



K'ómoks  
First Nation

Canada 



**K'ÓMOKS**  
**TREATY**  
*“A Living Agreement”*  
Minor Changes Agreement No. 1 Consolidated Version  
February 20, 2026





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# **GENERAL**



**PREAMBLE**

- (a) Whereas K'ómoks is an Aboriginal People who draw their identity from the Island K'ómoks, Kwakwaka'wakw and Pentlatch traditions, from their lands, waters and resources and from the rich culture, heritage, language and traditions passed on from their elders;
- (b) Whereas the history of K'ómoks and its ancestors is tied to the K'ómoks Traditional Territory, which is also referred to as the "land of plenty";
- (c) Whereas K'ómoks defines its vision as set out below:
- "We the K'ómoks people envision a prosperous and healthy Nation in which we exercise our rights and title throughout our territory, honouring our people, lands, waters, cultures and languages."
- (d) Whereas 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) Whereas the Parties recognize K'ómoks' inherent right of self-determination, which includes:
- i. an inextricable link to the lands, territories and resources traditionally owned, occupied or otherwise used or acquired by K'ómoks;
  - ii. rights to determine K'ómoks' own identity and membership in accordance with its customs, traditions and laws;
  - iii. inherent rights of jurisdiction and self-government;
  - iv. laws, law-making authority and legal systems;
  - v. rights to determine, maintain, develop and strengthen its distinct political systems, institutional structures and representative institutions, through representatives chosen by K'ómoks in accordance with its own procedures; and
  - vi. rights to freely pursue economic, political, social and cultural development;
- (f) Whereas Canada and British Columbia acknowledge the aspirations of K'ómoks and its members to participate more fully in the economic, political and social life of British

Columbia and for K'ómoks to evolve and flourish as a self-sufficient and sustainable self-governing nation;

- (g) Whereas this Agreement advances the objectives of the United Nations Declaration on the Rights of Indigenous Peoples;
- (h) Whereas the Parties agree that constitutionally protected, comprehensive treaties are among the highest forms of reconciliation between Indigenous nations and the Crown;
- (i) Whereas the Parties have entered into this Agreement with the view of advancing the following Common Objectives:
  - i. recognizing K'ómoks Aboriginal rights and title and the inherent right to self-government;
  - ii. 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;
  - iii. providing for an effective and sustainable K'ómoks self-government through, among other things, a common commitment to capacity building and a new and enhanced fiscal relationship;
  - iv. providing flexibility, clarity and predictability for all Parties with respect to the nature, scope and geographic extent of the exercise of K'ómoks rights;
  - v. implementing the United Nations Declaration on the Rights of Indigenous Peoples in accordance with the Constitution of Canada;
  - vi. achieving equity with other Canadians in socioeconomic outcomes and overall well-being of K'ómoks and K'ómoks Members;
  - vii. enhancing economic opportunities for K'ómoks, K'ómoks Members and the surrounding community;
  - viii. preserving, revitalizing and strengthening of the culture, language and heritage of K'ómoks;
- (j) Whereas each of the Parties have ratified this Agreement, in accordance with the Ratification Chapter,

THE PARTIES THEREFORE AGREE:

## 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 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 do not form part of this Agreement;
  - d) the development over time of Fiscal Arrangements and Fiscal Provisions referred to in the Fiscal Relations Chapter;
  - e) the evolution of consultation processes or arrangements pursuant to paragraphs 66 to 79;
  - f) existing amendment provisions in the Amendment Chapter; 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 will be interpreted and implemented in a manner consistent with the honour of the Crown.
5. 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.
6. This Agreement is binding on and can be relied on by the Parties and all persons.
7. Ratification of this Agreement by the Parties in accordance with the Ratification Chapter is a condition precedent to the validity of this Agreement and, unless so ratified, this Agreement is of no force or effect.

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

#### **REPRESENTATION AND WARRANTY**

9. K'ómoks represents and warrants to Canada and British Columbia that, in relation to the matters dealt with in this Agreement, K'ómoks has the authority to enter, and it enters, into this Agreement on behalf of all individuals who are eligible for enrolment under this Agreement on the Effective Date.
10. Canada and British Columbia represent and warrant to K'ómoks 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**

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

#### **RELATIONSHIP OF LAWS**

13. This Agreement prevails to the extent of an inconsistency or Conflict with Federal Law or Provincial Law.
14. Federal Treaty Implementation Legislation prevails over other Federal Law to the extent of any inconsistency or Conflict.
15. Provincial Treaty Implementation Legislation prevails over other Provincial Law to the extent of any inconsistency or Conflict.
16. Notwithstanding any other rule of priority in this Agreement, in the event of a Conflict between a Federal Law or a Provincial Law and a K'ómoks Law that has an incidental effect on an area of jurisdiction over which K'ómoks:

- a) does not have law-making authority under this Agreement; or
  - b) does have law-making authority under this Agreement but for which Federal Law or Provincial Law prevails to the extent of a Conflict,  
Federal Law or Provincial Law prevails with respect to the incidental effect to the extent of the Conflict.
17. Notwithstanding any other rule of priority in this Agreement, Federal Law in relation to peace, order and good government, criminal law, human rights, the protection of the health and safety of all Canadians or other matters of overriding national importance, prevails to the extent of a Conflict with a K'ómoks Law.
  18. For greater certainty, the law-making authority of K'ómoks does not include criminal law, criminal procedure, official languages of Canada, Intellectual Property, aeronautics, navigation and shipping or labour relations and working conditions.
  19. K'ómoks Law is of no force or effect to the extent of an inconsistency or Conflict with this Agreement.
  20. Any licence, permit or other authorization to be issued by Canada or British Columbia as a result of this Agreement will be issued under Federal Law or Provincial Law, as the case may be, and will not form part of this Agreement, and this Agreement will prevail to the extent of an inconsistency with the licence, permit or other authorization.
  21. Nothing in this Agreement affects the public right of navigation.

#### **APPLICATION OF LAWS**

22. Federal Law and Provincial Law applies to K'ómoks, K'ómoks Members, K'ómoks Lands, K'ómoks Government, K'ómoks Public Institutions and K'ómoks Corporations.
23. 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 K'ómoks, K'ómoks Members, K'ómoks Lands, K'ómoks Government, K'ómoks Public Institutions or K'ómoks 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 K'ómoks, K'ómoks Members, K'ómoks Government, K'ómoks Public Institutions, K'ómoks Corporations or K'ómoks Lands, as the case may be.
24. Unless otherwise provided in this Agreement, K'ómoks Law does not apply to Canada or British Columbia.

25. Paragraph 24 does not preclude Federal Law from providing for the application of K'ómoks Law to Canada or Provincial Law from providing for the application of K'ómoks Law to British Columbia.
26. For greater certainty, K'ómoks Law applies to agents of Canada or British Columbia on K'ómoks Lands acting outside of the purposes for which they are agents for Canada or British Columbia, as applicable.

### INTERNATIONAL LEGAL OBLIGATIONS

27. Prior to expressing consent to be bound by an International Treaty that would give rise to a new International Legal Obligation, Canada will Consult with K'ómoks, separately or through a forum or means as appropriate, if compliance with the new International Legal Obligation may adversely affect a right of K'ómoks under this Agreement.
28. If, due to K'ómoks Law or another exercise of governmental authority of K'ómoks, Canada is or may be unable to comply with an International Legal Obligation, Canada and K'ómoks 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.
29. For greater certainty, for the purposes of paragraph 28, K'ómoks 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.
30. Dispute resolution under the Dispute Resolution Chapter 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.

### RECOGNITION OF RIGHTS

31. Canada and British Columbia recognize that K'ómoks has Aboriginal rights as recognized and affirmed by section 35 of the *Constitution Act, 1982*.

32. For greater certainty, the Aboriginal rights of K'ómoks include Aboriginal title and the inherent right of self-government, as recognized and affirmed by section 35 of the *Constitution Act, 1982*.
33. 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 the Parties, by setting out:
  - a) K'ómoks 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 set out in the Periodic Renewal and Orderly Process Chapter and the Amendment Chapter by which Aboriginal rights of K'ómoks, or attributes or geographic extent of those rights, that are not exercisable or assertable pursuant to paragraph 35 may become K'ómoks Exercisable Section 35 Rights.
34. Nothing in this Agreement or the Treaty Implementation Legislation modifies or extinguishes any Aboriginal rights of K'ómoks, and Canada and British Columbia will not assert against K'ómoks that any Aboriginal rights of K'ómoks are modified, surrendered or extinguished as a result of this Agreement or the Treaty Implementation Legislation.
35. K'ómoks will only exercise or assert K'ómoks Exercisable Section 35 Rights.
36. The purpose of paragraph 35 is to ensure that as of the Effective Date:
  - a) K'ómoks can assert and exercise K'ómoks Exercisable Section 35 Rights; and
  - b) Canada, British Columbia and all other persons can exercise their rights, authorities, jurisdictions and privileges in a manner consistent with this Agreement, and do not have any obligations, including any fiduciary duties or duty to consult, in respect of any Aboriginal rights that pursuant to paragraph 35 are not exercisable or assertable.
37. K'ómoks releases Canada, British Columbia and all other persons from all suits, actions, claims, proceedings or demands of whatever kind, whether known or unknown, that K'ómoks 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 K'ómoks; and

- b) on or after the Effective Date that may have affected, interfered with or infringed any Aboriginal rights of K'ómoks that pursuant to paragraph 35 are not exercisable or assertable.
38. For greater certainty, paragraph 37 includes any suits, actions, claims, proceedings or demands based on the duty to consult in respect of the matters set out in paragraph 37.a) and 37.b).
39. For greater certainty, the releases in paragraph 37 are not intended to affect any rights and recourses that K'ómoks may have with respect to suits, actions, claims, proceedings or demands that are not based on any Aboriginal rights of K'ómoks.
40. The Parties will not challenge, and will vigorously defend any challenge to, the validity or legal effectiveness of K'ómoks' agreement not to assert or exercise Aboriginal rights of K'ómoks that are other than, or different in attributes, geographic extent or limitations from, K'ómoks Exercisable Section 35 Rights.
41. K'ómoks Lands are not "lands reserved for the Indians" within the meaning of section 91(24) of the *Constitution Act, 1867*, and there are no "reserves" within the meaning of the *Indian Act* for K'ómoks.

### **Specific Claims**

42. Nothing in this Agreement precludes K'ómoks 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.
43. For greater certainty, if K'ómoks 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 K'ómoks reserves the right to make all possible counter arguments available to it.
44. For greater certainty, claims referred to in paragraph 42 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 K'ómoks, or an Indian Reserve for the use and benefit of K'ómoks.
45. Subject to paragraph 46, nothing in this Agreement precludes K'ómoks from participating in or under any federal or provincial program or policy that may be developed in the future to address the legacy and impacts of, and past grievances related to, the Esquimalt & Nanaimo land grant (1883) on Indigenous groups on Vancouver Island, if K'ómoks meets the general criteria established for the program or policy in effect from time to time.

46. In respect of the scope of K'ómoks' participation in or under any program or policy referred to in paragraph 45, Canada and British Columbia are entitled to rely on paragraphs 31 to 40 to the extent that K'ómoks' claim falls within paragraph 37.
47. For greater certainty, paragraph 46 is not intended to generally exclude K'ómoks from any program or policy referred to in paragraph 45 for which other Indigenous groups, including Indigenous signatories to modern treaties, are eligible.
48. For greater certainty, paragraph 45 does not obligate Canada or British Columbia to establish any program or policy referred to in that paragraph.
49. The transfer of the lands identified as "Pentledge 2 Rail Corridor" in Appendix B-3 to K'ómoks will not be used to offset any compensation which K'ómoks is entitled to under Canada's Specific Claims Policy for loss of use of the land prior to the date of the transfer.

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

50. K'ómoks Members who are Canadian citizens or permanent residents of Canada continue to be entitled to all of the rights and benefits for which they would otherwise be entitled to as Canadian citizens or permanent residents of Canada, applicable to them from time to time.
51. Subject to paragraph 53, nothing in this Agreement affects the ability of:
  - a) K'ómoks;
  - b) K'ómoks Members;
  - c) K'ómoks Government;
  - d) K'ómoks Public Institutions; or
  - e) K'ómoks Corporations,to participate in, or benefit from, programs established by Canada or British Columbia for Indigenous individuals or groups, in accordance with criteria established for those programs from time to time.
52. Nothing in this Agreement affects the ability of K'ómoks, K'ómoks Institutions, K'ómoks Corporations or K'ómoks Members to apply for or bid on any commercial, economic or other activity or project for which they would otherwise be eligible.
53. K'ómoks Members are eligible to participate in programs established by Canada or British Columbia, and to receive services from Canada or British Columbia, in

accordance with criteria established for those programs or services from time to time, to the extent that K'ómoks has not assumed responsibility for those programs or services under a Fiscal Arrangement or Fiscal Provision.

54. Nothing in this Agreement precludes K'ómoks from participating in a provincial process or institution, including a process or institution that may address matters of shared decision-making and revenue and benefit sharing, or from benefiting from any future provincial program, policy or initiative of general application to First Nations as British Columbia develops a new relationship with First Nations, including the enactment of legislation to support these initiatives.
55. Nothing in this Agreement precludes K'ómoks from entering into arrangements for economic opportunities, including economic benefit agreements, with third parties.

#### **APPLICATION OF THE *INDIAN ACT* AND CONTINUATION OF INDIAN STATUS**

56. Subject to the Transition Chapter and the Taxation Chapter, the *Indian Act* will have no application to K'ómoks, K'ómoks Members, K'ómoks Government, K'ómoks Public Institutions, K'ómoks Lands or K'ómoks Corporations as of the Effective Date, except for the purposes of determining whether an individual is an Indian.
57. For greater certainty, nothing in this Agreement prevents a K'ómoks Member from being registered under the *Indian Act* if that individual is entitled to be registered in accordance with that Act.
58. Subject to paragraph 10 of the Transition Chapter, the Framework Agreement on First Nation Land Management, the *Framework Agreement on First Nation Land Management Act* and the *K'ómoks First Nation Land Code* have no application to K'ómoks, K'ómoks Institutions, K'ómoks Members or K'ómoks Lands.
59. For so long as the Framework Agreement on First Nation Land Management is in effect and has the force of law, Canada will indemnify K'ómoks, and K'ómoks will indemnify Canada, in relation to Former K'ómoks First Nation 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.

#### **JUDICIAL DETERMINATION IN RELATION TO VALIDITY**

60. If a Superior Court, in a Final Judgment, determines any provision of this Agreement to be invalid or unenforceable:

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

### **OTHER ABORIGINAL PEOPLE**

63. Nothing in this Agreement affects, recognizes or provides any rights under section 35 of the *Constitution Act, 1982* for any Aboriginal People other than K'ómoks.
64. If a Superior Court, in a Final Judgment, determines that any Aboriginal People, other than K'ómoks, 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.
65. 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 K'ómoks Exercisable Section 35 Rights as set out in this Agreement:
- a) Canada or British Columbia, or both, as the case may be, will provide K'ómoks with additional or replacement rights, or other appropriate remedies; and
  - b) at the request of K'ómoks, the Parties will negotiate and attempt to reach agreement on the provision of those additional, or replacement rights, or other appropriate remedies.

**CONSULTATION**

66. Canada and British Columbia acknowledge that they have a duty to consult and, if appropriate, accommodate K'ómoks regarding Contemplated Crown Conduct that may adversely affect K'ómoks Exercisable Section 35 Rights.
67. Canada and British Columbia will carry out consultation, as set out in paragraphs 66 to 79, with the aim of securing the free, prior and informed consent of K'ómoks.
68. The Parties have considered and designed processes and arrangements that are intended to govern the Crown's consultation obligations in respect of Contemplated Crown Conduct and agree that consultation, and, if appropriate, accommodation, will occur in accordance with the processes and arrangements contemplated under paragraphs 66 to 79.
69. Where a Specific Consultation Process applies to a particular type of Contemplated Crown Conduct, Canada or British Columbia, as applicable, and K'ómoks will rely on that process for the purposes of consultation in respect of that conduct.
70. Where there is no Specific Consultation Process applicable in respect of a particular type of Contemplated Crown Conduct, Canada or British Columbia, as applicable, will fulfill its duty to consult K'ómoks regarding that conduct in accordance with the process described in the term "Consult".
71. In relation to paragraphs 69 and 70, Canada or British Columbia, as applicable, and K'ómoks may supplement, change or replace that consultation process in respect of a particular type of Contemplated Crown Conduct by written agreement made outside of the Agreement.
72. Where Canada or British Columbia, as applicable, may have a consultation obligation in respect of Contemplated Crown Conduct but it reasonably believes that an emergency exists, it may act immediately to respond to that emergency.
73. Canada or British Columbia will give notice of its intent to implement any measure to respond to an emergency, including the reasons for the measure identified under paragraph 72 to K'ómoks:
  - a) before the measure is implemented if it is practicable to do so; or
  - b) as soon as practicable after the measure is implemented.
74. Any measure implemented by Canada or British Columbia to reasonably respond to an emergency pursuant to paragraph 72 shall only be in force for as long as necessary.
75. Canada or British Columbia will give notice to K'ómoks when the measure implemented pursuant to paragraph 72 is no longer in force.

