



# KITSELAS TREATY

## A LIVING AGREEMENT

Minor Changes Agreement No. 1  
Consolidated Version  
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**KITSELAS**  
FIRST NATION



**BRITISH  
COLUMBIA**



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# **GENERAL**



## PREAMBLE

### WHEREAS:

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

- H. Kitselas people are Tsimshian people who speak Sm'algayax and whose heritage, history and culture, including their language and religion, are tied to the lands and waters of the lower Skeena River and the north coast of British Columbia;
- I. The Parties have negotiated this Agreement under the British Columbia Treaty Commission process;
- J. The Parties enter into this Agreement with the view of advancing the following Common Objectives:
- (a) recognizing Kitselas Aboriginal rights, including Aboriginal title and the inherent right to self-government;
  - (b) reconciling differences between the Parties over lands and resource ownership and jurisdiction through a new treaty relationship that is flexible and intended to evolve over time;
  - (c) providing for effective and sustainable Kitselas self-government through, among other things, a common commitment to capacity building and a new and enhanced fiscal relationship;
  - (d) providing flexibility, clarity and predictability for all Parties with respect to the nature, scope and geographic extent of the exercise of Kitselas Exercisable Section 35 Rights;
  - (e) implementing the United Nations Declaration on the Rights of Indigenous Peoples in accordance with the Constitution of Canada;
  - (f) achieving equity with other Canadians in socio-economic outcomes and overall well-being of Kitselas and Kitselas Citizens;
  - (g) enhancing economic opportunities for Kitselas, Kitselas Citizens and the surrounding community; and
  - (h) preserving, revitalizing, and strengthening of the culture, language, and heritage of Kitselas;
- K. The Parties agree that comprehensive treaties are among the highest forms of reconciliation between the Crown and Indigenous Nations; and
- L. This Agreement advances the objectives of the United Nations Declaration on the Rights of Indigenous Peoples.

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

## CHAPTER 1 – GENERAL PROVISIONS

### Living Agreement

1. The Parties recognize and acknowledge that this Agreement is a living agreement and provides a foundation for an ongoing relationship amongst the Parties.
2. The Parties commit to the following specific treaty arrangements that support the evolution of this Agreement:
  - (a) Periodic Renewal;
  - (b) Orderly Process;
  - (c) the review, renewal or amendment, in accordance with their terms, of agreements associated with this Agreement but that do not form part of this Agreement;
  - (d) the development over time of Fiscal Arrangements and Fiscal Provisions in accordance with Chapter 25 Fiscal;
  - (e) the evolution of consultation arrangements in accordance with paragraphs 62 to 75;
  - (f) amendment provisions in Chapter 31 Amendment; and
  - (g) other processes as agreed to by the Parties.

### Nature of This Agreement

3. This Agreement is a treaty and a land claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.
4. This Agreement:
  - (a) is binding on the Parties and all persons; and
  - (b) notwithstanding paragraph 4(a), is not intended to bind provinces, other than British Columbia, or territories, on matters within their jurisdiction without their consent.
5. The Parties and all persons are entitled to rely on this Agreement.
6. Ratification of this Agreement by the Parties in accordance with Chapter 27 Ratification is a condition precedent to the validity of this Agreement and, unless so ratified, this Agreement has no force or effect.

7. Canada and British Columbia will recommend to Parliament and the Legislature of British Columbia, respectively, that Federal Treaty Implementation Legislation and Provincial Treaty Implementation Legislation provide that this Agreement is approved, given effect, declared valid and has the force of law.

### **Honour of the Crown and UNDRIP**

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

### **Representations and Warranties**

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

### **Constitution of Canada**

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

### **Character of Kitselas Lands and Kitselas Coastal Site Lands**

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

**Application of Federal and Provincial Law**

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

**Relationship of Laws**

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

Federal or Provincial Law prevails with respect to the incidental effect to the extent of the Conflict.

21. Notwithstanding any other rule of priority in this Agreement, Federal Law in relation to peace, order and good government, criminal law, human rights, the protection of the health and safety of all Canadians, or other matters of overriding national importance prevails to the extent of any Conflict with Kitselas Law.
22. Canada will recommend to Parliament that Federal Treaty Implementation Legislation include a provision that, to the extent that a Provincial Law does not apply of its own force to Kitselas, Kitselas Citizens, Kitselas Lands, Kitselas Coastal Site Lands, Kitselas Government, Kitselas Public Institutions or Kitselas Corporations, that Provincial Law will, subject to the Federal Treaty Implementation Legislation and any other Act of Parliament, apply in accordance with this Agreement to Kitselas, Kitselas Citizens, Kitselas Government, Kitselas Public Institutions, Kitselas Corporations, Kitselas Lands and Kitselas Coastal Site Lands, as the case may be.
23. Unless otherwise provided in this Agreement, Kitselas Law does not apply to Canada or British Columbia.

24. Paragraph 23 does not preclude Federal Law from providing for the application of Kitselas Law to Canada or Provincial Law from providing for the application of Kitselas Law to British Columbia.
25. For greater certainty, Kitselas Law applies to agents of Canada or British Columbia on Kitselas Lands acting outside the purposes for which they are agents of Canada or British Columbia.
26. Kitselas Law is of no force or effect to the extent of an inconsistency or Conflict with this Agreement.
27. For greater certainty, Kitselas law-making authorities set out in this Agreement do not extend to criminal law and procedure, Intellectual Property, official languages of Canada, aeronautics, navigation, shipping, and labour relations and working conditions.
28. Nothing in this Agreement affects the public right of navigation.

### **International Legal Obligations**

29. Prior to expressing consent to be bound by an International Treaty that would give rise to a new International Legal Obligation, Canada will Consult Kitselas, separately or through a forum or means as appropriate, if compliance with the new International Legal Obligation may adversely affect a right of Kitselas under this Agreement.
30. If, due to a Kitselas Law or other exercise of governmental authority of Kitselas, Canada is or may be unable to comply with an International Legal Obligation, Canada and Kitselas will collaborate to ensure that Canada is able to comply with the International Legal Obligation, taking into account the importance of the Parties complying with this Agreement.
31. For greater certainty, for the purposes of paragraph 30, Kitselas Laws or other exercises of governmental authority cover both acts and omissions that can result in Canada being in violation of its International Legal Obligations.
32. Dispute resolution under Chapter 29 Dispute Resolution is not available to seek:
  - (a) a determination regarding Canada's compliance with an International Legal Obligation;
  - (b) a review of any determination by an International Tribunal concerning Canada's compliance with an International Legal Obligation; or
  - (c) a review of any advice, recommendation or views by an international body concerning Canada's compliance with an International Legal Obligation.

### **Application of the *Indian Act***

33. Except for the purposes of determining whether an individual is an Indian, and subject to:
  - (a) Chapter 30 Transition;
  - (b) Chapter 24 Tax; and

(c) if applicable, paragraph 2(b) of Chapter 3 Kitselas Lands,

the *Indian Act* does not apply to Kitselas, Kitselas Citizens, Kitselas Institutions, Kitselas Corporations, Kitselas Lands or Kitselas Coastal Site Lands.

34. Subject to paragraph 6 of Chapter 30 Transition, the Framework Agreement on First Nation Land Management, the *Framework Agreement on First Nation Land Management Act* and the *Kitselas Reserve Lands Management Act* do not apply to Kitselas, Kitselas Institutions, Kitselas Citizens or Kitselas Lands.
35. For as long as the Framework Agreement on First Nation Land Management is in effect and has the force of law, Canada will indemnify Kitselas, and Kitselas will indemnify Canada, in relation to Former Kitselas Indian Reserves, in the same manner and under the same conditions as would be the case if the Framework Agreement on First Nation Land Management applied to those lands.
36. For greater certainty, nothing in this Agreement will prevent a Kitselas Citizen from being registered as an Indian if that individual is entitled to be registered in accordance with the *Indian Act*.

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

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

#### **Court Decisions**

42. If a superior court of a province, the Federal Court of Canada, or the Supreme Court of Canada finally determines that any provision of this Agreement is invalid or unenforceable:

- (a) the Parties will make best efforts to amend this Agreement to remedy or replace the provision; and
  - (b) the provision will be severable from this Agreement to the extent of the invalidity or unenforceability, and the remainder of this Agreement will be construed, to the extent possible, to give effect to the intent of the Parties.
43. No Party will challenge, or support a challenge to, the validity of any provision of this Agreement.
44. A breach of this Agreement by a Party does not relieve any Party from its obligations under this Agreement.

### **Recognition and Predictability**

45. Canada and British Columbia recognize that Kitselas has Aboriginal rights within Kitselas's traditional territory, as recognized and affirmed by section 35 of the *Constitution Act, 1982*.
46. For greater certainty, the Aboriginal rights of Kitselas include Aboriginal title and the inherent right of self-government, as recognized and affirmed by section 35 of the *Constitution Act, 1982*.
47. The Parties agree that this Agreement is intended to achieve flexibility, clarity and predictability in providing for the implementation of those rights as part of an ongoing relationship between Kitselas, Canada and British Columbia, by setting out:
- (a) the Kitselas Exercisable Section 35 Rights, their attributes, the geographic extent of those rights, and the limitations to those rights, to which the Parties have agreed; and
  - (b) processes as set out in Chapter 31 Amendment and Chapter 2 Periodic Renewal and Orderly Process, by which Aboriginal rights of Kitselas, or attributes or geographic extent of those rights, that are not exercisable or assertable pursuant to paragraph 49 may become Kitselas Exercisable Section 35 Rights.
48. Nothing in this Agreement or the Treaty Implementation Legislation modifies or extinguishes any Aboriginal rights of Kitselas, and Canada and British Columbia will not assert against Kitselas that any Aboriginal rights of Kitselas are modified, surrendered or extinguished as a result of this Agreement or the Treaty Implementation Legislation.
49. Kitselas will only exercise or assert Kitselas Exercisable Section 35 Rights.
50. The purpose of paragraph 49 is to ensure that as of the Effective Date:
- (a) Kitselas can assert and exercise Kitselas Exercisable Section 35 Rights; and

- (b) Canada, British Columbia and all other persons can exercise their rights, authorities, jurisdictions and privileges in a manner that is consistent with this Agreement, and do not have any obligations, including any fiduciary duties or duty to consult, in relation to any Aboriginal rights that pursuant to paragraph 49 are not exercisable or assertable.
51. Kitselas releases Canada, British Columbia and all other persons from all suits, actions, claims, proceedings or demands of whatever kind, whether known or unknown, that Kitselas had, has or may have in the future, relating to or arising from any act or omission:
- (a) before the Effective Date that may have affected, interfered with or infringed any Aboriginal rights of Kitselas; and
- (b) on or after the Effective Date that may have affected, interfered with or infringed any Aboriginal rights of Kitselas that pursuant to paragraph 49 are not exercisable or assertable.
52. For greater certainty, paragraph 51 includes any suits, actions, claims, proceedings or demands based on the duty to consult in relation to the matters set out in paragraph 51(a) and 51(b).
53. For greater certainty, the releases in paragraph 51 are not intended to affect any rights and recourses that Kitselas may have in relation to suits, actions, claims, proceedings or demands that are not based on any Aboriginal rights of Kitselas.
54. The Parties will not challenge, and will vigorously defend any challenge to, the validity or legal effectiveness of Kitselas's agreement not to assert or exercise Aboriginal rights of Kitselas that are other than, or different in attributes, geographic extent or limitations from, the Kitselas Exercisable Section 35 Rights.

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

55. Notwithstanding any other provision of this Agreement, nothing in this Agreement precludes Kitselas from pursuing any claims that fall within the scope of Canada's Specific Claims Policy, in accordance with that policy, the *Specific Claims Tribunal Act*, or in court.
56. For greater certainty, if Kitselas pursues a specific claim in court, Canada reserves the right to plead all defences available to it including limitation periods, the doctrine of laches, and lack of admissible evidence, and Kitselas reserves the right to make all possible counter arguments available to it.
57. Claims referred to in paragraph 55 will not result in any land being declared to be, or being set aside as, "Lands reserved for the Indians" within the meaning of the *Constitution Act, 1867* for Kitselas or an Indian Reserve for the use and benefit of Kitselas.

### **Other Aboriginal Peoples**

58. This Agreement will not affect, recognize or provide any rights under section 35 of the *Constitution Act, 1982* for any Aboriginal people other than Kitselas.

59. 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 Kitselas, has a right under section 35 of the *Constitution Act, 1982* that is adversely affected by a provision of this Agreement:
- (a) that provision will operate and have effect to the extent it does not adversely affect that right; and
  - (b) if the provision cannot operate and have effect in a way that it does not adversely affect that right, the Parties will make best efforts to amend this Agreement to remedy or replace that provision.
60. If Canada or British Columbia enters into a treaty or a land claims agreement, within the meaning of sections 25 and 35 of the *Constitution Act, 1982*, with any other Aboriginal people and that treaty or land claims agreement adversely affects a Kitselas Exercisable Section 35 Right, Canada or British Columbia, or both, as the case may be, will provide Kitselas with additional or replacement rights or other appropriate remedies.
61. At the request of Kitselas, the Parties will negotiate and attempt to reach agreement on the provision of those additional or replacement rights or other appropriate remedies under paragraph 60.

### **Consultation**

62. Canada and British Columbia acknowledge that they have a duty to consult and, if appropriate, accommodate Kitselas regarding Contemplated Crown Conduct that may adversely affect Kitselas Exercisable Section 35 Rights.
63. British Columbia and Canada will carry out consultation, as set out in paragraphs 62 to 75, with the aim of securing the free, prior and informed consent of Kitselas.
64. The Parties have considered and designed processes and arrangements that are intended to govern the Crown's consultation obligations in relation to Contemplated Crown Conduct and agree that consultation, and, if appropriate, accommodation, will occur in accordance with the processes and arrangements contemplated under paragraphs 62 to 75.
65. Where a Specific Consultation Process applies to a particular type of Contemplated Crown Conduct, Canada or British Columbia, as applicable, and Kitselas will rely on that process for the purposes of consultation in relation to that conduct.
66. Where there is no Specific Consultation Process applicable in relation to a particular type of Contemplated Crown Conduct, Canada or British Columbia, as applicable, will fulfill its duty to consult Kitselas regarding that conduct in accordance with the process described in the term "Consult".
67. In relation to paragraphs 65 and 66, Canada or British Columbia, as applicable, and Kitselas may supplement, change or replace that consultation process in relation to a particular type of Contemplated Crown Conduct by written agreement made outside of this Agreement.

68. Where Canada or British Columbia, as applicable, may have a consultation obligation in relation to Contemplated Crown Conduct but reasonably believes that an emergency exists, Canada or British Columbia may act immediately to respond to that emergency.
69. Canada or British Columbia will give notice of its intent to implement, or its implementation of, any measure to respond to an emergency, including the reasons for the measure identified under paragraph 68 to Kitselas:
  - (a) before the measure is implemented if it is practicable to do so; or
  - (b) as soon as practicable after the measure is implemented,as the case may be.
70. Any measure implemented by Canada or British Columbia to reasonably respond to an emergency pursuant to paragraph 68 shall only be in force for as long as necessary.
71. Canada or British Columbia will give notice to Kitselas when the measure implemented pursuant to paragraph 68 is no longer in force.
72. Kitselas may request that Canada or British Columbia review the continued necessity of any measure implemented pursuant to paragraph 68 and Canada or British Columbia will fully and fairly consider any such request.
73. For greater certainty, the provision of notice under paragraph 69 does not limit the ability of the Parties to discuss, while the emergency is in effect and if the circumstances so allow:
  - (a) the adequacy and effectiveness of any measure implemented pursuant to paragraph 68;  
or
  - (b) the interests or concerns of any Party related to that emergency measure.
74. Within 120 days from the notice given in paragraph 71, if requested by Kitselas, Canada or British Columbia as applicable will meet with Kitselas to discuss:
  - (a) their respective views on the implementation of the measure for purposes of future emergency planning;
  - (b) if applicable, the interests or concerns of any Party related to that emergency measure, including the impacts of the measure on the Kitselas Exercisable Section 35 Rights; and
  - (c) if applicable, measures mutually agreed upon to address, mitigate or rectify the impacts of the emergency response referred to in paragraph 68.
75. The applicable Parties will participate in the processes set out in paragraphs 62 to 74 in good faith and in a timely, responsive, and meaningful way.

## Interpretation

76. The provisions of this Chapter and Chapter 2 Periodic Renewal and Orderly Process prevail to the extent of any inconsistency with the provisions in the other Chapters and the Appendices.
77. Subject to paragraph 78, there is no presumption that doubtful expressions, terms or provisions in this Agreement are to be resolved in favour of any Party.
78. Any doubtful expressions, terms or provisions in this Agreement are to be interpreted in accordance with modern treaty interpretation principles, including that the text is to be interpreted in light of this Agreement as a whole and this Agreement's objectives, in a manner consistent with paragraph 8, and having regard to the shared objective of advancing reconciliation between the Parties.
79. No agreement, plan, guideline or other document made by a Party or Parties that is referred to in or contemplated by this Agreement, including an agreement that is reached as a result of negotiations that are required or permitted by this Agreement, is:
- (a) part of this Agreement; or
  - (b) a treaty or land claims agreement, or recognizes or affirms Aboriginal or treaty rights, within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.
80. Where an authority of British Columbia referred to in this Agreement is delegated to Canada, the reference to British Columbia will be deemed to be a reference to Canada.
81. Where an authority of British Columbia referred to in this Agreement is delegated from Canada and:
- (a) the delegation of that authority is revoked; or
  - (b) a superior court of a province, the Federal Court of Canada or the Supreme Court of Canada finally determines that the delegation of that authority is invalid,
- the reference to British Columbia will be deemed to be a reference to Canada.
82. Where an authority of Canada referred to in this Agreement is delegated to British Columbia, the reference to Canada will be deemed to be a reference to British Columbia.
83. Where an authority of Canada referred to in this Agreement is delegated from British Columbia and:
- (a) the delegation of that authority is revoked; or
  - (b) a superior court of a province, the Federal Court of Canada or the Supreme Court of Canada finally determines that the delegation of that authority is invalid,
- the reference to Canada will be deemed to be a reference to British Columbia.

84. In this Agreement:
- (a) a reference to a statute or a regulation includes every amendment to it, any laws enacted in substitution of it or in replacement of it and every regulation made under that statute;
  - (b) unless the context requires otherwise, the use of the singular includes the plural, and the use of the plural includes the singular;
  - (c) unless the context requires otherwise, “will” denotes an obligation that, unless this Agreement provides to the contrary, must be carried out as soon as practicable after the Effective Date or the event that gives rise to the obligation;
  - (d) “may” is to be construed as permissive and empowering;
  - (e) “includes” means “includes, but not limited to”;
  - (f) “including” means “including, but not limited to”;
  - (g) “harvest” includes an attempt to harvest;
  - (h) “gather” includes an attempt to gather;
  - (i) unless the context otherwise requires, a reference in a Chapter or an Appendix of this Agreement to a “paragraph” or “Schedule” means a paragraph or Schedule of that Chapter or Appendix;
  - (j) unless the context otherwise requires, a reference to a “Chapter”, “paragraph”, “Schedule”, “Appendix” or the “Atlas” means a Chapter, paragraph, Schedule, Appendix or the Atlas of this Agreement;
  - (k) headings and subheadings are for convenience only, do not form a part of this Agreement, and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Agreement;
  - (l) “provincial” refers to the province of British Columbia; and
  - (m) where a word is defined in this Agreement or described in this paragraph, other parts of speech and grammatical forms of the same word have corresponding meanings.
85. For greater certainty, the Parties acknowledge that the *Official Languages Act* applies to this Agreement, including the execution of this Agreement.

### **Information and Privacy**

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

87. If Kitselas requests disclosure of information from Canada or British Columbia, the request will be evaluated as if it were a request by a province for disclosure of that information, but Canada and British Columbia are not required to disclose to Kitselas information that is only available to a particular province or particular provinces or that is not available to any provinces.
88. The Parties may enter into agreements in relation to any one or more of the collection, protection, retention, use, disclosure and confidentiality of personal, general or other information in accordance with any applicable legislation, including federal and provincial access to information and privacy legislation.
89. Canada or British Columbia may provide information to Kitselas in confidence if Kitselas has made a law or has entered into an agreement with Canada or British Columbia, as the case may be, under which the confidentiality of the information will be protected.
90. Notwithstanding any other provision of this Agreement:
- (a) Canada and British Columbia are not required to disclose any information that they are required to or authorized to withhold under Federal or Provincial Law, including under sections 37 to 39 of the *Canada Evidence Act*;
  - (b) if Federal or Provincial Law allows the disclosure of certain information only if specified conditions for disclosure are satisfied, Canada and British Columbia are not required to disclose that information unless those conditions are satisfied; and
  - (c) the Parties are not required to disclose any information that may be withheld under a privilege at law.

### **Entire Agreement**

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

### **No Implied Waiver**

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

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

**Obligation to Negotiate**

94. Whenever the Parties are obliged under any provision of this Agreement to negotiate and attempt to reach agreement, all Parties will participate in the negotiations unless the Parties otherwise agree.
95. Where this Agreement provides that the Parties, or any two of them, “will negotiate and attempt to reach agreement”, those negotiations will be conducted as set out in Chapter 29 Dispute Resolution, but none of the Parties are obliged to proceed to arbitration under Stage Three unless, in a particular case, they are required to do so under paragraph 28 of Chapter 29 Dispute Resolution.
96. Where this Agreement provides that a dispute will be “finally determined by arbitration”, the dispute will be referred to arbitration under paragraph 28 of Chapter 29 Dispute Resolution, unless none of the Parties directly engaged in the Disagreement delivers notice to all Parties under Appendix O-5.

**Assignment**

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

**Enurement**

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

**Minor Changes and Corrections**

99. After the Treaty Ratification Vote, but before the Parties sign this Agreement, the chief negotiators on behalf of Canada, British Columbia and Kitselas may agree to minor changes to this Agreement.
100. Before the Effective Date, the chief negotiators for Canada, British Columbia and Kitselas may agree to changes to this Agreement, the Appendices and the Atlas to update information or correct any editing, grammatical or typographical errors, and any updated information or corrections may be incorporated in the printing of this Agreement and the Appendices after the Effective Date.

**Deposit of Treaty**

101. The Parties will deposit a copy of this Agreement and any amendments to this Agreement, including any instruments giving effect to an amendment, in the following locations:
  - (a) by Canada in:
    - (i) the Library of Parliament; and

- (ii) the library of the Department of Crown-Indigenous Relations and Northern Affairs in the National Capital Region;
- (b) by British Columbia in:
  - (i) the Legislative Library of British Columbia; and
  - (ii) the applicable offices of the Registrar;
- (c) by Kitselas in its government office; and
- (d) any other locations agreed to by the Parties.

### Notice

102. In paragraphs 103 to 107, “communication” includes a notice, document, request, response, approval, authorization, confirmation or consent.
103. Unless otherwise described in this Agreement, a communication between or among the Parties under this Agreement will be in writing and will be:
- (a) delivered personally or by courier;
  - (b) transmitted by email; or
  - (c) mailed by any method for which confirmation of delivery is provided.
104. A communication is considered to have been given, made or delivered, and received:
- (a) if delivered personally or by courier, at the start of business on the next business day after the business day on which it was received by the addressee or a responsible representative of the addressee;
  - (b) if transmitted by email and the sender receives confirmation of the transmission, at the start of business on the business day next following the day on which it was transmitted; or
  - (c) if delivered by any method for which confirmation of delivery is provided, at the start of business on the next business day after the business day on which it was received by the addressee or a responsible representative of the addressee.
105. The Parties may agree to give, make or deliver a communication by means other than those provided in paragraphs 103 and 104.
106. The Parties will provide to each other addresses for delivery of communications under this Agreement, and subject to paragraph 107, will deliver a communication to the address provided by each Party.

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

For: Canada

Attention: Minister of Crown Indigenous Relations

House of Commons

Confederation Building

Ottawa, Ontario

K1A 0A6

For: British Columbia

Attention: Minister of Indigenous Relations and Reconciliation

Provincial Legislature

PO Box 9051, Stn Prov Govt

Victoria, British Columbia

V8W 9E2

For: Kitselas

Attention: Chief Administrative Officer

Kitselas Government

2225 Gitaus Road

Terrace, British Columbia

V8G 0A9

108. A Party may change its address as referred to in paragraph 107 by giving notice of the change to the other Parties.
109. If, in any judicial or administrative proceeding, an issue arises in relation to:

- (a) the interpretation or validity of this Agreement;
- (b) the validity, applicability or operability of the Federal Treaty Implementation Legislation or the Provincial Treaty Implementation Legislation; or
- (c) the validity, applicability or operability of a Kitselas Law,

the issue will not be decided until the party raising the issue has properly served notice on the Attorney General of British Columbia, the Attorney General of Canada and Kitselas.

110. In any judicial or administrative proceeding to which paragraph 109 applies, the Attorney General of British Columbia, the Attorney General of Canada and Kitselas may appear and participate in the proceedings as parties with the same rights as any other party.

## CHAPTER 2 – PERIODIC RENEWAL AND ORDERLY PROCESS

### Periodic Renewal

1. The Parties will conduct and implement Periodic Renewals of this Agreement in accordance with paragraphs 2 to 26.
2. The Parties will commence the first Periodic Renewal on a date agreed to by the Parties that will be no later than the tenth anniversary of the Effective Date.
3. The Parties will commence all subsequent Periodic Renewals on the Periodic Renewal Date that falls in the tenth year following the conclusion of the previous Periodic Renewal.
4. Periodic Renewals will conclude on the date that is the earlier of:
  - (a) the date agreed to by all Parties;
  - (b) 30 days following the date any Party has provided the other Parties with a notice that it is withdrawing from the Periodic Renewal; or
  - (c) the Periodic Renewal Date in respect of which the Parties did not engage in a Periodic Renewal pursuant to paragraph 6.
5. The Parties will meet at least 180 days before each Periodic Renewal Date to discuss possible agenda items and scheduling for the upcoming Periodic Renewal.
6. At least 60 days before each Periodic Renewal Date, each Party will provide the other Parties with notice if the Party wishes to address any matter contemplated by paragraphs 7 or 11, and if no notice is provided by any Party, the Parties will forego engaging in Periodic Renewal for that Renewal Period.
7. As part of the Periodic Renewal discussions, at the request of any Party, the Parties will discuss and, if requested by a Party, negotiate potential amendments to this Agreement or other measures relating to:
  - (a) the occurrence of any of the following during the Renewal Period:
    - (i) new developments in the common law related to the matters set out in this Agreement;
    - (ii) changes to federal or provincial legislation that relate directly to the matters set out in this Agreement;
    - (iii) any developments in federal or provincial policy related to the matters set out in this Agreement; or

- (iv) innovations in other modern treaties and land claims agreements, with a view to incorporating such innovations into this Agreement, if applicable;
  - (b) improving the harmonization of the legal and administrative systems, including law-making authorities that are being exercised under this Agreement, with those of British Columbia and Canada;
  - (c) changes required because of unforeseen circumstances that significantly impact:
    - (i) Kitselas Exercisable Section 35 Rights; or
    - (ii) other treaty arrangements or benefits; or
  - (d) other matters in relation to the implementation of the provisions of this Agreement as the Parties may agree in writing.
8. For greater certainty, paragraph 7(a) applies to developments, changes or innovations related to:
- (a) releases in paragraph 51 of Chapter 1 General Provisions; or
  - (b) agreements between one or more Indigenous Nations and the Crown recognizing Aboriginal title,
- that also fall within one or more of the occurrences described in paragraphs 7(a)(i) to 7(a)(iv).
9. For greater certainty, paragraphs 7(a) to 7(c) apply to the Kitselas Fish Allocations described in Schedule 1 of Chapter 21 Fish.
10. For greater certainty, the matters under paragraph 7(a) may include discussions regarding issues pertaining to corridors adjacent to and through Kitselas Lands.
11. As part of the Periodic Renewal discussions, at the request of any Party, the Parties will review and evaluate progress on the Common Objectives and determine whether any steps, to be agreed to by the Parties, should be taken to advance those objectives.
12. For greater certainty, while the requirement to review and evaluate progress on the Common Objectives in paragraph 11 is legally binding, the Parties agree that the Common Objectives on their own do not create independently enforceable legally binding obligations and are not agreed upon interpretative tools for any other purpose other than the application of the Periodic Renewal provisions.
13. The Parties acknowledge the importance of having a common agreement on the socio-economic indicators necessary to inform the review and evaluation of Common Objective (f).
14. If, at the time of the Periodic Renewal, the Parties have not reached agreement on the socio-economic indicators necessary to review and evaluate progress on Common Objective (f) and the mechanisms for measuring such indicators, the Parties will evaluate progress on Common Objective (f) based on the best available empirical data.

15. If a proposal advanced as part of Periodic Renewal relates to the fiscal relationship of the Parties set out in Chapter 25 Fiscal, the review will take place in accordance with Chapter 25 Fiscal and the review processes set out in the applicable Fiscal Arrangement or Fiscal Provision.
16. Unless the Parties otherwise agree, the discussions and any negotiations under paragraphs 7 or 11 will commence on the Periodic Renewal Date.
17. During a Periodic Renewal, the Parties are required to participate in the discussions and negotiations in good faith.
18. Good faith negotiations under paragraph 17 require the Parties to, among other things:
  - (a) enter into the negotiations with the goal of reaching a mutually acceptable outcome;
  - (b) provide timely disclosure of sufficient information and documents to enable a full examination of the subject matter;
  - (c) respond appropriately and in a timely manner to bargaining positions;
  - (d) not unreasonably reject a position of the other Party; and
  - (e) act consistently with the standard of good faith as articulated in the common law.
19. In assessing proposals brought forward by the Parties in a Periodic Renewal, the Parties may consider, among other things:
  - (a) whether the innovation described in paragraph 7(a)(iv) is based on such particular circumstances that it could not reasonably be applied to Kitselas;
  - (b) whether the proposal in relation to a specific issue can be addressed in another forum, under another process or through other arrangements, agreed to by the Parties;
  - (c) availability of resources and lower cost alternatives that would reasonably address the Parties' interests;
  - (d) the interests and potential impact of the proposal on third parties;
  - (e) any obligations that Canada or British Columbia may have to other Indigenous groups; and
  - (f) other alternatives that would reasonably address the Parties' interests and that do not require amendment of this Agreement.
20. Within 60 days of the conclusion of a Periodic Renewal, any Party may refer the question of whether any Party failed to participate in the Periodic Renewal process in good faith to Dispute Resolution in accordance with Appendix O-5 to be finally determined by arbitration without having to go through Stage One and Stage Two.

21. If an Arbitral Tribunal determines that a Party failed to participate in a Periodic Renewal in good faith, that Party will be required to pay:
  - (a) the costs of the arbitration, as determined in accordance with Section 116 of Appendix O-5;
  - (b) the other Parties' reasonable negotiation costs in the Periodic Renewal as determined in accordance with Section 116 of Appendix O-5; and
  - (c) a financial penalty of up to three times the aforementioned costs, as may be determined by the Arbitral Tribunal in accordance with Section 121 of Appendix O-5.
22. The Periodic Renewal contemplated by paragraphs 1 to 26 and all discussions and information relating to the matter of the Periodic Renewal are without prejudice to the respective legal positions of the Parties, unless the Parties otherwise agree, and nothing made or done with respect to a Periodic Renewal, including the discussions or the responses provided by the Parties, except for any amendments made pursuant to paragraph 23(b), creates any legally binding rights or obligations, including financial obligations, other than those contemplated by paragraph 21.
23. For greater certainty:
  - (a) although the Parties are required to participate in the discussions and negotiations in good faith, none of the Parties are required to agree to amend this Agreement or take other measures requested by another Party as a result of the Periodic Renewal contemplated by paragraphs 1 to 26;
  - (b) if the Parties agree to amend this Agreement, any such amendment will be made in accordance with Chapter 31 Amendment; and
  - (c) if the Parties agree to amend an agreement contemplated by this Agreement, the agreement will be amended in accordance with its terms.
24. Each of the Parties will be responsible for its own costs in relation to the Periodic Renewal process, unless otherwise determined by an arbitrator.
25. The Parties may choose to engage in regional or collective Periodic Renewals, provided all Parties have agreed.
26. For greater certainty, following a final determination by an arbitrator under paragraph 20, no Party is precluded from seeking to engage in additional discussions outside of the Periodic Renewal process described in paragraphs 1 to 25, but nothing in this Agreement obligates any Party to engage in such discussions.

**Orderly Process**

27. Following notice from Kitselas, the Parties will negotiate and attempt to reach agreement on amendments to this Agreement to incorporate an Aboriginal right into this Agreement, subject to the following conditions:
- (a) a Final Judgment of a Superior Court confirms the existence of the Aboriginal right in favour of another First Nation;
  - (b) on the Effective Date, the right, as characterized by the Final Judgment referenced in paragraph 27(a), had not yet been recognized by a Superior Court in a Final Judgment as an Aboriginal right recognized and affirmed under section 35 of the *Constitution Act, 1982*;
  - (c) the Aboriginal right relates to a matter that this Agreement is not designed to resolve; and
  - (d) a *prima facie* case for the existence of the Aboriginal right can be established in favour of Kitselas.
28. If, within one year following the commencement of collaborative negotiations under Stage One, the Parties:
- (a) do not agree that the conditions under paragraph 27 have been met; or
  - (b) agree that the conditions under paragraph 27 have been met, but do not agree on:
    - (i) the manner in which the Aboriginal right is to be exercised; or
    - (ii) the form and wording of the amendment,
- then, within 15 days of the conclusion of the foregoing period, a Party may refer the dispute to mediation under Stage Two.
29. If the mediation under paragraph 28 is terminated in accordance with the circumstances set out in Chapter 29 Dispute Resolution and Appendix O-2, Kitselas may apply to the Supreme Court of British Columbia for a declaration that:
- (a) on the Effective Date, the right, as characterized by the Superior Court determination referenced in paragraph 27(a), had not yet been recognized in a Final Judgment of a Superior Court as an Aboriginal right that is recognized and affirmed under section 35 of the *Constitution Act, 1982* as referenced in 27(b);
  - (b) the Aboriginal right relates to a matter that this Agreement is not designed to resolve; and
  - (c) Kitselas has the Aboriginal right referred to in paragraph 27(a).

30. If a Superior Court finally determines that the disputed conditions under paragraph 29 have been met, the Parties will, within one year from the date of the declaratory judgment, negotiate:
  - (a) the manner in which the Aboriginal right is to be exercised having regard to the factors set out in paragraph 33; and
  - (b) the form and wording of any amendment to this Agreement which may be required for inclusion of the Aboriginal right into this Agreement.
31. If the Parties are unable to reach agreement under paragraph 28(b) or paragraph 30(a) or 30(b), the matter will be finally determined by arbitration under Stage Three.
32. Kitselas may exercise the Aboriginal right when this Agreement has been amended and, notwithstanding paragraph 10 of Chapter 31 Amendment, this Agreement will be deemed to have been amended on:
  - (a) the date that the agreement between the Parties under paragraph 27, 28 or 30 takes effect;
  - (b) the date that the decision of the arbitrator under paragraph 31 takes effect; or
  - (c) where federal or provincial legislation is required to give effect to the amendment, the date the federal or provincial legislation is brought into force.
33. Amendments to the Agreement to incorporate the Aboriginal right will:
  - (a) preserve the balance of relations between the Parties and the integrity of this Agreement;
  - (b) preserve a reasonable balance between the rights of Kitselas and other societal interests; and
  - (c) take into account and have no effect on the rights and interests of third parties, including other Indigenous groups.
34. If an Aboriginal right incorporated into this Agreement includes the authority to make laws:
  - (a) the Kitselas law-making authority will be exercised concurrently with Federal and Provincial Law; and
  - (b) unless the Parties otherwise agree, Federal and Provincial Law will prevail to the extent of a Conflict with Kitselas Law made under the law-making authority incorporated into this Agreement.
35. Nothing in paragraphs 27 to 34 creates or implies any financial obligations or service delivery responsibilities for Canada or British Columbia.

# **LANDS**



## CHAPTER 3 – KITSELAS LANDS

### General

1. On the Effective Date, Kitselas Lands consist of approximately 38,223 hectares, shown for illustrative purposes in Appendix B-1, comprised of:
  - (a) 1,031 hectares, more or less, of Former Kitselas Indian Reserves, described in Appendix B-2 Part 3 and shown for illustrative purposes in Appendix B-2 Parts 1 and 2;
  - (b) 36,942 hectares, more or less, of former provincial Crown land, identified as “Former Provincial Crown Land” in Appendix B-3 Part 2 and shown for illustrative purposes in Appendix B-3 Part 1; and
  - (c) 250 hectares, more or less, of Former Private Fee Simple Lands described in Appendix B-4 Part 1 and shown for illustrative purposes in Appendix B-4 Part 2, subject to Kitselas meeting the conditions under paragraph 30.

### Port Essington Lands

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

### Port Essington Water Lot

4. British Columbia and Kitselas will negotiate and attempt to reach agreement on a suitable area of Submerged Lands in the Port Essington area for the issuance of a water lot lease by British Columbia under paragraph 6 for the purposes of a dock and moorage.
5. British Columbia and Kitselas will provide notice of and, to the extent possible, include Kitsumkalum in the negotiations under paragraph 4.
6. Subject to paragraph 7, if British Columbia and Kitselas reach agreement under paragraph 4, British Columbia will issue a water lot lease of the agreed upon area to Kitselas and Kitsumkalum, or an entity agreed upon by British Columbia, Kitselas and Kitsumkalum, substantially in the form set out in Appendix J Part 3.

7. The issuing of a water lot lease by British Columbia under paragraph 6 is subject to British Columbia:
  - (a) obtaining the consent of any upland owner whose riparian rights of access may be affected by the water lot lease;
  - (b) obtaining the consent of Kitsumkalum to the form and content of the water lot lease; and
  - (c) fulfilling any obligation British Columbia may have to consult other Aboriginal peoples whose rights recognized and affirmed under section 35 of the *Constitution Act, 1982* may be adversely affected by the water lot lease.
8. British Columbia will not designate Submerged Lands within the area of a water lot lease issued under paragraph 6 as a Wildlife Management Area, Provincial Protected Area, Provincial Park, conservancy or ecological reserve.

#### **Port Essington Foreshore Agreement**

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

#### **Kitselas Spoksuut Park**

12. On the Effective Date, Kitselas will make a Kitselas Law establishing Kitselas Spoksuut Park as a park.
13. Kitselas will manage Kitselas Spoksuut Park for the following purposes:
  - (a) preserving and maintaining Kitselas social, ceremonial, and cultural values; and

- (b) protecting and maintaining ecological values, biological diversity and the natural environment, including:
  - (i) salmon spawning habitat;
  - (ii) coastal western hemlock, yellow cedar, sitka spruce and western red cedar tree species;
  - (iii) habitat for grizzly bear, marbled murrelet and northern goshawk; and
  - (iv) habitat for red-listed or blue-listed species, as listed in the B.C. Conservation Data Centre.
- 14. At the request of British Columbia or Kitselas, British Columbia and Kitselas will review the harmonization of land use planning initiatives and compatible land use within Kitselas Spoksuut Park and adjacent areas within the provincial Ecstall-Spoksuut Conservancy.
- 15. Kitselas may only:
  - (a) designate Kitselas Spoksuut Park as Kitselas Private Lands in accordance with paragraph 3 of Chapter 7 Access; or
  - (b) alter the boundary of Kitselas Spoksuut Park,with the agreement of British Columbia and upon reasonable notice to the public and Canada.

### **Kleanza Ecological Area**

- 16. Kitselas will manage the Kleanza Ecological Area for the maintenance of ecological values, including:
  - (a) salmon spawning habitat in Kleanza Creek and Singlehurst Creek; and
  - (b) habitat for red-listed or blue-listed species, as listed in the B.C. Conservation Data Centre or any successor data centre.

### **Gitaws**

- 17. Kitselas will manage Gitaws for cultural, community, and heritage values and in a manner consistent with Kitselas culture.

### **Kitselas Coastal Site Lands**

- 18. In addition to Kitselas Lands, on the Effective Date Kitselas owns the Kitselas Coastal Site Lands, having an area of approximately three hectares, in fee simple in accordance with paragraph 19.
- 19. The Kitselas Coastal Site Lands:

- (a) are subject to the exceptions and reservations under section 50 of the *Land Act*;
  - (b) do not include any Crown Corridor, or any Submerged Lands;
  - (c) will be registered in the Land Title Office;
  - (d) may not be transferred or disposed of by Kitselas except in accordance with Kitselas Law;
  - (e) may not be transferred or disposed of to any person other than a Kitselas Public Institution or Kitselas Citizen without the consent of British Columbia; and
  - (f) for greater certainty, are not Kitselas Lands.
20. For greater certainty, Kitselas's fee simple ownership of the Kitselas Coastal Site Lands includes the right to the exclusive use and occupation of those lands in accordance with Provincial Law.
21. Prior to the Effective Date, British Columbia will cause an Adequate Survey of the boundaries of each of the Kitselas Coastal Site Lands to be prepared and filed or deposited in the Land Title Office.

#### **Kitselas Coastal Site Conservancy Lands**

22. On the Effective Date, the boundaries of the following Provincial Conservancies are deemed to be amended to remove the applicable Kitselas Coastal Site Conservancy Lands from that Provincial Conservancy:
- (a) Kennedy Island Conservancy; and
  - (b) Gitxaala Nii Luutiksm / Kitkatla Conservancy.
23. For greater certainty, after the Effective Date the Kitselas Coastal Site Conservancy Lands do not form part of any Provincial Conservancy.
24. Kitselas will manage and use the Kitselas Coastal Site Conservancy Lands in a manner consistent with the protection, preservation and maintenance of ecological and cultural values applicable to a Provincial Conservancy.
25. Nothing in paragraph 24 precludes Kitselas from constructing cabins, including cabins with cement foundations, and buildings, including smoke houses, on Kitselas Coastal Site Conservancy Lands.

#### **Kitselas Coastal Site Areas**

26. On the Effective Date, British Columbia will ensure that the Kitselas Coastal Site Areas and the Subsurface Resources on those lands are withdrawn from disposition under Provincial Law.

27. British Columbia will not amend or revoke any withdrawal from disposition under paragraph 26, or authorize the use or disposition of the Kitselas Coastal Site Areas for any commercial purpose, without the consent of Kitselas.

### **Harvesting Rights on and Incidental Use of Kitselas Coastal Site Areas**

28. For greater certainty, Kitselas has the right to exercise the following Kitselas Exercisable Section 35 Rights in accordance with this Agreement on the Kitselas Coastal Site Areas:
- (a) Kitselas Right to Gather Plants;
  - (b) Kitselas Right to Harvest Wildlife; and
  - (c) Kitselas Right to Harvest Migratory Birds.
29. For greater certainty, Kitselas Citizens may use the resources on the Kitselas Coastal Site Areas for purposes reasonably incidental to the exercise of the Kitselas Exercisable Section 35 Rights referred to in paragraph 28, in accordance with this Agreement.

### **Former Private Fee Simple Lands and Addition of Pre-Approved Fee Simple Addition Lands**

30. On the Effective Date, each parcel of Former Private Fee Simple Lands will be Kitselas Lands if Kitselas has delivered to Canada and British Columbia for that parcel:
- (a) a certificate, in substantially the form set out in Appendix B-4 Part 3, signed by each registered owner in fee simple of that parcel of Former Private Fee Simple Lands, certifying that, on the date of the certificate, they are the registered owner in fee simple of the lands legally described in the certificate and they consent to the inclusion of the lands in Kitselas Lands;
  - (b) where applicable, a certificate in substantially the form set out in Appendix B-4 Part 3, signed by the registered holder of each charge or encumbrance on title to that parcel of Former Private Fee Simple Lands, certifying that, on the date of the certificate, they are the registered holder of the charge or encumbrance and they consent to the inclusion of the lands in Kitselas Lands; and
  - (c) releases, in substantially the form set out Appendix B-4 Part 3, signed by each registered owner in fee simple, releasing Canada and British Columbia, as of the Effective Date, from any claims, demands, actions or proceedings relating to or arising out of the inclusion of the lands in Kitselas Lands.
31. If Kitselas does not deliver the certificates or releases required under paragraph 30 for a parcel of Former Private Fee Simple Lands, on or before the Effective Date, that parcel:
- (a) will not be included in Former Private Fee Simple Lands; and
  - (b) will be included in Pre-Approved Fee Simple Addition Lands,

and the Parties will amend Appendix B-4 Parts 1 and 2 and Appendix F Part 4 and any other applicable Appendices in accordance with the process set out in paragraph 9 of Chapter 31 Amendment.