76. K'ómoks may request that Canada or British Columbia review the continued necessity of any measure implemented pursuant to paragraph 72 and Canada or British Columbia shall fully and fairly consider any such request.
77. For greater certainty, the provision of notice under paragraph 73 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 72; or
  - b) the interests or concerns of any Party related to that emergency measure.
78. Within 120 days from the notice given in paragraph 75, and if requested by K'ómoks, Canada or British Columbia as applicable will meet with K'ómoks 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 K'ómoks Exercisable Section 35 Rights; and
  - c) if applicable, measures mutually agreed upon to address, mitigate or rectify the impacts of the emergency measure identified in paragraph 72.
79. The Parties will participate in the processes set out in paragraphs 66 to 78 in good faith and in a timely, responsive and meaningful way.

## **INFORMATION AND PRIVACY**

80. For the purposes of federal and provincial access to information and privacy legislation, information that K'ómoks provides to Canada or British Columbia in confidence is deemed to be information received or obtained in confidence from another government.
81. If K'ómoks 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 K'ómoks information that is only available to a particular province or particular provinces or that is not available to any province.
82. 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.

83. Canada or British Columbia may provide information to K'ómoks in confidence, if K'ómoks has made a law or entered into an agreement with Canada or British Columbia, as the case may be, under which the confidentiality of the information will be protected.
84. Notwithstanding any other provision of this Agreement:
- a) Canada and British Columbia are not required to disclose any information that they are required or authorized to withhold under any Federal Law or Provincial Law, including under sections 37 to 39 of the *Canada Evidence Act*;
  - b) if Federal Law 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 otherwise be withheld under a privilege at law.

#### **OBLIGATIONS TO NEGOTIATE**

85. Whenever the Parties are obliged under any provision of this Agreement to negotiate and attempt to reach agreement, unless the Parties otherwise agree, all Parties will participate in the negotiations.
86. If this Agreement provides that the Parties, or any two of them, “will negotiate and attempt to reach agreement”, those negotiations will be conducted as set out in the Dispute Resolution Chapter, but none of the Parties are obliged to proceed to Stage Three of the Dispute Resolution Chapter unless, in a particular case, they are required to do so under paragraph 28 of the Dispute Resolution Chapter.
87. Where this Agreement provides that a dispute will be “finally determined by arbitration”, the process under paragraph 28 of the Dispute Resolution Chapter will apply.

#### **OTHER AGREEMENTS**

88. No agreement, plan, guideline or other document made by a Party or Parties that is referred to in or contemplated by this Agreement, including an agreement that is reached as a result of negotiations that are required or permitted by this Agreement, is:
- a) part of this Agreement; or
  - b) a treaty or land claims agreement, or creates, recognizes or affirms Aboriginal or treaty rights, within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.

**ENTIRE AGREEMENT**

89. 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.
90. The Schedules and Appendices to this Agreement form part of this Agreement.

**INTERPRETATION**

91. The provisions in this chapter and the Periodic Renewal and Orderly Process Chapter prevail over the provisions in the other chapters of this Agreement to the extent of any inconsistency.
92. Subject to paragraph 93, there is no presumption that doubtful expressions, terms or provisions in this Agreement are to be resolved in favour of any Party.
93. 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, consistent with the honour of the Crown, and having regard to the shared objective of advancing reconciliation between the Parties.
94. If an authority of British Columbia referred to in this Agreement is delegated from Canada and:
- a) the delegation of that authority is revoked; or
  - b) if a Superior Court, in a Final Judgment, determines that the delegation of that authority is invalid,
- the reference to British Columbia will be deemed a reference to Canada.
95. If an authority of Canada referred to in this Agreement is delegated from British Columbia and:
- a) the delegation of that authority is revoked; or
  - b) if a Superior Court, in a Final Judgment, determined that the delegation of that authority is invalid,
- the reference to Canada will be deemed a reference to British Columbia.
96. In this Agreement, unless otherwise provided for or unless otherwise clear from the context:

- a) “will” denotes an obligation that, unless this Agreement provides to the contrary, must be carried out as soon as practicable after the Effective Date or the event that gives rise to the obligation;
  - b) “may” is to be construed as permissive, but the use of the words “may not” is to be construed as disempowering;
  - c) “including” means “including, but not limited to”;
  - d) “harvest” includes attempts to harvest;
  - e) “or” is used in its inclusive sense, meaning A or B, or both A and B;
  - f) “and” is used in its joint sense, meaning A and B, but not either alone;
  - g) a reference to a “paragraph”, “chapter”, “Schedule” or “Appendix” means a paragraph, chapter, schedule or appendix, respectively, of this Agreement;
  - h) a reference in a chapter to a “paragraph” or “Schedule” means a paragraph or schedule, respectively, of that chapter;
  - i) 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;
  - j) a reference to a statute or a regulation includes every amendment to it, every regulation made under that statute and any law enacted in substitution for it or in replacement of it;
  - k) the use of the singular includes the plural, and the use of the plural includes the singular;
  - l) “provincial” refers to the province of British Columbia; and
  - m) where a word is defined in this Agreement other parts of speech and grammatical forms of the same word have corresponding meanings.
97. Notwithstanding paragraph 6, this Agreement is not intended to bind provinces, other than British Columbia, or territories, on matters within their jurisdiction without their consent.

## OFFICIAL LANGUAGES

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

**NO IMPLIED WAIVER**

99. 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.

**ASSIGNMENT**

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

**ENUREMENT**

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

**MINOR CHANGES AND CORRECTIONS**

102. After a K'ómoks Treaty Ratification Vote, but before the Parties sign this Agreement, the Chief Negotiators on behalf of each Party may agree to minor changes to this Agreement.

103. Before the Effective Date, the Chief Negotiators for each Party may agree to changes to this Agreement and the Appendices 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 AGREEMENT**

104. 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 Office of the Registrar of Land Titles of British Columbia;
- c) by K'ómoks in its main office; and
- d) any other locations agreed to by the Parties.

## NOTICE

105. In paragraphs 106 to 109, “communication” includes a notice, document, request, response, approval, authorization, confirmation or consent.
106. Unless otherwise set out in this Agreement, a communication will be in writing and be delivered:
- a) personally;
  - b) by email;
  - c) by mail using a method for which confirmation of delivery is provided, including by courier; or
  - d) by any other means agreed to by the applicable Parties.
107. A communication is considered to have been given, made or delivered, and received at the start of the next business day after it is delivered to the applicable Party or to the address provided by the applicable Party.
108. The Parties will provide to each other addresses for delivery of communications under this Agreement, and subject to paragraph 109, will deliver a communication to the address provided by the applicable Party.
109. If no other address for delivery of a particular communication has been provided by a Party, a communication may be delivered to the applicable Party as set out below:

For: Canada

Attention: Minister of Crown-Indigenous Relations

House of Commons  
Room 583, Confederation Building  
Ottawa, Ontario  
K1A 0A6

For: British Columbia

Attention: Minister of Indigenous Relations and  
Reconciliation

Room 310, Parliament Buildings  
PO Box 9052 Stn Prov Govt  
Victoria, British Columbia  
V8W 9E2

For: K'ómoks

Attention: 3330 Comox Road  
Courtenay, British Columbia  
V9N 3P8

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



## CHAPTER 2: PERIODIC RENEWAL AND ORDERLY PROCESS

### PERIODIC RENEWAL

1. The Parties will conduct and implement Periodic Renewals of this Agreement in accordance with paragraphs 2 to 25.
2. The Parties will commence the first Periodic Renewal on a date agreed to by the Parties that is 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 given the other Parties 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 give the other Parties notice if the Party wishes to address any matter contemplated by paragraphs 7 and 9, and if no notice is given by any Party, the Parties will forego engaging in a review or 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 of Canada, British Columbia and K'ómoks, including K'ómoks law-making authorities that are being exercised under this Agreement;
  - c) changes required because of unforeseen circumstances that significantly impact:
    - i. K'ómoks Exercisable Section 35 Rights; or
    - ii. other arrangements or benefits related to this Agreement; or
  - d) other matters with respect to the implementation 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 37 of the General Provisions Chapter; or
  - b) agreements between one or more Aboriginal Peoples and the Crown recognizing Aboriginal title,which also fall within one or more of the categories of occurrences described in 7.a)i to 7.a)iv.
- 9. 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.
- 10. For greater certainty, while the requirement to review and evaluate progress on the Common Objectives in paragraph 9 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 purpose other than the application of the Periodic Renewal provisions.
- 11. The Parties acknowledge the importance of having a common agreement on the socioeconomic indicators necessary to inform the review and evaluation of Common Objective (i)vi.
- 12. If, at the time of the Periodic Renewal, the Parties have not reached agreement on the socioeconomic indicators necessary to review and evaluate progress on Common

- Objective (i)vi and the mechanisms for measuring such indicators, the Parties will evaluate progress on Common Objective (i)vi based on the best available empirical data.
13. If a proposal advanced as part of the Periodic Renewal relates to the fiscal relationship of the Parties set out in the Fiscal Relations Chapter, the review will take place in accordance with the Fiscal Relations Chapter and the review processes set out in the applicable Fiscal Arrangement or Fiscal Provision.
  14. Unless the Parties otherwise agree, the discussions and any negotiations under paragraphs 7 and 9, respectively, will commence on the Periodic Renewal Date.
  15. During the Periodic Renewal, the Parties are required to participate in the discussions and negotiations in good faith.
  16. Good faith negotiations under paragraph 15 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 bargaining position of another Party; and
    - e) act consistently with the standard of good faith as articulated in the common law.
  17. 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 7.a)iv is based on such particular circumstances that it could not reasonably be applied to K'ómoks;
    - b) whether the proposal in relation to a specific issue can be addressed in another forum, under another process or through other arrangements, as agreed to by the Parties;
    - c) availability of resources and lower cost alternatives that would reasonably address the Parties' interests;
    - d) the interests of third parties and potential impact of the proposal on third parties;
    - e) any obligations that Canada or British Columbia may have to other Indigenous groups; or

- f) other alternatives that would reasonably address the Parties' interests that do not require amendment of this Agreement.
18. 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 in good faith to be finally determined by arbitration under the Dispute Resolution Chapter without having to proceed through Stage One or Stage Two.
19. If an Arbitral Tribunal determines that a Party failed to participate in the 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 P-6;
  - b) the other Parties' reasonable costs in connection with the Periodic Renewal as determined in accordance with section 117 of Appendix P-6; 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 120 of Appendix P-6.
20. The Periodic Renewals 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.
21. 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 22.b), creates any legally binding rights or obligations, including financial obligations, other than those contemplated by paragraph 19.
22. For greater certainty:
- a) while the Parties are required to participate in the discussions and negotiations in good faith, none of the Parties are required to agree to amend this Agreement or take other measures requested by another Party as a result of the Periodic Renewal;
  - b) if the Parties agree to amend this Agreement, any such amendment will be made in accordance with the Amendment Chapter; and
  - c) if the Parties agree to amend an agreement contemplated by this Agreement, that agreement will be amended in accordance with its terms.
23. Each of the Parties will be responsible for its own costs in relation to the Periodic Renewal, unless otherwise determined by an Arbitral Tribunal.

24. The Parties may choose to engage in Periodic Renewals on a regional or collective basis, provided all Parties agree.
25. For greater certainty, following a final determination by an Arbitral Tribunal under paragraph 18, no Party is precluded from seeking to engage in additional discussions outside of the Periodic Renewal, but nothing in this Agreement obligates any Party to engage in such discussions.

## ORDERLY PROCESS

26. Following notice from K'ómoks, 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 26.a), had not yet been recognized by a Superior Court in a Final Judgment as an Aboriginal right recognized and affirmed under section 35 of the *Constitution Act, 1982*;
  - c) the Aboriginal right relates to a matter that this 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 K'ómoks.
27. If, within one year following the commencement of collaborative negotiations under Stage One of the Dispute Resolution Chapter, the Parties:
  - a) do not agree that the conditions under paragraph 26 have been met; or
  - b) agree that the conditions under paragraph 26 have been met, but do not agree on:
    - i. the manner in which the Aboriginal right is to be exercised; or
    - ii. the form and wording of the amendment,then, within 15 days of the conclusion of the foregoing period, a Party may refer the Disagreement to mediation under Stage Two of the Dispute Resolution Chapter.
28. If the mediation under paragraph 27 is terminated in accordance with the circumstances set out in the Dispute Resolution Chapter and Appendix P-2, K'ómoks may apply to the British Columbia Supreme Court for a declaration that:

- a) on the Effective Date, the right, as characterized by the Superior Court determination referenced in paragraph 26.a), had not yet been recognized in a Final Judgment of a Superior Court as an Aboriginal right that is recognized and affirmed under section 35 of the *Constitution Act, 1982* as referenced in 26.b);
  - b) the Aboriginal right relates to a matter that this Agreement is not designed to resolve; and
  - c) K'ómoks has the Aboriginal right referred to in paragraph 26.a).
29. If a Superior Court finally determines that the disputed conditions under paragraph 28 have been met, the Parties will, within one year from the date of the declaratory judgment, negotiate:
- a) the manner in which the Aboriginal right is to be exercised having regard for the factors set out in paragraph 32, 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.
30. If the Parties are unable to reach agreement under paragraph 27.b) or paragraph 29.a) or 29b), the matter will be finally determined by arbitration under Stage 3 of the Dispute Resolution Chapter.
31. K'ómoks may exercise the Aboriginal right when this Agreement has been amended, and notwithstanding paragraph 10 of the Amendment Chapter, the Agreement will be deemed to have been amended on:
- a) the date that the agreement between the Parties under paragraph 26, 27 or 29 takes effect;
  - b) the date that the decision of the Arbitral Tribunal under paragraph 30 takes effect; or
  - c) where federal or provincial legislation is required to give effect to the amendment, the date the federal or provincial legislation is brought into force.
32. Amendments to this 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 K'ómoks and other societal interests; and

- c) take into account and have no effect on the rights and interests of third parties, including other Indigenous groups.
33. If an Aboriginal right incorporated into this Agreement includes the authority to make laws:
- a) K'ómoks law-making authority will be exercised concurrently with Federal Law and Provincial Law; and
  - b) unless the Parties otherwise agree, Federal Law or Provincial Law will prevail to the extent of a Conflict with K'ómoks Law made under the law-making authority incorporated into this Agreement.
34. Nothing in paragraphs 26 to 33, creates or implies any financial obligations or service delivery responsibilities for Canada or British Columbia.



# **GOVERNANCE**



## CHAPTER 3: SELF-GOVERNMENT

### K'ÓMOKS SELF-GOVERNMENT

1. K'ómoks has the inherent right to self-government and the authority to make laws as set out in this Agreement.
2. The authority of K'ómoks to make laws 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. K'ómoks may adopt Federal Law or Provincial Law in relation to matters within K'ómoks law-making authority set out in this Agreement.
4. The exercise of K'ómoks' jurisdiction and authority set out in this Agreement will evolve over time.

### LEGAL STATUS AND CAPACITY

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

**K'ÓMOKS CONSTITUTION**

8. K'ómoks will have a K'ómoks Constitution, consistent with this Agreement, which will provide:
- a) for criteria respecting who is eligible for enrolment under this Agreement which, on the Effective Date, will be the same as paragraphs 1 to 3 of the Eligibility and Enrolment Chapter;
  - b) for the components set out in paragraph 6 of the Eligibility and Enrolment Chapter;
  - c) for a democratic K'ómoks Government, including its duties, composition and membership;
  - d) that the K'ómoks Government will be democratically accountable with elections at least every five years;
  - e) for a system of financial administration with standards comparable to those generally accepted for governments in Canada of similar size, through which K'ómoks Government will be financially accountable to its K'ómoks Members;
  - f) for conflict of interest rules comparable to those generally accepted for governments of similar size in Canada;
  - g) for recognition and protection of rights and freedoms of K'ómoks Members;
  - h) that every individual who is enrolled under this Agreement is a K'ómoks Member;
  - i) that this Agreement sets out the authority of K'ómoks, acting through K'ómoks Government, to make laws;
  - j) for the process for the enactment of laws by K'ómoks, acting through K'ómoks Government;
  - k) for challenging the validity of K'ómoks Law;
  - l) for appeal or review of administrative decisions made by K'ómoks Institutions under K'ómoks Law;
  - m) that K'ómoks Law is of no force or effect to the extent of an inconsistency or Conflict with the K'ómoks Constitution;
  - n) for the establishment of K'ómoks Public Institutions;

- o) for conditions under which K'ómoks may dispose of lands or interests in lands;
  - p) for a process for the amendment of the K'ómoks Constitution; and
  - q) for other provisions, as determined by K'ómoks.
9. The K'ómoks Constitution, once ratified in accordance with this Agreement, will come into force on the Effective Date.

### **K'ÓMOKS GOVERNMENT STRUCTURE**

10. A majority of the combined total members of the executive and legislative branches of K'ómoks Government will be elected, as provided for in the K'ómoks Constitution.
11. Subject to paragraph 10, the K'ómoks Constitution may provide for the appointment of members to the executive or legislative branches of K'ómoks Government, including the process for appointment, duties and other related matters.

### **K'ÓMOKS ELECTIONS**

12. Elections for K'ómoks Government will be held in accordance with the K'ómoks Constitution and other K'ómoks Laws.

### **REGISTRY OF LAWS**

13. K'ómoks will:
- a) maintain a public registry of K'ómoks Laws in the English language, which version is authoritative, and at the discretion of K'ómoks, in Pentlatch, Kwak'wala or Ayajuthem (ʔayʔaʃuθəm);
  - b) provide Canada and British Columbia with copies of K'ómoks Laws after they are enacted, unless otherwise agreed by the Parties; and
  - c) establish procedures for the coming into force and publication of K'ómoks Laws.

### **DECISIONS AFFECTING NON-MEMBERS**

14. K'ómoks Institutions will engage with Non-Members in respect of K'ómoks Institution decisions that directly and significantly affect those Non-Members.

15. K'ómoks will provide Non-Members with access to the appeal and review procedures in accordance with paragraph 8.1) and the Administration of Justice Chapter in respect of administrative decisions that directly and significantly affect Non-Members.

## TRANSITIONAL PROVISIONS

### K'ómoks Government

16. The Chief and Council of K'ómoks First Nation under the *Indian Act* immediately before the Effective Date are the elected members of K'ómoks Government from the Effective Date until the individuals elected in the first election take office.
17. The first election for K'ómoks Government will be initiated no later than 180 days after the Effective Date and the individuals elected will take office no later than one year after the Effective Date.

### Notification of Legislation

18. Before K'ómoks brings into effect any K'ómoks 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,

K'ómoks will give at least six months written notice to Canada and British Columbia of its intention to exercise the law-making authority.

19. Upon agreement by the Parties, K'ómoks may exercise a law-making authority before the expiration of the six month notice period under paragraph 18.
20. At the written request of any Party made within three months of receiving notice under paragraph 18, the relevant Parties will discuss:
  - a) options to address the interests of K'ómoks through methods other than the exercise of law-making authority;

- b) immunity of individuals providing services or exercising authority under K'ómoks Law;
  - c) coordination between individuals providing services or exercising authority under K'ómoks Law and other service providers;
  - d) any transfer of cases and related documentation from federal or provincial institutions to K'ómoks Institutions, including any confidentiality and privacy considerations;
  - e) any transfer of assets from federal or provincial institutions to K'ómoks Institutions;
  - f) any appropriate amendments to Federal Law or Provincial Law, including amendments to address duplicate licensing requirements;
  - g) the relationship of K'ómoks Laws with other Indigenous law; and
  - h) other matters agreed to by the Parties.
21. The Parties may negotiate agreements regarding any of the matters set out in paragraph 20, but an agreement under this paragraph is not a condition precedent to the exercise of law-making authority by K'ómoks, and such authority may be exercised immediately following the six month notice period or the notice period agreed upon in accordance with paragraph 19.

#### **NOTIFICATION OF PROVINCIAL LEGISLATION**

22. Before legislation is introduced in the Legislative Assembly, or before a regulation is approved by the Lieutenant Governor in Council, British Columbia will notify K'ómoks if:
- a) K'ómoks 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 relation to liability, remedies over and rights referred to in paragraphs 156 and 157; or
  - c) the legislation or regulation may affect:
    - i. the rights, powers, duties or obligations; or
    - ii. the protections, immunities or limitations in relation to liability,

referred to in paragraph 127,

except where this cannot be done for reasons of emergency or confidentiality.

23. If British Columbia does not notify K'ómoks under paragraph 22 for reasons of emergency or confidentiality, British Columbia will notify K'ómoks that the legislation has been introduced in the Legislative Assembly, or the regulation has been deposited with the Registrar of Regulations.
24. Notifications under paragraphs 22 and 23 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 come into force, if it has not already done so.
25. If within 30 days after notice is given under paragraph 22 or 23 K'ómoks makes a written request to British Columbia, then British Columbia and K'ómoks will discuss the effect of the legislation or regulation, if any, on:
  - a) a K'ómoks Law; or
  - b) a matter referred to in paragraph 22.b) or 22.c).
26. British Columbia and K'ómoks may enter into an agreement establishing alternatives to the obligations which would otherwise apply under paragraphs 22 to 25.
27. If British Columbia establishes a process providing for collective discussion with First Nation Governments in British Columbia in relation to matters referred to in paragraph 25:
  - a) K'ómoks will be invited to participate in that process; and
  - b) the process will be deemed to satisfy British Columbia's obligation for discussion in relation to that matter.
28. If K'ómoks is a member of a representative body and British Columbia and that body enter into an agreement providing for consultation in relation to matters under paragraphs 22 to 25 then, with the consent of K'ómoks, consultations in relation to a particular matter will be deemed to satisfy British Columbia's obligations under paragraphs 22 to 25.
29. Unless British Columbia agrees otherwise, K'ómoks will retain the information provided under paragraphs 22 to 28 in strict confidence until such time, if ever, the draft legislation is given first reading in the Legislative Assembly or the regulation is deposited with the Registrar of Regulations, as applicable.

30. The Parties acknowledge that nothing in paragraphs 22 to 28 is intended to interfere with British Columbia's legislative process.
31. Notwithstanding any other provision of this Agreement, to the extent that provincial legislation or a regulation referred to in paragraph 22 affects the validity of a K'ómoks Law, the K'ómoks Law will be deemed to be valid for a period of 180 days after the coming into force of the provincial legislation or regulation.

## DELEGATION

32. Any law-making authority of K'ómoks under this Agreement may be delegated by a K'ómoks Law to:
  - a) a K'ómoks 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, a Local Government or an Islands Trust Body; 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 K'ómoks Constitution.
33. Any authority of K'ómoks under this Agreement other than a law-making authority may be delegated by a K'ómoks Law to:
  - a) any body set out in paragraph 32; 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 K'ómoks Constitution.
34. Any delegation under paragraphs 32 and 33, except a delegation to a K'ómoks Public Institution, requires the written consent of the delegate.
35. K'ómoks may enter into agreements to receive authorities, including law-making authority, by delegation.

**K'ÓMOKS LAW-MAKING AUTHORITIES****K'ómoks Government**

36. K'ómoks may make laws in relation to the administration, management and operation of K'ómoks Government including:
- a) the establishment of K'ómoks Public Institutions, including their respective powers, duties, composition and membership, but any registration or incorporation of a K'ómoks Public Institution will be under Federal Law or Provincial Law;
  - b) the powers, duties, responsibilities, remuneration and indemnification of members, officials and appointees of K'ómoks Institutions;
  - c) the establishment of K'ómoks Corporations, but the registration or incorporation of K'ómoks Corporations will be under Federal Law or Provincial Law;
  - d) financial administration of K'ómoks and K'ómoks Institutions; and
  - e) elections, by-elections and referenda.
37. K'ómoks will make laws to provide K'ómoks Members with reasonable access to information in the custody or control of a K'ómoks Institution.
38. K'ómoks will make laws to provide persons other than K'ómoks Members with reasonable access to information in the custody or control of a K'ómoks Institution regarding matters that directly and significantly affect those persons.
39. K'ómoks may provide different means for accessing information under paragraphs 37 and 38.
40. Any K'ómoks Law made under paragraph 37 or 38 may exempt access to information that is generally unavailable under Federal Law or Provincial Law.
41. A K'ómoks Law under paragraphs 36 to 38 prevails to the extent of a Conflict with Federal Law or Provincial Law, unless the Conflict is in relation to the protection of personal information, in which case Federal Law or Provincial Law prevails to the extent of the Conflict.

**Protocols with Other Indigenous Nations**

42. K'ómoks may enter into Protocols with Other Indigenous Nations.
43. For greater certainty, a Protocol referred to in paragraph 42 does not form part of this Agreement.

44. Where K'ómoks enters into a Protocol in accordance with paragraph 42, K'ómoks will make laws to ensure that the exercise of any K'ómoks Exercisable Section 35 Rights addressed in a Protocol is in accordance with the terms of that Protocol and this Agreement.
45. Where K'ómoks enters into or terminates a Protocol under paragraph 42, K'ómoks will prepare a copy of Schedule 1 updated to list or remove, as applicable, the name of that Protocol and will deliver that copy to Canada and British Columbia.
46. Notwithstanding paragraph 5 of the Amendment Chapter, where K'ómoks delivers an updated copy of Schedule 1 to Canada and British Columbia in accordance with paragraph 45, Schedule 1 will be deemed amended to reflect the updates in that copy.
47. Upon request by Canada or British Columbia, K'ómoks will provide a copy of any Protocol, including any amendments, to Canada or British Columbia, as applicable.

### **K'ómoks Membership**

48. K'ómoks may make laws in relation to K'ómoks membership, including in relation to factors according to which an individual's Demonstrated Attachment to K'ómoks is to be assessed.
49. The conferring of K'ómoks membership does not:
  - a) confer or deny rights of entry into Canada, Canadian citizenship, the right to be registered under the *Indian Act* or any of the rights or benefits under the *Indian Act*; or
  - b) except as set out in this Agreement or in any Federal Law or Provincial Law, impose any obligation on Canada or British Columbia to provide rights or benefits.
50. A K'ómoks Law under paragraph 48 prevails to the extent of a Conflict with Federal Law or Provincial Law.

### **K'ómoks Assets**

51. K'ómoks may make laws in relation to the use, possession, management and disposition of assets of K'ómoks, a K'ómoks Institution, or a K'ómoks Corporation:
  - a) located on K'ómoks Lands; and
  - b) located off K'ómoks Lands.

52. For greater certainty, the law-making authority under paragraph 51 does not include the authority to make laws regarding creditors' rights and remedies.
53. For greater certainty, for the purposes of paragraph 51 "assets" include artifacts owned by K'ómoks, a K'ómoks Public Institution or a K'ómoks Corporation.
54. A K'ómoks Law under paragraph 51.a) prevails to the extent of a Conflict with Federal Law or Provincial Law.
55. Federal Law or Provincial Law prevails to the extent of a Conflict with a K'ómoks Law under paragraph 51.b).

### **Adoption**

56. K'ómoks may make laws in relation to adoptions:
  - a) of K'ómoks Children in British Columbia; and
  - b) by K'ómoks Members of Children who reside on K'ómoks Lands.
57. Any K'ómoks Law made under paragraph 56 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 the 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 the court's power to dispense with consent to an adoption under Provincial Law.
58. Where K'ómoks exercises law-making authority under paragraph 56, K'ómoks will provide Canada and British Columbia with a record of all adoptions occurring under K'ómoks Law.
59. The adoption record under paragraph 58 will include:
  - a) names and birthdate of the adoptee;
  - b) names of the biological parents;
  - c) names of the adoptive parents;
  - d) completion date of the adoption; and

- e) any other information agreed to by the Parties.
60. If a Director designated under the *Child, Family and Community Service Act* becomes the guardian of a K'ómoks Child, the Director will:
- a) give notice to K'ómoks that the Director is the guardian of the K'ómoks Child;
  - b) give notice to K'ómoks when the Director applies for a continuing custody order;
  - c) provide K'ómoks with a copy of the continuing custody order once the order is made and make reasonable efforts to involve K'ómoks in planning for the K'ómoks Child;
  - d) if requested by K'ómoks, consent to the application of K'ómoks Law to the adoption of the K'ómoks Child, provided that it is in the best interests of the K'ómoks Child; and
  - e) in determining the best interest of the K'ómoks Child under paragraph 60.d) the Director will consider the importance of preserving the K'ómoks Child's cultural identity.
61. A K'ómoks Law under paragraph 56 prevails to the extent of a Conflict with Federal Law or Provincial Law.
62. Before placing a K'ómoks Child for adoption, a Director or an adoption agency under the *Adoption Act* will:
- a) make all reasonable efforts to obtain information about the K'ómoks Child's cultural identity and preserve the information for the K'ómoks Child; and
  - b) discuss and collaborate about the K'ómoks Child's placement with a designated representative of K'ómoks.

### **Guardianship**

63. K'ómoks has standing in any judicial proceedings in British Columbia in which guardianship of a K'ómoks Child is in dispute and the court will take judicial notice of K'ómoks Laws and consider any evidence and representations in relation to K'ómoks Laws and customs in addition to any other matters it is required by law to consider.
64. The participation of K'ómoks in proceedings referred to in paragraph 63 will be in accordance with the applicable rules of court and will not affect the court's ability to control its process.

**Child and Family Services**

65. K'ómoks may make laws in relation to Child and Family Services:
- a) for Children of K'ómoks Families; and
  - b) if an agreement under paragraph 72.b) is reached and subject to that agreement, for Children who are not members of K'ómoks Families.
66. Any K'ómoks Law made under paragraph 65 will:
- a) expressly provide that those laws will be interpreted and administered such that the best interests of the Child is 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.
67. Any K'ómoks Law made under paragraph 65 must be consistent with any minimum standards set out in Federal Law that are applicable, on a national level, to the provision of Child and Family Services in relation to Indigenous Children.
68. If K'ómoks makes laws under paragraph 65, K'ómoks 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.
69. Notwithstanding any laws made under paragraph 65, if there is an emergency in which a K'ómoks Child is in need of protection, and K'ómoks has not responded or is unable to respond in a timely manner, British Columbia may act to protect the K'ómoks Child and, unless British Columbia and K'ómoks otherwise agree in writing, British Columbia will refer the matter to K'ómoks after the emergency.
70. Where K'ómoks exercises law-making authority under paragraph 65 and there is an emergency in which the Child under British Columbia's authority is a Child in need of protection, K'ómoks may act to protect the Child and, unless British Columbia and K'ómoks otherwise agree in writing, K'ómoks will refer the matter to British Columbia after the emergency.
71. A K'ómoks Law under paragraph 65 prevails to the extent of a Conflict with Federal Law or Provincial Law.
72. At the request of British Columbia or K'ómoks, British Columbia and K'ómoks will negotiate and attempt to reach agreement in relation to Child and Family Services for:

- a) Children of K'ómoks Families who reside on or off K'ómoks Lands; or
  - b) Children who are not members of K'ómoks Families and who reside on K'ómoks Lands.
73. Where the Director becomes the guardian of a K'ómoks Child, the Director will make reasonable efforts to include K'ómoks in planning for the K'ómoks Child, including adoption planning.
74. K'ómoks and the Minister or a Director designated under the *Child, Family and Community Service Act* may enter into an agreement, in accordance with Provincial Law, that has the effect of:
- a) imposing specific duties or restrictions on a Director; or
  - b) requiring that specific services be provided or not provided by a Director.

### **Indigenous Healers**

75. K'ómoks may make laws authorizing individuals to practice as Indigenous healers on K'ómoks Lands.
76. K'ómoks' law-making authority under paragraph 75 does not include the authority to regulate:
- a) medical or health practices that, or practitioners who, require licencing or certification under Federal Law or Provincial Law; or
  - b) products or substances that are regulated under Federal Law or Provincial Law.
77. Any K'ómoks Law made under paragraph 75 will establish 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.
78. A K'ómoks Law under paragraph 75 prevails to the extent of a Conflict with Federal Law or Provincial Law.

### **Health**

79. K'ómoks may make laws in relation to health services on K'ómoks Lands:
- a) for K'ómoks Members; or
  - b) provided by a K'ómoks Institution.