32. Subject to paragraph 33, if Kitselas, a Kitselas Corporation, Kitselas Institution or Kitselas Citizen is a registered owner of the estate in fee simple of a parcel of Pre-Approved Fee Simple Addition Lands, Kitselas may give notice to British Columbia and Canada that the parcel of land is to be added to Kitselas Lands.
33. If Kitselas gives notice under paragraph 32, Kitselas may also deliver, in relation to that parcel:
- (a) a certificate, in substantially the form set out in Appendix B-4 Part 3, signed by each registered owner in fee simple of that parcel, certifying that, on the date of the certificate, they are the registered owner in fee simple of the lands legally described in the certificate and they consent to the addition of the lands to Kitselas Lands;
  - (b) where applicable, a certificate in substantially the form set out in Appendix B-4 Part 3, signed by the registered holder of each charge or encumbrance on title to that parcel, certifying that, on the date of the certificate, they are the registered holder of the charge or encumbrance and they consent to the addition of the lands to Kitselas Lands; and
  - (c) releases, in substantially the form set out Appendix B-4 Part 3, signed by each registered owner in fee simple, releasing Canada and British Columbia from any claims, demands, actions or proceedings relating to or arising out of the addition of the lands to Kitselas Lands.
34. Upon British Columbia and Canada receiving notice under paragraph 32 and the releases and certificates required under paragraph 33, the Parties will:
- (a) amend the applicable Appendices in accordance with the process set out in paragraph 9 of Chapter 31 Amendment to reflect the addition of the parcel to Kitselas Lands; and
  - (b) take the steps required to have the parcel recognized as Kitselas Lands in the Land Title Office,

and the land will become Kitselas Lands when the amendment takes effect.

35. Kitselas will indemnify and save harmless Canada and British Columbia from any damages, losses, liabilities or costs, excluding fees and disbursements of solicitors and other professional advisors, that Canada or British Columbia may suffer or incur in connection with or as a result of any claims, demands, actions or proceedings relating to or arising out of the addition of Former Private Fee Simple Lands or Pre-Approved Fee Simple Addition Lands to Kitselas Lands.

#### **Pre-Approved Addition to Kitselas Lands (Airport West Lands)**

36. If requested by Kitselas, British Columbia will offer to sell the Airport West Lands to Kitselas by providing Kitselas with an offer setting out:

- (a) the purchase price of the parcel which, unless British Columbia and Kitselas otherwise agree, will be equal to the fair market value of the parcel;
  - (b) the interests the parcel will be subject to; and
  - (c) the other terms and conditions applicable to the purchase and sale of the parcel.
37. Prior to the request being made in accordance with paragraph 36, Kitselas will engage with the City of Terrace to discuss interests related to the potential transfer and addition of the parcel to Kitselas Lands, including a potential municipal service agreement, and any implications that may arise as a result of the potential amendment of the municipal boundaries. In the event that Kitselas will be required to issue replacement tenures on lands referred to in paragraph 36, or to assume existing tenures, the terms and conditions of those tenures will be included as part of this Agreement.
38. The provincial Crown land that may be acquired by Kitselas under paragraph 36 will:
- (a) include the Subsurface Resources;
  - (b) not include required Provincial Roads and required Municipal Roads; and
  - (c) not include Submerged Lands.
39. If Kitselas becomes the registered owner of the Airport West Lands in the Land Title Office under paragraph 36, the parcel will be Kitselas Lands and the Parties will:
- (a) amend Appendix B in accordance with the process set out in paragraph 9 of Chapter 31 Amendment to reflect the addition of the Airport West Lands to Kitselas Lands; and
  - (b) take the steps required to have the Airport West Lands recognized as Kitselas Lands in the Land Title Office.
40. British Columbia will not dispose of any interest in the Airport West Lands after the Effective Date without the consent of Kitselas.
41. Unless otherwise agreed by Kitselas and British Columbia, British Columbia is not responsible for the costs associated with the survey, registration and transfer of the Airport West Lands to Kitselas.

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

42. Subject to paragraph 43, if Kitselas, a Kitselas Corporation, Kitselas Institution or Kitselas Citizen is or becomes the registered owner of the estate in fee simple in a parcel of land, or any portion thereof, identified as “Subject Lands” in Appendix F Parts 2 and 3, Kitselas may provide notice to British Columbia and Canada that the parcel of land is to be added to Kitselas Lands.

43. If Kitselas gives notice under paragraph 42 for a parcel of land, Kitselas must also deliver, in relation to that parcel:
- (a) a certificate, in substantially the form set out in Appendix B-4 Part 3, signed by each registered owner in fee simple of that parcel, certifying that, on the date of the certificate, they are the registered owner in fee simple of the lands legally described in the certificate and they consent to the addition of the lands to Kitselas Lands;
  - (b) where applicable, a certificate in substantially the form set out in Appendix B-4 Part 3, signed by the registered holder of each charge or encumbrance on title to that parcel, certifying that, on the date of the certificate, they are the registered holder of the charge or encumbrance and they consent to the addition of the lands to Kitselas Lands; and
  - (c) releases, in substantially the form set out Appendix B-4 Part 3, signed by each registered owner in fee simple, releasing Canada and British Columbia from any claims, demands, actions or proceedings relating to or arising out of the addition of the lands to Kitselas Lands.
44. Upon British Columbia and Canada receiving notice under paragraph 42 and the releases and certificates required under paragraph 43, the Parties will:
- (a) amend the applicable Appendices in accordance with the process set out in paragraph 9 of Chapter 31 Amendment to reflect the addition of the parcel to Kitselas Lands; and
  - (b) take the steps required to have the parcel recognized as Kitselas Lands in the Land Title Office,
- and the land will become Kitselas Lands when the amendment takes effect.

### **Ownership of Kitselas Lands**

45. On the Effective Date, Kitselas owns Kitselas Lands in fee simple, except for Former Private Fee Simple Lands that are owned in fee simple by a registered owner other than Kitselas.
46. Fee simple ownership of Kitselas Lands is not subject to any condition, proviso, restriction, exception or reservation set out in the *Land Act* or any comparable limitation under Federal or Provincial Law.
47. For greater certainty, on the Effective Date, Former Private Fee Simple Lands are Kitselas Lands.
48. Upon Former Private Fee Simple Lands or Pre-Approved Fee Simple Addition Lands becoming Kitselas Lands, the interests, rights, privileges and estates that were excluded or reserved by Canada or British Columbia from the original disposition of Crown land vest in Kitselas.
49. In accordance with this Agreement, the Kitselas Constitution and Kitselas Law, Kitselas may transfer any of its estates or interests in Kitselas Lands without the consent of Canada or British Columbia.

50. If Kitselas disposes of a fee simple estate in a parcel of Kitselas Lands under an agreement with Canada, unless otherwise agreed, those lands are not Kitselas Lands and Appendix B will be amended in accordance with the process set out in paragraph 9 of Chapter 31 Amendment.
51. Except as provided in paragraphs 50, 111 or section 10 of Appendix I Part 1, or in accordance with paragraph 53, a parcel of Kitselas Lands does not cease to be Kitselas Lands as a result of the disposition of an interest in such parcel.
52. If Kitselas wishes to dispose of a fee simple estate in a parcel of Kitselas Lands, Kitselas will, before the disposition, register the indefeasible title to that parcel under the *Land Title Act* in accordance with this Agreement. For greater certainty, any Kitselas Lands registered under the *Land Title Act* will continue to be Kitselas Lands.
53. Kitselas may remove a parcel of land from Kitselas Lands with the consent of Canada and British Columbia, which will not be unreasonably withheld.
54. In considering whether to consent to the removal of a parcel of land from Kitselas Lands in accordance with a request under paragraph 53, Canada and British Columbia may consider:
- (a) necessary jurisdictional, administrative and servicing arrangements;
  - (b) the views of any affected Local Government or affected neighbouring Indigenous group;
  - (c) whether the removal of the land will have an impact on negotiated Fiscal Arrangements or Fiscal Provisions;
  - (d) whether the removal of the land will have any legal or financial implications for Canada or British Columbia; and
  - (e) any other matter that Canada or British Columbia considers relevant.
55. If Canada and British Columbia consent to the removal of a parcel of land from Kitselas Lands under paragraph 54, each will give notice of its consent to the other Parties.
56. Upon receipt by Kitselas of the notices under paragraph 55:
- (a) Kitselas will register the parcel of land in the Land Title Office, if it is not registered;
  - (b) the Parties will amend all applicable Appendices in accordance with the process set out in paragraph 9 of Chapter 31 Amendment to reflect the removal of lands from Kitselas Lands; and
  - (c) the Parties will take the steps required, if necessary, to have the parcel of land no longer recognized as Kitselas Lands in the Land Title Office,

and the parcel of land will cease to be Kitselas Lands when the amendment takes effect.

57. All methods of acquiring a right in or over land by prescription or by adverse possession, including the common law doctrine of prescription and the doctrine of the lost modern grant, are abolished in relation to Kitselas Lands.
58. If, at any time, any parcel of Kitselas Lands, or any estate or interest in a parcel of Kitselas Lands, finally escheats to the Crown, the Crown will transfer, at no charge, that parcel, estate or interest to Kitselas.
59. For greater certainty, Kitselas Lands that escheat to the Crown remain Kitselas Lands.

### **Surveys**

60. No new survey will be required for a parcel of Kitselas Lands where the Surveyor General of British Columbia determines that an Adequate Survey exists for that parcel.
61. If an Adequate Survey is accepted for filing or deposit in the Land Title Office or Crown Land Registry, all applicable Appendices will be amended in accordance with the process set out in paragraph 9 of Chapter 31 Amendment to reflect any establishment or re-establishment of the boundaries identified by the Adequate Survey.
62. If there is a conflict between a map contained in the Appendices and an Adequate Survey that has been accepted for filing or deposit in the Land Title Office or Crown Land Registry, the Adequate Survey is authoritative.

### **Initial Surveys for Exterior Boundary of Kitselas Indian Reserves**

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

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

64. If Adequate Surveys of former provincial Crown lands identified in Appendix B-5 do not exist, British Columbia will cause Adequate Surveys of the exterior boundaries of those lands to be prepared prior to Effective Date in accordance with survey instructions issued by the Surveyor General of British Columbia.
65. If Adequate Surveys of former provincial Crown lands identified in Appendix B-3 Part 2 but not identified in Appendix B-5 do not exist, British Columbia will cause Adequate Surveys of the exterior boundaries of those lands to be prepared in accordance with survey instructions issued by the Surveyor General of British Columbia, as soon as practicable and in accordance with the survey protocol referred to in paragraph 66.
66. British Columbia and Kitselas will enter into agreement on a survey protocol before the Effective Date setting out the timing, order and priority for Adequate Surveys of the lands referred to in paragraph 65 having regard to:
  - (a) Kitselas's priorities and land use plans;

- (b) efficiency, economy and the availability of British Columbia Land Surveyors; and
- (c) the necessity to clarify boundaries due to imminent development on Kitselas Lands or adjacent lands.

**Costs**

- 67. Canada will pay the cost for the initial Adequate Surveys of the exterior boundaries of Former Kitselas Indian Reserves and the Port Essington Lands.
- 68. British Columbia will pay the cost for the initial Adequate Surveys of the exterior boundaries of the former provincial Crown lands identified in Appendix B-3 Part 2 and the Kitselas Coastal Site Lands.

**Interests**

- 69. On the Effective Date, title to Kitselas Lands is free and clear of all interests, except:
  - (a) replacement interests on Former Kitselas Indian Reserves granted or issued under paragraph 71;
  - (b) replacement interests granted or issued by Kitselas on the Effective Date as set out in Appendix G-1 Parts 2, 3 and 4;
  - (c) replacement interests granted or issued by Kitselas on former provincial Crown land on the Effective Date as set out in Appendix G-2;
  - (d) interests granted or issued by Kitselas on the Effective Date as set out in Appendix G-3;
  - (e) interests as set out in Appendix G-5, which continue in accordance with paragraph 79;
  - (f) encumbrances registered on title to the Former Private Fee Simple Lands immediately prior to the Effective Date, which continue in accordance with paragraph 81; and
  - (g) replacement interests referred to in paragraph 76.
- 70. Subject to paragraph 69, every interest that before the Effective Date encumbered or applied to Kitselas Lands ceases to exist.

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

- 71. On the Effective Date, Kitselas will grant or issue, to each interest holder named in Appendix G-1 Part 1, a form of tenure giving that holder at least the same rights with respect to the described parcel of Kitselas Lands that the interest holder had immediately before the Effective Date, modified to reflect the ownership and law-making authority of Kitselas over those lands.

**Replacement, Creation and Continuation of Interests**

- 72. On the Effective Date, Kitselas will:

- (a) grant or issue to each person holding the interest referred to in Appendices G-1 Parts 2, 3 and 4 and G-2 an interest replacing that person's interest as set out in those Appendices; and
  - (b) create new interests by granting or issuing to each person referred to in Appendix G-3 the interest set out in that Appendix.
73. An interest granted or issued by Kitselas in accordance with paragraphs 71 and 72 will:
- (a) be in the applicable form of document, if any, set out in Appendix G-4; and
  - (b) include any modifications agreed upon in writing before the Effective Date by the Kitselas Band and the person entitled to the interest.
74. Documents referred to in paragraph 73 have legal effect on the Effective Date as though they have been prepared, executed and delivered by Kitselas and by the applicable person named in Appendices G-1, G-2 or G-3 on the Effective Date.
75. Kitselas will deliver any applicable document to:
- (a) the applicable person named in Appendices G-1, G-2 and G-3; or
  - (b) any other person who, before the Effective Date, was identified by Canada, British Columbia and the Kitselas Band as the correct interest holder, and the Parties will amend Appendix G, as applicable, in accordance with the process set out in paragraph 9 of Chapter 31 Amendment to reflect the change.
76. On the Effective Date, the Kitselas Housing Society will:
- (a) replace the security interests set out in Appendix G-1 Part 5 by granting registerable security interests to the British Columbia Housing Management Commission substantially in the form set out in Appendix G-4 Part 1; and
  - (b) grant to each tenant referred to in Appendix G-1 Part 5 an interest replacing that tenant's interest substantially in the form set out in Appendix G-4 Part 1.
77. If, following the Effective Date, a Party notifies the other Parties that an interest granted or issued in accordance with paragraphs 71, 72 or 76:
- (a) is in the name of a person who was not entitled to the interest on the Effective Date; or
  - (b) contains a clerical error or a wrong description of a material fact,
- the appropriate Parties will take reasonable measures to rectify the error.
78. Any right of way of the nature described in section 218 of the *Land Title Act* that is granted by Kitselas under this Agreement will be legally binding and enforceable notwithstanding that Kitselas Lands to which the right of way relates may not be subject to the *Land Title Act*.

79. The interests set out in Appendix G-5 are retained by the persons who hold those interests on the Effective Date and will continue in accordance with Provincial Law and the existing terms and conditions of the interest on the Effective Date, modified where appropriate to reflect ownership of the land by Kitselas.
80. If an interest set out in Appendix G-5 is not renewed or replaced when it expires or terminates in accordance with its terms or Provincial Law, that interest ceases to exist.
81. The encumbrances registered on title to the Former Private Fee Simple Lands immediately prior to the Effective Date will continue in accordance with Provincial Law and the existing terms and conditions of the encumbrance on the Effective Date.

### **Submerged Lands**

82. Subject to paragraph 86, Submerged Lands do not form part of Kitselas Lands and nothing in this Agreement affects British Columbia's ownership of Submerged Lands.
83. British Columbia will notify Kitselas of any proposed disposition of an interest in, or authorization of the use or occupation of, Submerged Lands that are wholly contained within Kitselas Lands.
84. British Columbia will not, in relation to Submerged Lands that are wholly contained within Kitselas Lands:
  - (a) grant an estate in fee simple;
  - (b) grant a lease that, with any rights of renewal, may exceed a term of 25 years;
  - (c) transfer administration and control for a period that may exceed 25 years; or
  - (d) otherwise dispose of an interest in, or authorize the use or occupation of, Submerged Lands if that disposition, use or occupation would adversely affect those Kitselas Lands or any applicable Kitselas interest described in this Agreement,without the consent of Kitselas.
85. Paragraph 84 does not affect the riparian rights of any upland owner of Kitselas Lands adjacent to Submerged Lands.
86. Submerged Lands that are part of Former Kitselas Indian Reserves form part of Kitselas Lands.
87. No transfer of Submerged Lands to Kitselas in accordance with this Agreement includes the exclusive right to fish, property rights in Fish or the right to allocate Fish.

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

88. Lawful accretions to Kitselas Lands are Kitselas Lands.

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

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

90. British Columbia will indemnify and forever save harmless Kitselas from any damages, losses, liabilities or costs, excluding fees and disbursements of solicitors and other professional advisors, that Kitselas may suffer or incur in connection with or as a result of any claims, demands, actions or proceedings relating to or arising out of:
- (a) the omission from Appendix G-2, G-3 or G-5 of the name of a person who, immediately before the Effective Date, had an interest in Kitselas Lands that had been granted by British Columbia over former provincial Crown land; or
  - (b) the incorrect naming of a person in Appendix G-2, G-3 or G-5 as a person entitled to an interest, where another person was actually entitled, immediately before the Effective Date, to the interest in Kitselas Lands that had been granted by British Columbia over former provincial Crown land.
91. Kitselas warrants that there are no interests arising subsequent to the coming into force of the *Kitselas Reserve Lands Management Act* with respect to the Former Kitselas Indian Reserves other than those set out in Appendix G-1.

### **Site Remediation on Kitselas Lands**

92. The transfer of Former Kitselas Indian Reserves to Kitselas in accordance with this Agreement does not, in and of itself, result in British Columbia being determined to be a Responsible Person in respect of any potential Contamination of any Former Kitselas Indian Reserves.
93. British Columbia is not required to prepare and provide a Site Disclosure Statement for any lands transferred to Kitselas in accordance with this Agreement.

### **Environmental Condition of Old Mining Sites**

94. Kitselas acknowledges that British Columbia has informed Kitselas that, given the historical mineral exploration and development activities occurring on the Old Mining Sites, there are potential undetermined Contamination and safety issues associated with the sites, including the potential presence of toxic, hazardous, dangerous, or potentially dangerous, substances on or under the sites, and on or under surrounding or neighbouring lands.
95. Notwithstanding the information provided to Kitselas under paragraph 94, Kitselas confirms its interest in including the Old Mining Sites as Kitselas Lands under this Agreement and agrees that it will on and after the Effective Date:

- (a) assume all liabilities relating to the environmental condition of the Old Mining Sites, including all liability for the cleanup of any Contamination or any other toxic, hazardous, dangerous or potentially dangerous substances on or conditions on or under the sites or migrating from the sites (including surface water and ground water) and any other costs of remediation of the sites, whether disclosed or undisclosed, known or unknown, created or existing, that arose before or after the Effective Date or arose before and continues after the Effective Date;
- (b) release British Columbia, and its agents, employees and officials, from all suits, actions, claims, proceedings or demands of whatever kind, whether known or unknown, that Kitselas had, has or may have in the future, relating to or arising from any and all liabilities described in paragraph 95(a); and
- (c) indemnify and save harmless British Columbia from any damages, losses, liabilities or costs, excluding fees and disbursements of solicitors and other professional advisors, that British Columbia may suffer or incur in connection with or as a result of any claims, demands, actions or proceedings relating to or arising out of the environmental condition of the Old Mining Sites.

#### **Additions to Kitselas Lands**

96. At any time after the Effective Date, Kitselas may request the agreement of British Columbia and Canada to add to Kitselas Lands land that is:
- (a) owned in fee simple by Kitselas, a Kitselas Corporation or Kitselas Institution; and
  - (b) within the Kitselas Harvest Area.
97. Prior to making a request under paragraph 96 for lands within a municipal boundary, Kitselas will engage with that municipality to discuss areas of shared interest and any implications that may arise as a result of the addition to Kitselas Lands.
98. When considering a request by Kitselas under paragraph 96 Canada and British Columbia will take into account:
- (a) potential adverse impacts that adding the land to Kitselas Lands might have on the rights of other Aboriginal peoples recognized and affirmed under section 35 of the *Constitution Act, 1982*;
  - (b) measures that may be appropriate to avoid, mitigate or otherwise accommodate any potential adverse impacts identified under paragraph 98(a); and
  - (c) any other relevant matters.
99. When considering a request by Kitselas under paragraph 96, British Columbia will take into account the results of Kitselas's engagement under paragraph 97.

100. If Canada agrees to add lands to Kitselas Lands, Canada will provide notice of its agreement by order of the Governor in Council.
101. If British Columbia agrees to add lands to Kitselas Lands, British Columbia will provide notice of its agreement by order of the Lieutenant Governor in Council or by other means specified by British Columbia.
102. Nothing in paragraphs 96 to 104 obligates Canada or British Columbia to pay any costs associated with the purchase or transfer of land that is added to Kitselas Lands under paragraph 96 or any other costs related to the addition of the land to Kitselas Lands.
103. Where Kitselas requests the agreement of Canada and British Columbia to add land to Kitselas Lands under paragraph 96, and Canada and British Columbia provide notice of their agreement to that request in accordance with paragraphs 100 and 101 respectively, the Parties will:
  - (a) take the steps required to have the parcel of land recognized as Kitselas Lands in the Land Title Office; and
  - (b) amend Appendix B in accordance with the process set out in paragraph 9 of Chapter 31 Amendment to reflect the addition of the parcel to Kitselas Lands,and the land will become Kitselas Lands when the amendment takes effect.
104. Where lands are added to Kitselas Lands under paragraph 103, Kitselas will be responsible for the preparation of Adequate Surveys, if necessary.

### **Continuation of Interests**

105. A parcel of land added to Kitselas Lands continues to be subject to any interest, financial charge or encumbrance existing immediately before the parcel of land becomes Kitselas Lands, unless the holder of such interest, financial charge or encumbrance otherwise agrees in writing.
106. For greater certainty, Kitselas's ownership of Subsurface Resources is subject to any Subsurface Tenures and those Subsurface Tenures continue to be administered by British Columbia in accordance with paragraphs 9 to 18 of Chapter 4 Subsurface.

### **Limits on Provincial Expropriation of Kitselas Lands**

107. British Columbia acknowledges that it is of fundamental importance to maintain the size and integrity of Kitselas Lands and therefore, as a general principle, an interest or estate in Kitselas Lands will not be expropriated under Provincial Law.
108. If a Provincial Expropriating Authority has determined that it requires Kitselas Lands, the Provincial Expropriating Authority will make reasonable efforts to acquire an interest or estate by agreement with the owner of those Kitselas Lands.

109. For greater certainty, if a Provincial Expropriating Authority and the owner of Kitselas Lands are unable to reach an agreement under paragraph 108, that Provincial Expropriating Authority may expropriate an interest or estate in Kitselas Lands in accordance with this Chapter and Appendix I Part 2.
110. If a Provincial Expropriating Authority expropriates an interest or estate in Kitselas Lands, only the most limited interest or estate in Kitselas Lands necessary will be expropriated for the shortest time required.
111. Any estate in fee simple in Kitselas Lands expropriated by a Provincial Expropriating Authority will not remain Kitselas Lands, unless Kitselas and British Columbia otherwise agree.
112. Subject to paragraph 113, the total amount of the estate in fee simple of Kitselas Lands that may be expropriated by Provincial Expropriating Authorities is an amount equal to 2.5% of the total area of Kitselas Lands on the Effective Date.
113. If lands are added to Kitselas Lands under paragraph 96, the total amount of the estate in fee simple of Kitselas Lands that may be expropriated by Provincial Expropriating Authorities under paragraph 112 increases by 2.5% of the area of the lands added to Kitselas Lands.

#### **Limits on Federal Expropriation of Kitselas Lands**

114. Canada acknowledges that it is of fundamental importance to maintain the size and integrity of Kitselas Lands and, therefore as a general principle interests in Kitselas Lands will not be expropriated under Federal Law.
115. Before expropriating an interest in Kitselas Lands, a Federal Expropriating Authority will make reasonable efforts to acquire the interest by agreement.
116. Despite the general principle against expropriation under paragraph 114, any interest in Kitselas Lands may be expropriated by a Federal Expropriating Authority with the consent of the Governor in Council, and in accordance with this Chapter and Appendix I Part 1.
117. If a Federal Expropriating Authority expropriates Kitselas Lands, only the most limited interest in Kitselas Lands necessary will be expropriated and for the shortest time required.
118. Federal Law applies to the expropriation of an interest in Kitselas Lands by a Federal Expropriating Authority except to the extent that this Agreement modifies its application.
119. Nothing in this Agreement affects or limits the application of the *Emergencies Act* to Kitselas Lands and that Act continues to apply on Kitselas Lands.

#### **Law-Making**

120. Kitselas may make laws in relation to:
  - (a) the use of Kitselas Lands, including:

- (i) management;
    - (ii) land use planning, zoning and development; and
    - (iii) designation, including the designation of Kitselas Private Lands;
  - (b) the creation, allocation, ownership and disposition of interests or estates in Kitselas Lands including:
    - (i) fee simple estates or any lesser estate or interest;
    - (ii) mortgages;
    - (iii) leases, licences, permits, easements, and Rights of Way, including Rights of Way and covenants similar to those in sections 218 and 219 of the *Land Title Act*;
    - (iv) tenuring of Subsurface Resources; and
    - (v) any conditions, provisos or restrictions, including restrictions on alienation, exceptions or reservations on such estates or interests;
  - (c) the establishment and operation of a Kitselas land title or land registry system for Kitselas Lands that are not registered in the Land Title Office; and
  - (d) expropriation for public purposes and public works by Kitselas of interests or estates in Kitselas Lands where Kitselas provides fair compensation to the owner of the estate or interest and the expropriation is of the smallest estate or interest necessary for the public purpose or public work.
121. Notwithstanding paragraph 120(d), Kitselas may not expropriate:
- (a) interests or estates, granted or continued on the Effective Date, or thereafter replaced in accordance with this Agreement, unless specifically provided for in this Agreement;
  - (b) interests or estates expropriated or otherwise acquired by a Federal Expropriating Authority or a Provincial Expropriating Authority; or
  - (c) any other interests upon which the Parties have agreed to in this Agreement.
122. Notwithstanding 121(a), Kitselas may expropriate for public purposes or public works an interest or estate granted or issued under paragraph 71 where Kitselas provides fair compensation to the owner of the interest or estate and the expropriation is for the smallest interest necessary for the public purpose or public work.
123. For the purposes of paragraph 120(b), Kitselas may make laws in relation to estates or interests in Kitselas Lands that are:
- (a) not recognized under Federal or Provincial Law; or

- (b) recognized under Federal or Provincial Law provided that they are consistent with Federal or Provincial Law in relation to those estates or interests.
124. For greater certainty, a Kitselas Law under paragraph 120(b)(v) in respect of a fee simple estate granted by Kitselas is not inconsistent with common law principles.
125. Kitselas Law under paragraph 120 prevails to the extent of a Conflict with Federal or Provincial Law.

### **Kitselas Agricultural Lands**

126. The *Agricultural Land Commission Act* does not apply to Kitselas Lands.
127. On the Effective Date, Kitselas will make laws under paragraph 120 that:
- (a) designate as Kitselas Agricultural Lands:
    - (i) Kitselas Lands identified in Appendix B-6 as Kitselas Agricultural Lands; and
    - (ii) future additions to Kitselas Lands that are designated as agricultural land reserve under the *Agricultural Land Commission Act* immediately prior to their addition to Kitselas Lands;
  - (b) establish in relation to Kitselas Agricultural Lands:
    - (i) farm uses and limitations on non-farm uses;
    - (ii) processes and authorities for authorizing requests for non-farm uses; and
    - (iii) processes and authorities for authorizing requests to remove agricultural designations; and
  - (c) establish processes for reviewing and authorizing requests to designate Kitselas Lands as Kitselas Agricultural Lands.
128. Kitselas Law under paragraph 127 will:
- (a) prioritize the preservation of high capability agricultural lands for agricultural and other food harvesting uses;
  - (b) define farm and non-farm uses comparable to the *Agricultural Land Commission Act* regulations; and
  - (c) provide for engagement with adjacent landowners and British Columbia in processes set out in 127(b).

**Commercial Recreation Tenure Opportunities**

129. At the request of Kitselas, Kitselas and British Columbia will negotiate and attempt to reach agreement respecting commercial recreation tenure opportunities for Kitselas within the provincial Crown lands identified as “Areas Subject to Co-Management Negotiations on the Effective Date” in Appendix J Part 1.
130. Unless otherwise agreed to by the Parties, any commercial recreation tenures issued in accordance with paragraph 129 are subject to Provincial Law and policy.

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

131. If, prior to the Effective Date, any lands, including the Highway 16 Lands, have been set apart as Indian Reserve for the exclusive use and benefit of the Kitselas Band, then this Agreement will be updated, as necessary, to reflect that those additional Indian Reserve lands form part of Former Kitselas Indian Reserves.
132. For greater certainty, nothing in paragraph 131 alters the application of the ATR Policy to the Kitselas Band, the Highway 16 Lands, or any other lands the Kitselas Band may seek to have set apart for their use and benefit prior to the Effective Date.

## CHAPTER 4 – SUBSURFACE

### General

1. On the Effective Date, Kitselas owns Subsurface Resources on or under Kitselas Lands if those Subsurface Resources were owned by British Columbia or Canada immediately prior to becoming Kitselas Lands.
2. Kitselas will own the Subsurface Resources on land that is added to Kitselas Lands after the Effective Date if:
  - (a) the fee simple title includes ownership of the Subsurface Resources; or
  - (b) British Columbia or Canada owns the Subsurface Resources and Kitselas and British Columbia or Canada, as applicable, agree.
3. For greater certainty, the Subsurface Resources on or under the lands legally described in Appendix G-6 will continue to be owned by the registered owners of those Subsurface Resources.
4. For greater certainty, Subsurface Resources on or under Kitselas Lands are subject to applicable Subsurface Tenures.
5. Subject to paragraph 14, Kitselas has authority to set, collect and receive fees, rents, royalties and other charges, except taxes, for the exploration, development, extraction and production of Subsurface Resources owned by Kitselas.
6. Nothing in this Agreement confers jurisdiction on Kitselas in relation to Nuclear Substances, nuclear facilities or prescribed equipment or information in relation to Nuclear Substances or nuclear facilities.
7. Nothing in this Agreement confers authority on Kitselas to make laws in respect of:
  - (a) spacing and target areas related to Petroleum and Natural Gas and Geothermal Resources and conservation and allocation of Petroleum and Natural Gas and Geothermal Resources among parties having interests in the same reservoir; and
  - (b) Subsurface Tenures and related Tenured Subsurface Resources.
8. Notwithstanding paragraph 125 of Chapter 3 Kitselas Lands, Federal or Provincial Law in respect of Subsurface Resources prevails to the extent of a Conflict with Kitselas Law under paragraph 120 of Chapter 3 Kitselas Lands.

### Tenured Subsurface Resources

9. Subject to paragraph 13, Subsurface Tenures:

- (a) continue in accordance with Provincial Law and this Agreement; and
  - (b) will be administered by British Columbia in accordance with Provincial Law and this Agreement.
10. Provincial Law applies to the exploration, development, extraction and production of Tenured Subsurface Resources as if the Tenured Subsurface Resources were owned by British Columbia.
11. In administering the Subsurface Tenures and Tenured Subsurface Resources, British Columbia may grant, as necessary, any related extensions, renewals, continuations, replacements or issue any further rights as the Tenured Subsurface Resources are developed.
12. In administering the Subsurface Tenures and Tenured Subsurface Resources, British Columbia will notify Kitselas before changing or eliminating any rents or royalties applicable to the Tenured Subsurface Resources.
13. British Columbia will:
  - (a) ensure that any rents and royalties applicable to Tenured Subsurface Resources that British Columbia would be entitled to receive after the Effective Date if those Tenured Subsurface Resources were owned by British Columbia, and any interest earned on those rents and royalties, are paid to Kitselas; and
  - (b) retain any fees, charges or other payments for administrative purposes applicable to Subsurface Tenures and Tenured Subsurface Resources under Provincial Law.
14. Kitselas does not have the authority to establish fees, rents, royalties or other charges in relation to Subsurface Tenures, or in relation to the exploration, development, extraction or production of Tenured Subsurface Resources.
15. Kitselas Lands will be treated as private lands under Provincial Law relating to Subsurface Resources for the purposes of resolving any access issues and compensation rights associated with any proposed entrance, occupation or use of Kitselas Lands by holders of Subsurface Tenures.
16. Any dispute under paragraph 15 may be resolved under Provincial Law relating to access and compensation disputes involving Subsurface Resources.
17. A Subsurface Tenure holder must not begin a mining activity on a Subsurface Tenure without first serving notice on Kitselas substantively in the form required to be given to an owner under Provincial Law.
18. Where a Subsurface Tenure is forfeited, cancelled or expires and is not restored under Provincial Law, Kitselas Lands will no longer be subject to that Subsurface Tenure.

## CHAPTER 5 – LAND TITLE

### Federal Title Registration

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

### Land Title System

2. The *Land Title Act* applies to:
  - (a) Kitselas Lands registered under the *Land Title Act*; and
  - (b) all applications in respect of Kitselas Lands made under the *Land Title Act*.
3. The *Land Title Act* does not apply to a parcel of Kitselas Lands for which:
  - (a) no application has been made under the *Land Title Act* in accordance with this Agreement for the registration of an indefeasible title;
  - (b) an application has been made under the *Land Title Act* in accordance with this Agreement for the registration of an indefeasible title and that application has been withdrawn or rejected; or
  - (c) the indefeasible title under the *Land Title Act* has been cancelled.

### Application for Registration of Indefeasible Title

4. Kitselas, and no other person, may apply under the *Land Title Act* for the initial registration of an indefeasible title to a parcel of Kitselas Lands for which no indefeasible title is registered at the time of application, and such application may be made in the name of Kitselas or on behalf of another person.
5. On the Effective Date, the following will be registered or remain registered in the Land Title Office in accordance with this Agreement and the requirements of the *Land Title Act*:
  - (a) an indefeasible title in the name of Kitselas to those parcels of Kitselas Lands identified as:
    - (i) Former Kitselas Indian Reserves in Appendix B-2; and
    - (ii) former provincial Crown land in Appendix B-5;
  - (b) subject to paragraph 30 of Chapter 3 Kitselas Lands, an indefeasible title to those parcels of Kitselas Lands identified as Former Private Fee Simple Lands in Appendix B-4;

- (c) an indefeasible title in the name of Kitselas to Kitselas Coastal Site Lands;
  - (d) if applicable, the interests granted or issued in accordance with paragraph 71 of Chapter 3 Kitselas Lands to each interest holder named in Appendix G-1 Part 1;
  - (e) if applicable, the interests set out in Appendix G-1 Parts 2, 3, 4 and 5 granted or issued in accordance with paragraphs 72 or 76 of Chapter 3 Kitselas Lands;
  - (f) if applicable, the interests set out in Appendix G-2 and Appendix G-3 granted or issued in accordance with paragraph 72 of Chapter 3 Kitselas Lands;
  - (g) if applicable, the interests on Kitselas Coastal Site Lands;
  - (h) any other interests in Kitselas Lands already registered in the Land Title Office; and
  - (i) any other interests agreed to by the Parties.
6. To the extent a transmission right of way in favour of British Columbia Hydro and Power Authority is applicable to a parcel of land registered under paragraph 5, the Parties will make application for registration of that interest in priority to the registration of other interests.

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

7. Notwithstanding any requirement of the *Land Title Act*, *Land Act*, by-laws of the Land Title and Survey Authority or any other Provincial Law, no fee is payable by:
- (a) Canada, Kitselas, or any other person in relation to:
    - (i) the first registration in the Land Title Office of indefeasible title to a parcel of Kitselas Lands in the name of Kitselas, a Kitselas Corporation, or a Kitselas Public Institution on or after the Effective Date;
    - (ii) the first registration in the Land Title Office of an instrument granting an estate or interest in Kitselas Lands if the estate or interest is required under this Agreement to be registered in the Land Title Office;
    - (iii) the deposit of any plan, or a certificate as required under the *Land Title Act* in relation to a matter referred to in paragraph 7(a)(i) or 7(a)(ii);
    - (iv) the issuance of a State of Title Certificate under the *Land Title Act* in relation to a matter referred to in paragraph 7(a)(i) or 7(a)(ii);
    - (v) the filing of a certificate in relation to a registered parcel that is to become Kitselas Lands on the Effective Date in accordance with this Agreement, the indefeasible title of which is to be registered on the Effective Date in the name of a person other than Kitselas; or
    - (vi) the first registration in the Land Title Office of indefeasible titles to the Kitselas Coastal Site Lands; or

- (b) Canada or Kitselas for any services provided under the *Land Act* by the Surveyor General, or persons under the Surveyor General's direction, in respect of a survey required by or for the purposes of this Agreement.

### **Registration of Indefeasible Title**

8. The Registrar is entitled to rely on, and is not required to make any inquiries with respect to, the matters certified in the Kitselas Certificate and a person deprived of an estate, interest, condition, proviso, restriction, exception or reservation, in or to a parcel of Kitselas Lands as a result of the reliance by the Registrar on the Kitselas Certificate, and the issuance by the Registrar of an indefeasible title based on the Kitselas Certificate, will have no recourse, at law or in equity, against the Registrar, an assurance fund under the *Land Title Act*, British Columbia or Canada.
9. No title adverse to, or in derogation of, the title of the registered owner of a parcel of Kitselas Lands under the *Land Title Act* will be acquired by length of possession and, for greater certainty, subsection 23(4) of the *Land Title Act* does not apply with respect to Kitselas Lands.
10. Notwithstanding paragraph 125 of Chapter 3 Kitselas Lands, where the *Land Title Act* applies to a parcel of Kitselas Lands, that Act prevails to the extent of a Conflict with Kitselas Law under paragraph 120 of Chapter 3 Kitselas Lands in respect of that parcel.

### **Cancellation of Indefeasible Title**

11. Kitselas, and no other person, may apply under the *Land Title Act* for cancellation of the registration of an indefeasible title to a parcel of Kitselas Lands.



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

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

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

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

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

### **Realignment of Crown Corridors**

9. British Columbia may request that a portion of a Crown Corridor be realigned onto Kitselas Lands, and if:
  - (a) the proposed new alignment is reasonably suitable for use as a Crown Corridor;

- (b) British Columbia and Kitselas reach agreement on the value of the land exchange; and
- (c) British Columbia pays, or causes to be paid, all reasonable costs associated with decommissioning that portion of the Crown Corridor,

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

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

British Columbia will not unreasonably refuse to undertake the realignment.

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

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

### **Realignment of Kitselas Wagon Road**

12. If a realignment of those portions of the Kitselas Wagon Road located outside of the Kitselas Wagon Road Crown Corridor is required under Provincial Law or policy related to the provision of public road access, British Columbia will, at its cost, realign those portions of the Kitselas Wagon Road within the Kitselas Wagon Road Crown Corridor.
13. Realignment of the Kitselas Wagon Road by British Columbia under paragraph 12 will be to construction standards established under Provincial Law and policy applicable to equivalent Provincial Roads.

14. If Kitselas acquires the estate in fee simple of any privately owned lands within the Railway Corridor adjacent to the Kitselas Wagon Road Crown Corridor prior to British Columbia being required to realign any portion of the Kitselas Wagon Road under paragraph 12, at the request of Kitselas, British Columbia and Kitselas will negotiate and attempt to reach agreement on:
- (a) the realignment of the Kitselas Wagon Road Crown Corridor to an area within those acquired fee simple lands immediately adjacent to the revised northerly boundary of the Railway Corridor; and
  - (b) the transfer to Kitselas of those portions of the Kitselas Wagon Road Crown Corridor no longer required because of the realignment under paragraph 12 and the addition of those lands to Kitselas Lands.
15. Upon British Columbia and Kitselas reaching an agreement in writing under paragraph 14:
- (a) the location of the Kitselas Wagon Road Crown Corridor will be revised accordingly;
  - (b) the portions of the Kitselas Wagon Road Crown Corridor transferred to Kitselas by British Columbia will be added to Kitselas Lands; and
  - (c) Appendix B-2 Part 2 Map 5 will be amended in accordance with the process set out in paragraph 9 of Chapter 31 Amendment.

### **Entry on Kitselas Lands**

16. In addition to the provisions of Chapter 7 Access, British Columbia, a Local Government, a Railway or a Public Utility, and their employees, agents, contractors, subcontractors or representatives will have access to Kitselas Lands, including Kitselas Roads, at no charge for the purpose of undertaking works, including:

- (a) constructing drainage works;
- (b) carrying out normal repairs;
- (c) maintaining slope stability;
- (d) removing dangerous Timber or other hazards;
- (e) carrying out emergency repairs; and
- (f) carrying out vegetation management,

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

17. Paragraph 16, and the terms and conditions set out in paragraphs 19 and 20, do not apply to the exercise of rights by British Columbia, a Local Government, a Railway or a Public Utility pursuant to the authority set out in a valid grant, tenure, or other form of agreement, if the valid grant, tenure or other form of agreement may reasonably be interpreted as authorizing works described in paragraph 16.
18. For greater certainty, the removal of Timber from Kitselas Lands in accordance with paragraph 16 does not change the ownership of that Timber.

### **Work Plan**

19. British Columbia, a Local Government, a Railway or a Public Utility will, before commencing work pursuant to the authority set out in paragraph 16, notify Kitselas, and will, at Kitselas's request, deliver a workplan to Kitselas describing the effect and extent of the proposed work on Kitselas Lands for the approval of Kitselas, which approval will not be unreasonably withheld.
20. If Kitselas does not approve the work plan submitted by British Columbia under paragraph 19 within 30 days of receipt by Kitselas, the dispute will be finally determined by arbitration under Chapter 29 Dispute Resolution without having to proceed through Stages One and Two.

### **Undertaking Works**

21. Unless otherwise provided for in a valid grant, tenure or other form of agreement, a person undertaking works referred to in paragraph 16 will:
  - (a) minimize the damage to and time spent on Kitselas Lands;
  - (b) pay fair compensation for any interference with or damage to Kitselas Lands resulting from the works; and
  - (c) perform such works or undertakings in a manner consistent with public health and safety.
22. If there is a dispute between British Columbia and Kitselas on payment of compensation under paragraph 21(b) with respect to the works undertaken by British Columbia, the dispute will be finally determined by arbitration under Chapter 29 Dispute Resolution.

### **Emergency Works**

23. Notwithstanding any other provision of this Agreement, British Columbia, a Local Government, a Railway or a Public Utility may access Kitselas Lands and undertake works and take steps on Kitselas Lands that are urgently required in order to protect works constructed on Crown Corridors, Provincial Roads, Railway Corridors, Rights of Way or Municipal Roads, or to protect individuals or vehicles using Crown Corridors, Provincial Roads, Railway Corridors, Rights of Way or Municipal Roads.

24. British Columbia, a Local Government, a Railway or a Public Utility, as applicable, will, if possible, notify Kitselas in advance of undertaking such work, and if advance notice is not possible, the person undertaking such work will notify Kitselas that it has undertaken works on Kitselas Lands under paragraph 23.

### **Public Utilities**

25. For greater certainty, Kitselas will grant or issue the Public Utility Rights of Way set out in Appendix G-1 Parts 2 and 3, Appendix G-2 Parts 1 and 2 and Appendix G-3 Part 1 on Kitselas Lands, as provided for in paragraphs 72 to 75, 77 and 78 of Chapter 3 Kitselas Lands.
26. A Public Utility may extend, install, operate and maintain electrical distribution, natural gas distribution or telecommunications works on Kitselas Lands:
- (a) in the case of British Columbia Hydro and Power Authority, Telus Communications Inc., Pacific Northern Gas Ltd., Rogers Communications Inc. and any of their successors and assigns, on substantially the same terms and conditions contained in Appendix G-4, as applicable, or on such other terms and conditions as may be agreed by Kitselas and the Public Utility; and
  - (b) in any other case, on such terms as may be agreed to by Kitselas and the Public Utility.
27. With the prior written consent of Kitselas, a Public Utility may extend new transmission works on Kitselas Lands outside of the existing transmission Rights of Way held by the Public Utility, on substantially the same terms and conditions as contained in Documents 1, 2, 4 and 5 of Appendix G-4 Part 4, as applicable, or on such other terms and conditions as may be agreed by Kitselas and the Public Utility.
28. Kitselas Law does not apply to the regulation of the business or undertaking of a Public Utility.
29. Without limiting the generality of paragraph 28, Kitselas will not, directly or indirectly, through Kitselas Law or Kitselas's use or occupation of Kitselas Lands, frustrate, unreasonably delay, place conditions on, limit or impair a Public Utility's authorized use of Kitselas Lands.

### **Engagement Regarding Traffic Regulation**

30. At the request of Kitselas, British Columbia will engage with Kitselas with respect to the regulation by British Columbia of traffic and transportation on a Crown Corridor or Provincial Road that is adjacent to a settled area on Kitselas Lands.

### **Access and Safety Regulation**

31. Nothing in this Agreement limits the authority of British Columbia to regulate all matters in relation to:
- (a) the location and design of any intersection of roads and Crown Corridors or Provincial Roads, including:

- (i) regulating or requiring signs, signals, or other traffic control devices on Crown Corridors or Provincial Roads;
  - (ii) regulating or requiring merging lanes, on ramps and off ramps; or
  - (iii) requiring contributions to the cost of the matters referred to in paragraphs 31(a)(i) and 31(a)(ii); and
- (b) the height and location of structures on Kitselas Lands immediately adjacent to Crown Corridors or Provincial Roads, only to the extent reasonably required to protect the safety of the users of Crown Corridors or Provincial Roads or the functional capacity of the Crown Corridor or Provincial Road.
32. Subject to provincial requirements, including those set out in paragraph 31, British Columbia will not unreasonably deny Kitselas access to a Provincial Road from Kitselas Lands.
33. British Columbia will provide Kitselas with any licence, permit or approval required under Provincial Law to join or intersect a Provincial Road with a Kitselas Road if:
- (a) the application for the required licence, permit or approval complies with Provincial Law, including the payment of any prescribed fees; and
  - (b) the joining or intersecting Kitselas Road complies with standards established under Provincial Law for equivalent Provincial Roads.
34. Kitselas will engage with British Columbia on any access or public safety issue associated with land use decisions relating to the development of Kitselas Lands adjacent to Crown Corridors or Provincial Roads.

### **Roads**

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

**Kitselas Access to Gravel on Provincial Crown Gravel Land**

41. Subject to paragraph 42, Kitselas, its contractors and permittees may enter onto Provincial Crown Gravel Lands to:
- (a) extract, refine and transport, without charge, Gravel from Gravel pits existing on the Effective Date; and
  - (b) locate, extract, refine and transport, without charge, Gravel from natural deposits as may exist on Provincial Crown Gravel Lands for use by Kitselas,
- in a sufficient quantity as required to construct, maintain, repair and upgrade Kitselas Roads and rights of way on Kitselas Lands.
42. Kitselas, its contractors and permittees, as applicable, will prepare and deliver to British Columbia a Gravel Pit Development Plan in accordance with Provincial Law for approval, which approval will not be unreasonably withheld:
- (a) before exercising their rights under paragraph 41(a); and
  - (b) before materially increasing the rate of extraction of Gravel from any Gravel pit Kitselas may use on Provincial Crown Gravel Lands.
43. Subject to paragraph 42(b), without preparing a Gravel Pit Development Plan, Kitselas, its contractors and permittees may enter onto Provincial Crown Gravel Lands to extract and transport, without charge, sufficient quantities of Gravel from a Gravel pit that, before the Effective Date, Kitselas had been using intermittently as a source of Gravel to maintain Kitselas Roads and rights of way on Kitselas Lands.
44. For greater certainty, entry onto Provincial Crown Gravel Lands and the location, development, extraction, refinement and transportation of Gravel on Provincial Crown Gravel Lands by Kitselas will be in accordance with Provincial Law.
45. Kitselas will comply with the provisions of an approved Gravel Pit Development Plan.

**British Columbia Access to Gravel on Kitselas Lands**

46. On the Effective Date, Kitselas will grant to British Columbia, as represented by the Minister of Transportation and Transit, an interest in those Kitselas Lands set out in Appendix G-3 Part 5 substantially in the form set out in Document 4 of Appendix G-4 Part 3 to allow British Columbia to extract, refine and transport sufficient quantities of Gravel from those lands to fulfill any obligations it may have to maintain, repair and upgrade Provincial Highways and public rights of way in the vicinity of Kitselas Lands.
47. Subject to paragraph 48, British Columbia, its contractors and permittees may enter onto Kitselas Lands to:

- (a) extract, refine and transport, without charge, Gravel from Gravel pits existing on the Effective Date; and
- (b) locate, extract, refine and transport, without charge, Gravel from natural deposits as may exist on Kitselas Lands,

in a sufficient quantity as required to construct, maintain, repair or upgrade Resource Roads and public rights of way in the vicinity of the applicable Kitselas Lands.

48. British Columbia, its contractors and permittees, as applicable, will prepare and deliver to Kitselas a Gravel Pit Development Plan in accordance with Provincial Law for approval, which approval will not be unreasonably withheld:
- (a) before exercising their rights under paragraph 47(a); and
  - (b) before materially increasing the rate of extraction of Gravel from any Gravel pit British Columbia may use on Kitselas Lands.
49. Subject to paragraph 48(b), without preparing a Gravel Pit Development Plan, British Columbia, its contractors and permittees may continue to enter onto Kitselas Lands to extract and transport, without charge, sufficient quantities of Gravel from a Gravel pit which before the Effective Date British Columbia had been using intermittently as a source of Gravel, to fulfill any obligations it may have to maintain Resource Roads and public rights of way in the vicinity of Kitselas Lands.

### **Gravel Exploration Plan**

50. Before undertaking any excavation for Gravel samples or other exploration work on Kitselas Lands in accordance with paragraph 47(b), British Columbia will prepare an exploration plan, indicating generally the proposed location of exploration and the method and extent of proposed work, for approval by Kitselas, which approval will not be unreasonably withheld.
51. In preparing an exploration plan under paragraph 50, British Columbia will select a proposed location to explore for a Gravel pit, taking into account the effect of a development at that proposed location on:
- (a) the lands adjacent to the proposed location; and
  - (b) any unique attributes of the lands at the proposed location and adjacent lands.
52. In considering whether to approve an exploration plan provided under paragraph 50, Kitselas will take account of the cost efficiencies of the proposed location in relation to alternate locations.
53. Before commencing any extraction, refinement or transportation of Gravel from any Gravel pit identified in an exploration plan approved by Kitselas in accordance with paragraph 50, British Columbia will prepare a Gravel Pit Development Plan for that Gravel pit and submit it to Kitselas for approval which approval will not be unreasonably withheld.

54. British Columbia will comply with the provisions of an approved Gravel Pit Development Plan.

**Pesticides and Herbicides**

55. British Columbia will Consult Kitselas, with the aim of securing the free, prior and informed consent of Kitselas, prior to confirmation of any Pesticide Use Notice under the *Integrated Pest Management Act* that will authorize the use of a pesticide, including herbicides, in the Kitselas Harvest Area which may adversely affect Kitselas Exercisable Section 35 Rights.
56. For greater certainty, as part of satisfying its obligation to Consult under paragraph 55, British Columbia may rely on engagement and consultation on Pest Management Plans with Kitselas carried out by applicants seeking to use a pesticide, including herbicides.



## CHAPTER 7 – ACCESS

### General

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

### Designation of Kitselas Private Lands

2. On the Effective Date, Former Kitselas Indian Reserves and, subject to paragraph 30 of Chapter 3 Kitselas Lands, Former Private Fee Simple Lands are designated as Kitselas Private Lands.
3. Kitselas may designate portions of Kitselas Lands as Kitselas Private Lands if Kitselas authorizes a use or disposition of those portions of Kitselas Lands that is incompatible with public access.
4. Before making a designation under paragraph 3 or changing the boundaries of Kitselas Private Lands, Kitselas will:
  - (a) provide reasonable notice to British Columbia, Canada and the public of the proposed designation; and
  - (b) consider any views advanced by British Columbia, Canada or the public in respect of the proposed designation.
5. If the designation of Kitselas Lands as Kitselas Private Lands has the effect of preventing public access to an area or location to which there is a public right of access under Federal or Provincial Law, such as navigable waters or Provincial Roads, Kitselas will provide reasonable alternative means of public access to that area or location.
6. For greater certainty, paragraph 5 will not apply where British Columbia and Kitselas agree that a reasonable alternative means of public access to an area or location, to which there is a public right of access under Federal or Provincial Law, across provincial Crown land already exists.

### Public Access on Kitselas Lands

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

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

### **Kitselas Public Access Permits**

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

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

12. Kitselas will allow reasonable access across Kitselas Lands to the interests on or under Kitselas Lands set out in Appendix G at no charge, subject to and consistent with the terms and conditions of those interests.
13. If no other reasonable access exists across Crown land, Kitselas will allow reasonable access, at no charge, across Kitselas Lands to any interests on or under lands adjacent or in close proximity to Kitselas Lands, consistent with the terms and conditions of those interests.

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

14. Kitselas will allow reasonable access, at least as favourable as that which existed immediately before the Effective Date, across Kitselas Lands, at no charge, to the parcels legally described in Appendix M and to the privately held Subsurface Resources set out in Appendix G-6.
15. If the owner of a parcel of land legally described in Appendix M or the owner of Subsurface Resources on or under the lands legally described in Appendix G-6 requires a right of access to that parcel other than the access allowed in accordance with paragraph 14, Kitselas will not withhold its consent to that right of access if:
  - (a) the owner of the parcel or Subsurface Resource offers fair compensation; and

- (b) the owner of the parcel or Subsurface Resource and Kitselas agree on the terms of access.
16. British Columbia or Kitselas may refer any Disagreement in respect of paragraphs 12 to 15 to be finally determined by arbitration under Chapter 29 Dispute Resolution.
17. For greater certainty, nothing in paragraphs 12 to 15 obligates Kitselas to pay any costs associated with allowing access under those paragraphs.

### **Law-Making**

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

### **Access to Kitselas Lands**

22. Agents, employees, contractors, subcontractors and other representatives of Canada, British Columbia, Local Government, Public Utilities, Railways and NAV CANADA, or any other successor entity, and Canadian Armed Forces personnel and members of foreign armed forces, authorized by Canada and working with the Canadian Armed Forces, or peace officers appointed under Federal or Provincial Law, may, in accordance with Federal or Provincial Law, enter, cross and stay temporarily on Kitselas Lands at no cost to:
- (a) deliver and manage programs and services;
  - (b) carry out inspections;
  - (c) enforce law;
  - (d) carry out the terms of this Agreement;
  - (e) respond to emergencies and natural disasters; and

- (f) carry out other duties under Federal and Provincial Law.
23. Nothing in this Agreement affects the ability of persons acting in an official capacity pursuant to lawful authority to have access to Kitselas Lands.
24. Nothing in this Agreement limits the authority of Canada or the Minister of National Defence to carry out activities related to national defence and security on Kitselas Lands, without payment of any fees or other charges to Kitselas except as provided for under Federal Law.
25. The Department of National Defence and the Canadian Armed Forces and members of foreign armed forces, authorized by Canada and working with the Canadian Armed Forces, will have access, at no charge, to Kitselas Lands for military exercises with the agreement of Kitselas. Failing agreement on conditions for the exercise of that access, the Minister of National Defence may refer the dispute for resolution under Chapter 29 Dispute Resolution, but that Department and those Forces may not exercise that access until the dispute has been resolved.
26. Unless otherwise agreed, Canada or British Columbia will provide reasonable notice of entry to Kitselas Lands by Canada or British Columbia under paragraph 22 to Kitselas:
- (a) before the entry if it is practicable to do so; or
  - (b) as soon as practicable after the entry.
27. The requirement to provide reasonable notice under paragraph 26 does not apply to peace officers, investigators or federal and provincial law enforcement officers carrying out duties under Federal or Provincial Law.
28. Any person exercising a right of access in accordance with paragraph 22 will act in accordance with Federal and Provincial Law, including the payment of compensation for any damage to Kitselas Lands if required by Federal or Provincial Law.

### **Kitselas Access to Crown Land**

29. Agents, employees, contractors, subcontractors and other representatives of Kitselas may, in accordance with Federal and Provincial Law and the terms of any uses authorized by the Crown, enter, cross and stay temporarily on Crown land, at no cost to:
- (a) deliver and manage programs and services;
  - (b) carry out inspections;
  - (c) respond to emergencies and natural disasters;
  - (d) enforce Kitselas Law;
  - (e) carry out the terms of this Agreement; and
  - (f) carry out other duties under Kitselas Law.

30. Unless otherwise agreed or notice is not required under Federal or Provincial Law, Kitselas will provide reasonable notice of entry onto Crown land under paragraph 29 to Canada or British Columbia as the case may be:
- (a) before the entry if it is practicable to do so; or
  - (b) as soon as practicable after the entry.
31. Any person exercising a right of access under paragraph 29 will act in accordance with Federal and Provincial Law, including the payment of compensation for any damage if required by Federal or Provincial Law.
32. If an authorized use or disposition of provincial Crown land would deny Kitselas reasonable access to Kitselas Lands, British Columbia will provide Kitselas with reasonable alternative means of access to those Kitselas Lands.



# **GOVERNANCE**



## CHAPTER 8 – SELF-GOVERNMENT

### General

1. Kitselas has the right to self-government and the authority to make laws as set out in this Agreement.
2. For greater certainty, the authority of Kitselas to make laws in relation to a subject matter as set out in this Agreement includes the authority to make laws and to do other things as may be necessarily incidental to exercising its authority.
3. Kitselas may adopt Federal or Provincial Law in relation to matters within Kitselas's law-making authority set out in this Agreement.
4. The exercise of Kitselas jurisdiction and authority set out in this Agreement will evolve over time.
5. The Kitselas Government, as provided for under the Kitselas Constitution and this Agreement, is the government of Kitselas.

### Legal Status and Capacity

6. Kitselas is a legal entity with the capacity, rights, powers and privileges of a natural person, including the ability to:
  - (a) enter into contracts and agreements;
  - (b) acquire and hold property or any interest in property and sell or dispose of that property or interest;
  - (c) raise, invest, expend and borrow money;
  - (d) sue and be sued; and
  - (e) do other things ancillary to the exercise of its rights, powers and privileges.
7. The rights, powers, and privileges of Kitselas will be exercised in accordance with:
  - (a) this Agreement; and
  - (b) Kitselas Law, including the Kitselas Constitution.
8. Kitselas will act through the Kitselas Government in exercising its rights, powers, privileges and authorities and in carrying out its duties, functions and obligations.

**Delegation**

9. Any law-making authority of Kitselas under this Agreement may be delegated by Kitselas Law to:
- (a) a Kitselas Public Institution;
  - (b) another First Nation Government in British Columbia or a public institution established by one or more First Nation Governments in British Columbia;
  - (c) a First Nation with a self-government agreement negotiated with British Columbia and Canada that provides for receiving delegated authority;
  - (d) Canada, British Columbia or a Local Government; or
  - (e) a legal entity as agreed to by the Parties,
- if the delegation and the exercise of any law-making authority is in accordance with this Agreement and the Kitselas Constitution.
10. Any authority of Kitselas under this Agreement other than a law-making authority may be delegated by a Kitselas Law to:
- (a) any body set out in paragraph 9; or
  - (b) a legal entity in Canada,
- if the delegation and the exercise of any delegated authority is in accordance with this Agreement and the Kitselas Constitution.
11. Any delegation under paragraph 9 or 10, except a delegation to a Kitselas Public Institution, requires the written consent of the delegate.
12. Kitselas may enter into agreements to receive authorities, including law-making authority, by delegation.

**Kitselas Constitution**

13. Kitselas will have a Kitselas Constitution, consistent with this Agreement, which will provide:
- (a) criteria respecting who is eligible for enrolment under this Agreement which, on the Effective Date, will be the same as the criteria set out in paragraphs 1 and 2 of Chapter 26 Eligibility and Enrolment;
  - (b) for the components set out in paragraph 5 of Chapter 26 Eligibility and Enrolment;
  - (c) for a democratic Kitselas Government, including its duties, composition and membership;

- (d) that the majority of the members of the legislative branch of the Kitselas Government will be elected;
  - (e) that this Agreement sets out the authority of Kitselas to make laws;
  - (f) for the enactment of laws by Kitselas acting through the Kitselas Government;
  - (g) for challenging the validity of Kitselas Law;
  - (h) for appeal or review of administrative decisions made by Kitselas Institutions under Kitselas Law;
  - (i) for the establishment of Kitselas Public Institutions;
  - (j) that any Kitselas Law inconsistent with the provisions of the Kitselas Constitution is, to the extent of the inconsistency, of no force or effect;
  - (k) that the Kitselas Government will be democratically accountable to Kitselas Citizens with elections at least every five years;
  - (l) for a system of financial administration comparable to standards generally acceptable for governments of similar size in Canada, through which the Kitselas Government will be financially accountable to Kitselas Citizens;
  - (m) for conflict of interest rules that are comparable to generally accepted conflict of interest rules for governments of similar size in Canada;
  - (n) for conditions under which Kitselas may dispose of land or interests in lands;
  - (o) for recognition and protection of rights and freedoms of Kitselas Citizens;
  - (p) that every individual who is enrolled under this Agreement is entitled to be a Kitselas Citizen;
  - (q) for a process for the amendment of the Kitselas Constitution; and
  - (r) other provisions as determined by Kitselas.
14. The Kitselas Constitution, once ratified in accordance with this Agreement, will come into force on the Effective Date.

### **Challenges to Validity of Kitselas Laws**

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

**Registry of Laws**

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

**Notification of Provincial Legislation**

17. Subject to paragraph 23, or an agreement under paragraph 20, before legislation is introduced in the Legislative Assembly, or before a regulation is approved by the Lieutenant Governor in Council, British Columbia will notify Kitselas if:
- (a) Kitselas has the authority to make laws under this Agreement in relation to the subject matter of the legislation or regulation;
  - (b) the legislation or regulation may affect the protections, immunities, limitations in respect of liability, remedies over and rights referred to in paragraphs 147 and 148; or
  - (c) the legislation or regulation may affect:
    - (i) the rights, powers, duties, obligations; or
    - (ii) the protections, immunities or limitations in respect of liability, referred to in paragraph 52 relating to emergency preparedness,except where this cannot be done for reasons of emergency or confidentiality.
18. If British Columbia does not notify Kitselas under paragraph 17 for reasons of emergency or confidentiality, British Columbia will notify Kitselas that the legislation has been introduced in the Legislative Assembly, or the regulation, as the case may be, has been deposited with the registrar of regulations.
19. Notifications under paragraphs 17 and 18 will include:
- (a) the nature and purpose of the proposed legislation or regulation; and
  - (b) the date the proposed legislation or regulation is anticipated to take effect, if it has not already done so.
20. Kitselas and British Columbia may enter into an agreement establishing alternatives to the obligations which would otherwise apply under paragraphs 17 to 19 and 21.

21. Subject to paragraphs 22 and 23, or an agreement under paragraph 20, if, within 30 days after notice is given under paragraphs 17 or 18 or by agreement under paragraph 20, Kitselas makes a written request to British Columbia, then British Columbia and Kitselas will discuss the effect of the legislation or regulation, if any, on:
  - (a) a Kitselas Law; or
  - (b) a matter referred to in paragraphs 17(b) or 17(c).
22. If British Columbia establishes a process providing for collective discussion with First Nation Governments in British Columbia in relation to matters referred to in paragraph 21:
  - (a) Kitselas will be invited to participate in that process; and
  - (b) the process will be deemed to satisfy British Columbia's obligation for discussion in respect of a particular matter under paragraph 21.
23. If Kitselas is a member of a representative body, and with the consent of Kitselas, British Columbia and that body have entered into an agreement providing for consultation in respect of matters under paragraphs 17, 18 and 21, then consultations in respect of a particular matter will be deemed to satisfy British Columbia's obligations for notification under paragraph 17 and 18 and discussion under paragraph 21.
24. Unless British Columbia otherwise agrees, Kitselas will retain the information provided under paragraphs 17 to 23 in strict confidence until such time, if ever, the draft legislation is given first reading in the Legislative Assembly or a regulation is deposited with the registrar of regulations, as applicable.
25. The Parties acknowledge that nothing in paragraphs 17 to 23 is intended to interfere with British Columbia's legislative process.
26. Notwithstanding any other provision of this Agreement, to the extent that provincial legislation or a regulation referred to in paragraph 17 affects the validity of a Kitselas Law, the Kitselas Law will be deemed to be valid for a period of 180 days after the coming into force of the provincial legislation or regulation.

### **Kitselas Government**

27. Kitselas may make laws in respect of the administration, management and operation of the Kitselas Government, including:
  - (a) the establishment of Kitselas Public Institutions, including their respective powers, duties, composition and membership, but the registration or incorporation of a Kitselas Public Institution will be under Federal or Provincial Law;
  - (b) the powers, duties, responsibilities, remuneration and indemnification of members, officials and appointees of Kitselas Institutions;

- (c) the establishment of Kitselas Corporations, but the registration or incorporation of Kitselas Corporations will be under Federal or Provincial Law;
  - (d) financial administration of Kitselas and Kitselas Institutions; and
  - (e) Kitselas elections, by-elections and referenda.
28. Kitselas will make laws that provide for reasonable access to information in the custody or control of a Kitselas Institution by:
- (a) Kitselas Citizens;
  - (b) Non-Citizen Residents; and
  - (c) persons who receive services and programs from a Kitselas Institution.
29. Subject to paragraph 30, Kitselas Law under paragraph 27 or 28 prevails to the extent of a Conflict with Federal or Provincial Law.
30. Federal or Provincial Law in respect of the protection of personal information prevails to the extent of a Conflict with Kitselas Law under paragraph 27 or 28.

#### **Protocols with Other Aboriginal Peoples**

31. Kitselas may enter into Protocols with other Aboriginal peoples that hold established or asserted rights under section 35 of the *Constitution Act, 1982*.
32. For greater certainty, a Protocol does not form part of this Agreement.
33. Kitselas will make laws to ensure that the exercise of any Kitselas Exercisable Section 35 Rights addressed in a Protocol is in accordance with the terms of that Protocol and this Agreement.
34. Kitselas will notify Canada and British Columbia of any Protocol and any termination of that Protocol.
35. Kitselas will deliver to British Columbia and, upon request, Canada a copy of any Protocol that it may enter into, and any amendment to that Protocol.

#### **Citizenship**

36. Kitselas may make laws in respect of Kitselas citizenship.
37. Kitselas citizenship does not:
- (a) confer or deny rights of entry into Canada, Canadian citizenship, the right to be registered as an Indian under the *Indian Act*, or any of the rights or benefits under the *Indian Act*; or

- (b) impose any obligation on British Columbia or Canada to provide rights or benefits, except as set out in this Agreement or in any Federal or Provincial Law.
38. A Kitselas Law under paragraph 36 prevails to the extent of a Conflict with Federal or Provincial Law.

### **Devolution of Cultural Property**

39. In paragraphs 40 to 45, “cultural property” means:
- (a) ceremonial regalia and similar personal property associated with a Kitselas chief or clan; and
  - (b) other personal property that has cultural significance to Kitselas.
40. Kitselas may make laws for the devolution of cultural property of a Kitselas Citizen who dies without a valid will.
41. Kitselas Law under paragraph 40 prevails to the extent of a Conflict with Federal or Provincial Law.
42. Kitselas has standing in any judicial proceeding in which the devolution of cultural property of a Kitselas Citizen is at issue, including any proceedings under wills variation legislation.
43. Kitselas may commence an action under provincial wills variation legislation with respect to cultural property addressed by the will of a Kitselas Citizen that provides for a devolution of cultural property.
44. In proceedings to which paragraph 42 or 43 applies, a court will consider, among other matters, any evidence and representations in relation to Kitselas Law and customs relating to the devolution of cultural property.
45. The participation of Kitselas in proceedings pursuant to paragraph 42 or 43 will be in accordance with the applicable rules of court and will not affect the court's ability to control its process.

### **Kitselas Assets**

46. Kitselas may make laws in relation to the use, possession, management and disposition of assets of Kitselas, a Kitselas Corporation or a Kitselas Public Institution:
- (a) located on Kitselas Lands; and
  - (b) located off of Kitselas Lands.
47. Kitselas Law under paragraph 46(a) prevails to the extent of a Conflict with Federal or Provincial Law.

48. Federal or Provincial Law prevails to the extent of a Conflict with Kitselas Law under paragraph 46(b).
49. For greater certainty, Kitselas law-making authority under paragraph 46 does not include authority to make laws regarding creditors' rights and remedies.

### **Public Order, Peace and Safety**

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

### **Emergency Preparedness**

52. Kitselas has:
  - (a) the rights, powers, duties, and obligations; and
  - (b) the protections, immunities and limitations in respect of liability,of a local authority under Federal and Provincial Law in relation to emergency preparedness and emergency measures on Kitselas Lands.
53. Kitselas may make laws in relation to its rights, powers, duties, and obligations under paragraph 52.
54. Federal or Provincial Law prevails to the extent of a Conflict with Kitselas Law under paragraph 53.
55. For greater certainty, Kitselas may declare a state of local emergency, and exercise the powers of a local authority in relation to local emergencies in accordance with Federal and Provincial Law in relation to emergency measures, but any declaration and any exercise of those powers is subject to the authority of Canada and British Columbia under Federal and Provincial Law.
56. Nothing in this Agreement affects the authority of:
  - (a) Canada to declare a national emergency; or
  - (b) British Columbia to declare a provincial emergency,in accordance with Federal and Provincial Law.
57. Kitselas may access emergency management support programs in the same manner that local authorities access such programs from Canada and British Columbia.

**Regulation of Business**

58. Kitselas may make laws in relation to the regulation, licensing and prohibition of business on Kitselas Lands, including the imposition of licence fees or other fees.
59. Without limiting the scope of other law-making authorities set out in this Agreement, Kitselas law-making authority under paragraph 58 does not include the authority to make laws in relation to the accreditation, certification or professional conduct of individuals engaged in professions and trades.
60. Federal or Provincial Law prevails to the extent of a Conflict with Kitselas Law under paragraph 58.

**Buildings and Structures**

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

**Public Works**

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

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

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

**Health**

69. Kitselas may make laws in relation to health services on Kitselas Lands:
  - (a) for Kitselas Citizens; or

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

### **Aboriginal Healers**

- 76. Kitselas may make laws in relation to authorization, licensing and regulation of individuals to practice as Aboriginal healers on Kitselas Lands.
- 77. Kitselas law-making authority under paragraph 76 does not include the authority to regulate:
  - (a) medical or health practices that, or practitioners who, require licensing or certification under Federal or Provincial Law; or
  - (b) products or substances that are regulated under Federal or Provincial Law.
- 78. Kitselas Law under paragraph 76 will include standards:
  - (a) in relation to competence, ethics and quality of practice that are reasonably required to protect the public; and
  - (b) that are reasonably required to safeguard personal client information.
- 79. Kitselas Law under paragraph 76 prevails to the extent of a Conflict with Federal or Provincial Law.

**Family and Social Services**

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

**Child and Family Services**

85. Kitselas may make laws in relation to Child and Family Services:
  - (a) for Children of Kitselas Families; and
  - (b) if an agreement is reached under paragraph 92(b), and subject to that agreement, for Children who are not members of Kitselas Families.
86. Kitselas Law under paragraph 85 will:
  - (a) expressly provide that those laws will be interpreted and administered such that the best interests of the Child are the paramount consideration;
  - (b) not preclude the reporting, under any applicable law, of a Child in need of protection; and
  - (c) provide for the collection, use, disclosure and security of Child and Family Services information.
87. Kitselas Law under paragraph 85 will be consistent with any minimum standards set out in Federal Law that are applicable, on a national level, to the provision of Child and Family Services in relation to Indigenous children.
88. If Kitselas makes laws under paragraph 85, Kitselas will establish and maintain a system for the management, storage and disposal of Child and Family Services records and the safeguarding of personal Child and Family Services information.

89. Notwithstanding any laws under paragraph 85, if there is an emergency in which a Kitselas Child is in need of protection, and Kitselas has not responded or is unable to respond in a timely manner, British Columbia may act to protect the Kitselas Child and, unless British Columbia and Kitselas otherwise agree in writing, British Columbia will refer the matter to Kitselas after the emergency.
90. If Kitselas makes laws under paragraph 85 and there is an emergency in which a Child under British Columbia's authority is a child in need of protection, Kitselas may act to protect the Child and, unless British Columbia and Kitselas otherwise agree in writing, Kitselas will refer the matter to British Columbia after the emergency.
91. Kitselas Law under paragraph 85 prevails to the extent of a Conflict with Federal or Provincial Law.
92. At the request of Kitselas or British Columbia, Kitselas and British Columbia will negotiate and attempt to reach agreement in relation to Child and Family Services for:
- (a) Children of Kitselas Families who reside on or off of Kitselas Lands; or
  - (b) Children who are not members of Kitselas Families and who reside on Kitselas Lands.
93. If the Director becomes the guardian of a Kitselas Child, the Director will contact Kitselas and will make reasonable efforts to include Kitselas in planning for the Kitselas Child, including adoption planning.
94. Kitselas and the Minister or a Director designated under the *Child, Family and Community Service Act* may enter into an agreement, in accordance with Provincial Law, that has the effect of:
- (a) imposing specific duties or restrictions on a Director; or
  - (b) requiring that specific services be provided or not be provided by a Director.

### **Guardianship**

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

### **Adoption**

97. Kitselas may make laws in relation to:
- (a) adoptions of Kitselas Children in British Columbia; and
  - (b) adoptions by Kitselas Citizens of Children who reside on Kitselas Lands.

98. Kitselas Law under paragraph 97 will:
- (a) expressly provide that the best interests of the Child are the paramount consideration in determining whether an adoption will take place;
  - (b) provide for the consent of an individual whose consent to a Child's adoption is required under Provincial Law, subject to the power of a court to dispense with such consent;
  - (c) provide for the collection, use, disclosure and security of information; and
  - (d) not preclude an adoption under Provincial Law or limit a court's power to dispense with consent to an adoption under Provincial Law.
99. If Kitselas makes laws under paragraph 97, Kitselas will provide British Columbia and Canada with a record of all adoptions occurring under Kitselas Law.
100. The Parties will negotiate and attempt to reach agreement on the information that will be included in the record provided under paragraph 99.
101. Kitselas Law under paragraph 97 prevails to the extent of a Conflict with Federal or Provincial Law.
102. If a Director designated under the *Child, Family and Community Service Act* becomes the guardian of a Kitselas Child, that Director will:
- (a) provide notice to Kitselas that the Director is the guardian of the Kitselas Child;
  - (b) provide notice to Kitselas when the Director applies for a continuing custody order;
  - (c) provide Kitselas with a copy of the continuing custody order once the order is made and make reasonable efforts to involve Kitselas in planning for the Kitselas Child;
  - (d) if requested by Kitselas, consent to the application of Kitselas Law to the adoption of that Kitselas Child, provided that it is in the best interests of the Kitselas Child; and
  - (e) in determining the best interests of the Kitselas Child under paragraph 102(d), consider the importance of preserving the Kitselas Child's cultural identity.
103. Before placing a Kitselas Child for adoption, a Director or an adoption agency under the *Adoption Act* will:
- (a) make all reasonable efforts to obtain information about the Kitselas Child's cultural identity and preserve the information for the Kitselas Child; and
  - (b) discuss and collaborate about the Kitselas Child's placement with a designated representative of Kitselas.

**Child Care**

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

**Language and Culture Education**

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

**Kindergarten to Grade 12 Education**

108. Kitselas may make laws in relation to kindergarten to grade 12 education provided by a Kitselas Institution on Kitselas Lands.
109. Kitselas Law under paragraph 108 will:
  - (a) establish curriculum, examination and other standards that permit the transfer of students between school systems in British Columbia at a similar level of achievement and permit entry of students to the provincial post-secondary education systems; and
  - (b) provide for the certification, other than for the teaching of Sm'algayax language and Tsimshian culture, of teachers by a Kitselas Institution, or a body recognized by British Columbia in accordance with standards comparable to standards under Provincial Law applicable to individuals who teach in public or provincially funded independent schools in British Columbia.
110. Kitselas may make laws in relation to kindergarten to grade 12 home education of Kitselas Citizens on Kitselas Lands.
111. Kitselas Law under paragraph 108 or 110 prevails to the extent of a Conflict with Federal or Provincial Law.
112. At the request of Kitselas or British Columbia, Kitselas and British Columbia will negotiate and attempt to reach agreement on the provision of kindergarten to grade 12 education by a Kitselas Institution to:
  - (a) individuals, other than Kitselas Citizens, residing on Kitselas Lands; or

- (b) Kitselas Citizens residing off of Kitselas Lands.

### **Post Secondary Education**

113. Kitselas may make laws in relation to post-secondary education provided by a Kitselas Institution on Kitselas Lands, including:
  - (a) the establishment of post-secondary institutions that have the ability to grant degrees, diplomas or certificates;
  - (b) the determination of the curriculum for post-secondary institutions established by Kitselas; and
  - (c) the provision for and coordination of adult education programs.
114. Federal or Provincial Law prevails to the extent of a Conflict with Kitselas Law under paragraph 113.
115. A Kitselas Institution may operate and provide post-secondary education services off of Kitselas Lands in accordance with Federal and Provincial Law.
116. A Kitselas Institution may enter into arrangements with British Columbia or post-secondary institutions in relation to the provision of post-secondary education by those institutions to Kitselas Citizens or other individuals identified by Kitselas.

### **Solemnization of Marriages**

117. Kitselas may make laws in relation to:
  - (a) the marriage rites and ceremonies of Kitselas culture; and
  - (b) the designation of Kitselas Citizens to solemnize marriages.
118. Nothing in the *Marriage Act* will be construed as in any way preventing Kitselas from solemnizing, according to the rites and ceremonies of Kitselas culture, a marriage between any two individuals:
  - (a) neither of whom is under any legal disqualification to contract marriage under Federal or Provincial Law; and
  - (b) either or both of whom are Kitselas Citizens.
119. A marriage may not be solemnized under Kitselas Law unless the individuals intending to marry possess a valid marriage licence.
120. For the purposes of paragraph 119, marriage licences may only be issued by Kitselas if:
  - (a) Kitselas has been appointed as an issuer of marriage licences under Provincial Law; and

- (b) the issuance of the marriage licence complies with the *Marriage Act*.
121. Immediately after the solemnization of the marriage, a representative designated under paragraph 117(b) must register the marriage:
- (a) by entering a record of it in a marriage register book issued by the Vital Statistics Agency and kept by Kitselas for that purpose; and
- (b) by providing the original registration to the registrar general under the *Vital Statistics Act*.
122. The registrar general, or an individual authorized by the registrar general, under the *Vital Statistics Act* may, during normal business hours and as often as the registrar general considers necessary, inspect the marriage register book kept by Kitselas and compare it with the registrations provided under paragraph 121(b).
123. The record under paragraph 121(a) must be signed:
- (a) by each of the parties to the marriage;
- (b) by at least two witnesses; and
- (c) by a representative designated under paragraph 117(b).
124. A representative designated under paragraph 117(b) by whom a marriage is solemnized must observe and perform the duties imposed on them under the *Vital Statistics Act* respecting the records of marriage.
125. Kitselas Law under paragraph 117 prevails to the extent of a Conflict with Federal or Provincial Law.

### **Liquor Control**

126. Kitselas may make laws in relation to the prohibition of, and the terms and conditions for, the sale, exchange, possession, manufacture or consumption of liquor on Kitselas Lands.
127. Federal or Provincial Law prevails to the extent of a Conflict with Kitselas Law under paragraph 126.
128. British Columbia will approve all applications made by or with the consent of Kitselas for a licence, permit or other authority to sell liquor on Kitselas Lands, where the application meets provincial regulatory requirements.
129. British Columbia will not issue a licence, permit or other authority to sell liquor on Kitselas Lands without the consent of Kitselas.

130. A person with a licence, permit, or other authority to sell liquor on Kitselas Lands must purchase liquor from the British Columbia Liquor Distribution Branch or from any person authorized to sell liquor by the British Columbia Liquor Distribution Branch, in accordance with Federal and Provincial Law.
131. British Columbia will, in accordance with Provincial Law, authorize persons designated by Kitselas to approve or deny applications for special event permits to sell liquor on Kitselas Lands.

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

132. In paragraph 133:
  - (a) “Adapted FNFMA” means the *First Nations Fiscal Management Act* and regulations made under it, as adapted by regulations made under section 141 of that Act;
  - (b) “Authority” means the First Nations Finance Authority; and
  - (c) “Board” means the First Nations Financial Management Board.
133. Despite any other provision in this Agreement, if Kitselas becomes a borrowing member pursuant to the Adapted FNFMA:
  - (a) provisions of the Adapted FNFMA relating to:
    - (i) obligations of borrowing members of the Authority;
    - (ii) rights of the Authority as a creditor; and
    - (iii) powers and authorities of the Board relating to co-management or third-party management,  
  
prevail to the extent of any inconsistency or Conflict with a provision of this Agreement or with Kitselas Law;
  - (b) for greater certainty, provisions of this Agreement and Kitselas Law that restrict or impose a condition precedent on any obligation, right, power or authority referenced in paragraph 133(a) do not apply;
  - (c) notwithstanding paragraph 133(a), the Authority and the Board may not cause the disposition of real property of Kitselas without the prior written consent of Kitselas; and
  - (d) for greater certainty, nothing in paragraph 133(a) precludes British Columbia from establishing, in Provincial Law or in an agreement between British Columbia and Kitselas, terms, conditions or limitations on Kitselas as to the expenditure of funds that British Columbia provides to Kitselas or restricts the application of such terms, conditions or limitations to Kitselas or the Board to the extent that the Board is acting in place of Kitselas.

**Limitations on Creditors' Remedies**

134. No creditor will have any remedy against an estate, interest, reservation or exception in any parcel of Kitselas Lands held by Kitselas or a Kitselas Public Institution if the land has not been registered in the Land Title Office or a Kitselas land title or land registry system under paragraph 120(c) of Chapter 3 Kitselas Lands.
135. Before granting a security instrument in an estate, interest, reservation or exception in a parcel of unregistered Kitselas Lands held by Kitselas or a Kitselas Public Institution, Kitselas will:
- (a) enact a law authorizing the granting of security interests; and
  - (b) register the indefeasible title to the parcel under the *Land Title Act* or a Kitselas land title or land registry system under paragraph 120(c) of Chapter 3 Kitselas Lands in accordance with this Agreement.
136. Only for the purposes of the *Land Title Act*, the registration of a security instrument against registered Kitselas Lands held by Kitselas or a Kitselas Public Institution will be conclusively deemed to be properly executed if it meets the requirements under Schedule 1 of the *Land Title Act*.
137. Subject to paragraph 138, no unsecured creditor will have a remedy against Essential Personal Property, and no unsecured creditor will have a remedy against a parcel of registered land held by Kitselas or a Kitselas Public Institution, unless the Supreme Court of British Columbia makes an order granting the creditor a remedy against such property at a time and on any such conditions as the court consider proper.
138. The court will consider the following factors in determining whether to grant an unsecured creditor under paragraph 137 an application for a remedy against a parcel of registered Kitselas Land or Essential Personal Property:
- (a) whether granting the application is likely to result in the insolvency of Kitselas or a Kitselas Public Institution, as applicable;
  - (b) the effect of granting the application on the delivery of programs or services provided by Kitselas or a Kitselas Public Institution at the time of the application; and
  - (c) whether the creditor has exhausted all other reasonable remedies, including obtaining a court order to realize on personal property, other than Essential Personal Property, of Kitselas or of a Kitselas Public Institution, as applicable.
139. Notwithstanding paragraph 137, no creditor will have any remedy against a Kitselas Artifact owned or held by Kitselas, a Kitselas Public Institution or a Kitselas Citizen provided that the Kitselas Artifact is not offered for sale.

**Liability of Members of Kitselas Government**

140. No action for damages lies or may be instituted against a member or former member of the executive or legislative branches of the Kitselas Government for:
- (a) anything said or done, or omitted to be said or done, by or on behalf of Kitselas or the Kitselas Government by somebody other than that individual while that individual is, or was, a member;
  - (b) any alleged neglect or default in the performance, or intended performance, of a duty, or the exercise of a power, of Kitselas or the Kitselas Government while that individual is, or was, a member;
  - (c) anything said or done or omitted to be said or done by that individual in the performance, or intended performance, of their duty or the exercise of their power; or
  - (d) any alleged neglect or default in the performance, or intended performance, of that individual's duty or exercise of that individual's power.
141. Paragraphs 140(c) and 140(d) do not provide a defence if:
- (a) the individual has, in relation to the conduct that is the subject matter of the action, been guilty of dishonesty, gross negligence or malicious or wilful misconduct; or
  - (b) the cause of action is libel or slander.
142. Paragraphs 140(c) and 140(d) do not absolve Kitselas from vicarious liability arising out of a tort committed by a member or former member of the executive or legislative branches of the Kitselas Government for which Kitselas would have been liable had those paragraphs not been in effect.

**Liability of Kitselas Public Officers**

143. No action for damages lies or may be instituted against a Kitselas Public Officer or former Kitselas Public Officer for:
- (a) anything said or done or omitted to be said or done by that individual in the performance, or intended performance, of their duty or the exercise of their power; or
  - (b) any alleged neglect or default in the performance, or intended performance, of that individual's duty or exercise of that individual's power.
144. Paragraph 143 does not provide a defence if:
- (a) the Kitselas Public Officer has, in relation to the conduct that is the subject matter of the action, been guilty of dishonesty, gross negligence or malicious or wilful misconduct; or
  - (b) the cause of action is libel or slander.

145. Paragraph 143 does not absolve any of the corporations or bodies referred to in the definition of Kitselas Public Officer from vicarious liability arising out of a tort committed by a Kitselas Public Officer for which the corporation or body would have been liable had that paragraph not been in effect.
146. Notwithstanding paragraph 143, except as may be otherwise provided under Federal or Provincial Law, a Kitselas Public Officer does not have protections, immunities or limitations in respect of liability, in relation to the provision of a service, if no individuals delivering reasonably similar programs or services under Federal or Provincial Law have protections, immunities or limitations in respect of liability and rights under Federal or Provincial Law.

### **Liability of Kitselas and the Kitselas Government**

147. Kitselas and the Kitselas Government have the protections, immunities, limitations in respect of liability and remedies over provided to a municipality and its municipal council under provincial legislation in relation to the provision of comparable programs and services.
148. Subject to paragraph 1(b) of Chapter 7 Access, Kitselas has the protections, immunities, limitations in respect of liability, remedies over and rights provided to a municipality under the *Occupiers Liability Act* and, for greater certainty, has those protections, immunities, limitations in respect of liability, remedies over and rights, in relation to a road on Kitselas Lands used by the public, or by industrial or resource users, if Kitselas is the occupier of that road.