80. Any K'ómoks Law made under paragraph 79 will take into account the protection, improvement and promotion of public and individual health and safety.
81. Any K'ómoks Law made under paragraph 79 will not apply to health services provided by a provincially-funded health institution, agency or body, other than an institution, agency or body established by K'ómoks.
82. At the request of any Party, the Parties will negotiate and attempt to reach agreement for the delivery and administration of federal and provincial health services and programs by a K'ómoks Institution for individuals residing on K'ómoks Lands.
83. Federal Law or Provincial Law prevails to the extent of a Conflict with a K'ómoks Law under paragraph 79.
84. Notwithstanding paragraph 83, a K'ómoks Law made under paragraph 79 in relation to the organization and structure of K'ómoks Institutions used to deliver health services on K'ómoks Lands prevails to the extent of a Conflict with Federal Law or Provincial Law.

#### **Family and Social Services**

85. K'ómoks may make laws in relation to family and social services provided by a K'ómoks Institution, including income assistance, social development, housing and family and community services.
86. Any K'ómoks Law made under paragraph 85, may require individuals collecting income assistance from K'ómoks to participate in back-to-work programs or other similar programs.
87. Federal Law or Provincial Law prevails to the extent of a Conflict with a K'ómoks Law under paragraph 85.
88. K'ómoks law-making authority under paragraph 85 does not include the authority to make laws in relation to the licensing and regulation of facility-based services off K'ómoks Lands.
89. If K'ómoks makes laws under paragraph 85, at the request of any Party, the Parties will negotiate and attempt to reach agreement in relation to exchange of information with regard to avoidance of double payments, and related matters.
90. At the request of any Party, the Parties will negotiate and attempt to reach agreement for administration and delivery by a K'ómoks Institution of federal or provincial social services and programs for all individuals residing within K'ómoks Lands.

**Liquor Control**

91. K'ómoks 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 K'ómoks Lands.
92. Federal Law or Provincial Law prevails to the extent of a Conflict with a K'ómoks Law under paragraph 91.
93. K'ómoks, its agents and assignees have:
  - a) the exclusive right to sell liquor on K'ómoks Lands in accordance with Federal Law and Provincial Law; and
  - b) the right to purchase liquor from the British Columbia Liquor Distribution Branch, or its successors, in accordance with Federal Law and Provincial Law.
94. British Columbia will approve an application made by K'ómoks, its agents or assignees for a licence, permit or other authority to sell liquor on K'ómoks Lands, where the application meets provincial regulatory requirements.
95. Notwithstanding paragraph 93.a), British Columbia may issue to a person other than K'ómoks, its agents or assignees, a licence, permit or other authority to sell liquor on K'ómoks Lands with the consent of K'ómoks.
96. British Columbia will, in accordance with Provincial Law, authorize persons designated by K'ómoks to approve or deny applications for special occasion licences or temporary permits to sell liquor on K'ómoks Lands.

**Marriage**

97. K'ómoks may make laws in relation to:
  - a) the marriage rites and ceremonies of K'ómoks culture; and
  - b) the designation of K'ómoks Members to Perform marriages.
98. Nothing in the *Marriage Act* will be construed as in any way preventing K'ómoks from Performing, according to the rites and ceremonies of K'ómoks culture, a marriage between any two individuals:
  - a) neither of whom is under any legal disqualification to contract marriage under Federal Law or Provincial Law; and
  - b) either or both of whom are K'ómoks Members.

99. A marriage may not be Performed under K'ómoks Law unless the individuals intending to marry possess a valid marriage licence.
100. For the purposes of paragraph 99, marriage licences may only be issued by K'ómoks where:
- a) K'ómoks 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*.
101. Immediately after the Performance of the marriage, a representative designated under paragraph 97.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 K'ómoks for that purpose; and
  - b) by providing the original registration to the chief executive officer under the *Vital Statistics Act*.
102. The chief executive officer, or an individual authorized by the chief executive officer, under the *Vital Statistics Act* may, during normal business hours and as often as the chief executive officer considers necessary, inspect the marriage register book kept by K'ómoks and compare it with the registrations returned by K'ómoks under paragraph 101.b).
103. The record under paragraph 101.a) must be signed;
- a) by each of the parties to the marriage;
  - b) by two witnesses; and
  - c) by a representative designated under paragraph 97.b).
104. A representative designated under paragraph 97.b) by whom a marriage is Performed must observe and perform the duties imposed on them under the *Vital Statistics Act* representing the records of marriage.
105. A K'ómoks Law under paragraph 97 prevails to the extent of a Conflict with Federal Law or Provincial Law.

### **Child Care**

106. K'ómoks may make laws in relation to Child Care services on K'ómoks Lands.

107. Federal Law or Provincial Law prevails to the extent of a Conflict with a K'ómoks Law under paragraph 106.

### **Devolution of Cultural Property**

108. K'ómoks may make laws in relation to the devolution of the Cultural Property of a K'ómoks Member who dies intestate.
109. A K'ómoks Law under paragraph 108 prevails to the extent of a Conflict with Federal Law or Provincial Law.
110. K'ómoks has standing in any judicial proceeding in which:
- a) the validity of the will of a K'ómoks Member; or
  - b) the devolution of the Cultural Property of a K'ómoks Member,
- is at issue, including any proceeding under wills variation legislation.
111. K'ómoks may commence an action under provincial wills variation legislation in relation to the Cultural Property addressed by the will of a K'ómoks Member that provides for the devolution of the Cultural Property.
112. In a proceeding to which paragraph 110 or 111 applies, the court will consider, among other matters, any evidence or representations in relation to K'ómoks Law and customs dealing with the devolution of the Cultural Property.
113. The participation of K'ómoks or any other party in the proceeding referred to in paragraph 110 or 111 will be in accordance with the applicable rules of court and will not affect the court's ability to control its process.

### **Language and Culture Education**

114. K'ómoks may make laws in relation to K'ómoks language and culture education provided by a K'ómoks Institution on K'ómoks Lands for:
- a) the certification and accreditation of teachers for K'ómoks language and K'ómoks culture; and
  - b) the development and teaching of a K'ómoks language and K'ómoks culture curriculum.
115. A K'ómoks Law under paragraph 114 prevails to the extent of a Conflict with Federal Law or Provincial Law.

**Kindergarten to Grade 12 Education**

116. K'ómoks may make laws in relation to kindergarten to grade 12 education on K'ómoks Lands:
- a) for K'ómoks Members; or
  - b) provided by a K'ómoks Institution.
117. Any K'ómoks Law made under paragraph 116 will:
- a) establish curriculum, examination and other standards that permit transfers of students between school systems in British Columbia at a similar level of achievement and permit entry of students to the provincial post-secondary education systems; and
  - b) provide for the certification of teachers, other than for the teaching of K'ómoks language or culture, by a K'ómoks Institution or a body recognized by British Columbia, in accordance with standards comparable to standards applicable to individuals who teach in public or provincially funded independent schools in British Columbia.
118. Any K'ómoks Law made under paragraph 116 does not apply to schools under the *School Act* or the *Independent School Act*, unless the school is established under the *Independent School Act* by a K'ómoks Institution.
119. K'ómoks may make laws in relation to kindergarten to grade 12 home education of K'ómoks Members on K'ómoks Lands.
120. Any K'ómoks Law made under paragraph 116 or 119 must not interfere with the ability of parents to decide where their Children may be enrolled to receive kindergarten to grade 12 education.
121. A K'ómoks Law under paragraph 116 or 119 prevails to the extent of a Conflict with Federal Law or Provincial Law.
122. At the request of British Columbia or K'ómoks, British Columbia and K'ómoks will negotiate and attempt to reach agreement concerning the provision of kindergarten to grade 12 education by a K'ómoks Institution to:
- a) individuals, other than K'ómoks Members, residing on or off K'ómoks Lands; or
  - b) K'ómoks Members residing off K'ómoks Lands.

**Post-Secondary Education**

123. K'ómoks may make laws in relation to post-secondary education provided by a K'ómoks Institution on K'ómoks 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 K'ómoks; and
  - c) the provision for and coordination of all adult education programs.
124. Federal Law or Provincial Law prevails to the extent of a Conflict with a K'ómoks Law under paragraph 123.
125. A K'ómoks Institution may operate and provide post-secondary education services off K'ómoks Lands in accordance with Federal Law and Provincial Law.
126. A K'ómoks 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 K'ómoks Members or other individuals identified by K'ómoks.

**Emergency Preparedness**

127. K'ómoks 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 Law or Provincial Law in relation to emergency preparedness and emergency measures on K'ómoks Lands.
128. K'ómoks may make laws in relation to its rights, powers, duties and obligations under paragraph 127, including laws with respect to Environmental Emergencies.
129. Federal Law or Provincial Law prevails to the extent of a Conflict with a K'ómoks Law under paragraph 128.
130. For greater certainty, K'ómoks may declare a state of local emergency, and exercise the powers of a local authority in relation to local emergencies in accordance with Federal Law or 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 Law or Provincial Law.

131. 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 Law or Provincial Law.
132. K'ómoks may access emergency management support programs in the same manner that local authorities access such programs from Canada and British Columbia.

### **Regulation of Business**

133. K'ómoks may make laws in relation to the regulation, licencing and prohibition of business on K'ómoks Lands, including the imposition of licence fees or other fees.
134. K'ómoks law-making authority under paragraph 133 does not include the authority to make laws in relation to the accreditation, certification or professional conduct of professions and trades.
135. Federal Law or Provincial Law prevails to the extent of a Conflict with a K'ómoks Law under paragraph 133.

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

136. K'ómoks may make laws in relation to the regulation, control or prohibition of any actions, activities or undertakings on K'ómoks Lands that constitute, or may constitute, a:
- a) nuisance;
  - b) trespass, other than trespass by individuals;
  - c) danger to public health; or
  - d) threat to public order, peace or safety.
137. Federal Law or Provincial Law prevails to the extent of a Conflict with a K'ómoks Law under paragraph 136.

### **Buildings and Structures**

138. K'ómoks may make laws in relation to buildings and structures on K'ómoks Lands.
139. K'ómoks Law may only establish standards that are different than or additional to those in the *British Columbia Building Code* pursuant to an agreement with British Columbia under paragraph 140.

140. At the request of K'ómoks, British Columbia and K'ómoks will negotiate and attempt to reach agreement to enable K'ómoks to establish standards for buildings or structures which are additional to or different from the standards established by the *British Columbia Building Code*.
141. Federal Law or Provincial Law prevails to the extent of a Conflict with a K'ómoks Law under paragraph 138.

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

142. K'ómoks may make laws in relation to traffic, parking, transportation and highways on K'ómoks Lands to the same extent as municipalities in British Columbia.
143. Federal Law or Provincial Law prevails to the extent of a Conflict with a K'ómoks Law under paragraph 142.

### **Public Works**

144. K'ómoks may make laws in relation to public works and related services on K'ómoks Lands.
145. Federal Law or Provincial Law prevails to the extent of a Conflict with a K'ómoks Law under paragraph 144.

### **Delegation Agreement**

146. On the Effective Date, British Columbia and K'ómoks will enter into an agreement in accordance with paragraph 35 to provide K'ómoks with law-making authority in accordance with paragraph 147.
147. The agreement under paragraph 146 will:
- a) identify the specific area extending through and beyond the foreshore where the agreement applies;
  - b) provide K'ómoks with law-making authority, comparable to the law-making authority of a municipality, by delegation, in relation to the area in paragraph 147.a) in respect of:
    - i. the control or prohibition of any action, activity or undertaking that constitutes, or may constitute nuisance, a trespass, a danger to public health or a threat to public order, peace or safety; and
    - ii. such other matters as British Columbia and K'ómoks agree; and

- c) provide that Federal Law or Provincial Law prevails to the extent of a Conflict with a law made by K'ómoks in accordance with that agreement.
148. Before concluding an agreement in accordance with paragraph 146, British Columbia will engage with Canada regarding the proposed agreement.

## **K'ÓMOKS LIABILITY**

### **Elected or Appointed Members of K'ómoks Government**

149. No action for damages lies or may be instituted against an elected or appointed member or former member of K'ómoks Government for:
- a) anything said or done, or omitted to be said or done, by or on behalf of K'ómoks or K'ómoks 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 K'ómoks or K'ómoks 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 their power.
150. Paragraphs 149.c) and 149.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 willful misconduct; or
  - b) the cause of action is libel or slander.
151. Paragraphs 149.c) and 149.d) do not absolve K'ómoks from vicarious liability arising out of a tort committed by an elected or appointed member or former member of K'ómoks Government for which K'ómoks would have been liable had those paragraphs not been in effect.

**K'ómoks Public Officers**

152. No action for damages lies or may be instituted against a K'ómoks Public Officer or former K'ómoks Public Officer:
- a) for anything said or done or omitted to be said or done by that individual in the performance, or intended performance, of their duty or the exercise of their power; or
  - b) for any alleged neglect or default in the performance, or intended performance, of that individual's duty or exercise of their power.
153. Paragraph 152 does not provide a defence if:
- a) the K'ómoks 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 willful misconduct; or
  - b) the cause of action is libel or slander.
154. Paragraph 152 does not absolve any of the corporations or bodies referred to in the definition of K'ómoks Public Officer from vicarious liability arising out of a tort committed by a K'ómoks Public Officer for which the corporation or body would have been liable had that paragraph not been in effect.
155. Notwithstanding paragraph 152, except as may be otherwise provided under Federal Law or Provincial Law, in relation to the provision of a service, a K'ómoks Public Officer does not have protections, immunities or limitations in relation to liability, if no individuals delivering reasonably similar programs or services under Federal Law or Provincial Law have protections, immunities, limitations in relation to liability and rights under Federal Law or Provincial Law.

**K'ómoks and K'ómoks Government**

156. K'ómoks and K'ómoks Government have the protections, immunities, limitations in relation to liability and remedies over provided to a municipality and its municipal council under provincial legislation in respect of the provision of comparable programs and services.
157. Subject to paragraph 1.b) of the Access Chapter, K'ómoks has the protections, immunities, limitations in relation to liability, remedies over and rights provided to a municipality under the *Occupiers Liability Act*, and, for greater certainty, has those protections, immunities, limitations in relation to liability, remedies over and rights, in

relation to a road on K'ómoks Lands used by the public, or by industrial or resource users, if K'ómoks is the occupier of that road.

### **Limitations on Creditors' Remedies**

158. No creditor will have any remedy against an estate, interest, reservation or exception in any K'ómoks Lands held by K'ómoks or a K'ómoks Public Institution if the land has not been registered in the Land Title Office.
159. Before granting a security instrument in an estate, interest, reservation or exception in a parcel of K'ómoks Lands held by K'ómoks or a K'ómoks Public Institution, K'ómoks 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* in accordance with this Agreement.
160. Only for the purposes of the *Land Title Act*, the registration of a security instrument against registered K'ómoks Lands held by K'ómoks or a K'ómoks Public Institution will be conclusively deemed to be properly executed where it meets the requirements under Schedule 1 of the *Land Title Act*.
161. Subject to paragraph 162, no unsecured creditor will have a remedy against Essential K'ómoks Personal Property held by K'ómoks or a K'ómoks Public Institution, and no unsecured creditor will have a remedy against a parcel of registered lands held by K'ómoks or K'ómoks Public Institutions unless the British Columbia Supreme Court makes an order granting the creditor a remedy against such property at a time and on any such conditions as the court considers proper.
162. The court will consider the following factors in determining whether to grant an unsecured creditor under paragraph 161 an application for a remedy against Essential K'ómoks Personal Property or a parcel of registered lands held by K'ómoks or a K'ómoks Public Institution:
  - a) whether granting the application is likely to result in the insolvency of K'ómoks or the K'ómoks Public Institution, as applicable;
  - b) the effect of granting the application on the delivery of programs or services provided by K'ómoks or a K'ómoks 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

K'ómoks Personal Property, of K'ómoks or of the K'ómoks Public Institution, as applicable.

163. Notwithstanding paragraph 161, no creditor will have any remedy against a K'ómoks Artifact owned or held by K'ómoks, a K'ómoks Public Institution or a K'ómoks Member provided that the K'ómoks Artifact is not offered for sale.

#### ACCESS TO LONG-TERM DEBT FINANCING

164. In paragraph 165:

- 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.

165. Despite any other provision in this Agreement, if K'ómoks 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 K'ómoks Laws;
- b) for greater certainty, provisions of this Agreement and K'ómoks Laws which restrict or impose a condition precedent on any obligation, right, power or authority referenced in paragraph 165.a) do not apply;
- c) notwithstanding paragraph 165.a), the Authority and the Board may not cause the disposition of K'ómoks real property without the prior written approval of K'ómoks; and
- d) for greater certainty, nothing in paragraph 165.a) precludes British Columbia from establishing in a Provincial Law or in an agreement between British Columbia and K'ómoks, terms, conditions or limitations on K'ómoks as to the expenditure

of funds that British Columbia provides to K'ómoks or restricts the application of such terms, conditions or limitations to K'ómoks or the Board to the extent that the Board is acting in place of the K'ómoks Government.