### **Decisions Affecting Non-Citizen Residents**

149. Kitselas Institutions will engage with Non-Citizen Residents in relation to decisions of Kitselas Institutions that directly and significantly affect those Non-Citizen Residents.
150. Kitselas will provide Non-Citizen Residents with access to appeal and review procedures referred to in paragraph 13(h) and Chapter 9 Administration of Justice in relation to administrative decisions that directly and significantly affect Non-Citizen Residents.

### **Transition to Kitselas Government under this Agreement**

151. The chief councillor and councillors of the Kitselas Band on the day immediately before the Effective Date are the elected members of the Kitselas Government from the Effective Date until the individuals elected in the first election take office.
152. The first election for the Kitselas Government will be initiated no later than 180 days after the Effective Date and the individuals elected in the election will take office no later than one year after the Effective Date.

### **Notification of Law-Making by Kitselas**

153. Before Kitselas makes a Kitselas Law in relation to:
  - (a) adoption;

- (b) Child and Family Services;
- (c) health services;
- (d) family and social services;
- (e) Child Care; or
- (f) kindergarten to grade 12 education,

Kitselas will give at least 180 days' written notice to Canada and British Columbia of its intention to make the Kitselas Law.

154. Upon agreement by the Parties, Kitselas may make a Kitselas Law before the expiration of the 180-day notice period required under paragraph 153.
155. At the written request of Canada or British Columbia made within 90 days of receiving notice under paragraph 153, the applicable Parties will discuss:
- (a) options to address the interests of Kitselas through methods other than the exercise of law-making authority;
  - (b) immunity of individuals providing services or exercising authority under Kitselas Law;
  - (c) co-ordination between persons providing services or exercising authority under Kitselas Law and other service providers;
  - (d) any transfer of cases and related documentation from federal or provincial institutions to Kitselas Institutions, including any confidentiality and privacy considerations;
  - (e) any transfer of assets from federal or provincial institutions to Kitselas Institutions;
  - (f) any appropriate amendments to Federal or Provincial Law, including amendments to address duplicate licensing requirements;
  - (g) the relationship of Kitselas Law with other Indigenous law; and
  - (h) other matters agreed to by the applicable Parties.
156. The Parties may enter into agreements regarding any of the matters set out in paragraph 155, but an agreement under this paragraph is not a condition precedent to the exercise of law-making authority by Kitselas and such authority may be exercised immediately following the 180-day notice period or the notice period agreed upon in accordance with paragraph 154.



## CHAPTER 9 – ADMINISTRATION OF JUSTICE

### **Policing and Enforcement of Federal Law and Provincial Law by Police Services on Kitselas Lands**

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

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

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

13. For greater certainty, nothing in this Agreement affects or limits the ability of Kitselas to participate in, or benefit from, federal or provincial programs in relation to policing and law enforcement services in accordance with criteria established for those programs from time to time.

#### **Enforcement of Federal Law respecting Fisheries by Kitselas Enforcement Officers**

14. Enforcement of Federal Law respecting fisheries by Kitselas Enforcement Officers is addressed in paragraphs 156 and 157 of Chapter 21 Fish.

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

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

#### **Enforcement of Provincial Law respecting Natural Resources by Kitselas Enforcement Officers**

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

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

#### **Responsibility for Enforcement of Kitselas Law**

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

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

22. Notwithstanding paragraph 19, and unless otherwise specified by Kitselas Law under paragraph 20, a Police Service has the authority to, and may in its discretion, enforce Kitselas Law.
23. Notwithstanding paragraph 21, Kitselas Law under paragraph 20 referred to in paragraph 22 prevails to the extent of a Conflict with Federal or Provincial Law.
24. At the request of Kitselas, British Columbia and Kitselas will negotiate and attempt to reach agreement regarding the enforcement of Kitselas Law by a Police Service or other provincial enforcement service, taking into account the enforcement authorities and capabilities of the different types of enforcement officers and the nature of Kitselas Law that will be the subject of enforcement.
25. Following the process set out in paragraph 116, the Parties will determine whether Canada will be a party to the negotiations under paragraph 24.

#### **Enforcement of Kitselas Laws by Kitselas Enforcement Officers**

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

27. Kitselas Law under paragraph 26:
  - (a) will set out the powers and duties of Kitselas Enforcement Officers;
  - (b) may designate Kitselas Enforcement Officers as peace officers for the purposes of carrying out the duties set out under Kitselas Law; and
  - (c) may provide Kitselas Enforcement Officers with protections and immunities.
28. Kitselas Enforcement Officers are not peace officers for the purposes of administering or enforcing Federal or Provincial Law, except in accordance with an agreement under paragraph 15 or 16 of this Chapter or paragraph 156 of Chapter 21 Fish.
29. The powers, protections and immunities referred to in paragraph 27 will not exceed those provided by Federal or Provincial Law for individuals enforcing similar laws or performing similar duties in British Columbia.
30. The Parties agree as a general principle that Kitselas be in a position to support the safety of Kitselas Enforcement Officers, having regard for federal and provincial legal frameworks with respect to non-restricted firearms, restricted firearms, prohibited firearms and prohibited weapons, in a manner that is comparable to federal and provincial enforcement officers enforcing similar laws or performing similar duties in British Columbia.
31. Prior to the Effective Date, the applicable Parties will explore measures and mechanisms, with a view to implementation, that are necessary to support the safety of Kitselas Enforcement Officers in relation to paragraph 30.
32. If the Parties are unable to complete the discussions referred to in paragraph 31 by the Effective Date, the applicable Parties will continue those discussions in good faith after the Effective Date.
33. Kitselas law-making authority under paragraph 26 does not include the authority to establish a police service, but nothing in this Agreement precludes Kitselas from establishing a Police Service under Provincial Law.
34. If Kitselas appoints Kitselas Enforcement Officers in accordance with Kitselas Law under paragraph 26, Kitselas will:
  - (a) ensure that those officers are adequately trained to carry out their duties, having regard to training requirements for provincial or federal enforcement officers carrying out similar duties in British Columbia;
  - (b) establish accountability standards similar to those established by Canada and British Columbia for its enforcement officials enforcing similar laws; and
  - (c) establish and implement procedures for responding to complaints against those officers.

35. Federal or Provincial Law prevails to the extent of a Conflict with Kitselas Law under paragraph 26.
36. For greater certainty, Kitselas may, by a proceeding brought in the Supreme Court of British Columbia, seek injunctive or other relief to prevent or restrain the contravention of Kitselas Law.

#### **Enforcement of Kitselas Law in Relation to Fisheries by Fishery Officers and Fishery Guardians**

37. Enforcement of Kitselas Law made pursuant to Chapter 21 Fish by Fishery Officers and Fishery Guardians is addressed in paragraphs 149 to 155 of Chapter 21 Fish.

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

38. Canada and Kitselas may negotiate an agreement for the enforcement of Kitselas Law respecting Species at Risk, Migratory Birds or the Environment.

#### **Powers and Protections of Federal Enforcement Officers**

39. The powers and protections that a federal enforcement officer has under any Act of Parliament, including the powers and protections of a peace officer under the *Criminal Code*, apply to a federal enforcement officer enforcing Kitselas Laws.

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

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

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

45. Canada or British Columbia and Kitselas may negotiate an agreement, other than those referred to in paragraphs 24, 38 and 43 of this Chapter and paragraph 152 of Chapter 21 Fish, for the enforcement of Kitselas Law by a federal or provincial enforcement agency.

**Administrative Sanctions**

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

**Offences**

47. Kitselas law-making authority under paragraph 20 includes the power to:
- (a) establish offences punishable on summary conviction; and
  - (b) provide for penalties or alternative measures in respect of those offences, including:
    - (i) a fine of not more than:
      - 1. the general limit for offences under section 787(1) of the *Criminal Code*;  
or

2. that which may be imposed for comparable offences punishable by way of summary conviction under Federal or Provincial Law, whichever is greater;
  - (ii) a term of imprisonment of not more than two years less a day;
  - (iii) restorative justice measures;
  - (iv) community service;
  - (v) restitution; or
  - (vi) other penalties or alternative measures.
48. Notwithstanding paragraphs 46 and 47, Kitselas Law in relation to taxation may provide for:
  - (a) a monetary penalty that exceeds the limit set out in paragraphs 46(b)(i);
  - (b) a fine that exceeds the limit set out in paragraph 47(b)(i); or
  - (c) a term of imprisonment that exceeds the limit set out in paragraph 47(b)(ii),if there is an agreement to that effect as contemplated under Chapter 24 Tax.

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

49. Kitselas may make laws that provide for:
  - (a) the constitution, maintenance and organization of Adjudicative Bodies for the effective administration of Kitselas Laws;
  - (b) the appointment, authorization or designation of Adjudicators to Adjudicative Bodies to hear:
    - (i) disputes of administrative sanctions issued under Kitselas Law;
    - (ii) appeals or reviews of administrative decisions made by Kitselas Institutions under Kitselas Law; or
    - (iii) subject to paragraph 52, disputes between persons under Kitselas Law and other matters arising under Kitselas Law; and
  - (c) rules of procedure that apply to proceedings before Adjudicative Bodies.
50. Kitselas Law under paragraph 49 prevails to the extent of a Conflict with Federal or Provincial Law.

**Powers of Adjudicative Bodies and Adjudicators**

51. Subject to paragraph 52, an Adjudicative Body and its Adjudicators have all the powers necessary to perform their duties and functions.
52. An Adjudicative Body and its Adjudicators do not have the power or jurisdiction to:
- (a) hear offences established under Kitselas Law;
  - (b) perform the duties and functions referred to in paragraph 85; or
  - (c) make a determination referred to in paragraph 86.

**Statutory Appeal and Judicial Review in respect of Decisions of Kitselas Institutions**

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

**Prosecution of Offences**

58. Kitselas is responsible for the prosecution of offences established under Kitselas Law, including any related appeals.

59. Kitselas may make laws that provide for the appointment, functions and responsibilities of Kitselas Prosecutors to prosecute offences under Kitselas Law in:
- (a) the Kitselas Court; or
  - (b) the Provincial Court of British Columbia in accordance with Provincial Law.
60. Prosecution of an offence established under Kitselas Law will be conducted:
- (a) if Kitselas has established a Kitselas Court with the jurisdiction to hear that offence, in the Kitselas Court in accordance with Kitselas Law; or
  - (b) if Kitselas has not established a Kitselas Court with the jurisdiction to hear that offence, in the Provincial Court of British Columbia in accordance with the *Offence Act*.
61. If a prosecution is conducted under paragraph 60(b), the Provincial Court of British Columbia has jurisdiction to hear the prosecution of that offence.
62. Kitselas will make laws to ensure that prosecutions of offences established under Kitselas Law and on behalf of Kitselas are conducted in a manner that is consistent with the principle of prosecutorial independence.
63. Kitselas Law under paragraph 59(a) prevails to the extent of a Conflict with Federal or Provincial Law.
64. Federal or Provincial Law prevails to the extent of a Conflict with Kitselas Law under paragraph 59(b) or 62.

#### **Prosecution of Offences in Kitselas Court**

65. Where prosecutions are to be conducted on behalf of Kitselas in the Kitselas Court under paragraph 60(a), Kitselas will appoint Kitselas Prosecutors or retain prosecutors to carry out such prosecutions and any related appeals or proceedings.
66. Subject to Kitselas Law, prosecutions under paragraph 60(a) may be commenced on behalf of Kitselas by the laying of an information in the Kitselas Court by:
- (a) a Kitselas Enforcement Officer who has been designated as a peace officer under Kitselas Law; or
  - (b) any other peace officer.

#### **Prosecution of Offences in Provincial Court**

67. Where prosecutions are to be conducted in the Provincial Court of British Columbia under paragraph 60(b), Kitselas will
- (a) appoint Kitselas Prosecutors or retain prosecutors; or

- (b) if Kitselas has entered into an agreement with Canada or British Columbia under paragraph 74, authorize those prosecutors as agreed,
- to carry out such prosecutions and any related appeals or proceedings.
68. A prosecution under paragraph 60(b) may be commenced on behalf of Kitselas by the laying of an information in the Provincial Court of British Columbia by:
- (a) a Kitselas Enforcement Officer who has been designated as a peace officer under Kitselas Law; or
- (b) any other peace officer,
- in the same manner as an information is laid in the Provincial Court of British Columbia by a peace officer in respect of an offence under Provincial Law.
69. Neither the Attorney General of British Columbia nor the Attorney General of Canada will take carriage of or stay a proceeding conducted by a prosecutor appointed or retained by Kitselas under paragraph 67(a).
70. At the request of Kitselas, British Columbia and Kitselas will collaborate to identify matters associated with the prosecution of offences under paragraph 60(b), including:
- (a) considerations and constraints under Provincial Law or policy;
- (b) potential amendments to Provincial Law or policy that may support the prosecution of offences under paragraph 60(b); and
- (c) operational matters, including:
- (i) use of court registry services or administrative services; or
- (ii) any other matter necessary for the effective prosecution of offences under paragraph 60(b).
71. Within 18 months of receiving a request under paragraph 70, British Columbia and Kitselas will negotiate any matters identified through the collaborative process under paragraph 70 and, if applicable, appropriate mechanisms to address those matters identified under paragraph 70(c).
72. Following the process set out in paragraph 116, the Parties will determine whether Canada will be a party to the negotiations under paragraph 71.
73. Any Party participating in negotiations under paragraph 71 may request an extension of an additional 18 months, and any Party receiving the request will not unreasonably withhold consent to the extension.

**Prosecution Services Agreement**

74. Where prosecutions of offences under Kitselas Law are to be conducted in the Provincial Court of British Columbia under paragraph 60(b), at the request of Kitselas, the applicable Parties:
- (a) will negotiate and attempt to reach agreement regarding the use of provincial prosecution services for those prosecutions, which will be conducted on behalf of the Attorney General of British Columbia in accordance with the principle of prosecutorial independence;
  - (b) may negotiate an agreement regarding the use of federal prosecution services for those prosecutions, which will be conducted on behalf of the Attorney General of Canada in accordance with the principle of prosecutorial independence; or
  - (c) may negotiate an agreement regarding the use of other prosecution services.
75. Before Kitselas makes a request under paragraph 74, the applicable Parties will discuss:
- (a) the Parties' goals for the negotiations under paragraph 74;
  - (b) the respective roles of the Parties;
  - (c) any operational impacts or other obligations that may be created; and
  - (d) other relevant considerations.

**Appeal in respect of Offences**

76. An appeal in respect of a determination under paragraph 60(a) or 60(b) lies to the Supreme Court of British Columbia or to the Court of Appeal for British Columbia in the manner in which an appeal lies under the *Offence Act*, and the provisions of that Act relating to appeals apply to appeals under this paragraph.

**Disputes and Other Matters**

77. Disputes between persons under Kitselas Law and other matters arising under Kitselas Law not addressed in paragraphs 53 and 60 will be heard:
- (a) if Kitselas has established a Kitselas Court or Adjudicative Body with the jurisdiction to hear that dispute or other matter, in the Kitselas Court or by the Adjudicative Body; or
  - (b) if Kitselas has not established a Kitselas Court or Adjudicative Body with the jurisdiction to hear that dispute or other matter:
    - (i) if, under Provincial Law, the Provincial Court of British Columbia has jurisdiction in respect of the dispute or other matter, in the Provincial Court of British Columbia; or

- (ii) if, under Provincial Law, the Provincial Court of British Columbia does not have jurisdiction in respect of the dispute or other matter, in the Supreme Court of British Columbia.
- 78. Notwithstanding paragraph 77, British Columbia and Kitselas may negotiate agreements providing for disputes between persons under Kitselas Law or other matters arising under Kitselas Law to be heard by courts or other administrative bodies or tribunals under Provincial Law.
- 79. Following the process set out in paragraph 116, the Parties will determine whether Canada will be a party to the negotiations under paragraph 78.
- 80. An appeal in respect of a determination under paragraph 77(a) or 77(b) lies to the Supreme Court of British Columbia or to the Court of Appeal for British Columbia in the same manner in which an appeal would lie if the dispute or other matter arose under Provincial Law.

### **Kitselas Court**

- 81. Kitselas may make laws that provide for:
  - (a) the constitution, maintenance, and organization of a Kitselas Court for the effective administration of Kitselas Law; and
  - (b) the appointment of Kitselas Court Judges to the Kitselas Court.
- 82. Kitselas Law under paragraph 81 prevails to the extent of a Conflict with Federal or Provincial Law.
- 83. Kitselas Law under paragraph 81 will:
  - (a) provide a process for the appointment of Kitselas Court Judges;
  - (b) confer jurisdiction on Kitselas Court Judges to hear matters arising under Kitselas Law, which may include:
    - (i) disputes of administrative sanctions issued under Kitselas Law;
    - (ii) appeals or reviews of administrative decisions made by a Kitselas Institution under Kitselas Law;
    - (iii) offences established under Kitselas Law; or
    - (iv) disputes between persons under Kitselas Law or other matters arising under Kitselas Law;
  - (c) provide for judicial independence, including security of tenure, financial security and administrative independence;

- (d) provide for standards of judicial competence and behaviour, including fairness and impartiality; and
  - (e) provide for processes to address judicial misconduct or incapacity.
84. Kitselas may appoint a Kitselas Court Judge:
- (a) on a part-time or full-time basis; or
  - (b) who acts in another judicial or adjudicative capacity.
85. Subject to paragraph 86, the Kitselas Court and Kitselas Court Judges have all the powers necessary to perform their duties and functions, including to:
- (a) exercise all the powers and perform all the duties that could be exercised or performed by a Provincial Court Judge as if the matter arose under Provincial or Federal Law, which for greater certainty includes:
    - (i) committing for contempt of court;
    - (ii) hearing a challenge to the validity, applicability or operability of any Kitselas Law;
    - (iii) hearing a matter arising under the *Canadian Charter of Rights and Freedoms*, including requests for remedies under section 24 of the *Canadian Charter of Rights and Freedoms*; and
    - (iv) presiding over the trial of a person charged with an offence established under Kitselas Law for which, on conviction, the person is liable to be sentenced to a term of imprisonment; and
  - (b) make orders of possession with respect to Kitselas Lands, where such power is conferred under Kitselas Law.
86. The Kitselas Court and Kitselas Court Judges do not have jurisdiction to make a determination of Aboriginal or treaty rights of individuals who are not enrolled under this Agreement.

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

87. Notwithstanding any provision in this Chapter other than paragraph 89, British Columbia and Kitselas may negotiate an agreement regarding:
- (a) the appointment by Kitselas of judges of the Provincial Court of British Columbia as Kitselas Court Judges in accordance with Provincial Law and Kitselas Law;
  - (b) the appointment by British Columbia of Kitselas Court Judges or other individuals recommended by Kitselas as judges of the Provincial Court of British Columbia in accordance with Provincial Law;

- (c) the appointment of individuals as judges of the Provincial Court of British Columbia in accordance with Provincial Law;
  - (d) the concurrent appointment of individuals as judges of the Provincial Court of British Columbia and Kitselas Court in accordance with Provincial Law and Kitselas Law; or
  - (e) any other appointment or matter necessary for the effective administration of Kitselas Laws in the Provincial Court of British Columbia or the Kitselas Court.
88. British Columbia and Kitselas will collaborate to identify any potential amendments to Provincial Law or policy that may be necessary to support the implementation of the agreement referred to in paragraph 87.
89. An agreement entered into under paragraph 87 will be negotiated and implemented in a manner that respects judicial independence, including administrative independence.

### **Kitselas Court Coordination Agreement**

90. Before Kitselas enacts or amends a Kitselas Law in respect of matters under paragraph 81, Kitselas will provide notice to Canada and British Columbia of its intention to exercise the law-making authority.
91. Upon receipt of a notice under paragraph 90, British Columbia and Kitselas will collaborate to identify matters under paragraph 81, including:
- (a) considerations and constraints under Provincial Law or policy;
  - (b) potential amendments to Provincial Law or policy that may support the implementation of Kitselas Law; and
  - (c) operational matters, including:
    - (i) security measures;
    - (ii) use of provincial facilities;
    - (iii) use of court registry services or administrative services; or
    - (iv) matters necessary for the effective enforcement of orders made by the Kitselas Court Judge.
92. Within 18 months of receiving a notice under paragraph 90, British Columbia and Kitselas will negotiate any matters identified through the collaborative process under paragraph 91 and, if applicable, appropriate mechanisms for the Parties to address those matters identified under paragraph 91(c).
93. Following the process set out in paragraph 116, the Parties will determine whether Canada will be a party to the negotiations under paragraph 92.

94. Any Party may, in participating in negotiations under paragraph 92, request an extension of an additional 18 months, and any Party receiving the request will not unreasonably withhold consent to the extension.
95. Any agreements entered into under paragraph 92 will be negotiated and implemented in a manner that respects judicial independence, including administrative independence.
96. For greater certainty, paragraphs 109 and 110 of Chapter 1 General Provisions apply to proceedings brought before a Kitselas Court or Adjudicative Body.

### **Regional Aggregate Mechanisms**

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

### **Orders**

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

### **Debt Certificates**

101. Without limiting the generality of paragraph 99, a Debt Certificate signed by a Designated Person may be filed in:
  - (a) if the principal amount of the Debt set out in the Debt Certificate is within the monetary limit for claims under the *Small Claims Act*, the Provincial Court of British Columbia; or

- (b) if the principal amount of the Debt set out in the Debt Certificate is not within the monetary limit for claims under the *Small Claims Act*, the Supreme Court of British Columbia.

102. A Debt Certificate filed under paragraph 101:

- (a) has the same force and effect, and all proceedings may be taken on it, as if it were a judgment of the court in which it was filed for the recovery of the Debt; and
- (b) is admissible in any proceedings to recover the Debt without proof of the signature or authority of the person appearing to have signed the Debt Certificate and is proof of the facts.

### **Payments to Kitselas**

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

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

104. Notwithstanding paragraphs 99 to 102, British Columbia and Kitselas may negotiate an agreement recognizing authority for Kitselas to file or register, in a registry or other place established under Provincial Law:

- (a) an order made or imposed under Kitselas Law from which no internal process established under Kitselas Law for appeal or review is available; or
- (b) a Debt Certificate signed by a Designated Person.

105. At the request of British Columbia or Kitselas, British Columbia and Kitselas will negotiate and attempt to reach agreement regarding operational matters related to the enforcement of:

- (a) an order under paragraph 99; or
- (b) a Debt Certificate under paragraph 101.

106. At the request of British Columbia or Kitselas, British Columbia and Kitselas will negotiate and attempt to reach agreement, respecting the payments referred to in paragraph 103 and any related matters, which will come into effect within 18 months of the request.

107. British Columbia or Kitselas may, in participating in negotiations under paragraph 106, request an extension of an additional 18 months, and the Party receiving the request will not unreasonably withhold consent to the extension.

### **Places of Confinement**

108. Subject to paragraph 109, this Agreement does not authorize Kitselas to establish or maintain places of confinement.

109. Canada and Kitselas may negotiate an agreement for Kitselas to establish or maintain places of confinement or processes for the care and custody for individuals sentenced to a term of imprisonment in a federal penitentiary.
110. The Parties and a Police Service providing policing and law enforcement on Kitselas Lands may negotiate an agreement regarding:
  - (a) procedures for how individuals arrested by Kitselas Enforcement Officers may be transferred into the custody of that Police Service for confinement; and
  - (b) the corresponding rights and obligations of the Parties and that Police Service.

### **Community Correctional Services**

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

**General**

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

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

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

## CHAPTER 10 – LOCAL GOVERNMENT RELATIONS

### General

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

### Intergovernmental Agreements

5. Kitselas may enter into agreements with Local Government in relation to the provision and delivery of:
  - (a) services by Local Government to Kitselas Lands; and
  - (b) services by Kitselas to lands under the jurisdiction of Local Government.
6. Any service agreement between the Kitselas Band and a Local Government in effect immediately before the Effective Date will remain in effect until such time as it is renegotiated or is terminated under the terms of the applicable service agreement.
7. Kitselas and Local Governments may establish and maintain agreements that set out principles, procedures and guidelines for the management of their relationship, including in relation to:
  - (a) protection of culture and heritage interests;
  - (b) coordination and harmonization of land use and planning, water use and watershed planning, including regulating land use, enforcement of regulations and development;
  - (c) coordination and harmonization of property tax structures;
  - (d) coordination and harmonization of the development of infrastructure, including transportation;
  - (e) cooperative economic development including recreation and tourism;

- (f) adjacent land use;
- (g) environmental protection; and
- (h) dispute resolution.

### **Regional District Membership**

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

### **School Districts**

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

### **Regional Hospital District Membership**

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

# **RESOURCE MANAGEMENT**



## CHAPTER 11 – CULTURE AND HERITAGE

### General

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

### Law-Making

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

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

### **Kitselas Artifacts**

10. Kitselas owns any artifact discovered on or after the Effective Date within an archaeological context on Kitselas Lands, unless another person establishes ownership of that artifact.
11. At the request of Kitselas, the Canadian Museum of History or the Parks Canada Agency, as applicable, will negotiate and attempt to reach agreement with Kitselas on provisions for the loan or transfer of any Kitselas Artifact in the permanent possession of the Canadian Museum of History or the Parks Canada Agency.
12. At the request of Kitselas and subject to funds available for this purpose, the Canadian Museum of History or the Parks Canada Agency, as applicable, will loan, at no cost to Kitselas, any Tsimshian Artifact in the permanent possession of the Canadian Museum of History or the Parks Canada Agency in accordance with an agreement negotiated between Kitselas and the Canadian Museum of History or the Parks Canada Agency.
13. As soon as practicable following a request by Kitselas, the Royal British Columbia Museum will transfer to Kitselas all its legal interests in Kitselas Artifacts in the permanent collection of the Royal British Columbia Museum listed in an agreement negotiated between the Royal British Columbia Museum and Kitselas, in accordance with that agreement, at no cost to Kitselas and without condition.
14. At the request of Kitselas and subject to funds available for this purpose, the Royal British Columbia Museum will loan, at no cost to Kitselas, any Tsimshian Artifact in the permanent possession of the Royal British Columbia Museum in accordance with an agreement negotiated between Kitselas and the Royal British Columbia Museum.
15. At the request of Kitselas or the Royal British Columbia Museum, Kitselas and the Royal British Columbia Museum will discuss with a view to entering into Custodial Arrangements for Tsimshian Artifacts that remain in the possession of the Royal British Columbia Museum.
16. The Royal British Columbia Museum will notify Kitselas if any artifact in the possession of the Royal British Columbia Museum is subsequently considered to be a Kitselas Artifact or a Kitselas Artifact comes into the permanent possession of the Royal British Columbia Museum after the Effective Date, and, at the request of Kitselas, will discuss a Custodial Arrangement or terms of transfer of the legal interest in relation to that Kitselas Artifact.
17. Custodial Arrangements or any other agreement between Kitselas and the Royal British Columbia Museum will respect Kitselas Law and will comply with Federal and Provincial Law, including the statutory mandate of the Royal British Columbia Museum.

18. At the request of Kitselas or the Royal British Columbia Museum, Kitselas and the Royal British Columbia Museum will discuss other matters of interest or concern to Kitselas, which may result in additional agreements between the applicable parties.
19. The Royal British Columbia Museum will provide Kitselas with reasonable access to Records in its possession and, at the request of Kitselas, will provide a copy of any of those Records to Kitselas at no cost to Kitselas according to the Royal British Columbia Museum's policies and procedures.
20. At the request of Kitselas, Canada or British Columbia, as applicable, will make reasonable efforts to facilitate Kitselas's access to Kitselas Artifacts or Kitselas Archaeological Human Remains in other public collections in Canada.

### **Kitselas Archaeological Human Remains**

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

### **Heritage Sites**

24. Before the Effective Date, British Columbia and Kitselas will endeavour to agree on a list of key sites of cultural and historic significance outside Kitselas Lands to be protected through provincial heritage site designation or through other measures agreed to by British Columbia and Kitselas.
25. If, before the Effective Date, British Columbia and Kitselas agree in writing on a list of key sites to be protected through provincial heritage site designation or through other measures agreed to in accordance with paragraph 24, on the Effective Date this Agreement will be amended in accordance with the process set out in paragraph 9 of Chapter 31 Amendment by adding such list as an Appendix.

**Place Names**

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

## CHAPTER 12 – ENVIRONMENTAL MANAGEMENT

### Environmental Assessment

1. Notwithstanding any decision made by Canada or British Columbia in relation to a Federal or Provincial Project, no Federal or Provincial Project on Kitselas Lands will proceed without the consent of Kitselas unless:
  - (a) the Kitselas Lands, or any interest in Kitselas Lands, required for the Federal or Provincial Project have been expropriated in accordance with Chapter 3 Kitselas Lands;
  - (b) the Federal or Provincial Project is within the rights granted under an interest set out in Appendix G-1 Part 2 or Appendix G-2 Part 1; or
  - (c) the Federal or Provincial Project is related to the extraction and development of privately owned Subsurface Resources on or under Kitselas Lands legally described in Appendix G-6.
2. If a Federal or Provincial Project is to be located within the Impact Assessment Area, or may reasonably be expected to adversely affect the Impact Assessment Area, the residents on Kitselas Lands, Kitselas Heritage Sites, or Kitselas Exercisable Section 35 Rights, then Canada or British Columbia, as applicable, will aim to secure the free, prior and informed consent of the Kitselas through:
  - (a) any Specific Consultation Process established pursuant to paragraphs 3 to 12; or
  - (b) a Specific Consultation Process set out in an agreement between Kitselas and Canada or British Columbia, as applicable, in accordance with paragraph 67 of Chapter 1 General Provisions.
3. Canada or British Columbia, as applicable, will inform Kitselas of any potential Federal or Provincial Project within the Impact Assessment Area as soon as reasonably possible, and where possible within seven days, after the federal or provincial government is notified of the potential Federal or Provincial Project in accordance with impact assessment legislation or environmental assessment legislation.
4. Kitselas and Canada or British Columbia, as applicable, will collaborate during an Impact Assessment process or Environmental Assessment process, up to the final project decision, including seeking to achieve consensus regarding:
  - (a) planning for the conduct of the assessment, including any early decisions about whether or not to proceed with the assessment, identifying information, study and procedural requirements and, where applicable, timeline requirements;

- (b) the sufficiency of information to inform the assessment of effects including the environmental, social, health, economic and cultural effects of the Federal or Provincial Project on the Impact Assessment Area, residents on Kitselas Lands, Kitselas Heritage Sites and Kitselas Exercisable Section 35 Rights;
  - (c) the assessment of effects in relation to, but not limited to, the environmental, social, health, economic and cultural effects, of the Federal or Provincial Project on the Impact Assessment Area, residents on Kitselas Lands, Kitselas Heritage Sites or Kitselas Exercisable Section 35 Rights;
  - (d) the identification of appropriate mitigation and accommodation measures and incorporation into potential conditions in relation to, but not limited to, the environmental, social, health, economic and cultural effects, of the Federal or Provincial Project on the Impact Assessment Area, residents on Kitselas Lands, Kitselas Heritage Sites or Kitselas Exercisable Section 35 Rights, which may include Kitselas involvement in the design and implementation of monitoring programs;
  - (e) conclusions related to the seriousness of effects including the environmental, social, health, economic and cultural effects, of the Federal or Provincial Project on the Impact Assessment Area, residents on Kitselas Lands, Kitselas Heritage Sites or Kitselas Exercisable Section 35 Rights; and,
  - (f) any recommendations made to Provincial Environmental Assessment Decision-Makers about whether or not to approve the Provincial Project.
5. Prior to referring a Provincial Project to Provincial Environmental Assessment Decision-Makers, Kitselas will be provided with the opportunity to review the materials that will be referred to Provincial Environmental Assessment Decision-Makers, subject to the requirements of Provincial Law, and to provide notice to British Columbia with written reasons regarding its consent or lack of consent to the Provincial Project.
6. If the recommendation to Provincial Environmental Assessment Decision-Makers referred to in paragraph 4(f) is contrary to the notification of consent or lack of consent provided by Kitselas under paragraph 5, the Provincial Environmental Assessment Decision-Makers must, before making a decision, offer to meet with Kitselas to seek consensus.
7. Environmental Assessment and Impact Assessment processes will give full and fair consideration to:
- (a) Kitselas Laws and Indigenous knowledge provided by Kitselas; and
  - (b) studies completed according to the outcomes of consensus seeking under paragraph 4(a).
8. Nothing in this Agreement precludes Kitselas from providing additional information, including studies, to decision-makers for Canada and British Columbia.

9. If, despite the Parties' efforts under paragraph 4, Kitselas and Canada or British Columbia, as applicable, are unable to achieve consensus with respect to a substantive matter contemplated in paragraphs 4(a) to 4(f), Canada or British Columbia, as applicable, and Kitselas may agree to retain a technical expert or mediator, as appropriate, to assist them in achieving consensus on any outstanding matter.
10. If a Federal or Provincial Project is referred to a panel during an Impact Assessment or Environmental Assessment and may reasonably be expected to adversely affect Kitselas Lands or Kitselas Exercisable Section 35 Rights, Canada or British Columbia, as applicable, will provide Kitselas with:
  - (a) the opportunity to propose to Canada or British Columbia a list of names that Canada or British Columbia may consider for appointment to the panel in accordance with Federal or Provincial Law unless Kitselas is a proponent of the Federal or Provincial Project;
  - (b) an opportunity to participate in the development of terms of reference of the panel; and
  - (c) an opportunity to appear before or make a submission to the panel.
11. If a Federal or Provincial Project is referred to a panel during an Impact Assessment or Environmental Assessment and will be located on Kitselas Lands, Canada or British Columbia, as applicable, will provide Kitselas with:
  - (a) the opportunity to propose to Canada or British Columbia a list of names from which Canada or British Columbia will appoint one member in accordance with the requirements of federal impact assessment legislation or provincial environmental assessment legislation, unless Kitselas is a proponent of the Federal or Provincial Project;
  - (b) an opportunity to participate in the development of the terms of reference of the panel; and
  - (c) an opportunity to appear before or make a submission to the panel.
12. If a Provincial Project is referred to a commission during an Environmental Assessment, Kitselas may appear before and make written or oral submissions to the commission.
13. Application of a Specific Consultation Process does not preclude Kitselas from participating in any additional opportunities including funding opportunities, available under federal impact assessment policy and legislation, or provincial environmental assessment policy and legislation, but not addressed in that Specific Consultation Process.
14. Where a Federal Project proceeds within the Impact Assessment Area pursuant to a federal decision statement, or where a Provincial Project proceeds under an Environmental Assessment Certificate, Canada or British Columbia will assign a primary contact responsible for working with Kitselas in relation to some or all of the following, where feasible:
  - (a) engaging with Kitselas as required to identify compliance concerns;

- (b) communicating with Kitselas, in a timely way, about compliance and enforcement activities;
  - (c) identifying and facilitating training and mentorship opportunities to support Kitselas's participation in compliance and enforcement; and
  - (d) including Kitselas on Federal or Provincial Project inspections.
15. Kitselas and Canada or British Columbia, may seek to strengthen collaboration through the exploration of agreements regarding Kitselas's participation in compliance and enforcement, which for British Columbia may include:
- (a) appointment of compliance and enforcement officers;
  - (b) granting of investigative powers; or
  - (c) orders to cease, prevent or remedy activities in contravention of provincial legislation.
16. If the holder of an Environmental Assessment Certificate, or federal decision statement, proposes a change to that Federal or Provincial Project that is located within the Impact Assessment Area, or that may reasonably be expected to adversely affect the Impact Assessment Area, the residents on Kitselas Lands, Kitselas Heritage Sites, or Kitselas Exercisable Section 35 Rights, then, before making a decision to amend the Environmental Assessment Certificate or federal decision statement, British Columbia or Canada will collaborate through a process agreed to by the applicable Parties and seek to achieve, with respect to the amendment, consensus with Kitselas.

### **Law-Making**

17. Kitselas may make laws applicable on Kitselas Lands in respect of:
- (a) environmental assessments for Kitselas Projects;
  - (b) environmental management relating to the protection, preservation and conservation of the Environment, including:
    - (i) prevention, mitigation and remediation of pollution and degradation of the Environment;
    - (ii) waste management, including solid and liquid waste;
    - (iii) protection of local air and water quality; and
    - (iv) Environmental Emergency response.
18. Kitselas will ensure that any environmental assessment process established under Kitselas Law under paragraph 17(a) for Kitselas Projects that are also Federal Projects will maintain, or exceed, the requirements of the federal impact assessment legislation.

19. Where Kitselas exercises law-making authority under paragraph 17(a), Canada and Kitselas will work collaboratively to promote a timely and efficient review through:
  - (a) coordinating the respective impact assessment and environmental assessment requirements; and
  - (b) avoiding duplication where the Kitselas Project is also a Federal Project.
20. Federal or Provincial Law prevails to the extent of a Conflict with a Kitselas Law under paragraph 17.

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

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

### **Environmental Emergencies**

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

### **Community Watershed Lands**

24. Kitselas acknowledges that, on the Effective Date, Kitselas Community Watershed Lands are located within an area designated under Provincial Law as a community watershed in order to protect water being diverted for human consumption through a licenced waterwork.
25. Kitselas will manage, use and develop Kitselas Community Watershed Lands in accordance with those standards and objectives established under Provincial Law for the purpose of protecting water being diverted for human consumption that apply to provincial Crown land adjacent to such lands.
26. British Columbia will engage with Kitselas before discontinuing a community watershed designation that applies to Kitselas Community Watershed Lands.

27. If British Columbia determines that any part of Kitselas Community Watershed Lands is no longer required for the purpose of protecting water being diverted for human consumption, British Columbia will notify Kitselas and the obligation to manage, use and develop those lands in accordance with paragraph 25 will terminate.
28. For greater certainty, nothing in this Agreement limits the application of the *Drinking Water Protection Act* to Kitselas Community Watershed Lands.

## CHAPTER 13 – PARKS AND PLANNING

### Public Planning Processes

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

### Parks and Protected Areas

12. Kitselas may make proposals to British Columbia to establish a Provincial Protected Area within the Kitselas Harvest Area.
13. Nothing in this Agreement obligates British Columbia to establish a Provincial Protected Area within the Kitselas Harvest Area.

14. Any Provincial Protected Area established after the Effective Date will not include Kitselas Lands without the consent of Kitselas.
15. For greater certainty, Kitselas Citizens may exercise the Kitselas Right to Gather Plants, the Kitselas Right to Harvest Migratory Birds, and the Kitselas Right to Harvest Wildlife within Provincial Protected Areas in accordance with this Agreement.
16. British Columbia will Consult with Kitselas in relation to:
  - (a) the establishment of new Provincial Protected Areas or Wildlife Management Areas;
  - (b) the preparation or modification of any management plan for a Provincial Protected Area wholly or partly within the Kitselas Harvest Area;
  - (c) the disposition of or modification of boundaries of existing Provincial Protected Areas or Wildlife Management Areas; and
  - (d) changes in the use or designation of existing Provincial Protected Areas or Wildlife Management Areas,

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

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

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

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

22. Canada will Consult Kitselas prior to:
  - (a) the establishment or changes to the boundaries of any National Park or National Marine Conservation Area;

- (b) the designation as a National Historic Site of lands under the administration and control of the Parks Canada Agency;
- (c) transfer of administration of a national historic site to the Parks Canada Agency; or
- (d) changes to the boundaries of a National Historic Site,

wholly or partly within the Kitselas Migratory Birds Harvest Area.

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

### **Harvesting and Other Cultural Activities**

24. Kitselas has the right to harvest Renewable Resources for Domestic Purposes in the portion of:
- (a) any National Park or National Marine Conservation Area wholly or partly within the Kitselas Migratory Birds Harvest Area; and
  - (b) any National Historic Site wholly or partly within the Kitselas Migratory Birds Harvest Area where an opportunity to harvest Renewable Resources exists,

in accordance with this Agreement.

25. The Kitselas Right to Harvest Renewable Resources is limited by duly authorized measures necessary for conservation, public health, or public safety.
26. The Kitselas Right to Harvest Renewable Resources is a communal right held by Kitselas and cannot be alienated.
27. If any National Park or National Marine Conservation Area is established wholly or partly within the Kitselas Migratory Birds Harvest Area, or where there is a Kitselas Right to Harvest Renewable Resources in a National Historic Site, at the request of Kitselas or Canada, Kitselas and Canada will negotiate and attempt to reach agreement on terms and conditions for the exercise of:
- (a) the Kitselas Right to Harvest Renewable Resources;
  - (b) the Kitselas Fishing Right; and
  - (c) other Kitselas cultural activities,

in that National Park, National Marine Conservation Area or National Historic Site.

28. For greater certainty, in the absence of an agreement on the terms and conditions for the exercise of the Kitselas Right to Harvest Renewable Resources, Kitselas Citizens may exercise the Kitselas Right to Harvest Renewable Resources.
29. After Consultation with Kitselas, the Minister may close areas in any National Park, National Marine Conservation Area or National Historic Site to harvesting for the purposes of public health, public safety or conservation.

**General**

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

## CHAPTER 14 – WATER RESOURCES

### Water Reservation

1. On the Effective Date, British Columbia will establish a water reservation under the *Water Sustainability Act* in favour of Kitselas of 33,996,795 cubic meters of water per year from Streams set out in Schedule 1 for all purposes under the *Water Sustainability Act* including domestic, agricultural and industrial uses, but excluding those purposes set out in paragraph 29.
2. Any Water Licences issued from a water reservation established under paragraph 1 will have a date of precedence of December 12, 2017.

### Water Licences

3. A person seeking a Water Licence for volumes of water to be applied against the Kitselas Water Reservation must obtain written consent from Kitselas before submitting an application to British Columbia.
4. If a person applies to British Columbia for a Water Licence under paragraph 3 and:
  - (a) the application conforms to provincial regulatory requirements;
  - (b) the application is for a volume of flow that does not exceed the Available Flow for the applicable Stream or Aquifer; and
  - (c) where required, the application includes provisions for storage where the monthly Available Flow is insufficient to meet proposed demand,

British Columbia will approve the application and issue the Water Licence.

5. A Water Licence issued to a person for use on Kitselas Lands under paragraph 4 will not be subject to any rentals, fees, or other charges, except taxes, by British Columbia.
6. For greater certainty, a person may apply for Water Licences under paragraph 4 for use of water off of Kitselas Lands.
7. The volume of flow approved in a Water Licence issued under paragraph 4 will be deducted from the unrecorded volume of flow in the applicable Kitselas Water Reservation.
8. If a Water Licence issued pursuant to paragraph 4 is cancelled, expires or otherwise terminates, the volume of flow in that Water Licence will be added back to the unrecorded volume of flow in a Kitselas Water Reservation.
9. For greater certainty, nothing in this Agreement precludes Kitselas, a Kitselas Public Institution, a Kitselas Corporation or a Kitselas Citizen from applying for additional Water Licences under Provincial Law not provided for under a Kitselas Water Reservation.

**Water Licence Access**

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

11. If a person other than Kitselas or a Kitselas Public Institution:

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

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

12. If Kitselas, a Kitselas Public Institution, a Kitselas Corporation or a Kitselas Citizen:

- (a) has a Water Licence approved under paragraph 4 or obtains a Water Licence under paragraph 9; and
- (b) reasonably requires access across, or an interest in, provincial Crown land for the construction, maintenance, improvement or operation of works authorized under the Water Licence,

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

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

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

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

- (a) are authorized under the associated Water Licences set out in Appendix G-2 Part 3; and
- (b) continue as provincial permits of occupation under Provincial Law under paragraph 79 of Chapter 3 Kitselas Lands or are replaced by Kitselas under paragraph 72 of Chapter 3 Kitselas Lands.

16. In addition to any consent required under paragraph 11, where Kitselas has disposed of an estate or interest in Kitselas Lands, Kitselas will take reasonable steps to ensure the granting of the access across or the interest in Kitselas Lands for the construction, maintenance, improvement or operation of works authorized under a Water Licence.
17. For greater certainty, the provisions of the *Water Sustainability Act* regarding access for the construction, maintenance, improvement or operation of works across fee simple lands off of Kitselas Lands apply in relation to Water Licences issued under paragraph 4.
18. Subject to paragraph 19, storage, diversion, extraction or use of water will be in accordance with Federal and Provincial Law.
19. The *Water Utility Act* does not apply to Kitselas, a Kitselas Public Institution, or a Kitselas Corporation for the provision of services on Kitselas Lands.

### **Law-Making**

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

### **Other**

23. If Federal or Provincial Law permits the sale of water, Kitselas may sell water in accordance with Federal and Provincial Law.
24. Nothing in this Agreement alters Federal or Provincial Law in relation to property in water.
25. If Groundwater is reasonably available, then at the request of Kitselas, British Columbia and Kitselas will negotiate and attempt to reach agreement on a reservation in favour of Kitselas of the amount of Groundwater that may be extracted and used by Kitselas for all purposes under the *Water Sustainability Act*, including domestic, agricultural and industrial purposes, but excluding those purposes set out in paragraph 29.
26. For the purposes of paragraph 25, British Columbia and Kitselas will:
  - (a) determine the amount of Groundwater which can reasonably be withdrawn from the Aquifer under consideration while maintaining the sustainability and quality of the Groundwater from the Aquifer;

- (b) determine the existing and reasonable future needs for Groundwater of Kitselas and Kitselas Citizens on Kitselas Lands, as well as existing and reasonable future needs of other users in the area;
  - (c) consider any future economic development opportunities for Kitselas or Kitselas Citizens;
  - (d) consider any water reservations that could potentially affect that Aquifer;
  - (e) consider the Kitselas Water Reservation established under paragraph 1; and
  - (f) ensure that any agreement under paragraph 25 complies with applicable requirements under Federal or Provincial Law.
27. If British Columbia and Kitselas are unable to reach agreement under paragraph 25 on a reservation of the amount of Groundwater that may be extracted and used by Kitselas, British Columbia or Kitselas may refer the matter to be finally determined by arbitration in accordance with Chapter 29 Dispute Resolution.
28. Access to Kitselas Lands to extract Groundwater on Kitselas Land requires the consent of Kitselas.

### **Hydro Power Reservation**

29. At the request of Kitselas, British Columbia and Kitselas will negotiate and attempt to reach agreement on water reservations of the unrecorded waters of the Chimdemash Creek, Kleanza Creek, Zymoetz (Copper) River and Dasque Creek to enable Kitselas to investigate the suitability of those Streams for hydro power purposes, including related storage purposes.

### **Clean Energy**

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

**Water Management**

32. Kitselas may participate in water planning processes in the Kitselas Harvest Area.
33. With respect to the management of water within the Kitselas Harvest Area, Kitselas and Canada or British Columbia, as applicable, may negotiate agreements to:
  - (a) define respective roles and responsibilities of the Parties;
  - (b) coordinate activities related to:
    - (i) flood response and public safety;
    - (ii) protection of water quality;
    - (iii) water conservation;
    - (iv) Groundwater management and regulation;
    - (v) resource inventory;
    - (vi) monitoring of water quality and quantity;
    - (vii) management of and access to information;
    - (viii) water management objectives and planning; and
    - (ix) other matters agreed to by the Parties; and
  - (c) identify watersheds that require water management planning.
34. If a watershed includes both Kitselas Lands and provincial Crown land, and if Kitselas or British Columbia considers that the watershed is an important source of drinking water, British Columbia and Kitselas may negotiate agreements in relation to the protection of drinking water in the area.

**Schedule 1: Kitselas Water Volumes**

<b>Water Source</b>	<b>Water Volume (m<sup>3</sup>)</b>
Carpenter Creek	345,888
Cecil Creek	475,200
Chist Creek	148,836
Chindemash Creek	2,676,000
Hankin Creek	711,600
Hardscrabble Creek	583,690
Kleanza Creek	1,390,824
Lakelse River	4,873,500
Legate Creek	423,024
Little Oliver Creek	29,448
Lowrie Creek	1,030,200
Shannon Creek	485,112
Singlehurst Creek	693,000
Skeena River	18,340,000
St. Croix Creek	1,050,000
Sockeye Creek	320,299
Williams Creek	295,374
Zymoetz (Copper) River	124,800
<b>Total</b>	<b>33,996,795</b>

## CHAPTER 15 – FOREST RESOURCES

### Forest Resources on Kitselas Lands

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

### Law-Making

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

### Timber Marking and Scaling

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

### Manufacture and Export of Timber Resources

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

### Forest and Range Health

10. Kitselas is responsible for the control of insects, diseases, invasive plants, animals or abiotic factors on Kitselas Lands that may affect the health of Forest Resources or Range Resources on Kitselas Lands.

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

### **Wildfire Suppression and Control**

15. Subject to the Wildfire Suppression Agreement and paragraphs 17 and 22, Provincial Law in relation to the protection of resources from wildfire and for wildfire prevention and control applies to Kitselas Lands as Private Lands.
16. On the Effective Date, the Parties will enter into a Wildfire Suppression Agreement that will set out how the costs incurred by British Columbia for wildfire control on Kitselas Lands for wildfires that originate on Kitselas Lands will be shared by British Columbia, Canada and Kitselas.
17. Subject to paragraphs 18 and 19 and the limitations on the scope of Kitselas's responsibility to pay wildfire control costs under the Wildfire Suppression Agreement, Kitselas is responsible for one third of the costs incurred by British Columbia for wildfire control on Kitselas Lands for wildfires that originate on Kitselas Lands.
18. If Kitselas caused or contributed to the start or spread of any wildfire due to its own wilful misconduct, Kitselas's responsibility for costs is not limited by paragraph 17.
19. Kitselas will not be responsible under paragraph 17 for wildfire control costs incurred by British Columbia on Kitselas Lands if British Columbia or Canada caused or contributed to the start or spread of that wildfire due to the wilful misconduct of British Columbia or Canada.
20. For greater certainty, the responsibility of Kitselas under paragraph 17 for the costs incurred by British Columbia for wildfire control does not include responsibility for any costs associated with wildfire control off of Kitselas Lands.
21. For greater certainty, cost recovery for wildfires that originate off Kitselas Lands and subsequently spread on to Kitselas Lands will be in accordance with the *Wildfire Act*.
22. British Columbia will respond to a wildfire originating on Kitselas Lands on the same priority basis as for provincial Crown land and in accordance with any priorities set by the Minister.

23. For the purposes of paragraph 16:
- (a) unless terminated at the written request of Kitselas, the Wildfire Suppression Agreement remains in effect between Kitselas and British Columbia, on the same terms, subject to those terms that Kitselas and British Columbia negotiate on a periodic basis; and
  - (b) Canada's participation in the Wildfire Suppression Agreement is limited to assuming a share of costs under that agreement for a period of ten years commencing on the Effective Date.
24. Subject to any cost-sharing arrangement that may be in effect between Canada and British Columbia regarding wildfire suppression on lands provided under land claims agreements, Canada and British Columbia may, at their respective discretion, enter into new agreements from time to time in respect of Canada's continuing participation in the Wildfire Suppression Agreement following the ten year period referred to in paragraph 23(b).
25. Nothing in paragraph 16 or 17 limits the ability of any Party to pursue legal action against third parties.
26. At the request of Kitselas, or in accordance with Provincial Law, British Columbia may enter on Kitselas Lands and assist in the provision of, or carry out, wildfire control.

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

27. Unless otherwise agreed by Kitselas, British Columbia will ensure that any obligation that applies on Kitselas Lands in respect of Forest Practices and Range Practices, including road deactivation, will be fulfilled in accordance with Provincial Law.
28. On or before the Effective Date, British Columbia and Kitselas will enter into an agreement that:
- (a) identifies the roads to be deactivated under paragraph 27;
  - (b) sets out the priority and timing of the deactivation of the roads identified under paragraph 28(a); and
  - (c) addresses other matters as agreed to by Kitselas and British Columbia related to the fulfillment of obligations under paragraphs 27 and 28.
29. Kitselas will provide access to Kitselas Lands at no cost to British Columbia and to any tenure holder whose rights to Forest Resources and Range Resources under paragraph 30 cease to be valid, and to their respective employees, agents, contractors, successors or assigns, so that they may fulfill the obligations under paragraph 27.

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

30. British Columbia will ensure that on the Effective Date, any portion of:

- (a) any agreement under the *Forest Act* or *Range Act*; and
- (b) any plan, permit or authorization associated with any agreement under the *Forest Act* or *Range Act*,

that applies on Kitselas Lands ceases to be valid, except for the community forest agreement, and any associated plan, permit or authorization, held by Terrace Community Forest Limited Partnership in respect of the land identified as “Former Provincial Crown Land” shown in cross-hatch on Appendix B-3 Part 2 Maps 39 and 41.

- 31. British Columbia will direct the Minister responsible for the *Forest Act* to amend the community forest agreement held by Terrace Community Forest Limited Partnership to specify that the Kitselas Lands that overlap the community forest agreement are subject to the community forest agreement and will be treated as Private Lands for the purposes of Provincial Law in relation to Forest Resources, Range Resources, Forest Practices and Range Practices.

### **Forest Research Plots**

- 32. On the Effective Date, Kitselas will grant to British Columbia licences in the applicable form in Document 3 of Appendix G-4 Part 3, to enter onto Kitselas Lands for the purpose of conducting forestry-related studies, tests and experiments, for those research installations and growth and yield sites respectively identified as “Forest Inventory Ground Plots” and “Forest Research Plots” in Appendix G-3 Parts 3 and 4.

### **Information Sharing**

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

## CHAPTER 16 – CO-MANAGEMENT

### Principles

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

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

2. Any Party may propose to the other applicable Parties that they collaboratively develop a framework respecting a Co-Management Agreement to address lands and resources management and decision-making within the Kitselas Harvest Area in respect of any of following subject areas:
  - (a) forestry;
  - (b) energy and mines;
  - (c) environmental management;
  - (d) lands;
  - (e) parks and protected areas;
  - (f) wildlife;
  - (g) fish;
  - (h) water;
  - (i) submerged lands and foreshore areas;
  - (j) oceans protection and management;
  - (k) archaeological, historic or cultural sites; and
  - (l) other matters by agreement of the Parties.

3. Upon receipt of a proposal under paragraph 2, the applicable Parties, in good faith, will make efforts to collaborate on the development of a framework respecting the matters to be addressed in the Co-Management Agreement, which may include:
  - (a) the purpose of the proposed agreement;
  - (b) the geographic extent and location of the proposed agreement;
  - (c) the decisions or matters to be addressed under the proposed agreement;
  - (d) coordination with existing collaborative governance structures or processes already established through this Agreement to address lands and resource management and decision-making;
  - (e) the nature of the decision-making process to be established under the proposed agreement;
  - (f) identification of the potential adverse impacts of the proposed agreement on Kitselas Exercisable Section 35 Rights and measures to ensure that such impacts are avoided, mitigated or otherwise accommodated;
  - (g) identification of Other Indigenous Nations potentially affected by the proposed agreement, and, where potential impacts are identified, if applicable, the need for appropriate mechanisms for the Parties to resolve any impacts;
  - (h) identification of considerations and constraints under Federal or Provincial Law, including policy frameworks and authorities, and, if applicable, appropriate mechanisms for the Parties to address those considerations and constraints;
  - (i) identification of potential amendments to Federal or Provincial Law that may be required to implement the proposed agreement; and
  - (j) such other matters as any Party may reasonably identify, such as implementation and resource considerations.
4. As an initial step in collaborating on the development of a framework respecting a proposed Co-Management Agreement, the participating Parties will develop an agreed-upon list of interests and principles that will guide them in developing and evaluating a proposed framework.
5. As part of collaborating on the development of a framework respecting the matters to be addressed in a Co-Management Agreement, the applicable Parties will also consider and identify:
  - (a) a workplan and proposed timeframe to complete the Co-Management Agreement;
  - (b) their respective requirements to approve and bring the Co-Management Agreement into force and effect; and

- (c) the resources reasonably required by Kitselas to negotiate and attempt to reach agreement on the Co-Management Agreement.
6. Where the subject matter of a proposal relates to federal or provincial land and resource decisions, the discussions may be conducted between Kitselas and Canada or British Columbia, as applicable.
7. Good faith obligations under paragraphs 3 and 8 require the Parties to, among other things:
- (a) enter into the development of the framework or negotiations, as applicable, with the goal of reaching a mutually acceptable outcome;
  - (b) provide timely disclosure of sufficient information and documents to enable a full examination of the subject matter;
  - (c) respond appropriately and in a timely manner to bargaining positions;
  - (d) not unreasonably reject a position of the other Party; and
  - (e) act consistently with the standard of good faith as articulated in the common law.

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

8. If the applicable Parties reach an agreement on a framework respecting the matters to be addressed in a Co-Management Agreement, they will negotiate and attempt to reach agreement on a Co-Management Agreement in accordance with the agreed-to framework and this Chapter.
9. A decision-making process to be established under a Co-Management Agreement may include:
- (a) collaborative management processes or boards;
  - (b) collaborative planning;
  - (c) consensus recommendations to a decision-maker;
  - (d) replacement of an existing decision-maker with an agreed to joint body or joint decision-makers;
  - (e) delegation of decisions;
  - (f) consent-based decision-making;
  - (g) agreements on policies, procedures and standards or best practices to be applied; or
  - (h) any other arrangements agreed to by the parties.

10. The Parties confirm their intention that, unless the context for or subject matter of a Co-Management Agreement requires otherwise, a Co-Management Agreement will constitute a Specific Consultation Process for the Contemplated Crown Conduct addressed in the agreement and agree that a Co-Management Agreement will specify whether it is a Specific Consultation Process in relation to those matters.
11. Any decision-making process that may be established under a Co-Management Agreement will ensure that principles of transparency, accountability, administrative fairness and due process are addressed.

### **Shared Territory Matters**

12. A Co-Management Agreement will not abrogate or derogate from the rights of any Other Indigenous Nation recognized and affirmed by section 35 of the *Constitution Act, 1982*.
13. If any Party, acting reasonably, determines that a Co-Management Agreement may adversely affect the exercise of the established or asserted rights of an Other Indigenous Nation recognized and affirmed under section 35 of the *Constitution Act, 1982*, the Parties negotiating that Co-Management Agreement will use all reasonable efforts to:
  - (a) address the shared territorial issues; and
  - (b) if appropriate, support British Columbia and Canada's obligation to consult in accordance with the common law.
14. Finalization of a Co-Management Agreement is subject to Canada and British Columbia, each acting reasonably, determining that any obligation they may have to consult in accordance with the common law in respect of a Co-Management Agreement has been fulfilled.

### **Arbitration**

15. Within 60 days of a Party delivering notice that it is withdrawing from efforts to collaboratively develop a framework pursuant to paragraph 3 or to negotiate and attempt to reach agreement on a Co-Management Agreement under paragraph 8, any Party may refer the question of whether a Party has failed to participate in those processes in good faith to be finally determined by arbitration in accordance with Chapter 29 Dispute Resolution without having to go through Stage One or Stage Two.

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

16. On the Effective Date, the applicable Parties will commence collaborative development of a framework, pursuant to paragraphs 2 to 7, respecting co-management within the following areas:
  - (a) Spoksuut;
  - (b) Skeena West;

- (c) Skeena North;
- (d) Kleanza;
- (e) Copper;
- (f) Lakelse/Williams; and
- (g) Upper Kitimat,

as identified in Appendix J Part 1.



# **HARVESTING RIGHTS**



## CHAPTER 17 – WILDLIFE

### General

1. Kitselas has the right to harvest Wildlife for Domestic Purposes within the Kitselas Harvest Area throughout the year in accordance with this Agreement.
2. For greater certainty, trapping may be used as a method to harvest Wildlife for Domestic Purposes.
3. The Kitselas Right to Harvest Wildlife is limited by duly authorized measures necessary for conservation, public health or public safety.
4. Canada or British Columbia, as applicable, will Consult with Kitselas before implementing any conservation, public health or public safety measures that may adversely affect the Kitselas Right to Harvest Wildlife.
5. For greater certainty, the obligation to Consult under paragraph 4 is subject to paragraphs 68 to 75 of Chapter 1 General Provisions related to emergencies.
6. The Kitselas Right to Harvest Wildlife is held by Kitselas and cannot be alienated.
7. The Kitselas Right to Harvest Wildlife is a right to harvest in a manner that is consistent with the communal nature of Kitselas's harvest for Domestic Purposes, and periods of harvest as determined by Kitselas.
8. Kitselas Citizens may exercise the Kitselas Right to Harvest Wildlife except as otherwise provided under Kitselas Law.
9. The Minister retains the authority for managing and conserving Wildlife and Wildlife habitat and will exercise that authority in a manner consistent with this Agreement.
10. For greater certainty, the Minister's authority referred to in paragraph 9 will be exercised in accordance with applicable constitutional principles respecting the priority of rights under section 35 of the *Constitution Act, 1982*.
11. Nothing in this Agreement alters Federal or Provincial Law in relation to property in Wildlife.

### Consultation Regarding Crown Dispositions

12. British Columbia may authorize the use or disposition of provincial Crown land subject to the consultation obligations in paragraphs 62 to 75 of Chapter 1 General Provisions and any such authorized use or disposition may affect the method, timing and location of harvesting under the Kitselas Right to Harvest Wildlife.

13. When contemplating the authorization of a proposed use or disposition of provincial Crown land under paragraph 12, British Columbia will Consult with Kitselas regarding any Contemplated Crown Conduct with the aim of securing the free, prior and informed consent of Kitselas in accordance with paragraph 63 of Chapter 1 General Provisions.
14. At the request of Kitselas or British Columbia, Kitselas and British Columbia will negotiate and attempt to reach agreement on a Specific Consultation Process to be relied upon as the process for consultation under paragraph 13, and, unless Kitselas and British Columbia otherwise agree in writing, that Specific Consultation Process will:
  - (a) require that decision-makers consider the preferred method, timing and location of harvesting under the Kitselas Right to Harvest Wildlife; and
  - (b) ensure that measures to avoid, mitigate or otherwise accommodate adverse impacts of the proposed authorized use or disposition of provincial Crown land on the preferred method, timing and location of harvesting under the Kitselas Right to Harvest Wildlife are identified, proposed and implemented, if appropriate.
15. The Kitselas Right to Harvest Wildlife will be exercised in a manner that does not interfere with authorized uses or dispositions of provincial Crown land existing as of the Effective Date or authorized in accordance with paragraph 12.
16. For greater certainty, where Kitselas and British Columbia have agreed upon a Specific Consultation Process that is in effect in relation to Contemplated Crown Conduct under paragraph 12, the processes set out in that agreement will be relied upon by Kitselas and British Columbia for the purposes of consultation in relation to that conduct.
17. For greater certainty, nothing in this Agreement or any Specific Consultation Process under paragraph 14 precludes Kitselas from raising the issue of whether there has been an unjustified infringement of the Kitselas Right to Harvest Wildlife.
18. British Columbia and Kitselas will explore processes to consider the cumulative effects of proposed uses or dispositions of provincial Crown land on the preferred method, timing and location of harvesting under the Kitselas Right to Harvest Wildlife and may agree to amend the Specific Consultation Process under paragraph 14 to include those processes.

### **Incidental Use**

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

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

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

**Harvesting on Fee Simple Lands**

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

**Harvesting Outside the Kitselas Harvest Area**

23. Nothing in this Agreement precludes Kitselas Citizens from harvesting Wildlife anywhere in Canada outside of the Kitselas Harvest Area in accordance with:
  - (a) Federal and Provincial Law; or
  - (b) Federal and Provincial Law and:
    - (i) any agreements between Kitselas and other Aboriginal peoples;
    - (ii) any arrangements between other Aboriginal peoples and Canada or British Columbia; or
    - (iii) any agreements between Kitselas and British Columbia or Canada, as applicable.
24. For greater certainty, Kitselas Citizens who are Indians, which includes status Indians, may harvest Wildlife outside of the Kitselas Harvest Area in the same manner as other Indians in British Columbia in accordance with the *Wildlife Act*.

**Licences and Fees**

25. Subject to paragraph 26, Kitselas Citizens are not required to have federal or provincial licences, or pay any fees or royalties to Canada or British Columbia, in relation to the Kitselas Right to Harvest Wildlife.
26. Nothing in this Agreement affects Canada's ability to require Kitselas Citizens to obtain licences for the use and possession of firearms under Federal Law on the same basis as other Aboriginal people of Canada.

**Trade and Barter and Sale**

27. Kitselas has the right to Trade and Barter among themselves, or with other Aboriginal people of Canada, any Wildlife and Wildlife parts, including meat and furs, harvested under the Kitselas Right to Harvest Wildlife.
28. Kitselas Citizens may exercise the right to Trade and Barter set out in paragraph 27 except as otherwise provided in Kitselas Law.

29. The right to Trade and Barter set out in paragraph 27 is held by Kitselas and cannot be alienated.
30. Kitselas and Kitselas Citizens may, in accordance with Federal and Provincial Law, sell Wildlife and Wildlife parts, including meat and furs, harvested under the Kitselas Right to Harvest Wildlife.

### **Transport and Export**

31. Any transportation of Wildlife and Wildlife parts, including meat and furs, harvested under the Kitselas Right to Harvest Wildlife will be in accordance with Kitselas Law and Federal and Provincial Law, including any requirement under the *Wildlife Act* to possess a record of receipt.
32. Notwithstanding paragraph 31, Wildlife and Wildlife parts, including meat and furs, harvested under the Kitselas Right to Harvest Wildlife may be transported throughout the year.
33. The information in the documentation issued by Kitselas under paragraph 39 will be deemed to serve as a hunting permit or licence number under Federal and Provincial Law relating to the transport of Wildlife and Wildlife parts, including meat and furs, harvested under the Kitselas Right to Harvest Wildlife.
34. Any export of Wildlife or Wildlife parts, including meat and furs, harvested under the Kitselas Right to Harvest Wildlife will be in accordance with Federal and Provincial Law.

### **Law-Making**

35. Kitselas may make laws in relation to the Kitselas Right to Harvest Wildlife for:
  - (a) the designation of Kitselas Citizens who may harvest Wildlife;
  - (b) the designation of individuals in accordance with a Designated Harvester Agreement;
  - (c) the administration of documentation for individuals authorized to harvest Wildlife;
  - (d) the method, timing and location of the harvest of Wildlife;
  - (e) the distribution of harvested Wildlife among Kitselas Citizens; and
  - (f) the Trade and Barter, under paragraph 27, of harvested Wildlife.
36. Kitselas Law under paragraph 35 prevails to the extent of a Conflict with Federal or Provincial Law.
37. Kitselas will make laws to require all Kitselas Citizens and Designated Harvesters who harvest or transport Wildlife under the Kitselas Right to Harvest Wildlife to carry documentation issued by Kitselas and produce that documentation on request by an authorized individual.
38. Federal or Provincial Law prevails to the extent of a Conflict with a Kitselas Law under paragraph 37.

**Documentation**

39. Kitselas will issue documentation to identify:
- (a) Kitselas Citizens who are authorized by Kitselas to exercise the Kitselas Right to Harvest Wildlife; and
  - (b) Designated Harvesters.
40. Documentation issued under paragraph 39 will:
- (a) be in the English language, which version is authoritative, and, at the discretion of Kitselas, in the Sm'algyax language;
  - (b) include sufficient information to identify the individual;
  - (c) be identifiable as having been issued by Kitselas; and
  - (d) meet any other requirements under Kitselas Law.
41. Documentation issued by Kitselas will be deemed to satisfy documentation requirements under Federal or Provincial Law for transporting or harvesting Wildlife harvested under the Kitselas Right to Harvest Wildlife.

**Designated Harvester**

42. Subject to paragraph 43 and the completion of a Designated Harvester Agreement, Kitselas may designate individuals other than Kitselas Citizens to exercise the Kitselas Right to Harvest Wildlife on behalf of a Kitselas Citizen who is unable to exercise the Kitselas Right to Harvest Wildlife.
43. The designation of a Designated Harvester under paragraph 42 must be in accordance with this Agreement and the Designated Harvester Agreement.
44. At the request of British Columbia or Kitselas, British Columbia and Kitselas will negotiate and attempt to reach agreement on a Designated Harvester Agreement that will include:
- (a) criteria that individuals must meet to be designated;
  - (b) the duration of designations;
  - (c) the number of individuals that may be designated on behalf of a Kitselas Citizen;
  - (d) requirements for the documentation that Kitselas will provide to a Designated Harvester; and
  - (e) any reporting requirements.

45. Subject to paragraph 46, neither Kitselas nor a Kitselas Citizen may pay any remuneration to, or accept any payment from, a Designated Harvester in relation to harvesting under paragraph 42.
46. Kitselas or a Kitselas Citizen may reimburse a Designated Harvester for reasonable expenses incurred in relation to harvesting under paragraph 42.
47. All Wildlife and Wildlife parts, including meat and furs, harvested by a Designated Harvester are the property of the Kitselas Citizen on whose behalf the Designated Harvester is harvesting.
48. Kitselas may only designate an individual under paragraph 42 if that individual possesses a valid hunting licence under Provincial Law or is exempt from the requirement to possess a British Columbia resident hunting licence while hunting in British Columbia.

### **Conservation Measures**

49. The Minister may establish or vary conservation measures in relation to Wildlife species in the Kitselas Harvest Area.
50. Kitselas may propose conservation measures to the Minister in relation to Wildlife species in the Kitselas Harvest Area.
51. When contemplating conservation measures under paragraph 49 or 50, the Minister will Consult Kitselas regarding those conservation measures, including in relation to the role of Kitselas in the development and implementation of the conservation measures.
52. When contemplating conservation measures under paragraph 49 or 50, the Minister will take into account all relevant information, including:
  - (a) the conservation risk to the Wildlife species;
  - (b) the population of the Wildlife species:
    - (i) within the Kitselas Harvest Area; and
    - (ii) within its normal range or area of movement outside the Kitselas Harvest Area; and
  - (c) the necessity for and the nature of the proposed conservation measures.
53. Before authorizing a conservation measure that will affect the Kitselas Right to Harvest Wildlife, the Minister will use reasonable efforts to minimize the impact of the conservation measure on the Kitselas Right to Harvest Wildlife.
54. The Minister will provide to Kitselas:
  - (a) a copy of any authorized conservation measure in relation to a Wildlife species within the Kitselas Harvest Area; and
  - (b) at the request of Kitselas, written reasons for the adoption of that conservation measure.

55. Kitselas will provide notice to Kitselas Citizens in relation to any conservation measure received under paragraph 54.
56. Where the Minister determines that establishing or varying an Allocation for Kitselas is a necessary conservation measure, British Columbia and Kitselas will negotiate and attempt to reach agreement on the Allocation for Kitselas, and such allocations shall be expressed as a percentage of the Total Allowable Harvest within the relevant Harvesting Zones.
57. Where agreement is not reached between Kitselas and British Columbia under paragraph 56, at the request of British Columbia or Kitselas, British Columbia and Kitselas will resolve the matter in accordance with paragraphs 58 to 62.

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

58. Notwithstanding paragraphs 28 and 29 of Chapter 29 Dispute Resolution, a dispute under paragraph 57 will, on delivery of a notice by a Disputing Party to all Parties as required under Appendix O-5, be referred to and resolved by arbitration in accordance with Chapter 29 Dispute Resolution and Appendix O-5, as modified by paragraphs 59 to 62, without having to proceed through Stage One or Stage Two.
59. In determining an Arbitral Award in relation to a dispute referred to arbitration under paragraph 58, the Arbitral Tribunal will take into account all relevant information provided by Kitselas and British Columbia.
60. Notwithstanding paragraph 33 of Chapter 29 Dispute Resolution and Section 146 of Appendix O-5, an Arbitral Award in relation to a dispute referred to arbitration under paragraph 58 is only binding on the Parties where the Minister determines that the Arbitral Award upholds the honour of the Crown in relation to British Columbia's obligations to Kitselas and other Aboriginal peoples.
61. Prior to implementing an Arbitral Award in relation to a dispute referred to arbitration under paragraph 58, the Minister may:
  - (a) consult with other Aboriginal peoples about the Arbitral Award and any potential adverse impacts to the rights recognized and affirmed by section 35 of the *Constitution Act, 1982* of those other Aboriginal peoples that may occur; and
  - (b) as a result of consultation under paragraph 61(a), and in a manner consistent with the honour of the Crown, amend the Arbitral Award.
62. Where the Minister amends an Arbitral Award under paragraph 61(a):
  - (a) Kitselas may, where a cause of action exists, commence or pursue judicial proceedings; and
  - (b) that ministerial decision is not subject to the processes in Chapter 29 Dispute Resolution.

**Wildlife Advisory Management Processes**

63. Kitselas has the right to participate in any public Wildlife advisory management process established by British Columbia that includes any portion of the Kitselas Harvest Area.
64. The Minister may request recommendations from a Wildlife advisory management process referred to in paragraph 63 before determining whether a Wildlife species will be or continue to be subject to a conservation measure.
65. Kitselas and British Columbia will meet at least once each calendar year to share harvest level information and to discuss and, where appropriate, make recommendations to the Minister regarding:
  - (a) Wildlife management and enforcement issues within the Kitselas Harvest Area;
  - (b) any issues related to Designated Harvesters;
  - (c) public health, public safety and conservation measures that may affect the Kitselas Right to Harvest Wildlife;
  - (d) any issues related to trapping, guiding and angling tenures on Kitselas Lands; and
  - (e) other matters agreed to by Kitselas and British Columbia.
66. Where the Minister disagrees with any recommendations under paragraph 65, the Minister will provide written reasons.

**Trapping**

67. Registered traplines that:
  - (a) exist on the Effective Date;
  - (b) are located in whole or in part on Kitselas Lands; and
  - (c) are set out in Appendix G-5 Part 4,are retained by the persons who hold those traplines and may be transferred, renewed or replaced in accordance with Provincial Law.
68. If a trapline set out in Appendix G-5 Part 4 becomes vacant by reason of abandonment or operation of law, British Columbia will not grant registration to any portion of the trapline located on Kitselas Lands without the consent of Kitselas.
69. If, by operation of Provincial Law, a registered trapline within the Kitselas Harvest Area becomes available, British Columbia will notify Kitselas of that opportunity.
70. If a person who holds a registered trapline set out in Appendix G-5 Part 4 agrees to transfer the trapline to Kitselas, British Columbia will consent to and register the transfer.

**Guiding**

71. Guide outfitter licences and guiding territory certificates that:
- (a) exist on the Effective Date;
  - (b) are located in whole or in part on Kitselas Lands; and
  - (c) are set out in Appendix G-5 Part 3,
- are retained by the persons who hold those licences and certificates and may be transferred, renewed or replaced in accordance with Provincial Law.
72. On or after the Effective Date, British Columbia will not grant the privilege of guiding for game on any portion of Kitselas Lands not included in a guide outfitter licence or guiding territory certificate referred to in paragraph 71, or any transfer, renewal or replacement of a guide outfitter licence or guiding territory certificate referred to in paragraph 71, without the consent of Kitselas.
73. If a privilege of guiding for game exercisable in an area that is in whole or in part on Kitselas Lands ceases by reason of non-renewal of the privilege or operation of law, including by exercise of administrative discretion, British Columbia will not grant a privilege of guiding for game on that portion included in Kitselas Lands without the consent of Kitselas.
74. If, by operation of Provincial Law, a guiding territory within the Kitselas Harvest Area becomes available, British Columbia will notify Kitselas of that availability.
75. For greater certainty, paragraph 74 does not apply to the transfer of a guiding territory certificate in accordance with Provincial Law.

**Angling**

76. Angling guide licences that have an approved Angling Guide Operating Plan in effect on the Effective Date that includes waters adjacent to Kitselas Lands, and any Angler Day Quota allocated to any of those licences, are retained by the persons who hold those licences and Angler Day Quota and those licences and any Angler Day Quota allocated to those licences may be transferred, renewed or replaced in accordance with Provincial Law.
77. British Columbia will notify Kitselas when, by operation of Provincial Law, Angler Day Quota becomes available for a Classified Water adjacent to Kitselas Lands because of the cancellation or surrender or an angling guide licence.
78. For greater certainty, paragraph 77 does not apply to the transfer of an angling guide licence or Angler Day Quota in accordance with Provincial Law.

79. On the Effective Date, British Columbia will issue to Kitselas, in accordance with and subject to Provincial Law and on a renewable annual basis, Angler Day Quota for 100 Angler Days for the Classified Water referred to as “Skeena River 4 additional guiding zone” on the Skeena River from Flint Creek to Chimdemash Creek for use by a licenced angling guide, and their employees, agents, and other representatives, including assistant angling guides.
80. If the total number of Angler Days for the Classified Water referred to as “Skeena River 4 additional guiding zone” on the Skeena River from Flint Creek to Chimdemash Creek is reduced, British Columbia may adjust the Angler Day Quota allocated to Kitselas under paragraph 79 in accordance with the *Angling and Scientific Collection Regulation*.
81. British Columbia will not approve any new or amended Angling Guide Operating Plan that applies to the portion of any Unclassified Waters adjacent to Kitselas Lands that is not included in an angling guide licence referred to in paragraph 76 without including a requirement in the Angling Guide Operating Plan that the consent of Kitselas is required for the purposes of carrying out angling guide activities on any portion of those Unclassified Waters adjacent to Kitselas Lands.

#### **Trapping, Guiding and Angling Guide Access to Kitselas Lands**

82. Kitselas will allow reasonable access to Kitselas Lands, other than Kitselas Private Lands, by:
  - (a) a person who holds a registered trapline set out in Appendix G-5 Part 4, or any renewal, replacement or transfer of that trapline; and
  - (b) a person who has written permission from that registered trapline holder to trap within the registered trapline area,for the purpose of carrying out trapping activities.
83. Kitselas will allow reasonable access to Kitselas Lands, other than Kitselas Private Lands, by a person who holds a guide outfitter licence or guiding territory certificate set out in Appendix G-5 Part 3, or any renewal, replacement or transfer of that licence or certificate, and to their respective employees, agents and other representatives for the purpose of carrying out guiding activities.
84. Kitselas will allow reasonable access to Kitselas Lands, other than Kitselas Private Lands, by a person who holds an angling guide licence or Angler Day Quota referred to in paragraph 76, or any renewal, replacement or transfer of that licence or Angler Day Quota, and to their respective employees, agents and other representatives for the purpose of carrying out angling guiding activities.
85. Access allowed under paragraph 82, 83 or 84 is not subject to any permits, licences or fees, other than as may be required in accordance with Provincial Law.
86. Notwithstanding paragraph 85, Kitselas may require that, at no cost, persons accessing Kitselas Lands under paragraph 82, 83 or 84 provide Kitselas with an assumption of risk, release and waiver of claim in relation to that access.

87. Access under paragraphs 82, 83 and 84 does not include:
- (a) harvesting or extracting resources other than as authorized by the applicable registered trapline, guiding territory certificate, guide outfitter licence, angling guide licence or Angler Day Quota, unless authorized by Kitselas or as in accordance with this Agreement;
  - (b) causing damage to Kitselas Lands or resources on Kitselas Lands;
  - (c) causing a nuisance; or
  - (d) interfering with other uses authorized by Kitselas or interfering with the ability of Kitselas to authorize uses or dispose of Kitselas Lands.
88. Access under paragraphs 82, 83 and 84 is subject to and will be exercised in accordance with Kitselas Law under paragraphs 18(a), 18(c), and 18(d) of Chapter 7 Access regulating public access on Kitselas Lands.
89. Kitselas will take reasonable measures to notify the holders of:
- (a) the registered traplines set out in Appendix G-5 Part 4;
  - (b) the guide outfitter licences and guiding territory certificates set out in Appendix G-5 Part 3; and
  - (c) the angling guide licences and Angler Day Quota referred to in paragraph 76,
- of the terms and conditions respecting access to Kitselas Lands.
90. British Columbia will take reasonable measures to notify the persons referred to in paragraph 89 to take reasonable measures to inform themselves of the terms and conditions respecting access to Kitselas Lands.



## CHAPTER 18 – MIGRATORY BIRDS

### General

1. Kitselas has the right to harvest Migratory Birds for Domestic Purposes within the Kitselas Migratory Birds Harvest Area throughout the year in accordance with this Agreement.
2. The Kitselas Right to Harvest Migratory Birds is limited by duly authorized measures necessary for conservation, public health or public safety.
3. Canada or British Columbia, as applicable, will Consult with Kitselas before implementing any conservation, public health or public safety measures that may adversely affect the Kitselas Right to Harvest Migratory Birds.
4. For greater certainty, the obligation to Consult under paragraph 3 is subject to paragraphs 68 to 75 of Chapter 1 General Provisions related to emergencies.
5. The Kitselas Right to Harvest Migratory Birds is held by Kitselas and cannot be alienated.
6. Kitselas Citizens may exercise the Kitselas Right to Harvest Migratory Birds except as otherwise provided under Kitselas Law.
7. The Minister retains authority for managing and conserving Migratory Birds and Migratory Birds habitat and will exercise that authority in a manner consistent with this Agreement.
8. For greater certainty, the Minister's authority referred to in paragraph 7 will be exercised in accordance with applicable constitutional principles respecting the priority of rights under section 35 of the *Constitution Act, 1982*.
9. Nothing in this Agreement alters Federal or Provincial Law in relation to property in Migratory Birds.

### Consultation Regarding Crown Dispositions

10. British Columbia may authorize the use or disposition of provincial Crown land subject to the consultation obligations in paragraphs 62 to 75 of Chapter 1 General Provisions and any such authorized use or disposition may affect the method, timing and location of harvesting under the Kitselas Right to Harvest Migratory Birds.
11. When contemplating the authorization of a proposed use or disposition of provincial Crown land under paragraph 10, British Columbia will Consult with Kitselas regarding any Contemplated Crown Conduct with the aim of securing the free, prior and informed consent of Kitselas in accordance with paragraph 63 of Chapter 1 General Provisions.

12. At the request of Kitselas or British Columbia, Kitselas and British Columbia will negotiate and attempt to reach agreement on a Specific Consultation Process to be relied upon as the process for consultation under paragraph 11, and, unless Kitselas and British Columbia otherwise agree in writing, that Specific Consultation Process will:
  - (a) require that decision-makers consider the preferred method, timing and location of harvesting under the Kitselas Right to Harvest Migratory Birds; and
  - (b) ensure that measures to avoid, mitigate or otherwise accommodate adverse impacts of the proposed authorized use or disposition of provincial Crown land on the preferred method, timing and location of harvesting under the Kitselas Right to Harvest Migratory Birds are identified, proposed and implemented, if appropriate.
13. The Kitselas Right to Harvest Migratory Birds will be exercised in a manner that does not interfere with authorized uses or dispositions of provincial Crown land existing as of the Effective Date or authorized in accordance with paragraph 10.
14. For greater certainty, where Kitselas and British Columbia have agreed upon a Specific Consultation Process that is in effect in relation to Contemplated Crown Conduct under paragraph 10, the processes set out in that agreement will be relied upon by Kitselas and British Columbia for the purposes of consultation in relation to that conduct and in satisfaction of the obligation of British Columbia to Consult under paragraph 11.
15. For greater certainty, nothing in this Agreement or any Specific Consultation Process under paragraph 12 precludes Kitselas from raising the issue of whether there has been an unjustified infringement of the Kitselas Right to Harvest Migratory Birds.
16. British Columbia and Kitselas will explore processes to consider the cumulative effects of proposed uses or dispositions of provincial Crown land on the preferred method, timing and location of harvesting under the Kitselas Right to Harvest Migratory Birds and may agree to amend the Specific Consultation Process under paragraph 12 to include those processes.

#### **Incidental Use**

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

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

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

**Harvesting on Fee Simple Lands Within the Kitselas Migratory Birds Harvest Area**

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

**Harvesting Outside the Kitselas Migratory Birds Harvest Area**

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

**Licences and Fees**

22. Subject to paragraph 23, Kitselas Citizens are not required to have federal or provincial permits or licences, or pay any fees or royalties to Canada or British Columbia, in relation to the Kitselas Right to Harvest Migratory Birds.
23. Nothing in this Agreement affects Canada's ability to require Kitselas Citizens to obtain licences for the use and possession of firearms under Federal Law on the same basis as other Aboriginal people of Canada.

**Trade and Barter and Sale**

24. Kitselas has the right to Trade and Barter among themselves, or with other Aboriginal people of Canada, any Migratory Birds harvested under the Kitselas Right to Harvest Migratory Birds.
25. Kitselas Citizens may exercise the right to Trade and Barter set out in paragraph 24 except as otherwise provided in Kitselas Law.
26. Kitselas and Kitselas Citizens may, in accordance with Federal and Provincial Law and Kitselas Law under paragraph 33(b), sell Migratory Birds harvested under the Kitselas Right to Harvest Migratory Birds.

27. Notwithstanding paragraph 26, Kitselas and Kitselas Citizens may sell inedible by-products, and the down, of Migratory Birds harvested under the Kitselas Right to Harvest Migratory Birds in accordance with Kitselas Law under paragraph 31(g).

### **Transport and Export**

28. Any transport of Migratory Birds harvested under the Kitselas Right to Harvest Migratory Birds will be in accordance with Kitselas Law and Federal and Provincial Law.
29. Notwithstanding paragraph 28, Migratory Birds harvested under the Kitselas Right to Harvest Migratory Birds may be transported throughout the year.
30. Any export of Migratory Birds harvested under the Kitselas Right to Harvest Migratory Birds will be in accordance with Federal and Provincial Law.

### **Law-Making**

31. Kitselas may make laws in relation to the Kitselas Right to Harvest Migratory Birds for:
- (a) the designation of Kitselas Citizens who may harvest Migratory Birds;
  - (b) the designation of individuals in accordance with a Designated Harvester Agreement;
  - (c) the administration of documentation for individuals authorized to harvest and transport Migratory Birds;
  - (d) the method, timing and location of the harvest of Migratory Birds;
  - (e) the distribution of harvested Migratory Birds among Kitselas Citizens;
  - (f) the Trade and Barter, under paragraph 24, of harvested Migratory Birds; and
  - (g) the sale of down and inedible by-products of harvested Migratory Birds under paragraph 27.
32. Kitselas Law under paragraph 31 prevails to the extent of a Conflict with Federal or Provincial Law.
33. Kitselas may make laws in relation to:
- (a) the management of Migratory Birds on Kitselas Lands; and
  - (b) the sale of Migratory Birds, other than their inedible by-products and down, if permitted by Federal and Provincial Law.
34. For greater certainty, nothing in paragraph 33(b) limits the ability of Kitselas to make laws under paragraph 31(g).

35. Kitselas will make laws to require all individuals who harvest Migratory Birds under the Kitselas Right to Harvest Migratory Birds to carry documentation issued by Kitselas and produce that documentation on request by an authorized individual.
36. Federal or Provincial Law prevails to the extent of a Conflict with Kitselas Law under paragraph 33 or 35.

### **Documentation**

37. Kitselas will issue documentation to identify:
  - (a) Kitselas Citizens who are authorized by Kitselas to exercise the Kitselas Right to Harvest Migratory Birds; and
  - (b) Designated Harvesters.
38. Documentation issued under paragraph 37 will:
  - (a) be in the English language, which version is authoritative, and, at the discretion of Kitselas, in the Sm'algyax language;
  - (b) include sufficient information to identify the individual;
  - (c) be identifiable as having been issued by Kitselas; and
  - (d) meet any other requirements under Kitselas Law.
39. Documentation issued by Kitselas will be deemed to satisfy federal or provincial documentation requirements for transporting and harvesting Migratory Birds harvested under the Kitselas Right to Harvest Migratory Birds.