**SCHEDULE 1 – PROTOCOLS BETWEEN K'ÓMOKS AND OTHER INDIGENOUS NATIONS**

<b>Other Indigenous Nation</b>	<b>Name of Protocol</b>	<b>Date</b>



## CHAPTER 4: ADMINISTRATION OF JUSTICE

### POLICING AND ENFORCEMENT BY POLICE SERVICES

#### Policing and Enforcement Services on K'ómoks 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 K'ómoks Lands.
2. British Columbia must provide policing and law enforcement services on K'ómoks Lands as if they were a rural area of the Province under the *Police Act*, unless K'ómoks 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 K'ómoks, and after the applicable local government and police board have agreed to participate in negotiations, British Columbia and K'ómoks 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. K'ómoks may develop and provide a cultural training program, specific to the needs of K'ómoks and supplemental to provincial or federal requirements, for officers of the Police Service responsible for providing policing and law enforcement on K'ómoks Lands as part of their regular duties.
6. K'ómoks 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 program.
7. At the request of British Columbia or K'ómoks, British Columbia and K'ómoks 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 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 K'ómoks, the Chief of Police will engage with K'ómoks on the development of priorities, goals and objectives for the delivery of policing and law enforcement services on K'ómoks Lands.
10. After engaging with the Chief of Police, K'ómoks may, every two years, set priorities, goals and objectives for the delivery of policing and law enforcement services on K'ómoks Lands, taking into account the priorities, goals and objectives for policing and law enforcement in British Columbia established by the Minister.
11. K'ómoks will deliver 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 delivered under paragraph 11 for the purpose of providing policing and law enforcement services on K'ómoks Lands; and
  - b) unless the Chief of Police and K'ómoks otherwise agree in writing, deliver a written report to K'ómoks each year on the implementation of the priorities, goals and objectives delivered under paragraph 11.

#### **Additional Policing and Enforcement Services on K'ómoks Lands**

13. For greater certainty, nothing in this Agreement affects or limits the ability of K'ómoks 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 K'ómoks Enforcement Officers**

14. Enforcement of Federal Law respecting fisheries by K'ómoks Enforcement Officers is addressed in paragraphs 159 and 160 of the Fisheries Chapter.

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

15. Canada and K'ómoks 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 K'ómoks Enforcement Officers**

16. At the request of British Columbia or K'ómoks, British Columbia and K'ómoks will negotiate and attempt to reach agreement on an agreement for K'ómoks Enforcement

Officers to enforce Provincial Law respecting natural resources within the K'ómoks Traditional Territory.

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

## **ENFORCEMENT OF K'ÓMOKS LAW**

### **Responsibility for Enforcement of K'ómoks Law**

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

### **Enforcement of K'ómoks Laws by Police Services**

22. Notwithstanding paragraph 19, and unless otherwise specified by K'ómoks Law under paragraph 20, a Police Service has the authority to, and may in its discretion, enforce K'ómoks Law.
23. Notwithstanding paragraph 21, a K'ómoks Law under paragraph 20 referred to in paragraph 22 prevails to the extent of a Conflict with Federal Law or Provincial Law.

24. At the request of K'ómoks, British Columbia and K'ómoks will negotiate and attempt to reach agreement regarding the enforcement of K'ómoks 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 K'ómoks Laws that will be the subject of enforcement.
25. Following the process set out in paragraph 116, the Parties will determine whether Canada will be a party to the negotiations under paragraph 24.

#### **Enforcement of K'ómoks Laws by K'ómoks Enforcement Officers**

26. K'ómoks may make laws that provide for the appointment of K'ómoks Enforcement Officers to enforce K'ómoks Law.
27. K'ómoks Law made under paragraph 26:
  - a) will set out the powers and duties of K'ómoks Enforcement Officers;
  - b) may designate K'ómoks Enforcement Officers as peace officers for the purposes of carrying out the duties set out under K'ómoks Law; and
  - c) may provide K'ómoks Enforcement Officers with protections and immunities.
28. K'ómoks Enforcement Officers are not peace officers for the purposes of administering or enforcing Federal Law or Provincial Law, except in accordance with an agreement under paragraph 15 or 16, or paragraph 159 of the Fisheries Chapter.
29. The powers, protections and immunities referred to in paragraph 27 shall not exceed those provided by Federal Law or Provincial Law for individuals enforcing similar laws or performing similar duties in British Columbia.
30. The Parties agree as a general principle that K'ómoks be in a position to support the safety of K'ómoks 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 K'ómoks 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. K'ómoks law-making authority under paragraph 26 does not include the authority to establish a police service, but nothing in this Agreement precludes K'ómoks from establishing a Police Service under Provincial Law.
34. If K'ómoks appoints K'ómoks Enforcement Officers in accordance with K'ómoks Law under paragraph 26, K'ómoks 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 Law or Provincial Law prevails to the extent of a Conflict with a K'ómoks Law under paragraph 26.
36. For greater certainty, K'ómoks may, by a proceeding brought in the Supreme Court of British Columbia, seek injunctive or other relief to prevent or restrain the contravention of K'ómoks Law.

#### **Enforcement of K'ómoks Law by Fishery Officers and Fishery Guardians**

37. Enforcement of K'ómoks Law made pursuant to the Fisheries Chapter by Fishery Officers and Fishery Guardians is addressed in paragraphs 152 to 158 of the Fisheries Chapter.

#### **Enforcement of K'ómoks Law Respecting Species at Risk, Migratory Birds and the Environment**

38. Canada and K'ómoks may negotiate an agreement for the enforcement of K'ómoks 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 K'ómoks Law.

**Enforcement of K'ómoks 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 K'ómoks Law respecting lands and natural resources.
41. K'ómoks may make laws to limit the authority of Provincial Enforcement Officers under paragraph 40.
42. Notwithstanding paragraph 21, a K'ómoks Law under paragraph 41 prevails to the extent of a Conflict with Federal Law or Provincial Law.
43. At the request of British Columbia or K'ómoks, British Columbia and K'ómoks will negotiate and attempt to reach agreement regarding the enforcement of K'ómoks 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 K'ómoks Enforcement Officers;
  - c) operational matters, including enforcement procedures and cultural protocols; and
  - d) any other matter to which British Columbia and K'ómoks agree.

**Enforcement of K'ómoks Laws by other External Enforcement Agencies**

45. Canada or British Columbia and K'ómoks may negotiate an agreement, other than those referred to in paragraphs 24, 38 and 43 and paragraph 155 of the Fisheries Chapter, for the enforcement of K'ómoks Law by a federal or provincial enforcement agency.

**Administrative Sanctions**

46. K'ómoks 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:
      - (i) the general limit for offences under section 787(1) of the *Criminal Code*; or

- (ii) that which may be imposed for comparable violations of administrative requirements under Federal Law or Provincial Law, whichever is greater;
- ii. suspension, restriction or revocation of a licence or other authorization;
- iii. seizure of personal property;
- iv. suspension or restriction of access or use of real property on K'ómoks Lands;
- v. suspension of a service; or
- vi. other administrative sanctions.

### Offences

47. K'ómoks 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:
      - (i) the general limit for offences under section 787(1) of the *Criminal Code*; or
      - (ii) that which may be imposed for comparable offences punishable by way of summary conviction under Federal Law 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, K'ómoks Law in relation to taxation may provide for:

- a) a monetary penalty that exceeds the limit set out in paragraph 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,
- where there is an agreement to that effect as contemplated in the Taxation Chapter.

## **ADJUDICATION AND JUDICIAL MATTERS**

### **Establishment of Adjudicative Bodies**

49. K'ómoks may make laws that provide for:
- a) the constitution, maintenance and organization of Adjudicative Bodies for the effective administration of K'ómoks Laws;
  - b) the appointment, authorization or designation of Adjudicators to Adjudicative Bodies to hear:
    - i. disputes of administrative sanctions issued under K'ómoks Law;
    - ii. appeals or reviews of administrative decisions made by K'ómoks Institutions under K'ómoks Law; or
    - iii. subject to paragraph 52, disputes between persons under K'ómoks Law and other matters arising under K'ómoks Law; and
  - c) rules of procedure that apply to proceedings before Adjudicative Bodies.
50. A K'ómoks Law under paragraph 49 prevails to the extent of a Conflict with Federal Law 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 K'ómoks Law;
  - b) perform the duties and functions referred to in paragraphs 85; or
  - c) make a determination referred to in paragraph 86.

**Statutory Appeals and Judicial Reviews in respect of Decisions of K'ómoks 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 K'ómoks Institutions under K'ómoks Law.
54. A statutory appeal or an application for judicial review under paragraph 53 may not be brought until all applicable processes established under K'ómoks Law for appeal or review have been exhausted.
55. For greater certainty, if K'ómoks has established applicable internal processes for appeal or review of an administrative decision made by a K'ómoks Institution under K'ómoks Law, the reviewable decision is that of the K'ómoks Court or Adjudicative Body hearing the final internal appeal or review under paragraph 54.
56. K'ómoks 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 K'ómoks Institutions under K'ómoks Law on any matters within its jurisdiction.
57. A K'ómoks Law under paragraph 56 prevails to the extent of a Conflict with Federal Law or Provincial Law.

**Prosecution of Offences**

58. K'ómoks is responsible for the prosecution of offences established under K'ómoks Law, including any related appeals.
59. K'ómoks may make laws that provide for the appointment, functions and responsibilities of K'ómoks Prosecutors to prosecute offences under K'ómoks Laws in:
- a) the K'ómoks Court; or
  - b) the Provincial Court of British Columbia, in accordance with Provincial Law.
60. Prosecution of an offence established under K'ómoks Law will be conducted:

- a) if K'ómoks has established a K'ómoks Court with the jurisdiction to hear that offence, in the K'ómoks Court, in accordance with K'ómoks Law; or
  - b) if K'ómoks has not established a K'ómoks Court with the jurisdiction to hear that offence, in the Provincial Court of British Columbia, in accordance with the *Offence Act*.
61. Where a prosecution is conducted under paragraph 60.b), the Provincial Court of British Columbia has jurisdiction to hear the prosecution of that offence.
62. K'ómoks will make laws to ensure that prosecutions of offences established under K'ómoks Law and on behalf of K'ómoks are conducted in a manner consistent with the principle of prosecutorial independence.
63. A K'ómoks Law under paragraph 59.a) prevails to the extent of a Conflict with Federal Law or Provincial Law.
64. Federal Law or Provincial Law prevails to the extent of a Conflict with a K'ómoks Law under paragraph 59.b) or 62.

#### **Prosecution of Offences in K'ómoks Court**

65. Where prosecutions are to be conducted on behalf of K'ómoks in the K'ómoks Court under paragraph 60.a), K'ómoks will appoint K'ómoks Prosecutors or retain prosecutors to carry out such prosecutions and any related appeals or proceedings.
66. Subject to K'ómoks Law, prosecutions on behalf of K'ómoks under paragraph 60.a) may be commenced by the laying of an information in K'ómoks Court by:
- a) a K'ómoks Enforcement Officer who has been designated as a peace officer under K'ómoks 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), K'ómoks will:
- a) appoint K'ómoks Prosecutors or retain prosecutors; or
  - b) where K'ómoks 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 K'ómoks by the laying of an information in the Provincial Court of British Columbia by:
- a) a K'ómoks Enforcement Officer who has been designated as a peace officer under K'ómoks 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 K'ómoks under paragraph 67.a).
70. At the request of K'ómoks, British Columbia and K'ómoks 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 K'ómoks 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 K'ómoks Law are to be conducted in the Provincial Court of British Columbia under paragraph 60.b), at the request of K'ómoks, the applicable Parties:
- a) will negotiate and attempt to reach agreement regarding the use of provincial prosecution services for 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. Prior to K'ómoks making a request under paragraph 74, the applicable Parties will engage to 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 K'ómoks Law and other matters arising under K'ómoks Law not addressed in paragraphs 53 and 60 will be heard:
- a) if K'ómoks has established a K'ómoks Court or Adjudicative Body with the jurisdiction to hear that dispute or other matter, by the K'ómoks Court or Adjudicative Body; or
  - b) if K'ómoks has not established a K'ómoks 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, by 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, by the Supreme Court of British Columbia.
78. Notwithstanding paragraph 77, British Columbia and K'ómoks may negotiate agreements providing for disputes between persons under K'ómoks Law or other matters arising under K'ómoks 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.

## **K'ÓMOKS COURT AND AGREEMENTS FOR THE EFFECTIVE ADMINISTRATION OF K'ÓMOKS LAWS**

### **K'ómoks Court**

81. K'ómoks may make laws that provide for:
  - a) the constitution, maintenance and organization of a K'ómoks Court for the effective administration of K'ómoks Laws; and
  - b) the appointment of K'ómoks Court Judges to the K'ómoks Court.
82. A K'ómoks Law under paragraph 81 prevails to the extent of a Conflict with Federal Law or Provincial Law.
83. K'ómoks Law made under paragraph 81 will:
  - a) provide a process for the appointment of K'ómoks Court Judges;
  - b) confer jurisdiction on K'ómoks Court Judges to hear matters arising under K'ómoks Law, which may include:
    - i. disputes of administrative sanctions issued under K'ómoks Law;

- ii. appeals or reviews of administrative decisions made by K'ómoks Institutions under K'ómoks Law;
  - iii. offences established under K'ómoks Law; or
  - iv. disputes between persons under K'ómoks Law and other matters arising under K'ómoks 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. K'ómoks may appoint a K'ómoks 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 K'ómoks Court and K'ómoks 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 Federal Law or Provincial Law, which for greater certainty includes:
    - i. committing for contempt of court;
    - ii. hearing a challenge to the validity, applicability or operability of any K'ómoks 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 K'ómoks 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 K'ómoks Lands, where such power is conferred under K'ómoks Law.

86. The K'ómoks Court and K'ómoks Court Judges do not have jurisdiction to make determinations 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 K'ómoks may negotiate an agreement regarding:
- a) the appointment by K'ómoks of judges of the Provincial Court of British Columbia as K'ómoks Court Judges in accordance with Provincial Law and K'ómoks Law;
  - b) the appointment by British Columbia of K'ómoks Court Judges or other individuals recommended by K'ómoks 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 K'ómoks Court in accordance with Provincial Law and K'ómoks Law; or
  - e) any other appointment or matter necessary for the effective administration of K'ómoks Law in the Provincial Court of British Columbia or K'ómoks Court.
88. British Columbia and K'ómoks 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.

**K'ómoks Court Coordination Agreement**

90. Before K'ómoks enacts or amends a K'ómoks Law in respect of matters under paragraph 81, K'ómoks will notify Canada and British Columbia of its intention to exercise the law-making authority.
91. Upon receipt of notice under paragraph 90, British Columbia and K'ómoks 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 K'ómoks 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 K'ómoks Court Judge.
92. Within 18 months of receiving a notice under paragraph 90, British Columbia and K'ómoks 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 under paragraph 92 will be negotiated and implemented in a manner that respects judicial independence, including administrative independence.
96. For greater certainty, paragraphs 110 and 111 of the General Provisions Chapter apply to proceedings brought before a K'ómoks 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 the K'ómoks Court or other matters related to the administration of justice.
98. K'ómoks Law may provide for K'ómoks to participate in regional aggregation in relation to the matters set out in this chapter.

**ORDERS, DEBT CERTIFICATES AND PAYMENTS TO K'ÓMOKS****Orders**

99. An order made or imposed under K'ómoks Law, from which no internal process established under K'ómoks Law for appeal or review is available, may be filed in:
- a) the Provincial Court of British Columbia, if under Provincial Law that court has jurisdiction in respect of the remedy provided for in the order; 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) the Provincial Court of British Columbia, 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*; 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 K'ómoks**

103. British Columbia will pay to K'ómoks any amounts collected on behalf of K'ómoks 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 K'ómoks may negotiate an agreement recognizing authority for K'ómoks to file or register, in a registry or other place established under Provincial Law:
- a) an order made or imposed under K'ómoks Law from which no internal process established under K'ómoks 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 K'ómoks, British Columbia and K'ómoks 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 K'ómoks, British Columbia and K'ómoks 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 K'ómoks 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.