### **Designated Harvester**

40. Subject to paragraph 41 and the completion of a Designated Harvester Agreement, Kitselas may designate individuals other than Kitselas Citizens to exercise the Kitselas Right to Harvest Migratory Birds on behalf of a Kitselas Citizen who is unable to exercise the Kitselas Right to Harvest Migratory Birds.
41. The designation of a Designated Harvester under paragraph 40 must be in accordance with this Agreement and the Designated Harvester Agreement.
42. At the request of Kitselas, Canada and Kitselas will negotiate and attempt to reach agreement on a Designated Harvester Agreement that will include:
  - (a) criteria that individuals must meet to be designated;
  - (b) the duration of designations;

- (c) a requirement that a Kitselas Citizen may have only one Designated Harvester of Migratory Birds at a time;
- (d) documentation requirements;
- (e) a requirement to return the products of the harvest to the Kitselas Citizen; and
- (f) limitations on remuneration.

### **Consultation on International Negotiations**

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

### **Conservation Measures**

44. Canada and Kitselas may enter into agreements in relation to achieving Migratory Birds population and habitat conservation objectives.
45. In accordance with the Minister's obligation to Consult, the Minister will provide to Kitselas:
- (a) notice of any approved conservation measure that may adversely affect the Kitselas Right to Harvest Migratory Birds; and
  - (b) at the request of Kitselas, written reasons for the adoption of that conservation measure.
46. Kitselas will provide notice to Kitselas Citizens regarding any conservation measure received under paragraph 45.

## CHAPTER 19 – GATHERING

### General

1. Kitselas has the right to gather Plants for Domestic Purposes on provincial Crown land within the Kitselas Harvest Area throughout the year in accordance with this Agreement.
2. The Kitselas Right to Gather Plants is limited by duly authorized measures necessary for conservation, public health or public safety.
3. Canada or British Columbia, as applicable, will Consult with Kitselas before implementing any conservation, public health or public safety measures that may adversely affect the Kitselas Right to Gather Plants.
4. For greater certainty, the obligation to Consult under paragraph 3 is subject to paragraphs 68 to 75 of Chapter 1 General Provisions related to emergencies.
5. The Kitselas Right to Gather Plants is held by Kitselas and cannot be alienated.
6. Kitselas Citizens may exercise the Kitselas Right to Gather Plants except as otherwise provided under Kitselas Law.
7. Nothing in this Agreement precludes Kitselas Citizens from gathering Plants on provincial Crown land in accordance with Federal and Provincial Law.
8. The Minister retains authority for managing and conserving Plants and Plant habitat and will exercise that authority in a manner consistent with this Agreement.
9. For greater certainty, the Minister's authority referred to in paragraph 8 will be exercised in accordance with applicable constitutional principles respecting the priority of rights under section 35 of the *Constitution Act, 1982*.
10. Nothing in this Agreement alters Federal or Provincial Law in relation to property in Plants.

### Consultation Regarding Crown Dispositions

11. British Columbia may authorize the use or disposition of provincial Crown land subject to the consultation obligations in paragraphs 62 to 75 of Chapter 1 General Provisions and any such authorized use or disposition may affect the method, timing and location of gathering under the Kitselas Right to Gather Plants.
12. When contemplating the authorization of a proposed use or disposition of provincial Crown land under paragraph 11, British Columbia will Consult with Kitselas regarding any Contemplated Crown Conduct with the aim of securing the free, prior and informed consent of Kitselas in accordance with paragraph 63 of Chapter 1 General Provisions.

13. At the request of Kitselas or British Columbia, Kitselas and British Columbia will negotiate and attempt to reach agreement on a Specific Consultation Process to be relied upon as the process for consultation under paragraph 12, and, unless Kitselas and British Columbia otherwise agree in writing, that Specific Consultation Process will:
  - (a) require that decision-makers consider the preferred method, timing and location of gathering under the Kitselas Right to Gather Plants; and
  - (b) ensure that measures to avoid, mitigate or otherwise accommodate adverse impacts of the proposed authorized use or disposition of provincial Crown land on the preferred method, timing and location of gathering under the Kitselas Right to Gather Plants are identified, proposed and implemented, if appropriate.
14. The Kitselas Right to Gather Plants will be exercised in a manner that does not interfere with authorized uses or dispositions of provincial Crown land existing as of the Effective Date or authorized in accordance with paragraph 11.
15. For greater certainty, where Kitselas and British Columbia have agreed upon a Specific Consultation Process that is in effect in relation to Contemplated Crown Conduct under paragraph 11, the processes set out in that agreement will be relied upon by Kitselas and British Columbia for the purposes of consultation in relation to that conduct.
16. For greater certainty, nothing in this Agreement or any Specific Consultation Process under paragraph 13, precludes Kitselas from raising the issue of whether there has been an unjustified infringement of the Kitselas Right to Gather Plants.
17. British Columbia and Kitselas will explore processes to consider the cumulative effects of proposed uses or dispositions of provincial Crown land on the preferred method, timing and location of gathering under the Kitselas Right to Gather Plants and may agree to amend the Specific Consultation Process under paragraph 13 to include those processes.

### **Incidental Use**

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

### **Licences and Fees**

19. Kitselas Citizens are not required to have federal or provincial licences, or pay any fees or royalties to Canada or British Columbia, in relation to the Kitselas Right to Gather Plants.

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

20. Kitselas has the right to Trade and Barter among themselves, or with other Aboriginal people of Canada, any Plants and household goods and apparel made from Plants gathered under the Kitselas Right to Gather Plants.

21. Kitselas Citizens may exercise the right to Trade and Barter set out in paragraph 20 except as otherwise provided in Kitselas Law.
22. Kitselas and Kitselas Citizens may, in accordance with Federal and Provincial Law, sell Plants and household goods and apparel made from Plants gathered under the Kitselas Right to Gather Plants.
23. The Kitselas right to Trade and Barter set out in paragraph 20 is held by Kitselas and cannot be alienated.

### **Transport and Export**

24. Any transport of Plants and household goods and apparel made from Plants gathered under the Kitselas Right to Gather Plants will be in accordance with Kitselas Law and Federal and Provincial Law.
25. Notwithstanding paragraph 24, Plants and household goods and apparel made from Plants gathered under the Kitselas Right to Gather Plants may be transported throughout the year.
26. Any export of Plants and household goods and apparel made from Plants gathered under the Kitselas Right to Gather Plants will be in accordance with Federal and Provincial Law.

### **Law-Making**

27. Kitselas may make laws in relation to the Kitselas Right to Gather Plants for:
  - (a) the designation of Kitselas Citizens who may gather Plants;
  - (b) the designation of individuals in accordance with a Designated Harvester Agreement;
  - (c) the administration of documentation for individuals authorized to gather Plants;
  - (d) the method, timing and location of the gathering of Plants;
  - (e) the distribution of gathered Plants among Kitselas Citizens; and
  - (f) the Trade and Barter, under paragraph 20, of gathered Plants.
28. Kitselas Law under paragraph 27 prevails to the extent of a Conflict with Federal or Provincial Law.
29. If documentation is required under Federal or Provincial Law for gathering or transporting Plants or transporting household goods and apparel made from Plants, Kitselas will make laws to require all Kitselas Citizens and Designated Harvesters who, under the Kitselas Right to Gather Plants:
  - (a) gather Plants; or
  - (b) transport Plants or household goods and apparel made from Plants,

to carry documentation issued by Kitselas and produce that documentation on request by an authorized individual.

30. Federal or Provincial Law prevails to the extent of a Conflict with a Kitselas Law under paragraph 29.

### **Documentation**

31. If documentation is required under Federal or Provincial Law for gathering or transporting Plants, Kitselas will issue documentation to identify:
- (a) Kitselas Citizens who are authorized by Kitselas to exercise the Kitselas Right to Gather Plants; and
  - (b) Designated Harvesters.
32. Documentation issued under paragraph 31 will:
- (a) be in the English language, which version is authoritative, and, at the discretion of Kitselas, in the Sm'algyax language;
  - (b) include sufficient information to identify the individual;
  - (c) be identifiable as having been issued by Kitselas; and
  - (d) meet any other requirements under Kitselas Law.
33. Documentation issued by Kitselas will be deemed to satisfy any federal or provincial documentation requirements for gathering or transporting Plants under the Kitselas Right to Gather Plants.

### **Designated Harvester**

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

35. Kitselas may designate individuals other than Kitselas Citizens to exercise the Kitselas Right to Gather Plants on behalf of a Kitselas Citizen who is unable to exercise the Kitselas Right to Gather Plants and the designation of a Designated Harvester must be in accordance with this Agreement and any applicable Designated Harvester Agreement.
36. Subject to paragraph 37, neither Kitselas nor a Kitselas Citizen may pay any remuneration to or accept any payment from, a Designated Harvester in relation to gathering under paragraph 35.
37. Kitselas or a Kitselas Citizen may reimburse a Designated Harvester for reasonable expenses incurred in relation to gathering under paragraph 35.
38. All Plants gathered by a Designated Harvester are the property of the Kitselas Citizen on whose behalf the Designated Harvester is gathering.

### **Conservation Measures**

39. The Minister may establish or vary conservation measures in relation to Plant species in the Kitselas Harvest Area.
40. Kitselas may propose conservation measures to the Minister in relation to Plant species in the Kitselas Harvest Area.
41. When contemplating conservation measures under paragraph 39 or 40, the Minister will:
  - (a) Consult Kitselas regarding those conservation measures, including in relation to the role of Kitselas in the development and implementation of the conservation measure; and
  - (b) take into account all relevant information, including:
    - (i) the conservation risk to the Plant species;
    - (ii) the population of the Plant species; and
    - (iii) the necessity for, and the nature of, the proposed conservation measure.
42. Before authorizing a conservation measure that will affect the Kitselas Right to Gather Plants, the Minister will use reasonable efforts to minimize the impact of the conservation measure on the Kitselas Right to Gather Plants.
43. The Minister will provide to Kitselas:
  - (a) a copy of any authorized conservation measure in relation to a Plant species within the Kitselas Harvest Area; and
  - (b) at the request of Kitselas, written reasons for the adoption of that conservation measure.
44. Kitselas will provide notice to Kitselas Citizens in relation to any conservation measure received under paragraph 43.



## CHAPTER 20 – TIMBER FOR DOMESTIC USE

### General

1. Kitselas has the right to harvest Timber for Domestic Use on provincial Crown land within the Kitselas Harvest Area in accordance with this Agreement and a Domestic Use Timber Harvest Agreement.
2. The Kitselas Right to Harvest Timber is limited by duly authorized measures necessary for conservation, public health or public safety.
3. Canada or British Columbia, as applicable, will Consult with Kitselas before implementing any conservation, public health or public safety measure that may adversely affect the Kitselas Right to Harvest Timber.
4. For greater certainty, the obligation to Consult under paragraph 3 is subject to paragraphs 68 to 75 of Chapter 1 General Provisions related to emergencies.
5. In the absence of a Domestic Use Timber Harvest Agreement, Kitselas Citizens may harvest Timber for traditional and cultural activities in accordance with Provincial Law.
6. The Kitselas Right to Harvest Timber is held by Kitselas and cannot be alienated.
7. On the Effective Date, British Columbia and Kitselas will enter into a Domestic Use Timber Harvest Agreement.
8. The Domestic Use Timber Harvest Agreement will include provisions relating to the process to establish:
  - (a) the amount of Timber that may be harvested over a specified period of time;
  - (b) the types of Timber that may be harvested; and
  - (c) the geographic location of the harvest.
9. The Timber volumes set out in a Domestic Use Timber Harvest Agreement will be additional to any other sources of Timber available to Kitselas.
10. The Kitselas Right to Harvest Timber may only be exercised by those persons designated by Kitselas under Kitselas Law under paragraph 22(a).
11. The Minister retains authority to manage Timber on provincial Crown land and will exercise that authority in a manner consistent with this Agreement.

12. For greater certainty, the Minister's authority referred to in paragraph 11 will be exercised in accordance with applicable constitutional principles respecting the priority of rights under section 35 of the *Constitution Act, 1982*.
13. Nothing in this Agreement alters Federal or Provincial Law in relation to property in Timber.

### **Consultation Regarding Crown Dispositions**

14. British Columbia may authorize the use or disposition of provincial Crown land subject to the consultation obligations in paragraphs 62 to 75 of Chapter 1 General Provisions and any such authorized use or disposition may affect the method, timing and location of harvesting under the Kitselas Right to Harvest Timber.
15. When contemplating the authorization of proposed uses or dispositions of provincial Crown land under paragraph 14, British Columbia will Consult with Kitselas regarding any Contemplated Crown Conduct with the aim of securing the free, prior and informed consent of Kitselas in accordance with paragraph 63 of Chapter 1 General Provisions.
16. At the request of Kitselas or British Columbia, Kitselas and British Columbia will negotiate and attempt to reach agreement on a Specific Consultation Process to be relied upon as the process for consultation under paragraph 15, and, unless Kitselas and British Columbia otherwise agree in writing, that Specific Consultation Process will:
  - (a) require that decision-makers consider the preferred method, timing and location of harvesting under the Kitselas Right to Harvest Timber; and
  - (b) ensure that measures to avoid, mitigate or otherwise accommodate adverse effects of the proposed authorized use or disposition of provincial Crown land on the preferred method, timing and location of harvesting under the Kitselas Right to Harvest Timber are identified, proposed and implemented, if appropriate.
17. The Kitselas Right to Harvest Timber will be exercised in a manner that does not interfere with authorized uses or dispositions of provincial Crown land existing as of the Effective Date or authorized in accordance with paragraph 14.
18. For greater certainty, where Kitselas and British Columbia have agreed upon a Specific Consultation Process that is in effect in relation to Contemplated Crown Conduct under paragraph 14, the processes set out in that agreement will be relied upon by Kitselas and British Columbia for the purposes of consultation in respect of that conduct.
19. For greater certainty, nothing in this Agreement or a Specific Consultation Process under paragraph 16 precludes Kitselas from raising the issue of whether there has been an unjustified infringement of the Kitselas Right to Harvest Timber.
20. British Columbia and Kitselas will explore processes to consider the cumulative effects of proposed uses or dispositions of provincial Crown land on the preferred method, timing and location of harvesting under the Kitselas Right to Harvest Timber and may agree to amend the Specific Consultation Process under paragraph 16 to include those processes.

**Fees**

21. Kitselas will not be required to pay any fees, rents or stumpage to British Columbia relating to the harvest of Timber under the Kitselas Right to Harvest Timber.

**Law-Making**

22. Kitselas may make laws in relation to the Kitselas Right to Harvest Timber, consistent with this Agreement and the Domestic Use Timber Harvest Agreement, in relation to the following:
- (a) the designation of individuals or persons authorized to exercise the Kitselas Right to Harvest Timber, which includes:
    - (i) a Kitselas Citizen, a Kitselas Corporation or a corporation owned by a Kitselas Citizen or a Kitselas Corporation; or
    - (ii) individuals or persons other than those identified in paragraph 22(a)(i) designated by Kitselas;
  - (b) the reporting of Timber harvested under the Kitselas Right to Harvest Timber;
  - (c) the distribution of harvested Timber to and its use by Kitselas, a Kitselas Institution, a Kitselas Corporation or a Kitselas Citizen;
  - (d) the administration of documentation to identify Kitselas Citizens or individuals or persons designated to exercise the Kitselas Right to Harvest Timber; and,
  - (e) Trade and Barter under paragraph 24.
23. Kitselas Law under paragraph 22 prevails to the extent of a Conflict with Federal or Provincial Law.

**Sale, Trade and Barter**

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

**Documentation**

25. Kitselas will issue documentation to identify those designated under Kitselas Law under paragraph 22(a) to harvest Timber under the Kitselas Right to Harvest Timber.
26. Documentation issued under paragraph 25 will:
- (a) be in the English language, which version is authoritative, and, at the discretion of Kitselas, in the Sm'algyax language;
  - (b) include sufficient information to identify the person;

- (c) be identifiable as having been issued by Kitselas; and
- (d) meet any other requirements under Kitselas Law.

## CHAPTER 21 – FISH

### General

1. Kitselas has the right to harvest Fish and Aquatic Plants for Domestic Purposes in the Kitselas Fishing Area in accordance with this Agreement.
2. Kitselas may determine the portions of the Kitselas Fish Allocations described in Schedule 1 that may be harvested in the Kitselas Fishing Area for Domestic Purposes or sale purposes, in accordance with paragraphs 38 to 44 and this Agreement.
3. The Kitselas Fishing Right is limited by duly authorized measures necessary for conservation, public health or public safety.
4. The Minister will Consult with Kitselas respecting any proposed conservation, public health or public safety measures that may adversely affect the Kitselas Fishing Right.
5. For greater certainty, the obligation to Consult under paragraph 4 is subject to paragraphs 68 to 75 of Chapter 1 General Provisions related to emergencies.
6. Where the Parties agree, the Kitselas Joint Fisheries Committee may be relied upon to facilitate the Specific Consultation Process for matters related to fisheries management.
7. The Specific Consultation Process referred to in paragraph 6 will be described in the Fisheries Operational Guidelines.
8. The Kitselas Fishing Right is held by Kitselas and cannot be alienated.
9. The harvest of Fish and Aquatic Plants under the Kitselas Fishing Right will be carried out in accordance with Kitselas Harvest Documents.
10. The Minister retains authority for managing and conserving Fish, Aquatic Plants, and Fish habitat and will exercise that authority in a manner consistent with this Agreement.
11. For greater certainty, the Minister's authority referred to in paragraph 10 will be exercised in accordance with applicable constitutional principles respecting the priority of rights under section 35 of the *Constitution Act, 1982*.
12. Nothing in this Agreement alters Federal or Provincial Law in relation to property in Fish or Aquatic Plants.
13. Kitselas has the right to Trade and Barter Fish and Aquatic Plants harvested under the Kitselas Fishing Right among Kitselas Citizens or with other Aboriginal people of Canada.
14. Except as otherwise provided under Kitselas Law, Kitselas Citizens may exercise the right to Trade and Barter Fish and Aquatic Plants harvested under the Kitselas Fishing Right.

15. Nothing in this Agreement precludes:
  - (a) Kitselas Citizens from harvesting Fish and Aquatic Plants under a licence, permit or other document issued under Federal or Provincial Law;
  - (b) Kitselas from concluding agreements that are in accordance with Federal and Provincial Law with other Aboriginal groups in respect of designations to harvest Fish or Aquatic Plants; or
  - (c) Kitselas Citizens from being designated by another Aboriginal group to harvest Fish and Aquatic Plants under federal or provincial arrangements with that Aboriginal group.

### **Consultation Regarding Crown Dispositions**

16. British Columbia may authorize the use or disposition of provincial Crown land subject to the consultation obligations in paragraphs 62 to 75 of Chapter 1 General Provisions and any such authorized use or disposition may affect the method, timing and location of harvesting under the Kitselas Fishing Right.
17. When contemplating the authorization of a proposed use or disposition of provincial Crown land under paragraph 16, British Columbia will Consult with Kitselas regarding any Contemplated Crown Conduct with the aim of securing the free, prior and informed consent of Kitselas in accordance with paragraph 63 of Chapter 1 General Provisions.
18. At the request of Kitselas or British Columbia, Kitselas and British Columbia will negotiate and attempt to reach agreement on a Specific Consultation Process to be relied upon as the process for consultation under paragraph 17, and, unless Kitselas and British Columbia otherwise agree in writing, that Specific Consultation Process will:
  - (a) require that decision-makers consider the preferred method, timing and location of harvesting under the Kitselas Fishing Right; and
  - (b) ensure that measures to avoid, mitigate or otherwise accommodate adverse impacts of the proposed authorized use or disposition of provincial Crown land on the preferred method, timing and location of harvesting under the Kitselas Fishing Right are identified, proposed and implemented, if appropriate.
19. The Kitselas Fishing Right will be exercised in a manner that does not interfere with authorized uses or dispositions of provincial Crown land existing as of the Effective Date or authorized in accordance with paragraph 16.
20. For greater certainty, where Kitselas and British Columbia have agreed upon a Specific Consultation Process that is in effect in relation to Contemplated Crown Conduct under paragraph 16, the processes set out in that agreement will be relied upon by Kitselas and British Columbia for the purposes of consultation in respect of that conduct.

21. For greater certainty, nothing in this Agreement or any Specific Consultation Process under paragraph 18 precludes Kitselas from raising the issue of whether there has been an unjustified infringement of the Kitselas Fishing Right.
22. British Columbia and Kitselas will explore processes to consider the cumulative effects of proposed uses or dispositions of provincial Crown land on the preferred method, timing and location of harvesting by Kitselas Citizens under the Kitselas Fishing Right and may agree to amend the Specific Consultation Process under paragraph 18 to include those processes.

### **Allocations**

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

29. The annual Skeena Sockeye salmon abundance will be determined, as described in the Fisheries Operational Guidelines, using one or more of:
  - (a) a pre-season forecast;
  - (b) an in-season abundance-based model; or
  - (c) another method as appropriate.
30. When information is sufficient, Kitselas and Canada will develop and apply an abundance-based formula for Skeena Chinook salmon that will be included in the Fisheries Operational Guidelines.
31. On the Effective Date, or such other date set by Kitselas and Canada, Kitselas and Canada will agree on a new allocation of Coho salmon different to that of Schedule 1, and Schedule 1 will be amended in accordance with the process set out in paragraph 9 of Chapter 31 Amendment.
32. An abundance-based approach may be developed for Coho salmon or Pink salmon. Where Canada or Kitselas proposes the establishment of an abundance-based formula, Canada and Kitselas will negotiate and attempt to reach agreement on the formula, as described in the Fisheries Operational Guidelines.
33. Allocations of specific rockfish species may be determined annually by the Minister, taking into account recommendations of the Kitselas Joint Fisheries Committee as appropriate.
34. The specific allocations in paragraph 33 may take into account conservation, which includes sustainability of specific rockfish species and associated area-based management measures.
35. Subject to paragraphs 33 and 34, the specific allocations of individual rockfish stocks or species will be described within the applicable Kitselas Harvest Document, however, the maximum amount for the species group Rockfish set out in Schedule 1 will not be reduced.
36. If permitted and subject to the conditions of a Kitselas Harvest Document or a licence, non-target stocks or species caught in Kitselas commercial fisheries targeting Halibut within the Kitselas Fishing Area may be retained for Domestic Purposes and will be counted against the defined maximum allocation for that stock or species in Schedule 1, unless those non-targeted stocks or species are retained under a commercial licence.
37. Any Periodic Renewal regarding Kitselas Fish Allocations will be conducted in accordance with the process outlined in Chapter 2 Periodic Renewal and Orderly Process and in the Fisheries Operational Guidelines.

### **Allocation Disposition**

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

39. Kitselas may designate any portion of the Kitselas Fish Allocations described in Schedule 1 to be harvested for sale purposes if the following conditions are met:
- (a) the portion of Kitselas Fish Allocations designated for sale purposes is identified pre-season in accordance with conditions set out in the Fisheries Operational Guidelines;
  - (b) the apportionment of Kitselas Fish Allocations between harvests for Domestic Purposes and sale purposes is set out in the Kitselas Annual Fishing Plan; and
  - (c) any in-season changes to the apportionment between Domestic Purposes and sale purposes will follow the in-season adjustment process outlined for the Kitselas Joint Fisheries Committee and in the Fisheries Operational Guidelines.
40. Any portion of an allocation designated for sale purposes pursuant to paragraph 39 has the same priority in fisheries management decisions as commercial fisheries.
41. Kitselas may only harvest that portion of the Kitselas Fish Allocation designated for sale purposes under paragraph 39 where:
- (a) the conditions set out in the Integrated Fisheries Management Plan approved by the Minister for initiating a commercial fishery for that species or stock are met; and
  - (b) the Minister has issued a Kitselas Harvest Document to harvest for sale purposes, setting out terms and conditions.
42. In relation to harvesting that portion of the Kitselas Fish Allocation designated for sale purposes under paragraph 41, Kitselas will comply with:
- (a) any requirements for monitoring and reporting set out in the Fisheries Operational Guidelines, licences or regulations;
  - (b) Federal and Provincial Law in relation to the sale of Fish including laws respecting health and safety, inspection, processing, packaging, storage, export, quality control and labelling;
  - (c) the terms and conditions set out in Kitselas Harvest Documents; and
  - (d) any other requirements agreed to by the Parties.
43. For greater certainty, Non-Allocated Species harvested under this Agreement may not be sold.
44. Details and process regarding paragraphs 39 to 42 will be described in the Fisheries Operational Guidelines.

### **Excess Salmon to Spawning Requirements**

45. In paragraphs 46 to 50, “surplus” refers to a number of salmon that is available for harvest where spawner abundance is in excess of spawning requirements, following all other approved fisheries.

46. Each year, the Minister may declare a surplus of a species or stock of salmon originating in the Kitselas Fishing Area, the size of the surplus and access to that surplus.
47. The Kitselas Joint Fisheries Committee, or any Party, may recommend to the Minister with respect to a species or stock of salmon returning to spawn in the Kitselas Fishing Area:
  - (a) the procedures for the identification of a surplus;
  - (b) the declaration of a surplus;
  - (c) the size and disposition of the surplus; and
  - (d) the terms and conditions for the harvest of the surplus.
48. The Minister will consider any recommendations of the Kitselas Joint Fisheries Committee, or any Party, when determining whether to declare a surplus in accordance with paragraph 46.
49. Where the Minister declares a surplus in accordance with paragraph 46, the Minister will determine:
  - (a) if a portion of the declared surplus may be harvested by Kitselas; and
  - (b) the terms and conditions for the harvest of the Kitselas portion of the declared surplus.
50. For greater certainty, nothing in paragraph 49 limits the ability of the Minister to declare a surplus of a species or stock of salmon originating in the Kitselas Fishing Area in the absence of recommendations from the Kitselas Joint Fisheries Committee or any Party.

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

51. Paragraphs 52 to 69 apply only to those species of Fish and Aquatic Plants managed by Canada.
52. For greater certainty, Kitselas may harvest a Non-Allocated Species managed by Canada for Domestic Purposes under the Kitselas Fishing Right in accordance with a Kitselas Harvest Document.
53. Any time five years after the Effective Date, or such earlier time that may be agreed to by Canada and Kitselas, Canada or Kitselas may propose the establishment of a Kitselas Fish Allocation for a Non-Allocated Species by providing the Parties and the Kitselas Joint Fisheries Committee with a written proposal.
54. Where Canada or Kitselas provides a proposal under paragraph 53, Canada and Kitselas will seek to agree on the Basic Harvest, including the Base Period, for a Non-Allocated Species in accordance with the process set out in paragraphs 55 to 57.
55. The duration of the Base Period referred to in paragraph 54 may consist of:
  - (a) a number of life cycles where specified in the Fisheries Operational Guidelines for that Non-Allocated Species;

- (b) a number of calendar years where specified in the Fisheries Operational Guidelines for that Non-Allocated Species; or
  - (c) a quantum of time as agreed to by the Minister and Kitselas.
56. Where Canada and Kitselas seek to reach an agreement on an allocation for a Non-Allocated Species, the Kitselas Joint Fisheries Committee will facilitate this process and provide recommendations to the Parties regarding the information needed to define the Kitselas Fish Allocation, the Basic Harvest and the Base Period.
57. Any agreement between Canada and Kitselas in respect of the Basic Harvest, including the Base Period, for a Non-Allocated Species will be in writing.
58. Where Canada and Kitselas have not agreed on a Basic Harvest, including a Base Period, for a Non-Allocated Species within one year of the receipt of a written proposal under paragraph 53, the Basic Harvest, including the Base Period, will be finally determined by arbitration under Chapter 29 Dispute Resolution without having to proceed through Stage One and Stage Two.
59. Where Canada and Kitselas agree to a Basic Harvest, including the Base Period, for a Non-Allocated Species, or an Arbitral Tribunal determines the Basic Harvest, including the Base Period, for that species or stock, Canada and Kitselas will seek to agree on a Kitselas Fish Allocation for that species or stock.
60. The Kitselas Fish Allocation for the Non-Allocated Species may be an amount determined by a defined harvest quantity or quota, a formula defining a harvest quantity or quota, or a defined harvest area within the Kitselas Fishing Area.
61. Where Canada and Kitselas seek to agree on a Kitselas Fish Allocation for a Non-Allocated Species, Canada and Kitselas will provide each other with written recommendations in respect of that Kitselas Fish Allocation and with any material that they consider relevant to the recommendations.
62. Where Canada and Kitselas seek to agree on the Kitselas Fish Allocation for a Non-Allocated Species, they will take into account:
- (a) Base Period information on the harvests by Kitselas of that Non-Allocated Species for Domestic Purposes;
  - (b) information on the historic and current harvest;
  - (c) measures necessary for conservation, public health, or public safety;
  - (d) biological status of a species or stock of Fish available for harvest in the Kitselas Fishing Area;
  - (e) impact of other fisheries on the Kitselas Fishing Right;

- (f) Kitselas interests in a species for Domestic Purposes including data on community needs;
  - (g) Kitselas population growth; and
  - (h) other relevant matters.
63. Where Canada and Kitselas agree on the Kitselas Fish Allocation for a Non-Allocated Species, the agreement will be in writing.
64. Where Canada and Kitselas do not agree on an allocation for a Non-Allocated Species, the Minister will determine the Kitselas Fish Allocation in accordance with paragraphs 65 and 66.
65. In determining a Kitselas Fish Allocation for a Non-Allocated Species, the Minister will take into account:
- (a) written recommendations and other material in respect of an allocation for a Non-Allocated Species provided by the Kitselas Joint Fisheries Committee or by Kitselas; and
  - (b) all other considerations under paragraph 62.
66. Where the Minister determines a Kitselas Fish Allocation for a Non-Allocated Species, the Kitselas Fish Allocation for that Non-Allocated Species will not be less than the Basic Harvest during the Base Period, adjusted to include an additional amount that accounts for Kitselas population growth.
67. Where the Minister determines a Kitselas Fish Allocation for a Non-Allocated Species the determination will be provided to Kitselas and the Kitselas Joint Fisheries Committee in writing.
68. Where the Kitselas Fish Allocation for a Non-Allocated Species that has been determined by the Minister varies from the written recommendations of Kitselas, the Minister will provide written reasons to Kitselas in respect of the basis of the determination of the Kitselas Fish Allocation for that species by the Minister.
69. Where Canada and Kitselas agree on the Kitselas Fish Allocation under paragraph 63 or the Minister determines the Kitselas Fish Allocation under paragraph 64 and provides that determination to Kitselas the Parties will amend Schedule 1 in accordance with the process set out in paragraph 9 of Chapter 31 Amendment to document the allocation.

### **Oolichan**

70. The Kitselas Fishing Right includes the harvest of Oolichan in the Kitselas Fishing Area and the Red Bluff Oolichan Harvest Site.
71. The harvest of Oolichan under the Kitselas Fishing Right will be in accordance with this Agreement and the Kitselas Harvest Document.

72. If the Minister proposes to establish a commercial fishery for Skeena River Oolichan, the Minister will Consult with Kitselas on this proposal.

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

73. Paragraphs 74 to 83 apply only to those species of Fish and Aquatic Plants managed by British Columbia.
74. For greater certainty, Kitselas may harvest a Non-Allocated Species managed by British Columbia for Domestic Purposes under the Kitselas Fishing Right in accordance with Kitselas Harvest Documents.
75. British Columbia or Kitselas may propose the establishment of a Kitselas Fish Allocation for a Non-Allocated Species by providing British Columbia or Kitselas, as applicable, with a written proposal and providing a copy of the proposal to the Kitselas Joint Fisheries Committee.
76. Where British Columbia or Kitselas proposes the establishment of a Kitselas Fish Allocation under paragraph 75, British Columbia and Kitselas will negotiate and attempt to reach agreement on the Kitselas Fish Allocation.
77. Where British Columbia and Kitselas do not reach agreement under paragraph 76, at the request of British Columbia or Kitselas, British Columbia and Kitselas will resolve the matter in accordance with paragraphs 78 to 82.
78. Notwithstanding paragraphs 28 and 29 of Chapter 29 Dispute Resolution, after completing Stage One and Stage Two, a dispute referenced in paragraph 77 will, on delivery of a notice by a Disputing Party to all Parties as required under Appendix O-5, be referred to and resolved by arbitration in accordance with Chapter 29 Dispute Resolution and Appendix O-5, as modified by paragraphs 79 to 82.
79. In determining an Arbitral Award under paragraph 78, the Arbitral Tribunal will take into account all relevant information provided by Kitselas and British Columbia.
80. Notwithstanding paragraph 33 of Chapter 29 Dispute Resolution and Section 146 of Appendix O-5, an Arbitral Award in relation to a dispute referred to arbitration under paragraph 78 is only binding on the Parties where the Minister determines that the Arbitral Award upholds the honour of the Crown in relation to British Columbia's obligations to Kitselas and other Aboriginal peoples.
81. Prior to implementing an Arbitral Award in relation to a dispute referred to arbitration under paragraph 78, the Minister may:
- (a) consult with other Aboriginal peoples about the Arbitral Award and any potential adverse impacts to the rights recognized and affirmed by section 35 of the *Constitution Act, 1982* of those other Aboriginal peoples that may occur; and
  - (b) as a result of consultation under paragraph 81(a), and in a manner consistent with the honour of the Crown, amend the Arbitral Award.

82. Where the Minister amends an Arbitral Award under paragraph 81(b):
- (a) Kitselas may, where a cause of action exists, commence or pursue judicial proceedings; and
  - (b) Chapter 29 Dispute Resolution does not apply to disputes in relation to that decision.
83. Where British Columbia and Kitselas agree on a Kitselas Fish Allocation under paragraph 76, the Arbitral Tribunal determines a Kitselas Fish Allocation under paragraph 78, or an Arbitral Award is varied under paragraph 81(b), the Parties will amend this Chapter in accordance with the process set out in paragraph 9 of Chapter 31 Amendment by adding a new Schedule to document the allocation.

### **Law-Making**

84. Kitselas may make laws in relation to:
- (a) the designation of vessels to harvest Fish and Aquatic Plants under the Kitselas Fishing Right;
  - (b) the designation of individuals who may harvest Fish and Aquatic Plants under the Kitselas Fishing Right; and
  - (c) the distribution among Kitselas Citizens of Fish and Aquatic Plants harvested under the Kitselas Fishing Right.
85. Kitselas Law under paragraph 84 prevails to the extent of a Conflict with Federal or Provincial Law.
86. Kitselas may make laws in relation to:
- (a) the portion of the Kitselas Fish Allocation that may be harvested for Domestic Purposes or sale purposes under paragraph 39;
  - (b) the designation of individuals who may participate in a sale fishery described in paragraphs 39 to 44 and the documentation required;
  - (c) the harvest of that portion of the Kitselas Fish Allocation identified for sale purposes under paragraph 39; and
  - (d) the sale of that portion of the Kitselas Fish Allocation identified for sale purposes under paragraph 39.
87. Kitselas may make laws in relation to:
- (a) the documentation of vessels that are designated to be used by Kitselas to harvest Fish and Aquatic Plants under the Kitselas Fishing Right;

- (b) the documentation of individuals who are designated by Kitselas to harvest Fish and Aquatic Plants under the Kitselas Fishing Right; and
  - (c) the Trade and Barter of Fish and Aquatic Plants harvested by Kitselas Citizens under the Kitselas Fishing Right.
88. Federal or Provincial Law prevails to the extent of a Conflict with Kitselas Law under paragraphs 86 and 87.

### **Designation**

89. The Kitselas Fishing Right may only be exercised by those individuals who are designated by Kitselas to harvest Fish and Aquatic Plants.
90. The Kitselas Fisheries Operational Guidelines may describe which vessels are required to be designated and the period of time for which they are required to be designated.
91. Designation of a vessel by Kitselas does not affect the application of Federal or Provincial Law in respect of foreign fishing vessels in Canadian waters.
92. Subject to paragraph 94, where an individual is designated by Kitselas to harvest Fish and Aquatic Plants under the Kitselas Fishing Right, Canada and British Columbia will not require that individual to have a federal or provincial fishing licence to harvest Fish and Aquatic Plants under the Kitselas Fishing Right.
93. Where a Kitselas Fish Allocation for a species of Fish or Aquatic Plants has been established under this Agreement, Kitselas may designate vessels and Kitselas Citizens and other individuals to harvest the species under the Kitselas Fishing Right.
94. Where a Kitselas allocation for a species of Fish or Aquatic Plant has not been established under the Agreement, Kitselas may designate:
- (a) vessels and Kitselas Citizens to harvest that species under the Kitselas Fishing Right; and
  - (b) any other individual to harvest the species under the Kitselas Fishing Right in accordance with a Kitselas Harvest Document.

### **Documentation**

95. Where Kitselas designates an individual or a vessel, Kitselas will issue documentation to that individual or vessel to evidence the designation.
96. Documentation issued under paragraph 95 will:
- (a) be in the English language, which version will be the authoritative version and, at the discretion of Kitselas, in the Sm'algayax language;

- (b) in the case of an individual, include the name and sufficient information to identify the individual;
- (c) in the case of a vessel, include the name and address of the operator; and
- (d) meet any requirements set out in the Kitselas Harvest Documents and the Kitselas Fisheries Operational Guidelines.

### **Kitselas Harvest Documents**

- 97. Kitselas will provide to the Minister biological samples, catch data and other information related to Fish and Aquatic Plants harvested under the Kitselas Fishing Right as may be required by a Kitselas Harvest Document or Federal or Provincial Law.
- 98. The Minister will issue, in a timely manner, one or more Kitselas Harvest Documents to Kitselas in respect of the Kitselas Fishing Right and all such Kitselas Harvest Documents will be issued in a manner consistent with this Agreement.
- 99. Kitselas will notify individuals designated by Kitselas to harvest Fish and Aquatic Plants under the Kitselas Fishing Right of the provisions of the Kitselas Harvest Documents.
- 100. In addition to the matters set out in the proposed Kitselas Annual Fishing Plan, where the Minister issues a Kitselas Harvest Document, the Minister will take into account:
  - (a) conservation, public health and public safety;
  - (b) any written recommendations received from the Parties or from the Kitselas Joint Fisheries Committee;
  - (c) the constitutional priority of the Kitselas Fishing Right;
  - (d) efficient and effective harvesting and management of fisheries resources; and
  - (e) any other matters that the Parties consider relevant.
- 101. The Minister will provide written reasons to Kitselas and the Kitselas Joint Fisheries Committee if Kitselas Harvest Documents vary from the Kitselas Annual Fishing Plan submitted in accordance with paragraph 129 or written recommendations received from Kitselas in accordance with paragraph 120.
- 102. In addition to any duty to consult, and subject to paragraph 103, where any amendments to a Kitselas Harvest Document are contemplated, the Minister will discuss the proposed amendments with the Kitselas Joint Fisheries Committee prior to issuing an amended Kitselas Harvest Document.
- 103. Where special circumstances make it impracticable to discuss a proposed amendment to the Kitselas Harvest Document with the Kitselas Joint Fisheries Committee under paragraph 102, the Minister:

- (a) may amend the Kitselas Harvest Document without receiving recommendations from the Kitselas Joint Fisheries Committee; and
  - (b) as soon as practicable after making the amendment, will notify the Kitselas Joint Fisheries Committee and Kitselas of the special circumstances and the reasons for the amendment.
104. Canada or British Columbia will not charge any fee for a Kitselas Harvest Document, or any management fee or landing fee in respect of fisheries authorized by a Kitselas Harvest Document.

### **Kitselas Annual Fishing Plan**

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

### **Management Plans for the Kitselas Community Fishing Area**

107. The Kitselas Joint Fisheries Committee will develop a proposed management plan for the Kitselas Community Fishing Area.
108. The proposed management plan for the Kitselas Community Fishing Area will be developed in accordance with the principles and process described in the Kitselas Fisheries Operational Guidelines.

109. In the development of a management plan under paragraph 107, Kitselas may make proposals to the Kitselas Joint Fisheries Committee related to Kitselas's interests in the Kitselas Community Fishing Area.
110. The management plan will address access by Kitselas Citizens to fish at Kitselas fishing sites and be based on the following principles:
  - (a) reduce potential for conflict;
  - (b) non-exclusivity; and
  - (c) collaboration with other user groups.

### **Kitselas Joint Fisheries Committee**

111. On the Effective Date, the Parties will establish a Kitselas Joint Fisheries Committee to facilitate discussion of any matters relating to the exercise of the Kitselas Fishing Right, including the cooperative assessment, planning and management of Fish, Fish habitat, and Aquatic Plants.
112. The Parties will each appoint one representative to the Kitselas Joint Fisheries Committee. Additional individuals may participate in meetings to support or assist a Party's representative in carrying out that representative's responsibilities on the Kitselas Joint Fisheries Committee.
113. Each representative will be notified of and may participate in all meetings of the Kitselas Joint Fisheries Committee.
114. Canada may choose not to attend Kitselas Joint Fisheries Committee meetings on fisheries matters related to species managed by British Columbia. British Columbia may choose not to attend Kitselas Joint Fisheries Committee meetings on fisheries matters related to species managed by Canada.
115. The Kitselas Joint Fisheries Committee representatives will seek to operate by consensus. The agreement of British Columbia is not required for consensus regarding fisheries matters related to species managed by Canada. The agreement of Canada is not required for consensus regarding fisheries matters related to species managed by British Columbia.
116. The Kitselas Joint Fisheries Committee will establish its own operating procedures and these will be set out in the Kitselas Fisheries Operational Guidelines.
117. Subject to paragraph 90 of Chapter 1 General Provisions, and any confidentiality limitations on the disclosure of information under Kitselas Law, the Parties will provide each other with information necessary to enable the Kitselas Joint Fisheries Committee to carry out its functions and activities.
118. Subject to paragraph 122, the Kitselas Joint Fisheries Committee may, where consensus is reached, make decisions in respect of some or all of:

- (a) components of the Kitselas Annual Fishing Plan;
  - (b) the collection and exchange of relevant fisheries-related data, including fisheries research and stock assessment;
  - (c) fisheries monitoring and catch reporting;
  - (d) how activities and functions of the Kitselas Joint Fisheries Committee will be coordinated with activities and functions of other regional fisheries processes;
  - (e) in-season amendments that are needed to a Kitselas Harvest Document issued by the federal Minister pursuant to paragraphs 98 and 100; and
  - (f) any other matter to which the Parties agree in writing.
119. Subject to paragraph 122, Kitselas Joint Fisheries Committee may discuss and make consensus recommendations to the Minister or any other Party in respect of some or all of the following matters:
- (a) conservation, public health and public safety considerations that could affect harvesting under the Kitselas Fishing Right;
  - (b) the management of fisheries both within and outside of the Kitselas Fishing Area that could affect the Kitselas Fishing Right;
  - (c) management plans for the Kitselas Community Fishing Area;
  - (d) in-season management that could affect harvesting under the Kitselas Fishing Right;
  - (e) the management objectives and biological considerations for Fish and Aquatic Plants harvested under the Kitselas Fishing Right;
  - (f) the management and protection of Fish and Aquatic Plant habitat in the Kitselas Fishing Area;
  - (g) Enhancement Initiatives, Stewardship Activities and habitat restoration activities conducted in the Kitselas Fishing Area; and
  - (h) other fisheries matters relevant to the exercise of the Kitselas Fishing Right.
120. Where the Kitselas Joint Fisheries Committee does not reach a consensus decision under paragraph 118, or a consensus recommendation under paragraph 119, any Party may provide their written recommendations to the other Parties and submit a copy to the Kitselas Joint Fisheries Committee.
121. The Minister will consider a consensus recommendation under paragraph 119 or a written recommendation made under paragraph 120 prior to making a decision.

122. If the federal Minister makes a decision that differs from a consensus decision under paragraph 118, or a consensus recommendation under paragraph 119, or a recommendation under paragraph 120, the federal Minister will provide written reasons to the Kitselas Joint Fisheries Committee.
123. If the provincial Minister makes a decision that differs from a consensus recommendation under paragraph 119, or a written recommendation under paragraph 120, the provincial Minister will provide written reasons to the Kitselas Joint Fisheries Committee.
124. Notwithstanding paragraphs 121 to 123, if there is an emergency the Minister:
  - (a) may make the decision or take the action that the Minister considers necessary, without receiving recommendations from the Parties or the Kitselas Joint Fisheries Committee; and
  - (b) will provide written reasons to the Parties and the Kitselas Joint Fisheries Committee, as soon as possible, describing the emergency and the decision made or action taken.
125. Each year, Kitselas will provide a draft Kitselas Annual Fishing Plan to the Kitselas Joint Fisheries Committee in a timely manner.
126. The Kitselas Joint Fisheries Committee will, in a timely manner, review the draft Kitselas Annual Fishing Plan and may make recommendations to Kitselas with respect to the draft Kitselas Annual Fishing Plan.
127. Kitselas will consider any recommendations from the Kitselas Joint Fisheries Committee on the draft Kitselas Annual Fishing Plan and will submit a Kitselas Annual Fishing Plan to the Joint Fisheries Committee.
128. Where the Kitselas Joint Fisheries Committee has reached a consensus decision regarding one or more components of the Kitselas Annual Fishing Plan, that consensus decision will be submitted to the Minister and subject to paragraph 122 will form the basis of the Kitselas Harvest Documents issued in accordance with paragraph 98.
129. Where the Kitselas Joint Fisheries Committee does not reach a consensus decision on one or more components of the Kitselas Annual Fishing Plan, Kitselas will, in a timely manner, submit the Kitselas Annual Fishing Plan to the Minister for consideration in the issuance of a Kitselas Harvest Document in accordance with paragraph 98, with a copy to the Kitselas Joint Fisheries Committee.
130. The Kitselas Joint Fisheries Committee will establish and include in the Fisheries Operational Guidelines appropriate dates for:
  - (a) the submission of the draft Kitselas Annual Fishing Plan by Kitselas to the Kitselas Joint Fisheries Committee;
  - (b) the collaborative discussion by the Kitselas Joint Fisheries Committee of the draft Kitselas Annual Fishing Plan;

- (c) the submission of the Kitselas Annual Fishing Plan by Kitselas; and
  - (d) the issuance of a Kitselas Harvest Document by the Minister.
131. Each year, the Kitselas Joint Fisheries Committee will conduct a post-season review of matters related to the exercise of the Kitselas Fishing Right and other matters as the Parties may agree, as described in the Fisheries Operational Guidelines and will prepare an annual post-season report.

### **Regional Fisheries Process**

132. Canada or British Columbia, as applicable, will Consult with Kitselas where a regional fisheries process for Aboriginal fisheries is proposed or established between Indigenous groups and Canada or British Columbia in an area that includes all or part of the Kitselas Fishing Area, or that may affect the exercise of the Kitselas Fishing Right..
133. Any representative, in accordance with paragraph 118(d), may request to the other representatives on the Kitselas Joint Fisheries Committee that a function or activity of the Kitselas Joint Fisheries Committee be addressed by a regional fisheries process.
134. Where the Parties agree that a function or activity of the Kitselas Joint Fisheries Committee will be carried out by a regional fisheries process:
- (a) the Parties will amend the Kitselas Fisheries Operational Guidelines, as required, to reflect the change; and
  - (b) a reference in this Agreement to the Kitselas Joint Fisheries Committee will be read as a reference to the regional fisheries process for that function or activity.
135. Where the regional fisheries process carries out a function or activity of the Kitselas Joint Fisheries Committee and, in carrying out the function or activity, makes a written recommendation to the Minister, a Party may, if it does not agree with the recommendation of the regional fisheries process, submit its own written recommendation to the Minister with a copy to the other Parties and to the Kitselas Joint Fisheries Committee.
136. On receipt of a recommendation in accordance with paragraph 135, the Minister will respond in writing to the Parties with a copy to the Kitselas Joint Fisheries Committee.
137. Where a Party is of the view that the regional fisheries process is not effectively carrying out a function or activity of the Kitselas Joint Fisheries Committee, the Party may request that the Kitselas Joint Fisheries Committee resume carrying out that function and activity, and no Party will unreasonably withhold their consent to such request.
138. Where the Parties agree to vary or terminate an agreement under paragraph 134, the Parties will amend the Kitselas Fisheries Operational Guidelines, as required, to reflect that change.

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

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

142. Where Canada or British Columbia has established or establishes a public fisheries advisory process that includes all or part of the Kitselas Fishing Area, Canada or British Columbia will, if requested by Kitselas, provide for participation by Kitselas.
143. For greater certainty, a public fisheries advisory process referred to in paragraph 142 does not include an international fisheries advisory process.
144. The design, establishment and termination of public fisheries advisory processes are at the discretion of the Minister.

#### **Fisheries Operational Guidelines**

145. Prior to the Effective Date, the Parties will jointly develop guidelines, called the Fisheries Operational Guidelines, to assist the Parties in implementing the provisions of this Chapter. The Fisheries Operational Guidelines may include operational principles and procedures.
146. The Kitselas Joint Fisheries Committee will update and maintain the Fisheries Operational Guidelines as required.
147. Any amendments to the Fisheries Operational Guidelines will require the written agreement of the Parties.
148. The Fisheries Operational Guidelines do not create legal obligations.

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

149. Fishery Officers and Fishery Guardians have the authority to, and may in their discretion, enforce Kitselas Laws made pursuant to this Chapter, subject to the terms of their designation under the *Fisheries Act* and as described in a fisheries enforcement agreement negotiated pursuant to paragraph 152.
150. Kitselas may make laws, consistent with a fisheries enforcement agreement negotiated pursuant to paragraph 152, to limit the powers of Fishery Officers and Fishery Guardians enforcing Kitselas Laws under paragraph 149.

151. Kitselas Law under paragraph 150 prevails to the extent of a Conflict with Federal or Provincial Law.
152. At the request of Canada or Kitselas, Canada and Kitselas will negotiate and attempt to reach agreement regarding the enforcement of Kitselas Laws made pursuant to this Chapter by Fishery Officers and Fishery Guardians pursuant to a fisheries enforcement agreement.
153. For greater certainty, any fisheries enforcement agreement made pursuant to paragraph 152 may be informed by Chapter 9 Administration of Justice with regard to enforcement of Kitselas Law made pursuant to this Chapter.
154. A fisheries enforcement agreement referred to in paragraph 152 may address the following matters:
  - (a) funding opportunities and sources;
  - (b) cultural sensitivity training;
  - (c) operational training requirements;
  - (d) information sharing;
  - (e) joint patrols and working together;
  - (f) ticketing, prosecutions and restorative justice;
  - (g) improving enforcement capacity;
  - (h) establishing collaborative and professional relationships;
  - (i) scope of authority for the enforcement of Kitselas Laws made pursuant to this Chapter;
  - (j) operational matters, including enforcement procedures and cultural protocols;
  - (k) identifying the organizations and individuals responsible for implementing the agreement; and
  - (l) any other matter to which Canada and Kitselas agree.
155. The powers and protections that a Fishery Officer or Fishery Guardian has under the *Fisheries Act* or any other Act of Parliament, including the powers and protections of a peace officer under the *Criminal Code*, apply to a Fishery Officer or Fishery Guardian enforcing Kitselas Laws made pursuant to this Chapter.

#### **Enforcement of Federal Law Respecting Fisheries**

156. At the request of Canada or Kitselas, Canada and Kitselas will negotiate and attempt to reach agreement regarding the process and standards necessary for Kitselas Enforcement Officers to have the authority to enforce Federal Law in respect of fisheries matters.

157. The negotiations referred to in paragraph 156 may result in an agreement that addresses the following matters:
- (a) training programs for Kitselas Enforcement Officers;
  - (b) identification of which Federal Laws Kitselas Enforcement Officers have the authority to enforce;
  - (c) standards of enforcement;
  - (d) responsibilities of Kitselas as the employer of Kitselas Enforcement Officers; and
  - (e) any other matter to which Canada and Kitselas agree.

### **Stewardship and Enhancement**

158. Kitselas may propose to the Kitselas Joint Fisheries Committee Stewardship Activities, Enhancement Initiatives and habitat restoration initiatives in the Kitselas Fishing Area.
159. The Parties may identify strategic restoration and enhancement opportunities and negotiate agreements concerning those opportunities in accordance with Federal and Provincial Law and Kitselas Law.

### **Marine Protected Areas**

160. Canada will Consult with Kitselas when Canada proposes to establish or terminate, or change the boundaries of, a Marine Protected Area that is wholly or partly within the Kitselas Fishing Area.
161. Kitselas may recommend in writing that Canada establish, or terminate, or change the boundaries of, a Marine Protected Area that is wholly or partly within the Kitselas Fishing Area.
162. Where Kitselas makes a written recommendation under paragraph 161, Canada will review the recommendation and provide a written response.

### **Kitselas Fisheries Conservation and Stewardship Fund**

163. Kitselas may establish a Kitselas Fisheries Conservation and Stewardship Fund from funds received from the Capital Transfer.
164. The Kitselas Fisheries Conservation and Stewardship Fund may be used for:
- (a) projects related to the conservation and protection of Fish and Aquatic Plants and Fish habitat in the Kitselas Fishing Area;
  - (b) facilitating the sustainable management of Fish and Aquatic Plants in the Kitselas Fishing Area; and

- (c) promoting and supporting participation by Kitselas in the stewardship of Fish and Aquatic Plants and Fish habitat in the Kitselas Fishing Area.

165. In pursuing the uses of the Kitselas Fisheries Conservation and Stewardship Fund, Kitselas may seek and consider recommendations from the Kitselas Joint Fisheries Committee.

### **Economic Opportunities**

166. On the Effective Date, the Parties will enter into a Kitselas Commercial Harvest Agreement.

167. If a Party terminates the Kitselas Commercial Harvest Agreement, that Party will recompense Kitselas in accordance with the terms of that agreement.

168. For purposes of increasing the fishing capacity of Kitselas, on the Effective Date Canada will provide to Kitselas \$8,974,508 to be adjusted for inflation prior to the Effective Date, to establish a Kitselas Fishing Capacity Fund.

169. For greater certainty, commercial fishing access obtained with the use of the funds from the Kitselas Fishing Capacity Fund, may be added to the Kitselas Commercial Harvest Agreement.

### **New Emerging Commercial Fisheries**

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

### **Intertidal Bivalves**

171. At the request of Kitselas the Parties will collaborate on future shellfish aquaculture tenure and licensing application processes.

172. If the Minister proposes to establish a commercial fishery for Intertidal Bivalves at locations that are in Category 1 or Category 2, identified in Appendix K Part 3, the Minister will Consult with Kitselas on this proposal.

173. For greater certainty, the Kitselas Fishing Right includes the harvest of Intertidal Bivalves in the Kitselas Fishing Area.

174. The Kitselas harvest of Intertidal Bivalves will be in accordance with this Agreement and Federal and Provincial Law respecting public health and public safety.

175. The harvesting of Intertidal Bivalves in Category 1 and Category 2 identified in Appendix K Part 3 are not exclusive to Kitselas.

176. Consistent with applicable Federal Law, and subject to the appropriation of funds by Parliament, Canada will, or in collaboration with Kitselas, conduct the water quality and biotoxin monitoring required to provide reasonable assurance that Intertidal Bivalves harvested from locations in Category 1 identified in Appendix K Part 3 are safe for consumption.
177. Canada and Kitselas may adopt flexibilities laid out in the Fisheries Operational Guidelines to provide reasonable assurance that Intertidal Bivalves harvested for Domestic Purposes are safe for consumption as food.

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

Table 1. Kitselas Fish Allocations, maximum annual amounts.

Species/group	Maximum Annual Allocation
Sockeye salmon (pieces)*	23,000
Chinook salmon (pieces)**	2,400
Coho salmon (pieces)***	1,000
Pink salmon (pieces)	3,000
Herring (whole pounds)	10,000
Halibut (dressed head-off pounds)	15,600
Sablefish (whole pounds)	4,000
Rockfish (whole pounds)	3,600
Lingcod (whole pounds)	2,700
Urchins (whole pounds)	1,500
Sea Cucumbers (whole pounds)	300
Prawn / Shrimp (whole pounds)	2,400
Crab (whole pounds)	41,000

\* Abundance-based allocation see paragraph 28.

\*\* Will be a fixed maximum until an abundance-based formula developed under paragraph 30.

\*\*\* To be determined prior to the Effective Date.



# **FISCAL RELATIONS**



## CHAPTER 22 – CAPITAL TRANSFER

### General

1. On the Effective Date, a Capital Transfer in the amount of \$109,764,730 (Q1 2023) will be paid by Canada to Kitselas in accordance with Schedule 1.
2. A Federal Capital Advance in the amount of \$10,000,000 may be paid by Canada to the Kitselas Band after a successful Constitution Ratification Vote and a successful Treaty Ratification Vote by Kitselas but prior to Effective Date.
3. The Federal Capital Advance will be subject to the terms and conditions of a funding agreement between Canada and the Kitselas Band.
4. The Capital Transfer amount under paragraph 1 and any Federal Capital Advance paid in accordance with paragraph 2 will be adjusted for price as determined in Schedule 1.
5. Kitselas acknowledges that a Federal Capital Advance paid to the Kitselas Band is a partial payment of the Capital Transfer under paragraph 1 and that the Capital Transfer paid by Canada to Kitselas under paragraph 1 will be reduced by the amount of any Federal Capital Advance as determined in Schedule 1.
6. On the Effective Date, a Capital Transfer payment of \$20,000,000 (Q2-2023) will be paid by British Columbia to Kitselas for infrastructure and economic development purposes.
7. The Parties acknowledge British Columbia paid to the Kitselas Band a Provincial Capital Advance in the amount of \$5,000,000 (Q2-2023) on October 26, 2023, for infrastructure and economic development purposes.
8. A Provincial Capital Advance in the amount of \$10,000,000 (Q2-2023) may be paid by British Columbia to the Kitselas Band after a successful Constitution Ratification Vote and a successful Treaty Ratification Vote by Kitselas but prior to the Effective Date for infrastructure and economic development purposes. This Provincial Capital Advance will be subject to terms and conditions of a funding agreement between British Columbia and the Kitselas Band.
9. Kitselas acknowledges that a Provincial Capital Advance paid to the Kitselas Band under paragraph 7 or 8 is a partial payment of the Capital Transfer under paragraph 6 and that the Capital Transfer paid by British Columbia to Kitselas under paragraph 6 will be reduced by the amount of any Provincial Capital Advance under paragraphs 7 and 8 as determined in Schedule 1.
10. The Capital Transfer paid by British Columbia in accordance with paragraph 6 and the Provincial Capital Advance amount paid by British Columbia in accordance with paragraph 8 will be adjusted for price as determined in Schedule 1.

**Schedule 1: Price Adjustments to the Capital Transfer paid by Canada and British Columbia**

1. To arrive at the final value owing of the Capital Transfer to be paid by Canada on the Effective Date:
  - (a) the Capital Transfer amount described in paragraph 1 will be multiplied by the first published value of the FDDIPI (Final Domestic Demand Implicit Price Index) for the latest quarter available from Statistics Canada 30 days before the Effective Date (FDDIPI<sub>ED</sub>) and divided by the value of the FDDIPI for the 1<sup>st</sup> quarter of 2023 as published at the same time as (FDDIPI<sub>ED</sub>).
  - (b) The Federal Capital Advance described in paragraph 2 will be multiplied by the first published value of the FDDIPI for the latest quarter available from Statistics Canada 30 days before the Effective Date (FDDIPI<sub>ED</sub>) and divided by the value of the FDDIPI for the quarter on which the Federal Capital Advance was made as published at the same time as (FDDIPI<sub>ED</sub>).
  - (c) The Federal Capital Advance calculated through 1(b) will be deducted from the Capital Transfer amount calculated through 1(a).
2. To arrive at the final value owing of the Provincial Capital Advance under paragraph 8 that may be paid by British Columbia after the successful ratification of this Agreement by Kitselas, the amount will be multiplied by the value of the FDDIPI for the latest quarter available 30 days before that Provincial Capital Advance is made divided by the value of the FDDIPI for the 2nd quarter of the 2023 calendar year, as published at the same time.
3. To arrive at the final value owing of the Capital Transfer to be paid by British Columbia on the Effective Date:
  - (a) the following amounts will be subtracted from the amount described in paragraph 6:
    - (i) the Provincial Capital Advance under paragraph 7 paid to the Kitselas Band;
    - (ii) the amount of the Provincial Capital Advance under paragraph 8 paid to the Kitselas Band, without including the adjustment under paragraph 2 of this Schedule; and
  - (b) the amount determined under 3(a) will be multiplied by the value of the FDDIPI for the latest quarter available 30 days before the Effective Date and divided by the value of the FDDIPI for the 2nd quarter of the 2023 calendar year, as published at the same time.

## CHAPTER 23 – RESOURCE REVENUE SHARING

### General

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

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

is subject to the appropriation of funds by the Legislature of British Columbia.

## CHAPTER 24 – TAX

### Direct Taxation

1. Kitselas may make laws in relation to:
  - (a) Direct taxation of Kitselas Citizens within Kitselas Lands in order to raise revenue for Kitselas purposes; and
  - (b) the implementation of any taxation agreement between Kitselas and Canada or British Columbia.
2. Kitselas law-making authority under paragraph 1(a) does not limit the taxation powers of Canada or British Columbia.
3. Notwithstanding any other provision of this Agreement, any Kitselas Law made under this Chapter, or any exercise of power by Kitselas, will be subject to and will conform with Canada's International Legal Obligations respecting taxation, and paragraphs 29 to 32 of Chapter 1 General Provisions do not apply in respect of Canada's International Legal Obligations in respect of taxation.

### Tax Agreements

4. From time to time, at the request of Kitselas, Canada and British Columbia, together or separately, may negotiate and attempt to reach agreement with Kitselas in relation to:
  - (a) the extent to which the Direct taxation law-making authority of Kitselas under paragraph 1(a) may be extended to apply to Persons, other than Kitselas Citizens, within Kitselas Lands; and
  - (b) the manner in which Kitselas law-making authority under paragraph 1(a), as extended by the application of paragraph 4(a), will be coordinated with existing federal or provincial tax systems, including:
    - (i) the amount of tax room that Canada or British Columbia may be prepared to vacate in favour of taxes imposed by Kitselas; and
    - (ii) the terms and conditions under which Canada or British Columbia may administer, on behalf of Kitselas, taxes imposed by Kitselas.

### Real Property Taxation

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

### Adjudication

6. Notwithstanding Chapter 9 Administration of Justice, parties to an agreement under this Chapter may provide for an alternative approach to the appeal, enforcement or adjudication of Kitselas Law with respect to taxation.

### Kitselas Lands

7. Kitselas is not subject to capital taxation, including real property taxes and taxes on capital or wealth, with respect to the estate or interest of Kitselas in Kitselas Lands on which there are no improvements or on which there is a designated improvement.
8. In paragraph 7, “designated improvement” means:
  - (a) a residence of a Kitselas Citizen;
  - (b) an improvement, all or substantially all of which is used for a public purpose or a purpose ancillary or incidental to the public purpose, including:
    - (i) a public governance or administration building, public meeting building, public hall, public school or other public educational institution, teacherage, public library, public health facility, public care facility, public seniors home, public museum, place of public worship, manse, fire hall, police facility, court, correction facility, public recreation facility, public park, or an improvement used for Kitselas cultural or spiritual purposes;
    - (ii) works of public convenience constructed or operated for the benefit of Kitselas Citizens, occupiers of Kitselas Lands or individuals visiting or in transit through Kitselas Lands, including public utility works, public works used to treat or deliver water or as part of a public sewer system, public roads, public bridges, public drainage ditches, traffic signals, street lights, public sidewalks, and public parking lots; or
    - (iii) other improvements similar in nature to those described in paragraphs 8(b)(i) and 8(b)(ii);
  - (c) an improvement that is used primarily for the management, protection or enhancement of a natural resource, including a Forest Resource or a fishery or wildlife resource, other than an improvement that is used primarily in harvesting or processing a natural resource for profit; and

- (d) Forest Resources and forest roads.
9. In paragraph 8(b), “public purpose” does not include the provision of property or services primarily for the purpose of profit.
  10. For the purposes of paragraphs 7 and 8:
    - (a) for greater certainty, Kitselas Lands include the improvements on those lands; and
    - (b) an improvement is deemed to be on the land that is necessarily ancillary to the use of the improvement.
  11. For greater certainty, the exemption from taxation in paragraph 7 does not apply to a taxpayer other than Kitselas nor does it apply with respect to a disposition of Kitselas Lands or interests in those lands by Kitselas.
  12. For federal and provincial income tax purposes, proceeds of disposition received by Kitselas on expropriation of Kitselas Lands in accordance with Chapter 3 Kitselas Lands and Appendix I are not taxable.

### **Transfer of Kitselas Capital**

13. A transfer under this Agreement of Kitselas Capital and a recognition of ownership of Kitselas Capital under this Agreement are not taxable.
14. For purposes of paragraph 13, an amount paid to a Kitselas Citizen is deemed to be a transfer of Kitselas Capital under the Agreement if the payment:
  - (a) reasonably can be considered to be a distribution of Capital Transfer received by Kitselas; and
  - (b) becomes payable to the Kitselas Citizen within 90 days and is paid to the Kitselas Citizen within 270 days from the date that Kitselas receives the Capital Transfer.
15. For federal and provincial income tax purposes, Kitselas Capital is deemed to have been acquired by Kitselas at a cost equal to its fair market value on the later of:
  - (a) the Effective Date; and
  - (b) the date of transfer of ownership or the date of recognition of ownership, as the case may be.

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

16. Subject to paragraph 18, section 87 of the *Indian Act* applies to a Kitselas Citizen who is an Indian.
17. Subject to paragraph 1(a) and paragraphs 18 to 20, section 87 of the *Indian Act* applies on Kitselas Lands that are Former Kitselas Indian Reserves as if the lands were Indian Reserves.

18. Paragraphs 16 and 17 only apply so long as section 87 of the *Indian Act* itself remains in force.
19. Paragraph 17 only applies to an Indian during the period that section 87 of the *Indian Act* applies to the Indian.
20. Kitselas may enter into a tax agreement with Canada or British Columbia that limits the application of paragraph 17 to the extent specified in that tax agreement.

**Tax Treatment Agreement**

21. The Parties will enter into a tax treatment agreement which will come into effect on the Effective Date.
22. Canada and British Columbia will recommend to Parliament and the Legislature of British Columbia, respectively, that the tax treatment agreement be given effect and force of law under federal and provincial legislation.

## CHAPTER 25 – FISCAL

### General

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

7. In any review or consideration of changes to a Fiscal Provisions, British Columbia and Kitselas will consider:
  - (a) the existing Fiscal Provisions, including those that have most recently expired or been terminated;
  - (b) British Columbia's prevailing fiscal policy for self-government arrangements;
  - (c) the principle that Fiscal Provisions be reasonably stable and predictable over time; and
  - (d) Kitselas's needs with respect to governmental operations and delivery of programs and services.
8. Notwithstanding paragraphs 4 and 6, Canada and Kitselas intend that there will always be a Fiscal Arrangement in place in accordance with this Chapter, though they acknowledge their fiscal relationship and the associated needs of Kitselas may evolve over time.
9. When Kitselas's own fiscal capacity is considered in Fiscal Arrangements, own source revenue arrangements will not include:
  - (a) transfers paid to Kitselas under this Agreement;
  - (b) a Specific Claims Settlement;
  - (c) proceeds from the sale or expropriation of Kitselas Lands and Kitselas Coastal Site Lands;
  - (d) transfers from Canada or British Columbia made directly or indirectly through an intermediary to support Government Responsibilities and the delivery of programs and services by Kitselas Government; and
  - (e) payments provided to Kitselas in respect of actual or potential impacts on Kitselas or Kitselas Citizens arising from projects located off of Kitselas Lands. This exemption will not apply to payments made in respect of the purchase of goods or services provided by Kitselas Government or an entity controlled by Kitselas Government in connection with such projects.
10. Fiscal Arrangements or Fiscal Provisions that include consideration of Kitselas's fiscal capacity will not permit:
  - (a) Canada to benefit from the decision of British Columbia to vacate tax room, to delegate tax authorities or to transfer revenues or revenue capacity to Kitselas; or
  - (b) British Columbia to benefit from the decision of Canada to vacate tax room, to delegate tax authorities or to transfer revenues or revenue capacity to Kitselas.

11. Where a proposed change to the publicly available federal policy on self-government fiscal arrangements, in place from time to time, could have an impact on existing Fiscal Arrangements:
  - (a) Kitselas is entitled to participate in any national or regional collaborative process of engagement established by Canada with Indigenous self-governments on the proposed changes to the publicly available federal policy on self-government fiscal arrangements; or
  - (b) where a regional or national collaborative process of engagement referred to in paragraph 11(a) does not exist, Canada will provide notice of the proposed change to the federal policy on self-government fiscal arrangements and provide an opportunity to meet and discuss its views or concerns respecting the proposed changes, prior to changes to the publicly available federal policy on self-government fiscal arrangements being made by Canada.
12. Unless it is otherwise agreed by the Parties in a Fiscal Arrangement or Fiscal Provision, the creation of the Kitselas Government, the recognition of Kitselas's law-making authority under this Agreement or the exercise of Kitselas's law-making authority does not create or imply any financial obligation or service delivery obligation on the part of any Party.
13. Any funding required for the purposes of any Fiscal Arrangement or Fiscal Provision required or permitted under any provision of this Agreement and that provides for financial obligations to be assumed by a Party is subject to the appropriation of funds:
  - (a) in the case of Canada, by the Parliament of Canada;
  - (b) in the case of British Columbia, by the Legislature of British Columbia; and,
  - (c) in the case of Kitselas, by the legislature of Kitselas.



# **PROCEDURES**



## CHAPTER 26 – ELIGIBILITY AND ENROLMENT

### Eligibility Criteria

1. Subject to paragraphs 2 and 3, an individual is eligible for enrolment under this Agreement if that individual is:
  - (a) of Kitselas ancestry by matrilineal or patrilineal descent;
  - (b) a member or entitled to be a member of the Kitselas Band;
  - (c) adopted as a Child under laws recognized in Canada, or by a Kitselas custom, by an individual eligible for enrolment under paragraphs 1(a) or 1(b);
  - (d) a descendant or an adopted Child of an individual eligible for enrolment under paragraphs 1(a), 1(b) or 1(c); or
  - (e) a spouse, including a common law spouse, of an individual eligible for enrolment under paragraphs 1(a), 1(b) or 1(c) and who is, after the Effective Date, accepted under a community acceptance process set out in Kitselas Law.
2. Except where an individual is eligible for enrolment under paragraph 1(b), to be eligible for enrolment under paragraph 1 individuals must have a Demonstrated Attachment to Kitselas.
3. On the day after the Effective Date, paragraphs 1 and 2 cease to be the source of the Eligibility Criteria and an individual is eligible for enrolment under this Agreement if that individual meets the Eligibility Criteria set out in the Kitselas Constitution.

### Changes to Kitselas Eligibility Criteria

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

- (c) that individuals who have applied for enrolment under this Agreement by the date immediately prior to the date that the amendments to the Eligibility Criteria come into effect will have their application determined in accordance with the Eligibility Criteria that would have applied prior to the date that the amendments to the Eligibility Criteria come into effect; and
  - (d) that individuals with Kitselas ancestry by matrilineal or patrilineal descent and a Demonstrated Attachment to Kitselas will always be eligible for enrolment.
6. Kitselas may make laws in relation to factors, consistent with the definition of Demonstrated Attachment, according to which an individual's Demonstrated Attachment to Kitselas is to be assessed.
7. Kitselas Law under paragraph 6 prevails to the extent of a Conflict with Federal or Provincial Law.

### **Applications for Enrolment**

8. An individual may:
- (a) apply
    - (i) before the Effective Date, to the Enrolment Committee; or
    - (ii) on or after the Effective Date, to Kitselas under paragraph 43(a),  
for enrolment under this Agreement;
  - (b) appeal a decision of the Enrolment Committee to the Enrolment Appeal Board; or
  - (c) seek judicial review of a decision of the Enrolment Appeal Board, or Kitselas under paragraph 43(a), as applicable,
- on the individual's own behalf, or on behalf of an individual whose affairs they have the legal authority to manage.
9. Each individual referred to in paragraph 8 has the burden of demonstrating that the Eligibility Criteria are met.

### **Other Land Claims Agreements**

10. Except as provided in this Chapter, an individual who is a beneficiary of, or has applied for enrolment under, another treaty or land claims agreement in Canada will not at the same time be enrolled under this Agreement.
11. Upon submitting an application to be enrolled under this Agreement, an individual must notify the Enrolment Committee, or Kitselas under paragraph 43(a), as applicable, if they are a beneficiary of, or have applied for enrolment under, another treaty or land claims agreement in Canada.

12. Subject to paragraphs 13 to 15, an individual described in paragraph 10 will be enrolled if they meet the Eligibility Criteria.
13. An individual who has been enrolled under paragraph 12 will:
  - (a) within 120 days after the Effective Date; or
  - (b) where the decision to accept their application to be enrolled under paragraph 12 is made after the Effective Date, within 120 days of receiving written notification from the Enrolment Committee, or Kitselas under paragraph 43(a), as applicable, that they have been enrolled,  
  
provide written evidence to the Enrolment Committee, or Kitselas under paragraph 43(a), as applicable, to demonstrate that they have ceased to be a beneficiary of, or have withdrawn their application for enrolment under, another treaty or land claims agreement in Canada.
14. If an individual enrolled under paragraph 12 fails to satisfy the requirements of paragraph 13, their name will be removed from the Enrolment Register.
15. An individual enrolled under paragraph 12 is not entitled to exercise any rights or receive any benefits under this Agreement until they have satisfied the requirements of paragraph 13.

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

16. For greater certainty, as of the Effective Date, upon becoming a Kitselas Citizen, an individual ceases to be a member or a registered Indian of any Band in accordance with paragraph 33 of Chapter 1 General Provisions.
17. An individual who was a member or a registered Indian of any Band other than the Kitselas Band will:
  - (a) within 120 days after the Effective Date; or
  - (b) where the decision to accept their application to be enrolled is made after the Effective Date, within 120 days of receiving notification from the Enrolment Committee, or Kitselas under paragraph 43(a), as applicable, that they have been enrolled,  
  
do all things necessary to request Canada to change their affiliation to Kitselas and to issue a new status card.

#### **The Enrolment Committee**

18. Kitselas will establish an enrolment committee consisting of three individuals appointed by Kitselas.
19. Kitselas will notify Canada and British Columbia of the names of the individuals appointed to the Enrolment Committee as soon as practicable after their appointment.

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

25. If an individual applies to have their name, or the name of an individual they have legal authority to manage, removed from the Enrolment Register, the Enrolment Committee will remove the name and notify the individual who made the application.

### **The Enrolment Appeal Board**

26. Canada and Kitselas will establish the Enrolment Appeal Board at a date agreed upon by the Parties.
27. Kitselas and Canada will each appoint one member to the Enrolment Appeal Board and will jointly appoint a third member, and the members will select a chairperson from among themselves.
28. A member of the Enrolment Committee will not be a member of the Enrolment Appeal Board.
29. An applicant or a Party may appeal by written notice to the Enrolment Appeal Board:
- (a) any decision of the Enrolment Committee made under paragraph 20(b) or 23; or
  - (b) any application deemed to be refused under paragraph 24.
30. The Enrolment Appeal Board will:
- (a) establish and publish its procedures and time limits, including a time limit for making enrolment decisions;
  - (b) hear and determine any appeal brought under paragraph 29 and decide whether the individual will be enrolled;
  - (c) conduct its hearings in public unless it determines in a particular case that there are reasons for confidentiality that outweigh the public interest in having an open hearing;
  - (d) provide written reasons for its decision to the applicant and the Parties;
  - (e) maintain a record of its decisions and provide it to the Enrolment Committee; and
  - (f) report on the appeal process to the Parties on request.
31. As of the Effective Date, the Enrolment Appeal Board may:
- (a) by summons require any individual to appear before the Enrolment Appeal Board as a witness and produce any relevant document in that individual's possession; and
  - (b) direct a witness to answer on oath or solemn affirmation any relevant question posed to the witness; and
  - (c) re-hear an appeal that was completed before the Effective Date on the basis of:
    - (i) new information; or

- (ii) such other factors as the Enrolment Appeal Board considers relevant including its ability to exercise its powers under paragraphs 31(a) and 31(b).
- 32. A judge of the Supreme Court of British Columbia or other court of competent jurisdiction may, on application by the Enrolment Appeal Board, enforce a summons or direction made under paragraphs 31(a) or 31(b).
- 33. Any individual appearing before the Enrolment Appeal Board may be represented by counsel or an agent.
- 34. Subject to paragraphs 31(c) and 36 to 39, all decisions of the Enrolment Appeal Board are final and binding.

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

- 35. No action lies or may be commenced against the Enrolment Appeal Board, the Enrolment Committee, any member of the Enrolment Appeal Board or any member of the Enrolment Committee for anything said or done or omitted to be said or done in good faith in the performance, or intended performance, of a duty or in the exercise of a power under this Chapter.

### **Judicial Review**

- 36. An applicant or a Party may apply to the Supreme Court of British Columbia to review a decision of the Enrolment Appeal Board, or Kitselas under paragraph 43(a), as applicable, on the grounds that the Enrolment Appeal Board, or Kitselas under paragraph 43(a):
  - (a) acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction;
  - (b) failed to observe procedural fairness;
  - (c) erred in law; or
  - (d) based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.
- 37. On an application for judicial review, the Supreme Court of British Columbia may either dismiss the application or set aside the decision and refer the matter back to the Enrolment Appeal Board, or Kitselas under paragraph 43(a), as applicable, for determination in accordance with any directions that the Supreme Court of British Columbia considers appropriate.
- 38. Where the Enrolment Appeal Board, or Kitselas under paragraph 43(a), as applicable, refuses or fails to hear or decide an appeal within a reasonable time, the applicant or a Party may apply to the Supreme Court of British Columbia for an order directing the Enrolment Appeal Board, or Kitselas under paragraph 43(a), to hear or decide the appeal in accordance with any directions that the Supreme Court of British Columbia considers appropriate.

39. An applicant or a Party may apply for judicial review within 60 days of receiving notification of the decision of the Enrolment Appeal Board, or Kitselas under paragraph 43(a), as applicable, or a longer time that may be determined by the Supreme Court of British Columbia.

### **Costs**

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

### **Enrolment as of the Effective Date**

The Enrolment Committee and the Enrolment Appeal Board will be dissolved when they have rendered decisions in respect of those applications or appeals commenced before the Effective Date, and on dissolution the Enrolment Committee and the Enrolment Appeal Board will provide their records to Kitselas and on request to British Columbia or Canada.

42. As of the Effective Date, Kitselas will:
- (a) be responsible for an enrolment process, including the application of the Eligibility Criteria, and the administrative costs of that process;
  - (b) maintain the Enrolment Register;
  - (c) provide a true copy of the Enrolment Register to Canada and British Columbia on request; and
  - (d) provide information concerning enrolment to Canada and British Columbia on request.

### **General**

43. Enrolment under this Agreement does not:
- (a) confer or deny rights of entry into Canada, Canadian citizenship, the right to be registered as an Indian under the *Indian Act*, or any of the rights or benefits under the *Indian Act*; or
  - (b) except as set out in this Agreement or in Federal or Provincial Law, impose any obligation on Canada or British Columbia to provide rights or benefits.



## CHAPTER 27 – RATIFICATION

### General

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

### Ratification of Agreement by Kitselas

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

### Ratification of the Kitselas Constitution

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

**Ratification Committee**

5. The Parties will establish a ratification committee, consisting of one representative appointed by each of the Parties, to be responsible for the Kitselas ratification processes.
6. The Ratification Committee will:
  - (a) establish and publish ratification procedures and time limits in relation to the Constitution Ratification Vote and the Treaty Ratification Vote;
  - (b) take reasonable steps to provide an opportunity for individuals who may be eligible to vote to review the Kitselas Constitution before the Constitution Ratification Vote and this Agreement before the Treaty Ratification Vote;
  - (c) prepare and publish:
    - (i) at least 30 days before the first day of general voting for the Constitution Ratification Vote, a Constitution Voters List; and
    - (ii) at least 30 days before the first day of general voting for the Treaty Ratification Vote, a Treaty Voters List,  
  
by determining whether each individual whose name is provided to it by the Enrolment Committee under paragraph 20(l) of Chapter 26 Eligibility and Enrolment is eligible to vote under paragraph 8;
  - (d) update the Constitution Voters List for the Constitution Ratification Vote and the Treaty Voters List for the Treaty Ratification Vote by:
    - (i) on an ongoing basis until the close of polls on the last day of voting or as provided for in paragraph 10(a), adding to the Constitution Voters List or the Treaty Voters List, as applicable:
      1. the name of each individual whose name has been removed under paragraph 6(d)(ii)1 and who has provided contact information to Kitselas or the Ratification Committee;
      2. the name of each individual whom the Ratification Committee determines to be eligible to vote under paragraph 8; and
      3. the name of each individual who casts a ballot under paragraph 9 and whose ballot is counted under paragraph 10; and
    - (ii) removing from the Constitution Voters List or the Treaty Voters List, as applicable:

1. the name of each individual whom Kitselas has requested be removed before the close of polls on the last day of voting due to an inability to contact that individual, provided that Kitselas provides documentation of the steps taken to contact the individual and the Ratification Committee is satisfied that those steps are reasonable;
  2. the name of each individual who did not vote and who provides, within seven days of the last day of voting, a letter from a qualified medical practitioner that the individual was physically or mentally incapacitated to the point that they could not have voted on the dates set for general voting;
  3. the name of each individual who died on or before the last day of voting without having voted;
  4. the name of each individual who has applied, or on whose behalf an application has been made, before the close of polls on the last day of voting, to have their name removed from the Enrolment Register by the Enrolment Committee under paragraph 25 of Chapter 26 Eligibility and Enrolment, provided the individual has not already voted; and
  5. the name of each individual who has applied or on whose behalf an application has been made, before the close of polls on the last day of voting, to have their name removed, provided the individual has not already voted.
- (e) after updating the Constitution Voters List under paragraph 6(d), preparing and publishing a final version of the Constitution Voters List;
  - (f) after updating the Treaty Voters List under paragraph 6(d), preparing and publishing a final version of the Treaty Voters List;
  - (g) approve the form and content of the ballots;
  - (h) authorize and provide general direction to voting officers, including the establishment of polling stations and rules that may include advance polling and mail-in ballots;
  - (i) publish the dates of each Ratification Vote and the location of the polling stations;
  - (j) conduct each Ratification Vote on the day or days determined by the Ratification Committee;
  - (k) count the votes on the ballots cast in each Ratification Vote and immediately provide the results to the Parties;
  - (l) publish the results of each Ratification Vote following the Ratification Vote count; and

- (m) prepare and provide to the Parties a written report on the outcome of each Ratification Vote within 90 days following the last day of voting for Ratification Vote.

7. For greater certainty, a Ratification Vote may include voting by electronic means.

### **Eligible Voters**

8. An individual is eligible to vote in a Ratification Vote if the individual is:

- (a) enrolled under Chapter 26 Eligibility and Enrolment; and
- (b) at least 18 years of age on the last day of voting in that Ratification Vote.

9. An individual whose name is not included on the Constitution Voters List or the Treaty Voters List may vote in the applicable Ratification Vote if:

- (a) the Enrolment Committee provides a voting officer with confirmation that the individual submitted a completed enrolment application to the Enrolment Committee; and
- (b) the individual provides evidence satisfactory to a voting officer that the individual is at least 18 years of age on the last day of voting in that Ratification Vote.

10. If the Enrolment Committee notifies the Ratification Committee that an individual referred to in paragraph 9 meets the Eligibility Criteria:

- (a) the name of the individual will be added to the Constitution Voters List or the Treaty Voters List, as applicable, within a timeframe established by the Ratification Committee; and
- (b) the ballot of the individual will be counted for the purposes of the votes under paragraphs 3 and 4.

### **Costs**

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

### **Ratification by Canada**

12. Ratification of this Agreement by Canada requires:

- (a) that this Agreement be signed by a Minister authorized by the federal Cabinet; and
- (b) the coming into force of Federal Treaty Implementation Legislation.

### **Ratification by British Columbia**

13. Ratification of this Agreement by British Columbia requires:

- (a) that this Agreement be signed by a Minister authorized to do so; and
- (b) the coming into force of Provincial Treaty Implementation Legislation.



## CHAPTER 28 – IMPLEMENTATION

### General

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

### Implementation Plan

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

### Implementation Committee

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

- (a) be a forum for the Parties to:
  - (i) discuss the implementation of this Agreement; and
  - (ii) attempt to resolve any implementation issues arising among the Parties in relation to this Agreement;
- (b) establish terms of reference, including procedures and operating guidelines;
- (c) review the Implementation Plan before the expiry of the Implementation Plan, and advise the Parties on the further implementation of this Agreement; and
- (d) address other matters agreed to by the Parties.

## CHAPTER 29 – DISPUTE RESOLUTION

### General

1. The Parties share the following objectives:
  - (a) to cooperate with each other to develop harmonious working relationships;
  - (b) to prevent, or, alternatively, to minimize Disagreements;
  - (c) to identify Disagreements quickly and resolve them in the most expeditious and cost-effective manner possible; and
  - (d) to resolve Disagreements in a non-adversarial, collaborative and informal atmosphere.
2. Except as otherwise provided, Participants may agree to vary a procedural requirement in this Chapter, or in Appendices O-1 to O-5, as it applies to a particular Disagreement.
3. Participants may agree in writing, or the Supreme Court of British Columbia on application may order, that a time limit in this Chapter or in Appendices O-1 to O-5 be:
  - (a) abridged; or
  - (b) extended, despite the expiration of that time limit.

### Scope: When This Chapter Applies

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

6. This Chapter does not apply to:
  - (a) an agreement or other document made between or among the Parties that is ancillary, subsequent, or supplemental to this Agreement unless the Parties have agreed that this Chapter applies to that agreement or other document;
  - (b) the Implementation Plan; or
  - (c) disputes, where excluded from this Chapter.
7. For greater certainty, this Chapter does not apply to any statutory decisions, except where there is an obligation under this Agreement to make a statutory decision, including decisions relating to the issuance of tenures, licences or other authorizations, such that paragraph 5(a) applies.
8. Nothing in this Chapter limits the application of a dispute resolution process, under any Federal or Provincial Law or Kitselas Law, to a dispute involving a person if that dispute is not a Disagreement.
9. Nothing in Federal or Provincial Law limits a Party's ability to refer a Disagreement to a process under this Chapter.

#### **Stages to Resolve Disagreements**

10. The Parties intend that most Disagreements will be resolved by informal discussions between or among the Parties, without needing to invoke this Chapter.
11. Except as otherwise provided in this Agreement, Disagreements not resolved informally will progress, until resolved, through the following stages:
  - (a) Stage One: formal, unassisted efforts to resolve a Disagreement in collaborative negotiations under Appendix O-1;
  - (b) Stage Two: structured efforts to resolve a Disagreement with the assistance of a Neutral Individual, who has no authority to resolve the Disagreement, in a facilitated process under Appendix O-2, O-3 or O-4 as applicable; and
  - (c) Stage Three: final adjudication of a Disagreement in arbitral proceedings under Appendix O-5 or in judicial proceedings.
12. Except as otherwise provided in this Agreement, no Party may refer a Disagreement to final adjudication in Stage Three without first proceeding through Stage One and Stage Two.
13. Nothing in this Chapter prevents a Party from commencing arbitral or judicial proceedings at any time:
  - (a) to preserve a right to commence proceedings due to the expiration of a limitation period;  
or

- (b) to obtain interlocutory or interim relief that is otherwise available pending resolution of the Disagreement under this Chapter.