**CORRECTIONAL SERVICES****Places of Confinement**

108. Subject to paragraph 109, this Agreement does not authorize K'ómoks to establish or maintain places of confinement.
109. Canada and K'ómoks may negotiate an agreement for K'ómoks 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 K'ómoks Lands may negotiate an agreement regarding:
- a) procedures for how individuals arrested by K'ómoks 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. K'ómoks may provide Community Correctional Services, in accordance with K'ómoks Law, for adults and youth convicted under or otherwise in conflict with K'ómoks Law.
- 112. At the request of K'ómoks, British Columbia and K'ómoks 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 K'ómoks Law:
  - a) before a prosecution is commenced; or
  - b) after a prosecution is commenced,in the K'ómoks Court or the Provincial Court of British Columbia.
- 113. At the request of K'ómoks, the applicable Parties will negotiate and attempt to reach agreement for K'ómoks to provide one or more Community Correctional Services on K'ómoks Lands for K'ómoks Members or individuals residing on K'ómoks Lands who are convicted under or otherwise in conflict with Federal Law or Provincial Law.
- 114. At the request of K'ómoks, the applicable Parties will negotiate and attempt to reach agreement for K'ómoks to provide within British Columbia one or more Community Correctional Services off of K'ómoks Lands for K'ómoks Members who are convicted under or otherwise in conflict with Federal Law or Provincial Law.
- 115. Prior to making 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 K'ómoks 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 Law or Provincial Law or policy;
- b) potential amendments to Federal Law or Provincial Law or policy that may support the implementation of K'ómoks Law;
- c) operational matters; or
- d) other relevant matters,

British Columbia and K'ómoks 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 K'ómoks cannot be the sole basis for requesting Canada's participation under this paragraph.

- 117. Canada will become a party to a negotiation 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 the Fiscal Relations Chapter, unless otherwise agreed to by the affected Parties.

## CHAPTER 5: LOCAL GOVERNMENT RELATIONS

### GENERAL

1. K'ómoks Lands do not form part of any municipality, Islands Trust Area or Regional District electoral area, and do not form part of any Regional District unless K'ómoks becomes a member of the Regional District in accordance with this Agreement.
2. On the Effective Date, K'ómoks is responsible for managing its intergovernmental relations with Local Government and Islands Trust Bodies.
3. Subject to the duty to consult and paragraph 4, 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, Islands Trust Area, municipality or Regional District electoral area in accordance with Provincial Law.
4. British Columbia will engage with K'ómoks on any changes to:
  - a) the structure of a Regional District; and
  - b) the boundaries of a Regional District, Islands Trust Area, municipality or Regional District electoral area,that directly and significantly affect K'ómoks.

### INTERGOVERNMENTAL AGREEMENTS

5. K'ómoks may enter into agreements with Local Government or Islands Trust Bodies with respect to the provision and delivery of:
  - a) Local Government or Islands Trust Bodies' services to K'ómoks Lands; and
  - b) K'ómoks services for lands under the jurisdiction of Local Government or Islands Trust Bodies.
6. K'ómoks agrees that any service agreement with a Local Government or an Islands Trust Body in effect on the Effective Date will remain in effect until such time as it is renegotiated or is terminated under the terms of the agreement.
7. K'ómoks and Local Governments or Islands Trust Bodies, as applicable, may establish and maintain agreements that set out principles, procedures and guidelines for the management of their relationship, including:

- a) coordination and harmonization of land use and planning, for certainty including regulating land use, enforcement of regulations and development;
- b) coordination and harmonization of property tax structures;
- c) coordination and harmonization of the development of infrastructure;
- d) cooperative economic development;
- e) environmental protection;
- f) dispute resolution;
- g) provision of services;
- h) participating in Local Government or Islands Trust Bodies' decision-making processes; and
- i) adjacent land use.

#### **REGIONAL DISTRICT MEMBERSHIP**

8. K'ómoks may become a member of a Regional District as set out in Provincial Law.
9. If K'ómoks becomes a member of a Regional District, K'ómoks will appoint a director to the board of the Regional District who will have the powers, duties and functions of a "treaty first nation director" under Provincial Law.
10. If K'ómoks is a member of the Regional District and a dispute arises, K'ómoks and the Regional District may be required to use a dispute resolution process set out in Provincial Law.

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

11. On the Effective Date, K'ómoks Lands form part of the Comox Strathcona Regional Hospital District.
12. On the Effective Date, K'ómoks will be a member of the Comox Strathcona Regional Hospital District and will appoint an elected member of K'ómoks Government to sit as a director on the board of the Comox Strathcona Regional Hospital District in accordance with Provincial Law.

13. The director appointed by K'ómoks under paragraph 12 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.
14. If K'ómoks becomes a member of a Regional District under paragraph 8, K'ómoks membership in the Comox Strathcona Regional Hospital District under paragraph 12 will be replaced through Regional District membership.



# LANDS



**CHAPTER 6: LANDS****GENERAL**

1. On the Effective Date, K'ómoks Lands comprises approximately 3441.8 hectares, including:
  - a) 289.8 hectares, more or less, of Former K'ómoks First Nation Reserves identified in Appendix B-2;
  - b) 3038.6 hectares, more or less, of Former Provincial Crown Land identified in Appendix B-3, including the lands referred to as Goose Spit Site 1 and Goose Spit Site 2;
  - c) 9.3 hectares, more or less, of former federal Crown land, referred to as Waveland Beacon, identified in Appendix B-4; and
  - d) 104.1 hectares, more or less, of Former K'ómoks Private Fee Simple Lands identified in Appendix B-5, subject to paragraph 31.
2. For greater certainty, the quantum in paragraph 1 will be finalized by the completion and filing or deposit of Adequate Surveys under paragraph 110 and the Parties may update paragraph 1 in accordance with paragraph 103 of the General Provisions Chapter.
3. If, on the Effective Date, British Columbia transfers the Timber on Royston Forest to K'ómoks pursuant to an agreement between British Columbia and K'ómoks, paragraphs 4 to 9 do not apply.
4. If, on the Effective Date, British Columbia does not transfer the Timber on Royston Forest to K'ómoks:
  - a) British Columbia reserves to itself all Timber on Royston Forest; and
  - b) Woodlot Licence W1968 remains in effect.
5. At any time after the Effective Date, provided that K'ómoks is the owner of Royston Forest, K'ómoks may request the removal of the timber reservation on Royston Forest.
6. If K'ómoks makes a request under paragraph 5, British Columbia and K'ómoks will jointly engage a qualified professional to conduct a timber cruise in accordance with applicable provincial policies to assess the remaining Timber on Royston Forest.
7. Within 90 days of receipt of the timber cruise referred to in paragraph 6, K'ómoks will pay British Columbia an amount determined by applying the stumpage rates under the

- Forest Act* in effect for Woodlot Licence W1968 at the time of the request under paragraph 5 to the volume of merchantable coniferous Timber determined in the timber cruise under paragraph 6.
8. Upon receipt by British Columbia of payment by K'ómoks under paragraph 7, British Columbia will remove the timber reservation from Royston Forest.
  9. For greater certainty, on the date the timber reservation is removed under paragraph 8, K'ómoks will own all of the Timber on Royston Forest.
  10. Notwithstanding the *Forest Act*, Woodlot Licence W1968 will expire:
    - a) on the Effective Date, if British Columbia transfers the Timber to K'ómoks under paragraph 3; or
    - b) on the date the timber reservation is removed under paragraph 8.
  11. No compensation is payable by British Columbia or K'ómoks to any person with respect to the expiration of Woodlot Licence W1968 and proceedings must not be commenced or continued to claim compensation from British Columbia or K'ómoks, or to obtain a declaration that compensation is payable by British Columbia or K'ómoks, in respect of the termination of a right to replace the tenure or the deletion of an area from the tenure, as the case may be.
  12. K'ómoks will indemnify and forever save harmless British Columbia from any and all compensation payable under the *Forest Act* to any person, including but not limited to K'ómoks or a K'ómoks Corporation, arising from the expiration of Woodlot Licence W1968.

#### **OWNERSHIP OF K'ÓMOKS LANDS**

13. On the Effective Date, K'ómoks owns K'ómoks Lands in fee simple except for those Former K'ómoks Private Fee Simple Lands that are owned in fee simple by a registered owner other than K'ómoks as set out in Appendix B-5 Part 1.
14. Subject to paragraph 15, upon Former K'ómoks Private Fee Simple Lands or Pre-approved Additions to K'ómoks Lands – Fee Simple Lands becoming K'ómoks Lands, all interests, rights, privileges and estates excluded or reserved by Canada or British Columbia vest in K'ómoks.
15. Paragraph 14 does not apply to Subsurface Resources or to the Timber reservation under paragraph 4.

16. Subject to paragraphs 4 and 43.c), fee simple ownership of K'ómoks Lands is not subject to any condition, proviso, restriction, exception or reservation set out in the *Land Act*, or any comparable limitation under Federal Law or Provincial Law.
17. 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 K'ómoks Lands.
18. Subject to paragraph 13 of the Subsurface Resources Chapter, where, at any time, any estate or interest in a parcel of K'ómoks Lands finally escheats to the Crown, the Crown will transfer, at no cost, that estate or interest to K'ómoks.
19. For greater certainty, if an estate or interest in a parcel of K'ómoks Lands escheats to the Crown, that parcel of land continues to be K'ómoks Lands.

#### **OTHER K'ÓMOKS LANDS**

20. On the Effective Date, K'ómoks owns Other K'ómoks Lands in fee simple.
21. This Agreement does not change ownership of Subsurface Resources on or under Other K'ómoks Lands.
22. K'ómoks' fee simple ownership of Other K'ómoks Lands is subject to the conditions, provisos, restrictions, exceptions and reservations set out in the *Land Act*, or any comparable limitation under Federal Law or Provincial Law.

#### **K'ÓMOKS PRIVATE AND PUBLIC LANDS**

23. For greater certainty, all K'ómoks Lands are K'ómoks Private Lands except K'ómoks Public Lands, K'ómoks Ecological Lands and K'ómoks Tribal Parks.
24. K'ómoks may designate all or a portion of K'ómoks Public Lands as K'ómoks Private Lands if K'ómoks intends to use the lands for commercial, cultural, resource development or other uses that are incompatible with public access, subject to British Columbia's consent, which will not be unreasonably withheld.
25. Notwithstanding paragraph 24, K'ómoks may designate up to 18.4 hectares of land from the parcel identified as "DL 7 'B'" in Appendix D-1 as K'ómoks Private Lands without the consent of British Columbia.
26. Before making a designation under paragraph 24 or 25, K'ómoks will give reasonable notice to the public of the change of designation.

27. If a designation is made under paragraph 24 or 25, the Parties will amend Appendix D-1 and other applicable Appendices in accordance with paragraph 9 of the Amendment Chapter to reflect that designation.

### **K'ÓMOKS TRIBAL PARKS**

28. K'ómoks will manage K'ómoks Tribal Parks in a manner which:
- a) protects and maintains the biological diversity and natural Environment in the area; and
  - b) prohibits commercial logging, mineral activities or any other activity that is inconsistent with the temporary recreational and non-commercial purposes allowed under paragraph 21 of the Access Chapter.
29. On the 49<sup>th</sup> anniversary of the Effective Date, the K'ómoks Lands identified as “Wildwood Forest Tribal Park” in Appendix B-3 will become K'ómoks Public Lands and the Parties will amend the applicable Appendices in accordance with paragraph 9 of the Amendment Chapter.

### **K'ÓMOKS ECOLOGICAL LANDS**

30. K'ómoks will manage K'ómoks Ecological Lands in a manner which protects sensitive, vulnerable or at-risk species and their habitat.

### **FORMER K'ÓMOKS PRIVATE FEE SIMPLE LANDS**

31. On the Effective Date, each parcel of Former K'ómoks Private Fee Simple Lands will be K'ómoks Lands if K'ómoks has delivered to Canada and British Columbia for that parcel:
- a) a certificate, in substantially the form set out in Appendix B-5 Part 3, signed by the registered owner in fee simple of that parcel of Former K'ómoks Private Fee Simple Lands, certifying that, on the date of the certificate, the signatory is the registered owner in fee simple of the lands legally described in the certificate and they consent to the inclusion of those lands in K'ómoks Lands;
  - b) where applicable, a certificate in substantially the form set out in Appendix B-5 Part 4, signed by the registered holder of each charge or encumbrance on title to that parcel of Former K'ómoks Private Fee Simple Lands certifying that, on the date of the certificate, the signatory is the registered holder of the charge or

encumbrance and they consent to the inclusion of the lands in K'ómoks Lands;  
and

- c) releases, in substantially the form set out Appendix B-5 Part 5, signed by the 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 K'ómoks Lands.

32. If K'ómoks does not deliver the certificates and releases as required under paragraph 31 for a parcel of Former K'ómoks Private Fee Simple Lands, on the Effective Date, that parcel:

- a) will not be included in Former K'ómoks Private Fee Simple Lands; and
- b) will be included in Pre-approved Additions to K'ómoks Lands - Fee Simple Lands;

and the Parties will amend Appendices B-1, B-5 and E-2, and any other applicable Appendices, in accordance with paragraph 9 of the Amendment Chapter.

33. K'ómoks will indemnify and forever save harmless Canada and British Columbia from any damages, losses, liabilities or costs, excluding fees and disbursements of solicitors and other professional advisors, that Canada or British Columbia may suffer or incur in connection with or as a result of any claims, demands, actions or proceedings relating to or arising out of the inclusion of Former K'ómoks Private Fee Simple Lands or Pre-approved Additions to K'ómoks Lands - Fee Simple Lands in K'ómoks Lands.

### **CREATION AND DISPOSITION OF INTERESTS IN K'ÓMOKS LANDS**

34. Subject to this Agreement, the K'ómoks Constitution and K'ómoks Law, K'ómoks may, without the consent of Canada or British Columbia:

- a) dispose of its fee simple estate in any parcel of K'ómoks Lands to any person; and
- b) from its fee simple estate or its interest in any parcel of K'ómoks Lands, create or dispose of any lesser estate or interest to any person, including rights of way and covenants similar to those in sections 218 and 219 of the *Land Title Act*.

35. Where K'ómoks disposes of a fee simple estate in a parcel of K'ómoks Lands to Canada under an agreement with Canada, unless otherwise agreed, at the time of the transfer of ownership those lands will no longer be K'ómoks Lands and the Parties will amend Appendix B and other applicable Appendices in accordance with paragraph 9 of the Amendment Chapter.

36. Except as provided in paragraphs 35, 108, 122, section 14 of Appendix O-1 and section 10 of Appendix O-2, a parcel of K'ómoks Lands does not cease to be K'ómoks Lands as a result of the disposition of an interest in that parcel, including a fee simple estate.
37. If K'ómoks wishes to dispose of a fee simple estate in a parcel of K'ómoks Lands for which no indefeasible title is registered under the *Land Title Act*, K'ómoks will, prior to the disposition, register the indefeasible title to that parcel under the *Land Title Act* in accordance with paragraph 8 of the Land Title Chapter.

### **SUBMERGED LANDS**

38. Any Submerged Lands that are part of the Former K'ómoks First Nation Reserves form part of K'ómoks Lands.
39. Subject to paragraph 38, Submerged Lands do not form part of K'ómoks Lands and nothing in this Agreement affects British Columbia's ownership of Submerged Lands.
40. No transfer of Submerged Lands to K'ómoks in accordance with this Agreement includes the exclusive right to fish, property rights in Fish or the right to allocate Fish.

### **ACCRETIONS TO K'ÓMOKS LANDS**

41. Lawful accretions to K'ómoks Lands are K'ómoks Lands.
42. Where K'ómoks delivers to Canada and British Columbia a certificate issued by the Surveyor General of British Columbia confirming that there has been lawful accretion to K'ómoks Lands, upon receipt of the certificate by Canada and British Columbia, the Parties will amend Appendix B and other applicable Appendices in accordance with paragraph 9 of the Amendment Chapter to reflect the lawful accretion.

### **INTERESTS ON K'ÓMOKS LANDS**

43. On the Effective Date, title to K'ómoks Lands is free and clear of all interests, except:
  - a) those interests set out in Appendix F, which are continued, replaced or created in accordance with this Agreement;
  - b) Freehold Subsurface Rights on or under K'ómoks Lands set out in Appendix K-2 Part 1, the ownership of which is to be confirmed in accordance with the adjudicative process contemplated in paragraphs 6 to 11 of the Subsurface Resources Chapter;

- c) any Subsurface Resources owned by British Columbia and located on or under K'ómoks Lands set out in Appendix K-2 Part 1; and
  - d) the timber reservation under paragraph 4, if applicable.
44. Subject to paragraph 43, on the Effective Date, every interest that before the Effective Date encumbered or applied to K'ómoks Lands ceases to exist.

#### **Interests to Continue**

45. Each interest set out in Appendix F-1 Parts 1 to 7 is retained by the person who held the interest immediately before the Effective Date and continues in accordance with applicable 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 K'ómoks or the registered owner set out in Appendix B-5 Part 1.
46. Where an interest set out in Appendix F-1 Parts 1 to 7 is not renewed or replaced when it expires or terminates in accordance with its terms or Provincial Law, that interest ceases to exist.

#### **Replacement of Certificates of Possession and Allotments on Former Reserves**

47. On the Effective Date, K'ómoks will grant or issue to each holder or joint holder of an interest set out in Appendix F-2 Part 1a, a form of tenure giving that holder at least the same rights with respect to the described parcel of K'ómoks Lands that individual held immediately before the Effective Date, modified to reflect the ownership and law-making authority of K'ómoks over those lands.
48. For greater certainty, any K'ómoks Law made under paragraph 65.c)iv applies in respect of K'ómoks Lands, including an interest granted under paragraph 47.

#### **Replacement and Creation of Interests on K'ómoks Lands**

49. On the Effective Date, K'ómoks will:
- a) grant to each person holding the interest set out in Appendix F-2 Parts 1b, 2 and 3 an interest replacing that person's interest with the interest set out in that Appendix; and
  - b) create new interests by granting to each person set out in Appendix F-3 the interest set out in that Appendix.
50. A document to grant or issue an interest in accordance with paragraphs 47 and 49 will:
- a) be issued in the applicable form of document, if any, set out in Appendix G; and

- b) include any modifications agreed upon in writing before the Effective Date by K'ómoks First Nation and the person entitled to the interest.
51. A document referred to under paragraph 50 has legal effect on the Effective Date as though it had been prepared, executed, and delivered by K'ómoks and by the applicable person set out in Appendices F-2 and F-3 on the Effective Date.
52. K'ómoks will deliver the applicable document to:
- a) the applicable person set out in Appendix F-2 and Appendix F-3; or
  - b) any other person who, before the Effective Date, was identified by Canada, British Columbia and K'ómoks First Nation as the correct interest holder, and the Chief Negotiators for each Party will change Appendix F, if applicable, in accordance with paragraph 103 of the General Provisions Chapter to reflect updated information.
53. If, following the Effective Date, a Party notifies the other Parties that an interest granted in accordance with paragraph 47 or 49:
- 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.
54. Any right of way of the nature described in section 218 of the *Land Title Act* that is granted by K'ómoks under this Agreement is legally binding and enforceable notwithstanding that K'ómoks Lands to which the right of way relates may not be subject to the *Land Title Act*.

## GOOSE SPIT

55. On the Effective Date K'ómoks owns the Goose Spit Lease Area and holds a lease of the K'ómoks Estuary Water Lot.
56. On the Effective Date, Canada, as represented by the Minister of National Defence, occupies and will be permitted to continue to occupy the Goose Spit Lease Area and the K'ómoks Estuary Water Lot Sublease Area for so long as required for national defence purposes, under the terms of the lease for the Goose Spit Lease Area and the sublease for the K'ómoks Estuary Water Lot Sublease Area.
57. On the Effective Date Canada owns the Goose Spit Improvements.

58. For greater certainty, nothing in this Agreement is intended to affect Canada's existing authority to dispose of any of the Goose Spit Improvements.
59. On the Effective Date, K'ómoks will issue to Canada, as represented by the Minister of National Defence, a lease of the Goose Spit Lease Area on terms agreed to by Canada and K'ómoks.
60. On the Effective Date, K'ómoks will issue to Canada, as represented by the Minister of National Defence, a sublease of the K'ómoks Estuary Water Lot Sublease Area on terms agreed to by Canada and K'ómoks.
61. The lease of the Goose Spit Lease Area and the sublease of the K'ómoks Estuary Water Lot Sublease Area by Canada is for purposes of national defence.
62. During the terms of the lease and the sublease referred to in paragraphs 59 and 60 respectively, the Goose Spit Lease Area and the K'ómoks Estuary Water Lot Sublease Area are defence establishments as defined in the *National Defence Act*.

## INDEMNITIES

63. British Columbia will indemnify and forever save harmless K'ómoks from any damages, losses, liabilities or costs, excluding fees and disbursements of solicitors and other professional advisors, that K'ómoks 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 F-1 Parts 1 to 6, F-2 Part 2 and F-3 of the name of a person who, immediately before the Effective Date, had an interest in K'ómoks Lands that had been granted by British Columbia; or
  - b) the incorrect identification of a person in Appendix F-1 Parts 1 to 6, F-2 Part 2 and F-3 as a person entitled to an interest, where another person was actually entitled, immediately before the Effective Date, to the interest in K'ómoks Lands that had been granted by British Columbia.
64. K'ómoks warrants that there are no interests, arising subsequent to the coming into force of the *K'ómoks First Nation Land Code*, with respect to the Former K'ómoks First Nation Reserves other than those set out in Appendix F-1 Part 7 and F-2 Part 1.

## LAW-MAKING AUTHORITY

65. K'ómoks may make laws in relation to:

- a) the use of K'ómoks Lands, including management, planning, zoning and development;
  - b) trespass by individuals on K'ómoks Lands;
  - c) the creation, allocation, ownership or disposition of estates or interests in K'ómoks Lands, including:
    - i. fee simple estates or any lesser estate or interest;
    - ii. mortgages;
    - iii. leases, licences, permits, easements or rights of way, including rights of way and covenants similar to those in sections 218 and 219 of the *Land Title Act*; and
    - iv. any conditions, provisos, restrictions, including restrictions on alienation, exceptions or reservations on such estates or interests;
  - d) the establishment and operation of a K'ómoks land title or land registry system for K'ómoks Lands that are not registered in the Land Title Office; and
  - e) expropriation for public purposes or public works by K'ómoks of estates or interests in K'ómoks Lands, other than:
    - i. estates or interests, including rights of way, granted or continued on the Effective Date, or thereafter replaced under this Agreement, unless specifically provided for otherwise in this Agreement,
    - ii. estates or interests expropriated or otherwise acquired by a Federal Expropriating Authority or a Provincial Expropriating Authority, and
    - iii. any other interests upon which the Parties have agreed in this Agreement,if K'ómoks 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.
66. Notwithstanding paragraph 65.e)i, K'ómoks may expropriate for public purposes or public works an interest granted under paragraph 47 where K'ómoks provides fair compensation to the owner of the interest and the expropriation is for the smallest interest necessary for the public purpose or public work.
67. Subject to paragraph 6 of the Land Title Chapter, a K'ómoks Law under paragraph 65 prevails to the extent of a Conflict with Federal Law or Provincial Law.

68. Notwithstanding paragraph 67, Federal Law or Provincial Law in respect of Subsurface Resources prevails to the extent of a Conflict with a K'ómoks Law under paragraph 65.
69. For the purposes of paragraph 65.c), K'ómoks may make laws with respect to estates or interests in K'ómoks Lands that are:
  - a) not recognized under Federal Law or Provincial Law; or
  - b) recognized under Federal Law or Provincial Law, provided that those laws are consistent with Federal Law or Provincial Law with respect to those estates or interests.
70. For greater certainty, a K'ómoks Law under paragraph 65.c)iv in respect of a fee simple estate granted by K'ómoks is not inconsistent with common law principles.

#### **PRE-APPROVED ADDITIONS TO K'ÓMOKS LANDS – FEE SIMPLE LANDS**

71. Subject to paragraphs 72 and 73, if K'ómoks, a K'ómoks Institution or a K'ómoks Corporation is the registered owner of the fee simple estate to a parcel of Pre-approved Additions to K'ómoks Lands – Fee Simple Lands, K'ómoks may give notice to Canada and British Columbia that the parcel of land is to be added to K'ómoks Lands.
72. Notice under paragraph 71 may be given only:
  - a) for the lands identified as “Kus-kus-sum” in Appendix E-2, after receipt by K'ómoks of a Certificate of Compliance for those lands;
  - b) for the lands identified as “Northeast Woods” in Appendix E-2 Part 1, after December 31, 2120; and
  - c) for all other lands set out in Appendix E-2, after the Effective Date.
73. If K'ómoks gives notice under paragraph 71 for a parcel of land, K'ómoks must also deliver, in relation to that parcel:
  - a) a certificate, in substantially the form set out in Appendix B-5 Part 3, signed by the registered owner in fee simple of that parcel of Pre-approved Additions to K'ómoks Lands – Fee Simple Lands, certifying that, on the date of the certificate, they are the registered owner in fee simple of the lands described in the certificate and they consent to the addition of those lands to K'ómoks Lands;
  - b) where applicable, a certificate in substantially the form set out in Appendix B-5 Part 4, signed by the registered holder of each charge or encumbrance on title to that parcel of Pre-approved Additions to K'ómoks Lands – 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 addition of the lands to K'ómoks Lands; and

- c) releases, in substantially the form set out in Appendix B-5 Part 5, signed by the registered owner in fee simple releasing Canada and British Columbia, as of the date of addition of those lands to K'ómoks Lands, from any claims, demands, actions or proceedings relating to or arising out of the addition of the lands to K'ómoks Lands.
74. Upon Canada and British Columbia receiving notice under paragraph 71 and the releases and certificates required under paragraph 73 the Parties will:
- a) take the steps required to have the parcel recognized as K'ómoks Lands at the Land Title Office; and
  - b) amend the applicable Appendices in accordance with paragraph 9 of the Amendment Chapter to reflect the addition of the parcel to K'ómoks Lands, and the land will become K'ómoks Lands when the amendment takes effect.
75. If the lands identified as “Northeast Woods” in Appendix E-2 Part 1 are added to K'ómoks Lands under paragraph 74:
- a) those lands will be K'ómoks Public Lands;
  - b) those lands will no longer be subject to the condition regarding local park use contained in Crown grant CA3538626 or to British Columbia’s right of reversion; and
  - c) British Columbia will remove the timber reservation from those lands and transfer the Timber to K'ómoks.
76. If the lands identified as “Kus-kus-sum” in Appendix E-2 Part 1 are added to K'ómoks Lands under paragraph 74, those lands will be a K'ómoks Tribal Park.

#### **ACQUISITIONS AND PRE-APPROVED ADDITIONS TO K'ÓMOKS LANDS – PROVINCIAL CROWN LANDS**

77. Subject to paragraph 80, at any time after the issuance of an Area-based Licence to K'ómoks or a K'ómoks Corporation under paragraph 66 of the Forest Resources Chapter, K'ómoks may purchase any or all of the lands identified as “WL0026”, “WL0085” and “WL1677” in Appendix E-1 Part 1 from British Columbia for the price determined under

- paragraph 81, and the purchased lands will become K'ómoks Lands under paragraph 82.e).
78. Subject to paragraph 80, at any time after the Effective Date, K'ómoks may purchase any or all of the lands identified in Appendix E-1 Part 1 as "H'kusam Expansion Lands" from British Columbia for the price determined under paragraph 83 and the purchased lands will become K'ómoks Lands under paragraph 84.e).
79. K'ómoks will notify British Columbia of its intent to purchase lands under paragraph 77 or 78.
80. Paragraphs 77 and 78 do not apply unless K'ómoks or a K'ómoks Corporation holds an Area-based Licence over the applicable lands at the time of purchase.
81. The purchase price of land identified as "WL0026", "WL0085" and "WL1677" in Appendix E-1 Part 1 will be the number of hectares of land purchased multiplied by the amount per hectare set out in Appendix T, as adjusted for inflation by the BCFDDIPI, plus the value of the Timber on that land as determined by:
- a) British Columbia and K'ómoks jointly engaging a qualified professional to conduct a timber cruise, in accordance with applicable provincial policies, to assess the remaining merchantable Timber on the area of land to be purchased; and
  - b) applying the stumpage rates under the *Forest Act* in effect for the Area-based Licence at the time of notification under paragraph 79 to the volume of Timber determined by the qualified professional in paragraph 81.a).
82. Upon receipt by British Columbia of the payment from K'ómoks determined under paragraph 81:
- a) notwithstanding the *Forest Act*, and subject to paragraph 82.b), effective on the date of the receipt of payment, that portion of the area of an Area-based Licence issued to K'ómoks or a K'ómoks Corporation under paragraph 66 of the Forest Resources Chapter that is part of the area of land purchased by K'ómoks under paragraph 77 is removed from the Area-based Licence area and the Area-based Licence area is amended;
  - b) notwithstanding the *Forest Act*, if the area of land purchased by K'ómoks under paragraph 77 includes:
    - i. the full area of an Area-based Licence issued to K'ómoks or a K'ómoks Corporation under paragraph 66 of the Forest Resources Chapter, or

- ii. the full area of the remaining portion of an Area-based Licence issued to K'ómoks or a K'ómoks Corporation under paragraph 66 of the Forest Resources Chapter,  
  
the Area-based Licence will expire as of the date of the receipt of the payment;
  - c) British Columbia will transfer ownership of the land and Timber purchased to K'ómoks;
  - d) the Parties will take the steps required to have the parcel recognized as K'ómoks Lands at the Land Title Office; and
  - e) the Parties will amend Appendix B and any other applicable Appendices in accordance with paragraph 9 of the Amendment Chapter to reflect the addition of the land purchased to K'ómoks Lands,
- and the land will become K'ómoks Lands when the amendment takes effect.
83. The purchase price of land, inclusive of Timber, identified as “H'kusam Expansion Lands” in Appendix E-1 Part 1 will be calculated by applying \$15,500 per hectare (Q2 2022\$) adjusted by the BCFDDIPI.
84. Upon receipt by British Columbia of the payment from K'ómoks determined in accordance with paragraph 83:
- a) notwithstanding the *Forest Act* and subject to paragraph 84.b), effective on the date of the receipt of payment, that portion of the area of Woodlot Licence W2030 that is part of the area of land purchased by K'ómoks in accordance with paragraph 78 is deleted from Woodlot Licence W2030;
  - b) notwithstanding the *Forest Act*, should the area or areas of land purchased by K'ómoks in accordance with paragraph 78 overlap the full area of Woodlot Licence W2030, or the full area of a portion of Woodlot Licence W2030 remaining, Woodlot Licence W2030 will expire as of the date of the receipt of the payment;
  - c) British Columbia will transfer ownership of the land and Timber purchased to K'ómoks;
  - d) the Parties will take the steps required to have the parcel recognized as K'ómoks Lands at the Land Title Office; and
  - e) the Parties will amend Appendix B and any other applicable Appendices in accordance with paragraph 9 of the Amendment Chapter to reflect the addition of the land purchased to K'ómoks Lands,

- and the land will become K'ómoks Lands when the amendment takes effect.
85. No compensation is payable by British Columbia or K'ómoks to K'ómoks, a K'ómoks Corporation or any other person who has acquired from K'ómoks or a K'ómoks Corporation an interest in an Area-based Licence affected by the purchase of land by K'ómoks under paragraph 77 or 78, in relation to an amendment to a boundary to a tenure or the expiration of an Area-based Licence under paragraph 82 or 84 and proceedings must not be commenced or continued to claim compensation from British Columbia or K'ómoks or to obtain a declaration that compensation is payable by British Columbia or K'ómoks in respect of the termination of a right to replace the tenure or the deletion of an area from the tenure under paragraphs 82 and 84, as the case may be.
  86. K'ómoks will indemnify and forever save harmless British Columbia from any and all compensation payable under the *Forest Act* to any person, including but not limited to K'ómoks or a K'ómoks Corporation, arising from an amendment to a boundary or the expiration of an Area-based Licence under paragraphs 82 and 84.
  87. K'ómoks is responsible for the preparation of any Adequate Surveys required for the addition of Pre-approved Addition Lands to K'ómoks Lands under paragraphs 71 to 84.
  88. Canada is not responsible for any costs associated with the purchase, transfer or addition of any Pre-approved Addition Lands to K'ómoks Lands.
  89. British Columbia is not responsible for any costs associated with the purchase, transfer or addition of any Pre-approved Addition Lands to K'ómoks Lands, except for the costs set out in paragraph 81.a).
  90. Subject to paragraphs 75.b), 82.a), 82.b), 84.a) and 84.b), any interests in relation to Pre-approved Addition Lands existing immediately before those lands are added to K'ómoks Lands in accordance with this Agreement will continue unless K'ómoks and the interest holder otherwise agree in writing.
  91. Subsurface Resources on Pre-approved Addition Lands that become K'ómoks Lands in accordance with this Agreement:
    - a) will continue to be owned by K'ómoks, the K'ómoks Institution or the K'ómoks Corporation, as applicable, when the lands become K'ómoks Lands, if the fee simple title includes ownership of the Subsurface Resources; or
    - b) subject to paragraph 13 of the Subsurface Resources Chapter, will be transferred by British Columbia to K'ómoks when the lands become K'ómoks Lands, if British Columbia owns the Subsurface Resources on or under those lands immediately before the lands become K'ómoks Lands.