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

14. If a Disagreement is not resolved by informal discussion, and a Party wishes to invoke this Chapter, that Party will deliver written notice, as required under Appendix O-1, to the other Parties, requiring collaborative negotiations to commence.
15. Upon receiving a notice under paragraph 14, a Party identified in that notice as a Disputing Party will participate in the collaborative negotiations.
16. A Party not identified in the notice under paragraph 14 as a Disputing Party may become a Participant in the collaborative negotiations by giving written notice to the Disputing Parties, preferably before the collaborative negotiations commence.
17. If the Parties have commenced negotiations in the circumstances described in paragraph 5(c), then, for all purposes under this Chapter, those negotiations are deemed collaborative negotiations and the particular matter under negotiation will be considered a Disagreement.
18. Collaborative negotiations terminate in the circumstances set out in Appendix O-1.

### **Stage Two: Facilitated Processes**

19. Within 15 days of collaborative negotiations terminating without resolving a Disagreement, a Disputing Party may commence a facilitated process by delivering notice to the other Parties.
20. Notice under paragraph 19:
  - (a) will identify the Disputing Parties and include a summary of the particulars of the Disagreement; and
  - (b) may propose a particular facilitated process described in paragraph 23.
21. Upon receiving a notice under paragraph 19, a Disputing Party will participate in a facilitated process described in paragraph 23.
22. Within 15 days of delivery of a notice under paragraph 19, a Party not identified as a Disputing Party in that notice may become a Participant in the facilitated process by giving written notice to the Disputing Parties.
23. Within 30 days after delivery of a notice under paragraph 19, the Disputing Parties will attempt to agree to use one of the following processes:
  - (a) mediation under Appendix O-2;
  - (b) technical advisory panel under Appendix O-3;
  - (c) neutral evaluation under Appendix O-4; or

(d) any other non-binding dispute resolution process assisted by a Neutral Individual, and, if they fail to agree, they will be deemed to have selected mediation under Appendix O-2.

24. A facilitated process terminates:

- (a) in the circumstances set out in the applicable part of Appendices O-2 to O-4; or
- (b) as agreed by the Disputing Parties, if Appendices O-2 to O-4 do not apply.

### **Negotiating Conditions**

25. In order to enhance the prospect of resolving a Disagreement, the Participants in collaborative negotiations or a negotiation component of a facilitated process will:

- (a) where a Participant requests, disclose sufficient information and documents in a timely manner to enable a full examination of the subject matter being negotiated;
- (b) make every reasonable effort to appoint negotiating representatives with sufficient authority to resolve the Disagreement or with ready access to such authority; and
- (c) negotiate in good faith.

### **Settlement Agreement**

26. Any agreement reached in a process under this Chapter is binding only on the Parties who have signed the agreement and will be:

- (a) in writing;
- (b) signed by authorized representatives of the Parties to the agreement; and
- (c) delivered to all Parties.

27. An agreement under paragraph 26 only requires the agreement of the Disputing Parties.

### **Stage Three: Adjudication – Arbitration**

28. Disagreements not otherwise resolved under Stage One or Stage Two will be referred to arbitration for final resolution in accordance with Appendix O-5 when:

- (a) the Disagreement arises out of any provision of this Agreement that provides that a matter will be “finally determined by arbitration”; and
- (b) a Disputing Party delivers a notice to all Parties as required under Appendix O-5.

29. Disagreements, other than Disagreements referred to in paragraph 28, will be referred to and finally resolved by arbitration in accordance with Appendix O-5 if the Disputing Parties agree in writing.

30. If there are only two Disputing Parties and they make a written agreement under paragraph 29, those two Disputing Parties will deliver a copy of the agreement to the Party that is not a Disputing Party.
31. A Party will be added as a Participant in the arbitration of a Disagreement, whether or not that Party has participated in Stage One or Stage Two, upon delivering written notice to the Disputing Parties within 15 days of receiving a notice under paragraph 28(b) or a copy of a written agreement under paragraph 30.
32. Notwithstanding paragraph 31, at any time an Arbitral Tribunal may, of its own accord or on application of a Party, make an order adding a Party as a Participant, if the Arbitral Tribunal considers that:
- (a) the Disputing Parties will not be unduly prejudiced; or
  - (b) the issues raised in the arbitration are materially different from those identified in the notice to arbitrate under paragraph 28 or the written agreement to arbitrate in paragraph 29,

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

### **Effect of Arbitral Award**

33. Subject to paragraph 34, an Arbitral Award is final and binding on all Parties whether or not a Party was a Participant in the arbitration.
34. An Arbitral Award is not binding on a Party that was not a Participant in the arbitration if:
- (a) that Party did not receive copies of:
    - (i) the notice to arbitrate under paragraph 28(b) or the written agreement to arbitrate under paragraph 30; or
    - (ii) the documents referenced in Sections 67 to 71 of Appendix O-5; or
  - (b) the Arbitral Tribunal refused to add the Party as a Participant to the arbitration under paragraph 32.

### **Application of Legislation Relating to Arbitration**

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

**Stage Three: Adjudication - Judicial Proceedings**

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

**Costs**

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

## CHAPTER 30 – TRANSITION

### General

1. The *Indian Act* applies, with any modifications that the circumstances require, to the estate of an individual who:
  - (a) died testate or intestate before the Effective Date; and
  - (b) at the time of death, was an Indian of the Kitselas Band.
2. Before the Effective Date, Canada will take reasonable steps to:
  - (a) notify in writing all Indians of the Kitselas Band who have deposited wills with the Minister; and
  - (b) provide information to all Indians of the Kitselas Band who have not deposited wills with the Minister and to all individuals who may be eligible for enrolment under the Agreement,

that their wills may not be valid after the Effective Date and that their wills should be reviewed to ensure validity under Provincial Law.
3. Section 51 of the *Indian Act* applies after the Effective Date, with any modifications that the circumstances require, to the property and estate of an individual whose property was administered under section 51 of the *Indian Act* immediately before the Effective Date, until that individual is declared to be no longer incapable under the *Patients Property Act*.
4. The *Indian Act* applies, with any modifications that the circumstances require, to the estate of a Kitselas Citizen:
  - (a) who executed a will in a form that complies with subsection 45(2) of the *Indian Act* before the Effective Date;
  - (b) whose property was administered under section 51 of the *Indian Act* immediately before the Effective Date and at the time of death; and
  - (c) who did not execute a will that complies with the requirements as to form and execution under Provincial Law during a period after the Effective Date in which that individual was declared to be no longer incapable under the *Patients Property Act*.

5. Sections 52 and 52.2 to 52.5 of the *Indian Act* apply, with any modifications that the circumstances require, to the administration of any property to which a Kitselas Child is entitled, where the Minister was administering that property under the *Indian Act* immediately before the Effective Date, until the duties of the Minister in relation to the property have been discharged.

**Continuation of *Indian Act* By-laws and *Kitselas Reserve Lands Management Act***

6. On Former Kitselas Indian Reserves:
  - (a) the by-laws of the Kitselas Band;
  - (b) the *Kitselas Reserve Lands Management Act*; and
  - (c) any law made under the *Kitselas Reserve Lands Management Act*,that were in effect immediately before the Effective Date, continue to have effect for 180 days after the Effective Date.
7. As of the Effective Date, the relationship between an enactment referred to in paragraph 6 and Federal and Provincial Law will be governed by the provisions of this Agreement governing the relationship between Kitselas Law and Federal and Provincial Law in relation to the subject matter of the enactment.
8. Kitselas may repeal, but not amend, an enactment referred to in paragraph 6.
9. Nothing in this Agreement precludes a person from challenging the validity of an enactment referred to in paragraph 6.

**Transfer of Band Assets**

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

## CHAPTER 31 – AMENDMENT

### General

1. Any Party may propose an amendment to this Agreement.
2. Before proceeding with an amendment to this Agreement proposed under paragraph 1, the Parties will attempt to find other means to address the interests of the Party proposing the amendment.
3. Except as provided under paragraphs 9 and 10, amendments to this Agreement require the consent of the Parties.
4. Where the Parties agree to amend this Agreement, they will determine the form and wording of the amendment, including additions, substitutions and deletions.
5. Except as provided under paragraphs 9 and 10, the Parties will provide consent to an amendment to this Agreement in the following manner:
  - (a) Canada, by order of the Governor in Council;
  - (b) British Columbia, by order of the Lieutenant Governor in Council; and
  - (c) Kitselas, by a resolution adopted by a majority of the elected members of the legislative branch of the Kitselas Government.
6. If federal or provincial legislation is required to give effect to an amendment to this Agreement, Canada or British Columbia, as applicable, will take all reasonable steps to enact the legislation.
7. Unless the Parties otherwise agree, an amendment to this Agreement takes effect once the consent requirements under paragraph 5 are complete and any legislation referred to in paragraph 6, if applicable, has been brought into force.
8. Each Party will give notice to the other Parties when it has given its consent in accordance with paragraph 5 and when it has brought into force any legislation referred to in paragraph 6, if applicable.
9. Where this Agreement provides that the Parties will amend this Agreement upon the happening of an event:
  - (a) the requirements for consent referred to in paragraphs 3 and 5 will not apply;
  - (b) paragraph 7 will not apply;
  - (c) as soon as possible after the happening of the event:

- (i) the Parties will take all steps necessary to conclude and give effect to the amendment including those steps referred to in paragraph 4 and, if applicable, paragraph 6; and
  - (ii) each Party will provide notice to the other Parties when it has completed all of its respective requirements to conclude and give effect to the amendment; and
  - (d) the amendment will take effect on the date agreed to by the Parties or if no date is agreed to, on the date that the last Party provides notice to the other Parties that it has completed all of its requirements to conclude and give effect to the amendment.
10. Notwithstanding paragraphs 2 to 9, where:
- (a) this Agreement provides that:
    - (i) the Parties, or any two of them, will negotiate and attempt to reach agreement in respect of a matter that will result in an amendment to this Agreement; and
    - (ii) if agreement is not reached, the matter will be finally determined by arbitration in accordance with Chapter 29 Dispute Resolution; and
  - (b) those Parties have reached an agreement or the matter has been finally determined by arbitration,
- this Agreement will be deemed to be amended on the date that the agreement or the decision of the arbitrator takes effect, as applicable.
11. In respect of amendments contemplated by paragraph 10, the applicable Parties will:
- (a) provide notice to any Party not a party to an agreement reached or an arbitrator's decision, as applicable; and
  - (b) agree on the form and wording of the amendment.
12. If an arbitrator makes a decision under paragraph 10 and the applicable Parties are unable to agree on the form and wording of the deemed amendment, the form and wording of the deemed amendment will be finally determined by the arbitrator.

### **Implementation of Amendments**

13. The Parties will take the necessary steps to implement an amendment to this Agreement as soon as possible after the amendment takes effect.
14. Amendments to this Agreement will be:
- (a) published by Canada in the Canada Gazette;
  - (b) published by British Columbia in the British Columbia Gazette; and

- (c) deposited by Kitselas in the public registry of Kitselas Law referred to in paragraph 16(a) of Chapter 8 Self-Government.
- 15. For the purposes of paragraph 14(b), where an amendment to this Agreement relates to the description of Kitselas Lands, including an amendment resulting from any re-surveying of Kitselas Lands or any addition or removal of land from Kitselas Lands, British Columbia may at its option:
  - (a) publish a new mapsheet in the British Columbia Gazette; or
  - (b) provide a website link in the British Columbia Gazette where the new mapsheet may be accessed.



# **DEFINITIONS**



## CHAPTER 32 – DEFINITIONS

In this Agreement:

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

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

“**Adjudicative Body**” means a body, which is a Kitselas Institution, comprised of one or more Adjudicators, established or authorized under Kitselas Law in paragraph 49(a) of Chapter 9 Administration of Justice;

“**Adjudicator**” means an individual appointed, authorized or designated by Kitselas in accordance with Kitselas Law under paragraph 49(b) of Chapter 9 Administration of Justice;

“**Agreement**” means this Kitselas Treaty: A Living Agreement;

“**Airport West Lands**” means the parcel identified as “Airport West Lands” in Appendix F Part 1;

“**Allocation**” means, in respect of the Kitselas Right to Harvest Wildlife:

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

if required as a conservation measure;

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

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

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

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

“**Aquifer**” means:

- (a) a geological formation;
- (b) a group of geological formations; or
- (c) a part of one or more geological formations,

that is Groundwater-bearing and capable of storing, transmitting and yielding Groundwater;

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

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

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

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

“**Atlas**” means the Kitselas Treaty: A Living Agreement – Atlas, as signed by the Parties, which consists of the authoritative maps of the following areas:

- (a) Kitselas Harvest Area;
- (b) Impact Assessment Area;
- (c) Kitselas Migratory Birds Harvest Area;
- (d) Kitselas Fishing Area; and
- (e) Red Bluff Oolichan Harvest Site,

which are also shown at a reduced scale for illustrative purposes in Appendix A, Appendix J Part 2 and Appendix K Parts 1 and 2;

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

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

- (a) to ensure the preservation of Environmental Flow Needs;
- (b) to continue navigability;
- (c) for Water Licences (active or applied for) with an earlier date of precedence; and
- (d) for Water Licences already drawn from the Kitselas Water Reservations,

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

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

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

“**Base Period**” means, for a Non-Allocated Species, the duration of time immediately preceding the date of a proposal to establish a Kitselas Fish Allocation made under paragraph 53 of Chapter 21 Fish, as agreed to by the Parties;

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

“**British Columbia Land Surveyor**” has the same meaning as “practising land surveyor” in the *Land Surveyors Act*;

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

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

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

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

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

“**Child Care**” means the care, supervision, social or educational training, including pre-school education, or physical or mental rehabilitative therapy of children under the age of 13 years, with or without charge, by caregivers other than the child’s parent or the person with whom the child resides and who stands in the place of the child’s mother or father, but does not include an educational program provided under the *School Act*, the *Independent School Act* or Kitselas Law under paragraph 108 of Chapter 8 Self-Government;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**“Custodial Arrangements”** means arrangements between Kitselas and the Royal British Columbia Museum, relating to curation, care, loan or potential sharing of Kitselas Artifacts in the collection of the Royal British Columbia Museum, which are informed by Kitselas protocols and include meaningful participation in decisions and activities relating to:

- (d) conservation;
- (e) research;
- (f) interpretation;
- (g) display;
- (h) storage; and
- (i) collaborative initiatives involving Kitselas Citizens;

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

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

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

**“Designated Harvester”** means an individual designated under paragraph 42 of Chapter 17 Wildlife, paragraph 40 of Chapter 18 Migratory Birds or paragraph 35 of Chapter 19 Gathering, as applicable;

**“Designated Harvester Agreement”** means an agreement entered into by Kitselas and British Columbia or Canada, as applicable, in accordance with paragraph 44 of Chapter 17 Wildlife, paragraph 42 of Chapter 18 Migratory Birds or paragraph 34 of Chapter 19 Gathering, as applicable;

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

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

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

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

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

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

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

“**Domestic Use**” means, in respect of Timber, use for traditional or cultural activities, including totem poles, canoes, or masks, or the construction of, or heating for, residential dwellings for Kitselas Citizens, cultural buildings or community buildings, but does not include the use of Timber for trade, barter or sale, except as provided in paragraph 24 of Chapter 20 Timber for Domestic Use;

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

“**Effective Date**” means the date, agreed to by the Parties, on which the Agreement takes effect;

“**Eligibility Criteria**” means:

- (f) prior to and on the Effective Date, the criteria for enrolment under this Agreement set out in paragraphs 1 and 2 of Chapter 26 Eligibility and Enrolment; and
- (g) after the Effective Date, the criteria for enrolment under this Agreement set out in the Kitselas Constitution in accordance with paragraph 3 of Chapter 26 Eligibility and Enrolment;

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

- (a) is eligible to vote under paragraph 8 of Chapter 27 Ratification; or
- (b) votes under paragraph 9 and whose ballot is counted under paragraph 10 of Chapter 27 Ratification;

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

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

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

**“Enrolment Committee”** means the enrolment committee established in accordance with paragraph 18 of Chapter 26 Eligibility and Enrolment;

**“Enrolment Register”** means the enrolment register established under paragraph 20(c) of Chapter 26 Eligibility and Enrolment;

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

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

**“Environmental Assessment”** means an assessment of the effects of a Provincial Project;

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

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

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

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

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

- (a) essential to the day-to-day operations of Kitselas or a Kitselas Public Institution; or

- (b) essential to the delivery of any programs and services by Kitselas or a Kitselas Public Institution;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**“Fish”** means:

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

**“Fisheries Operational Guidelines”** means the guidelines established under paragraph 145 of Chapter 21 Fish;

**“Fishery Guardian”** has the same meaning as “fishery guardian” in the *Fisheries Act*;

**“Fishery Officer”** means a “fishery officer” as defined in the *Fisheries Act* and designated by the Minister of Fisheries and Oceans;

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

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

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

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

**“Former Private Fee Simple Lands”** means the lands described in Appendix B-4 Part 1 and shown for illustrative purposes in Appendix B-4 Part 2;

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

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

**“Gitaws”** means the Kitselas Lands identified as “Gitaws” in Appendix B-3 Part 2 Map 21;

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

- (a) identified for the development of Expenditure Need Methodologies in Canada’s Collaborative Self Government Fiscal Policy (2019), as amended or replaced, including:
  - (i) governance and administration;
  - (ii) modern treaty management;
  - (iii) economic development;
  - (iv) culture, language and heritage;
  - (v) stewardship of lands and resources, which may include fish and fish habitat;
  - (vi) environmental management;
  - (vii) infrastructure maintenance and replacement;
  - (viii) housing;
  - (ix) education;
  - (x) social development; or
  - (xi) health; or
- (b) otherwise agreed to in writing by Canada and Kitselas for development of an Expenditure Need Methodology;

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

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

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

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

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

“**Highway 16 Lands**” means those lands identified as “Highway 16 Lands” in Appendix B-2 Part 2 Maps 1, 2 and 3;

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

“**Impact Assessment Area**” means the area identified in the Atlas as the “Impact Assessment Area” and shown for illustrative purposes in Appendix J Part 2;

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

“**Implementation Plan**” means the plan described in Chapter 28 Implementation;

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

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

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

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

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

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

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

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

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

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

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

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

**“Kitselas Annual Fishing Plan”** means a Kitselas annual fishing plan described in paragraph 105 of Chapter 21 Fish;

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

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

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

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

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

**“Kitselas Child”** means a Child who is a Kitselas Citizen;

**“Kitselas Citizen”** means an individual who is enrolled under this Agreement;

**“Kitselas Coastal Site Areas”** means those provincial Crown lands identified as “Kitselas Coastal Site Areas” in Appendix E;

**“Kitselas Coastal Site Conservancy Lands”** means those Kitselas Coastal Site Lands shown for illustrative purposes in Appendix D Part 3 that immediately before the Effective Date were located within a Provincial Conservancy and, following the completion of Adequate Surveys of those lands, the lands identified in those survey plans;

**“Kitselas Coastal Site Lands”** means those lands shown for illustrative purposes in Appendix D Part 2 and, following the completion of Adequate Surveys of those lands, the lands identified in those survey plans;

**“Kitselas Commercial Harvest Agreement”** means the agreement described in paragraph 166 of Chapter 21 Fish;

**“Kitselas Community Fishing Area”** means the area identified in Appendix L;

**“Kitselas Community Watershed Lands”** means the Kitselas Lands identified as “Kitselas Community Watershed Lands” in Appendix N;

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

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

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

**“Kitselas Court”** means a court constituted in accordance with Kitselas Law under paragraph 81 of Chapter 9 Administration of Justice;

**“Kitselas Court Judge”** means a judge appointed by Kitselas in accordance with paragraph 81(b) of Chapter 9 Administration of Justice;

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

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

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

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

**“Kitselas Fish Allocation”** means:

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

**“Kitselas Fishing Area”** means the area identified in the Atlas as the “Kitselas Fishing Area” and shown for illustrative purposes in Appendix K Part 2;

**“Kitselas Fishing Capacity Fund”** means the funding provided under paragraph 168 of Chapter 21 Fish;

**“Kitselas Fishing Right”** means the right to harvest Fish and Aquatic Plants set out in paragraphs 1 and 70 of Chapter 21 Fish;

**“Kitselas Government”** means the government of Kitselas referred to in paragraph 5 of Chapter 8 Self-Government and the Kitselas Constitution;

**“Kitselas Harvest Area”** means the area identified in the Atlas as the “Kitselas Harvest Area” and shown for illustrative purposes in Appendix A, but does not include lands that are administered or occupied by federal departments or agencies or areas temporarily being used for military training from the time that notice has been given to Kitselas until the temporary use is completed;

**“Kitselas Harvest Document”** means any fishing licence, permit or document, or amendments thereto, issued by the Minister under Federal or Provincial Law in respect of the Kitselas Fishing Right;

**“Kitselas Heritage Site”** means a Heritage Site of importance to Kitselas located within the Kitselas Harvest Area;

**“Kitselas Institution”** means the Kitselas Government or a Kitselas Public Institution;

**“Kitselas Joint Fisheries Committee”** means the committee established under paragraph 111 of Chapter 21 Fish;

**“Kitselas Lands”** means those lands identified in Appendix B;

**“Kitselas Law”** means a law made under Kitselas law-making authority set out in this Agreement and includes the Kitselas Constitution;

**“Kitselas Migratory Birds Harvest Area”** means the area identified in the Atlas as the “Kitselas Migratory Birds Harvest Area” and shown for illustrative purposes in Appendix K Part 1, but does not include lands that are administered or occupied by federal departments or agencies or areas temporarily being used for military training from the time that notice has been given to Kitselas until the temporary use is completed;

**“Kitselas Private Lands”** means Kitselas Lands that have been designated as Kitselas Private Lands under paragraphs 2 and 3 of Chapter 7 Access;

**“Kitselas Project”** means a project on Kitselas Lands that is subject to an environmental assessment under Kitselas Law, but does not include a Provincial Project;

**“Kitselas Prosecutor”** means an individual appointed in accordance with Kitselas Law under paragraph 59 of Chapter 9 Administration of Justice;

**“Kitselas Public Institution”** means a body, board, commission or any other similar entity, including societies and trusts, established by Kitselas under Kitselas Law, including a school board or health board, and, for greater certainty, whose principal function is to provide public programs or services reasonably similar to those provided by federal, provincial or municipal governments, rather than to engage in for-profit commercial activities;

**“Kitselas Public Officer”** means:

- (a) a member, commissioner, director, or trustee of a Kitselas Public Institution;
- (b) a director, officer or employee of a Kitselas Corporation whose principal function is to provide public programs or services reasonably similar to those provided by federal, provincial or municipal governments, rather than to engage in commercial activities;
- (c) an officer or employee of Kitselas or a Kitselas Institution;
- (d) an election official under Kitselas Law;
- (e) a Kitselas Enforcement Officer, an Adjudicator, or Kitselas Prosecutor; or
- (f) a volunteer who participates in the delivery of services by Kitselas, a Kitselas Institution, or a Kitselas Corporation referred to in paragraph (b), under the supervision of an officer or employee of Kitselas, a Kitselas Institution, or a Kitselas Corporation referred to in paragraph (b);

**“Kitselas Reserve Lands Management Act”** means Kitselas’s land code approved by Kitselas in accordance with the Framework Agreement on First Nation Land Management;

**“Kitselas Right to Gather Plants”** means the right of Kitselas to gather Plants set out in paragraph 1 of Chapter 19 Gathering;

**“Kitselas Right to Harvest Migratory Birds”** means the right of Kitselas to harvest Migratory Birds set out in paragraph 1 of Chapter 18 Migratory Birds;

**“Kitselas Right to Harvest Renewable Resources”** means the right of Kitselas to harvest Renewable Resources set out in paragraph 24 of Chapter 13 Parks and Planning;

**“Kitselas Right to Harvest Timber”** means the right to harvest Timber for Domestic Use set out in paragraph 1 of Chapter 20 Timber for Domestic Use;

“**Kitselas Right to Harvest Wildlife**” means the right of Kitselas to harvest Wildlife set out in paragraph 1 of Chapter 17 Wildlife;

“**Kitselas Road**” means any road on Kitselas Lands under the administration and control of Kitselas;

“**Kitselas Spoksuut Park**” means the Kitselas Lands identified as “Kitselas Spoksuut Park” in Appendix B-3 Part 2 Map 42;

“**Kitselas Treaty: A Living Agreement**” means this agreement between Kitselas, Canada and British Columbia including the Atlas and all Schedules and Appendices to this agreement;

“**Kitselas Wagon Road**” means the Provincial Road and related 30-metre right-of-way existing on the Effective Date shown for illustrative purposes as the “Kitselas Wagon Road” in Appendix B-2 Part 2 Map 5;

“**Kitselas Wagon Road Crown Corridor**” means the 30-metre Crown Corridor shown for illustrative purposes as the “Kitselas Wagon Road Crown Corridor” in Appendix B-2 Part 2 Map 5, as may be amended in accordance with paragraph 15 of Chapter 6 Crown Corridors, Roads and Rights of Way;

“**Kitselas Water Reservation**” means the water reservations established under the *Water Sustainability Act* in favour of Kitselas:

- (a) of water from Streams, as set out in paragraph 1 of Chapter 14 Water Resources; and
- (b) of Groundwater from Aquifers, as determined in accordance with paragraphs 25 to 27 of Chapter 14 Water Resources;

“**Kitsumkalum**” means the Kitsumkalum Band or any successor to that entity;

“**Kleanza Ecological Area**” means the Kitselas Lands identified in Appendix B-3 Part 2 Maps 21 and 21(a);

“**Land Title Office**” means a Land Title Office continued or established under the *Land Title Act*;

“**Local Government**” has the same meaning as “local government” in the *Local Government Act*;

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

“**Marine Protected Area**” means a marine protected area as described in the *Oceans Act*;

“**Migratory Birds**” means “migratory birds” as defined under Federal Law enacted further to international conventions, and for greater certainty, includes their eggs and inedible by-products, feathers and down;

“**Mineral**” means an ore of metal, or natural substance that can be mined, and includes rock, dimension stone, and other materials from mine tailings, dumps and previously mined deposits of minerals;

“**Minister**” means the federal or provincial minister having responsibility for the exercise of powers in relation to the matter in question and any individual with authority to act in relation to the matter in question;

“**Municipal Road**” means a highway that is vested, or the right to possession of which is vested, in a municipality in accordance with section 35 of the *Community Charter*;

“**National Historic Site**” means a site, building, or other place of national historic interest or significance commemorated under the *Historic Sites and Monuments Act*, administered by the Parks Canada Agency, including a national historic site of Canada to which the *Canada National Parks Act* applies;

“**National Marine Conservation Area**” means lands and water areas named and described in the schedules to the *Canada National Marine Conservation Areas Act* and administered under Federal Law and includes a national marine conservation area reserve;

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

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

“**NAV CANADA**” means the “Corporation” as that term is defined in the *Civil Air Navigation Services Commercialization Act*;

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

“**Neutral Individual**” means an individual appointed to assist the Participants to resolve a Disagreement and includes an arbitrator;

“**Non-Allocated Species**” means a species or stock of Fish or Aquatic Plant for which a Kitselas Fish Allocation has not been established under this Agreement;

“**Non-Citizen Resident**” means an individual who has reached the age of majority under Provincial Law, is ordinarily resident on Kitselas Lands and is not a Kitselas Citizen;

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

“**Nuclear Substance**” means:

- (a) deuterium, thorium, uranium or an element with an atomic number greater than 92;
- (b) a derivative or compound of deuterium, thorium, uranium or of an element with an atomic number greater than 92;

- (c) a radioactive nuclide;
- (d) a substance that is prescribed as being capable of releasing nuclear energy or as being required for the production or use of nuclear energy;
- (e) a radioactive by-product of the development, production or use of nuclear energy; and
- (f) a radioactive substance or radioactive thing that was used for the development or production, or in connection with the use, of nuclear energy;

**“Old Mining Sites”** means those areas of former provincial Crown land identified as “Old Mining Sites” in Appendix B-3 Part 2 Maps 6, 11, 13, 17, 18, 19 and 21;

**“Orderly Process”** means the process set out in paragraphs 27 to 35 of Chapter 2 Periodic Renewal and Orderly Process;

**“Other Indigenous Nation”** means, for the purposes of Chapter 16 Co-Management, an entity that holds established or asserted rights recognized and affirmed by section 35 of the *Constitution Act, 1982* within the Kitselas Harvest Area, other than Kitselas;

**“Parties”** means Kitselas, Canada and British Columbia and **“Party”** means any one of them;

**“Participant”** means a Party that:

- (a) is a Disputing Party;
- (b) is not a Disputing Party but chooses to participate in a process described in Chapter 29 Dispute Resolution to resolve a Disagreement; or
- (c) is ordered to participate in an arbitration under paragraph 32 of Chapter 29 Dispute Resolution;

**“Periodic Renewal”** means the process to review this Agreement in accordance with paragraphs 1 to 26 of Chapter 2 Periodic Renewal and Orderly Process;

**“Periodic Renewal Date”** means the same day and month on which the first Periodic Renewal commenced as determined under paragraph 2 of Chapter 2 Periodic Renewal and Orderly Process;

**“Person”** for the purposes of Chapter 24 Tax, includes an individual, a partnership, a corporation, a trust, an unincorporated association or other entity, or a government or any agency or political subdivision thereof, and their heirs, executors, administrators and other legal representatives;

**“Pest Management Plan”** has the same meaning as “pest management plan” in the *Integrated Pest Management Act*;

**“Pesticide Use Notice”** has the same meaning as “pesticide use notice” in the *Integrated Pest Management Act*;

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

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

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

“**Police Service**” means a police service in British Columbia, other than the independent investigations office, authorized or established under the *Police Act* and, for greater certainty, includes the Royal Canadian Mounted Police when carrying out the powers and duties of the provincial police service;

“**Port Essington Lands**” means the lands legally described in Appendix C Part 1, and shown for illustrative purposes in Appendix C Part 2, and which are also shown in Canada Lands Survey Records No. BC 168 and referred to therein as the “Port Essington Indian Reserve”;

“**Pre-Approved Fee Simple Addition Lands**” means the lands identified in Appendix F Part 4;

“**Private Lands**” means, for the purposes of Chapter 15 Forest Resources, lands that are not Crown lands;

“**Protocol**” means an agreement in effect between Kitselas and an Aboriginal people that holds established or asserted rights under section 35 of the *Constitution Act, 1982* in respect of the exercise of Kitselas Exercisable Section 35 Rights, referred to in paragraph 31 of Chapter 8 Self-Government, that is expressly stated in the agreement to be a Protocol;

“**Provincial Capital Advance**” means the amounts set out in paragraphs 7 and 8 of Chapter 22 Capital Transfer paid by British Columbia to the Kitselas Band as precursor to Kitselas in the period between when the ‘Kitselas First Nation Treaty Negotiations Canada and British Columbia Comprehensive Offer for Concluding a Treaty’ document was provided to the Kitselas Band on June 3, 2023, and the Effective Date;

“**Provincial Conservancy**” means provincial Crown land established as a conservancy under the *Park Act* or the *Protected Areas of British Columbia Act*;

“**Provincial Court Judge**” has the same meaning as “judge” in the *Provincial Court Act*;

“**Provincial Crown Gravel Lands**” means provincial Crown land located in the Kitselas Harvest Area in the vicinity of Kitselas Lands, other than provincial Crown land:

- (a) that, as of the Effective Date, was withdrawn or designated for Gravel pits and quarries under section 16 or 17 of the *Land Act*; or
- (b) is subject to a third party disposition by the Province of the right to extract, refine and transport Gravel under section 11 of the *Land Act*;

**“Provincial Enforcement Officer”** means a conservation officer designated under the *Environmental Management Act* or a natural resource officer designated under the *Natural Resource Compliance Act*;

**“Provincial Environmental Assessment Decision-Maker”** means the decision-maker identified under provincial environmental assessment legislation as the decision-maker responsible for a decision;

**“Provincial Expropriating Authority”** means a provincial ministry or agency or any person with the authority to expropriate land or an interest in land under provincial legislation;

**“Provincial Highway”** has the same meaning as “highway” in the *Transportation Act*;

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

**“Provincial Park”** means provincial Crown land established as a park under the *Park Act* or the *Protected Areas of British Columbia Act*;

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

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

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

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

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

- (a) plans, objectives or guidelines for land, marine or resource use, at any of a variety of scales from the regional to the landscape level; and
- (b) plans, objectives or guidelines for specific land, marine and resource use sectors, such as commercial recreation, but not operational plans concerning specific land, marine and resource use proposals;

**“Public Utility”** means:

- (a) a person, or the person’s lessee, trustee, receiver or liquidator, who owns or operates in British Columbia equipment or facilities for the:
  - (i) production, gathering, generating, processing, storage, transmission, sale, supply, distribution or delivery of petroleum, or petroleum products or by-products;
  - (ii) production, generation, gathering, processing, storage, transmission, sale, supply, distribution or delivery of gas (including natural gas, natural gas liquids, propane, and coalbed gas), electricity, steam, water or sewage or any other agent for the production of light, heat, cold or power;

- (iii) emission, conveyance, transmission or reception of information, messages or communications by guided or unguided electromagnetic waves, including systems of cable, microwave, optical fibre or radio communications, if that service is offered to the public for compensation; or
- (b) a local or regional authority providing services in connection with air quality, dikes, water, sewage, solid waste disposal and wastewater treatment,

and for the purposes of this definition, “person” includes a partnership or agent of the Crown and, for greater certainty, a corporation, including a Crown corporation, but does not include a person engaged in the petroleum industry who is not otherwise a Public Utility;

**“Railway”** means a company, established under Federal or Provincial Law, authorized to construct, own or operate a railway, including:

- (a) all branches, extensions, sidings, stations, depots, wharves, rolling stock, equipment, works, property and works connected with the railway and all railway bridges, tunnels, or other structures connected with the railway, and
- (b) communications or signalling systems and related facilities and equipment used for railway purposes;

**“Railway Corridors”** means any lands identified as “Railway Corridor” in Appendices B-2 Part 2, B-3 Part 2 and B-4 Part 2;

**“Range Practices”** means:

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

**“Range Resources”** means those plant communities that are associated with grazing;

**“Ratification Committee”** means the committee established in accordance with paragraph 5 of Chapter 27 Ratification;

**“Ratification Vote”** means the Constitution Ratification Vote or the Treaty Ratification Vote, as applicable;

**“Records”** means records documenting Kitselas culture and includes any correspondence, memoranda, books, plans, maps, drawings, diagrams, pictorial or graphic work, photographs, films, microforms, sound recordings, videotape, machine readable records and any other documentary material regardless of physical form or characteristics and any copy thereof;

**“Red Bluff Oolichan Harvest Site”** means the area identified in the Atlas as the “Red Bluff Oolichan Harvest Site” and shown for illustrative purposes in Appendix K Part 2;

**“Registrar”** has the same meaning as “registrar” in the *Land Title Act*;

**“Renewable Resources”** means Wildlife, Migratory Birds, Plants and Timber Resources;

**“Renewal Period”** means the period between the conclusion of a Periodic Renewal and the Periodic Renewal Date for the next Periodic Renewal;

**“Resource Revenues”** means the types of provincial revenues that will be payable to Kitselas as agreed to and set out in a Resource Revenue Sharing Agreement;

**“Resource Revenue Sharing Agreement”** means one or more agreements negotiated between British Columbia and Kitselas in accordance with Chapter 23 Resource Revenue Sharing;

**“Resource Road”** means a Provincial Road that is not a Provincial Highway;

**“Responsible Person”** has the same meaning as “responsible person” in the *Environmental Management Act*;

**“Right of Way”** means an interest in a defined area of land on which a grant is given for a specified use, including use for a road, or by a Public Utility or Railway;

**“Site Disclosure Statement”** has the same meaning as “site disclosure statement” in the *Environmental Management Act*;

**“Species at Risk”** has the same meaning as “species at risk” in the *Species at Risk Act*;

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

**“Specific Claims Settlement”** means any sum paid by Canada to Kitselas in settlement of a claim brought under the Specific Claims Policy or the *Specific Claims Tribunal Act*;

**“Specific Consultation Process”** means any process or arrangement that Kitselas and Canada or British Columbia, as applicable, have agreed in writing will be relied on to meet the consultation obligations of Canada or British Columbia, as applicable, in relation to a particular type of Contemplated Crown Conduct and which is:

- (a) set out in this Agreement,
- (b) set out in a separate agreement that is referenced in this Agreement; or

- (c) established pursuant to Federal or Provincial Law, referenced in this Agreement, including related approval or regulatory processes;

**“Stage One”** means the stage of dispute resolution described in paragraph 11(a) of Chapter 29 Dispute Resolution;

**“Stage Two”** means the stage of dispute resolution described in paragraph 11(b) of Chapter 29 Dispute Resolution;

**“Stage Three”** means the stage of dispute resolution described in paragraph 11(c) of Chapter 29 Dispute Resolution;

**“Stewardship Activities”** means activities conducted for the assessment, monitoring, protection and management of Fish and Fish habitat;

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

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

**“Subsurface Resources”** means:

- (a) earth, including diatomaceous earth, soil, peat, marl, sand and gravel;
- (b) slate, shale, argillite, limestone, marble, clay, gypsum, volcanic ash and rock;
- (c) minerals, including Placer Minerals;
- (d) coal, Petroleum and Natural Gas;
- (e) Geothermal Resources; and
- (f) fossils;

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

- (a) set out in Appendix G-5 Part 1; and
- (b) that exist on any parcel of land added to Kitselas Lands immediately before that parcel of land becomes Kitselas Lands;

**“Superior Court”** means, for the purposes of paragraphs 27 to 35 of Chapter 2 Periodic Renewal and Orderly Process, the following courts or any of their successors established under applicable law:

- (a) the Supreme Court, Court of King’s Bench, Superior Court and Superior Court of Justice, as the case may be, of a Province;

- (b) the Supreme Court of Yukon, Supreme Court of the Northwest Territories and the Nunavut Court of Justice;
- (c) a Court of Appeal of a Province or Territory;
- (d) the Federal Court and Federal Court of Appeal; and
- (e) the Supreme Court of Canada;

**“Tenured Subsurface Resources”** means those Subsurface Resources subject to Subsurface Tenures;

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

**“Total Allowable Harvest”** means the maximum number of a given species of Wildlife that may be harvested by all harvesters each year in the Kitselas Harvest Area, or any portion thereof;

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

**“Treaty Implementation Legislation”** means Federal Treaty Implementation Legislation and Provincial Treaty Implementation Legislation;

**“Treaty Ratification Vote”** means the vote conducted under Chapter 27 Ratification to ratify this Agreement;

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

**“Tsimshian Artifacts”** means those objects held at the Effective Date in the permanent collections of the Canadian Museum of History, the Parks Canada Agency or the Royal British Columbia Museum that are identified as “Tsimshian” in their documentation;

**“Unclassified Waters”** means a water or group of waters other than a Classified Water;

**“United Nations Declaration on the Rights of Indigenous Peoples”** or **“UNDRIP”** means the United Nations Declaration on the Rights of Indigenous Peoples that was adopted by the General Assembly of the United Nations as General Assembly Resolution 61/295 on September 13, 2007;

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

**“Wildfire Suppression Agreement”** means an agreement entered into by British Columbia, Canada, and Kitselas under paragraph 16 of Chapter 15 Forest Resources;

**“Wildlife”** means:

- (a) all vertebrate and invertebrate animals, including mammals, birds, reptiles, and amphibians; and

(b) the eggs, juvenile states, and adult stages of all vertebrate and invertebrate animals, but does not include Fish or Migratory Birds; and

**“Wildlife Management Area”** means provincial Crown land established as a Wildlife management area under Provincial Law.



# REFERENCES



**LIST OF STATUTES, REGULATIONS AND LAND CODES  
REFERRED TO IN THE KITSELAS TREATY: A LIVING  
AGREEMENT**

*Adoption Act*, R.S.B.C. 1996, c. 5

*Agricultural Land Commission Act*, S.B.C. 2002, c. 36

*Angling and Scientific Collection Regulation*, B.C. Reg. 125/90

*British Columbia Building Code 2024*, BC Ministerial Order BA 2023 10

*Canada Evidence Act*, R.S.C. 1985, c. C-5

*Canada National Marine Conservation Areas Act*, S.C. 2002, c. 18

*Canada National Parks Act*, S.C. 2000, c. 32

*Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11

*Child, Family and Community Service Act*, R.S.B.C. 1996, c. 46

*Civil Air Navigation Services Commercialization Act*, S.C. 1996, c. 20

*Community Charter*, S.B.C. 2003, c. 26

*Constitution Act, 1867*, (U.K.), 30 & 31 Vict., c. 3

*Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11

*Criminal Code*, R.S.C. 1985, c. C-46

*Drinking Water Protection Act*, S.B.C. 2001, c. 9

*Emergencies Act*, R.S.C. 1985, c. 22 (4<sup>th</sup> Supp.)

*Environmental Assessment Act*, S.B.C. 2018, c. 51

*Environmental Management Act*, S.B.C. 2003, c. 53

*Export and Import Permits Act*, R.S.C., 1985, c. E-19

*Expropriation Act*, R.S.C., 1985, c. E-21

*First Nations Fiscal Management Act*, S.C. 2005, c. 9

*Fisheries Act*, R.S.C., 1985, c. F-14

*Forest Act*, R.S.B.C. 1996, c. 157

*Framework Agreement on First Nation Land Management Act*, S.C. 2022, c. 19, s. 121

*Historic Sites and Monuments Act*, R.S.C. 1985, c. H-4

*Impact Assessment Act*, S.C. 2019, c. 28, s. 1

*Independent School Act*, R.S.B.C. 1996, c. 216

*Indian Act*, R.S.C. 1985, c. I-5

*Integrated Pest Management Act*, S.B.C. 2003, c. 58

*Kitselas Reserve Lands Management Act*, (2005)

*Land Act*, R.S.B.C. 1996, c. 245

*Land Surveyors Act*, R.S.B.C. 1996, c. 248

*Land Title Act*, R.S.B.C. 1996, c. 250

*Local Government Act*, R.S.B.C. 2015, c. 1

*Mineral Tenure Act*, R.S.B.C. 1996, c. 292

*Marriage Act*, R.S.B.C. 1996, c. 282

*Natural Resource Compliance Act*, S.B.C. 2011, c. 21

*Occupiers Liability Act*, R.S.B.C. 1996, c. 337

*Oceans Act*, S.C. 1996, c. 31

*Offence Act*, R.S.B.C. 1996, c. 338

*Official Languages Act*, R.S.C. 1985, c. 31 (4<sup>th</sup> Supp.)

*Park Act*, R.S.B.C. 1996, c. 344

*Patients Property Act*, R.S.B.C. 1996, c. 349

*Police Act*, R.S.B.C. 1996, c. 367

*Protected Areas of British Columbia Act*, S.B.C. 2000, c. 17

*Provincial Court Act*, R.S.B.C. 1996, c. 379

*Range Act*, S.B.C. 2004, c. 71

*School Act*, R.S.B.C. 1996, c. 412

*Small Claims Act*, R.S.B.C. 1996, c. 430

*Species at Risk Act*, S.C. 2002, c. 29

*Specific Claims Tribunal Act*, S.C. 2008, c. 22

*Transportation Act*, S.B.C. 2004, c. 44

*Vital Statistics Act*, R.S.B.C. 1996, c. 479

*Water Sustainability Act*, S.B.C. 2014, c. 15

*Water Utility Act*, R.S.B.C. 1996, c. 485

*Wildfire Act*, S.B.C. 2004, c. 31

*Wildlife Act*, R.S.B.C. 1996, c. 488