92. For the purposes of paragraph 91, unless otherwise agreed by British Columbia and K'ómoks, any Subsurface Tenures and the Subsurface Resources subject to those Subsurface Tenures will be administered by British Columbia in accordance with paragraphs 14 to 24 of the Subsurface Resources Chapter.

#### ADDITIONS TO K'ÓMOKS LANDS

93. If K'ómoks requests the agreement of Canada and British Columbia to add land to K'ómoks Lands under paragraph 94, and Canada and British Columbia give notice of their agreement to that request in accordance with paragraphs 98 and 99, respectively, the Parties will:
- a) take the steps required to have the parcel recognized as K'ómoks Lands at the Land Title Office; and
  - b) amend Appendix B and any other applicable Appendices, in accordance with paragraph 9 of the Amendment Chapter to reflect the addition of the land,
- and the land will become K'ómoks Lands when the amendment takes effect.
94. At any time after the Effective Date, K'ómoks may request the agreement of Canada and British Columbia to add to K'ómoks Lands, land that is:
- a) owned in fee simple by K'ómoks, a K'ómoks Corporation or a K'ómoks Public Institution; and
  - b) within the K'ómoks Traditional Territory.
95. Prior to making a request under paragraph 94 in relation to lands within a municipal boundary or an Islands Trust Area, K'ómoks will engage with that municipality or Islands Trust Body, as applicable, to discuss areas of shared interest and any implications that may arise as a result of the addition to K'ómoks Lands.
96. When considering a request by K'ómoks under paragraph 94, Canada and British Columbia will take into account:
- a) potential adverse impacts that adding the land to K'ómoks Lands might have on the rights under section 35 of the *Constitution Act, 1982* of Other Indigenous Nations;
  - b) measures that may be appropriate to avoid, mitigate or otherwise accommodate those potential adverse impacts referred to in paragraph 96.a), including associated costs; and

- c) other relevant matters.
97. When considering a request by K'ómoks under paragraph 94, British Columbia will take into account the results of K'ómoks' engagement under paragraph 95.
98. If Canada agrees to add lands to K'ómoks Lands, Canada will give notice of its agreement by order of the Governor in Council.
99. If British Columbia agrees to add lands to K'ómoks Lands, British Columbia will give notice of its agreement by order of the Lieutenant Governor in Council or by other means specified by British Columbia.
100. Nothing in paragraphs 93 to 104 obligates Canada or British Columbia to pay any costs associated with the purchase or transfer of land that is added to K'ómoks Lands under paragraph 93 or any other costs related to the addition of that land to K'ómoks Lands.
101. Any interests in relation to lands existing immediately before those lands are added to K'ómoks Lands under paragraph 93 will continue unless K'ómoks and the interest holder otherwise agree in writing.
102. Subsurface Resources on lands that become K'ómoks Lands under paragraph 93:
- a) will continue to be owned by K'ómoks, the K'ómoks Institution or the K'ómoks Corporation, as applicable, when the lands become K'ómoks Lands, if the fee simple title includes ownership of the Subsurface Resources; or
  - b) subject to paragraph 13 of the Subsurface Resources Chapter, will be transferred by British Columbia to K'ómoks when the lands become K'ómoks Lands, if British Columbia owns the Subsurface Resources on or under the lands immediately before the lands become K'ómoks Lands.
103. For the purposes of paragraph 102, unless otherwise agreed by British Columbia and K'ómoks, any Subsurface Tenures and the Subsurface Resources subject to those Subsurface Tenures will be administered by British Columbia in accordance with paragraphs 14 to 24 of the Subsurface Resources Chapter.
104. K'ómoks is responsible for the preparation of any Adequate Surveys required for the addition of lands to K'ómoks Lands under paragraph 93.

#### **REMOVAL OF K'ÓMOKS LANDS**

105. K'ómoks may request the agreement of Canada and British Columbia to the removal of a parcel of land from K'ómoks Lands, which agreement will not be unreasonably withheld.

106. In considering a request under paragraph 105, Canada and British Columbia may each take into account:
- a) necessary jurisdictional, administrative and servicing arrangements;
  - b) the views of any affected Local Government and any affected neighbouring First Nations;
  - c) whether removal of the land will have an impact on negotiated Fiscal Arrangements and Fiscal Provisions;
  - d) whether removal of the land will create legal or financial implications for Canada or British Columbia; and
  - e) any other matter that Canada or British Columbia reasonably considers relevant.
107. If Canada and British Columbia agree to the removal of a parcel of land from K'ómoks Lands, each will give notice of its agreement to the other Parties.
108. Upon receipt by K'ómoks of the notices under paragraph 107 the Parties will amend Appendix B and any other applicable Appendices in accordance with paragraph 9 of the Amendment Chapter to reflect the removal of lands from K'ómoks Lands, and the parcel of land will cease to be K'ómoks Lands when the amendment takes effect.

## **SURVEYS**

109. No new surveys will be required for a parcel of K'ómoks Lands or Other K'ómoks Lands if the Surveyor General of British Columbia determines that an Adequate Survey exists for that parcel.
110. If an Adequate Survey is prepared and accepted for filing or deposit in the Land Title Office or Crown Land Registry, the Parties will amend the applicable Appendices in accordance with paragraph 9 of the Amendment Chapter as required to reflect any resulting establishment or re-establishment of the boundaries.
111. 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 FORMER PROVINCIAL CROWN LANDS**

112. If Adequate Surveys of Former Provincial Crown Lands or Other K'ómoks Lands do not already 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.

**INITIAL SURVEYS FOR EXTERIOR BOUNDARY OF FORMER K'ÓMOKS FIRST NATION RESERVES AND FORMER FEDERAL CROWN LAND**

113. If Adequate Surveys of Former K'ómoks First Nation Reserves or Waveland Beacon do not already 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 K'ÓMOKS PRIVATE FEE SIMPLE LANDS**

114. If Adequate Surveys of Former K'ómoks Private Fee Simple Lands do not already exist, K'ómoks 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.

**COSTS**

115. British Columbia will pay the cost of the Adequate Surveys of the exterior boundaries of Former Provincial Crown Lands and Other K'ómoks Lands required under paragraph 112.
116. Canada will pay the cost of the Adequate Surveys of the exterior boundaries of Former K'ómoks First Nation Reserves and Waveland Beacon required under paragraph 113.
117. K'ómoks will pay the cost of the Adequate Surveys of the exterior boundaries of Former K'ómoks Private Fee Simple Lands required under paragraph 114.
118. Prior to the Effective Date, Canada will provide K'ómoks with funding to carry out the initial interior boundary surveys of Former K'ómoks First Nations Reserves, and such surveys will meet the requirements of the *Land Title Act*.

**PROVINCIAL EXPROPRIATION OF K'ÓMOKS LANDS**

119. British Columbia acknowledges that K'ómoks Lands are of cultural significance to K'ómoks and that it is of fundamental importance to maintain the size and integrity of K'ómoks Lands and, therefore, as a general principle, K'ómoks Lands will not be expropriated under Provincial Law.
120. If a Provincial Expropriating Authority has determined that it requires an interest in K'ómoks Lands, the Provincial Expropriating Authority will make reasonable efforts to acquire the interest by agreement.
121. If a Provincial Expropriating Authority expropriates an interest in K'ómoks Lands, only the most limited interest necessary will be expropriated and for the shortest time required.
122. An estate in fee simple in K'ómoks Lands expropriated by a Provincial Expropriating Authority will not remain K'ómoks Lands, unless British Columbia and K'ómoks otherwise agree.
123. Appendix O-1 applies to the expropriation of K'ómoks Lands, including K'ómoks Lands not owned by K'ómoks.

**FEDERAL EXPROPRIATION OF K'ÓMOKS LANDS**

124. Canada acknowledges that it is of fundamental importance to maintain the size and integrity of K'ómoks Lands and, therefore, as a general principle, interests in K'ómoks Lands will not be expropriated under Federal Law.
125. Before expropriating an interest in K'ómoks Lands, a Federal Expropriating Authority will make reasonable efforts to acquire the interest by agreement.
126. Despite the general principle against expropriation under paragraph 124, any interest in K'ómoks 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 O-2.
127. If a Federal Expropriating Authority expropriates K'ómoks Lands, only the most limited interest in K'ómoks Lands necessary will be expropriated and for the shortest time required.
128. Federal Law applies to the expropriation of an interest in K'ómoks Lands by a Federal Expropriating Authority except to the extent that this Agreement modifies its application.
129. Nothing in this Agreement affects or limits the application of the *Emergencies Act* to K'ómoks Lands and that Act continues to apply on K'ómoks Lands.

**K'ÓMOKS WATER LOTS**

130. On the Effective Date, British Columbia will issue to K'ómoks a 99-year water lot lease in respect of the K'ómoks Gravelly Bay Water Lot in the form set out in Appendix M-1 Part 2.
131. On the Effective Date, British Columbia will issue to K'ómoks a 99-year water lot lease in respect of the K'ómoks Estuary Water Lot in the form set out in Appendix M-2 Part 2.
132. The leases issued under paragraphs 130 and 131 are renewable in accordance with the terms set out in the leases.
133. At the request of British Columbia or K'ómoks, British Columbia and K'ómoks will negotiate and attempt to reach agreement on amendments to the terms and geographic boundaries of the leases issued under paragraphs 130 and 131.
134. If amendments to geographic boundaries are made pursuant to paragraph 133, Appendices M-1 Part 1 or M-2 Part 1 will be deemed to be amended accordingly.
135. British Columbia will not designate lands within the K'ómoks Estuary Water Lot or K'ómoks Gravelly Bay Water Lot as a Wildlife Management Area or Protected Area without the agreement of K'ómoks.

**AGRICULTURAL LAND RESERVE**

136. The *Agricultural Land Commission Act* does not apply to K'ómoks Lands.
137. On the Effective Date, K'ómoks will make laws under paragraph 65 that:
  - a) designate as K'ómoks Agricultural Lands:
    - i. K'ómoks Lands set out and shown for illustrative purposes in Appendix I; and
    - ii. future additions to K'ómoks Lands that are designated as agricultural land reserve under the *Agricultural Land Commission Act* immediately before their addition to K'ómoks Lands;
  - b) establish, with respect to K'ómoks 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 K'ómoks Lands as K'ómoks Agricultural Lands.
138. Any K'ómoks Law referred to in paragraph 137 will:
- a) prioritize the preservation of the high capability agricultural lands for agricultural and other food harvesting uses;
  - b) define farm and non-farm uses comparable to regulations made under the *Agricultural Land Commission Act*; and
  - c) provide for engagement with adjacent landowners and British Columbia in processes set out in paragraphs 137.b) and 137.c).

#### **SITE REMEDIATION**

139. British Columbia is not required to prepare or provide a site profile for any lands transferred to K'ómoks in accordance with this Agreement.
140. The transfer of the Former K'ómoks First Nation Reserves to K'ómoks in accordance with this Agreement does not, in and of itself, result in British Columbia being liable in respect of any contamination of such lands.

#### **MEMEKAY HORSE CAMP AND SALMON RIVER GRAVEL AREA**

141. The Parties acknowledge that K'ómoks has an interest in:
- a) ensuring the area identified as “Memekay Horse Camp” and shown for illustrative purposes in Appendix R, continues as a British Columbia recreational site; and
  - b) securing access to Gravel in the area identified as “Salmon River Gravel Area” and shown for illustrative purposes in Appendix S.
142. Prior to issuing any authorization that may adversely affect K'ómoks' interests under paragraph 141, British Columbia will Consult with K'ómoks with the aim of securing the free, prior and informed consent of K'ómoks.

**CHANGE IN LAND CATEGORY**

143. The Parties acknowledge that if, prior to the Effective Date, land defined as Former K'ómoks First Nation Reserves, Former Provincial Crown Lands or Former K'ómoks Private Fee Simple Lands ceases to fall within the applicable definition, the Parties will update the applicable Appendices in accordance with paragraph 103 of the General Provisions Chapter to reflect the change in category.

**CONDENSORY ROAD**

144. If, prior to the Effective Date, Canada has transferred administration and control of the Pentledge 2 Alignment Lands to British Columbia, paragraphs 145 to 149 do not apply.
145. On the Effective Date, immediately after receiving the transfer of Former K'ómoks First Nation Reserves, K'ómoks will transfer ownership of the Pentledge 2 Alignment Lands, including Subsurface Resources, to British Columbia.
146. If Adequate Surveys of the Pentledge 2 Alignment Lands do not already 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.
147. British Columbia will pay the cost of the Adequate Surveys of the exterior boundaries of the Pentledge 2 Alignment Lands required under paragraph 146.
148. Following a transfer to British Columbia under paragraph 145, the Pentledge 2 Alignment Lands are not K'ómoks Lands and, for greater certainty, are Crown Corridors.
149. For greater certainty, any transfer under paragraph 145 is without prejudice to any claims K'ómoks has or defences which British Columbia has with respect to the use by British Columbia of the Pentledge 2 Alignment Lands.



## CHAPTER 7: LAND TITLE

### FEDERAL TITLE REGISTRATION

1. Federal land title and land registry laws do not apply to K'ómoks Lands, other than laws in respect of the survey and recording of interests held by Canada in K'ómoks Lands.

### REGISTRATION OF INDEFEASIBLE TITLE AND INTERESTS ON THE EFFECTIVE DATE

2. On the Effective Date:
  - a) indefeasible title in the name of K'ómoks to the following K'ómoks Lands:
    - i. Former K'ómoks First Nation Reserves identified in Appendix B-2 Part 1;
    - ii. Former Provincial Crown Lands identified in Appendix B-3 Part 1;
    - iii. former federal Crown land identified in Appendix B-4 Part 1;
  - b) an indefeasible title in the name of the registered owner to each parcel of Former K'ómoks Private Fee Simple Lands identified in Appendix B-5 Part 1;
  - c) an indefeasible title in the name of K'ómoks to Other K'ómoks Lands identified in Appendix C;
  - d) unless otherwise agreed to in writing by the interest holder and K'ómoks, the interests set out in:
    - i. Appendix F-1 Parts 5 and 7;
    - ii. Appendix F-2;
    - iii. Appendix F-3 Part 1, if registrable;
    - iv. Appendix F-3 Parts 2 and 4;
    - v. Appendix F-3 Part 5, if identified for registration;
  - e) unless otherwise provided for under Provincial Law, the exceptions, reservations and charges set out in Appendix F-1 Part 8,

will be transferred, designated as K'ómoks Lands, registered or remain registered in the Land Title Office in accordance with this Agreement and the requirements of the *Land Title Act*.

**LAND TITLES SYSTEM (TORRENS)**

3. The *Land Title Act* does not apply to a parcel of K'ómoks 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.
4. The *Land Title Act* applies to:
  - a) a parcel of K'ómoks Lands registered under the *Land Title Act*; and
  - b) an application made under the *Land Title Act* in accordance with this Agreement for the registration of an indefeasible title, from the time of application until the application has been withdrawn or rejected.
5. No title adverse to or in derogation of the title of the registered owner of a parcel of K'ómoks 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 in relation to K'ómoks Lands.
6. Notwithstanding paragraph 67 of the Lands Chapter, where the *Land Title Act* applies to a parcel of K'ómoks Lands, that Act prevails to the extent of a Conflict with a K'ómoks Law under paragraph 65 of the Lands Chapter in respect of that parcel.
7. The Registrar is entitled to rely on, and is not required to make any inquiries in relation to, the matters certified in the K'ómoks Certificate and a person deprived of an estate, interest, condition, proviso, restriction, exception or reservation, in or to a parcel of K'ómoks Lands as a result of the reliance by the Registrar on the K'ómoks Certificate, and the issuance by the Registrar of an indefeasible title based on the K'ómoks Certificate, will have no recourse, at law or in equity, against the Registrar, an assurance fund under the *Land Title Act*, Canada or British Columbia.

**APPLICATION FOR REGISTRATION OF INDEFEASIBLE TITLE AND INTERESTS**

8. K'ómoks, and no other person, may apply under the *Land Title Act* for the registration of an indefeasible title to a parcel of K'ómoks Lands for which no indefeasible title is registered at the time of application, and such application may be made in the name of K'ómoks or on behalf of another person.

**SURVEY AND LAND TITLE FEES**

9. Notwithstanding any requirement of the *Land Title Act*, the *Land Act*, bylaws of the Land Title and Survey Authority or any other Provincial Law, no fee is payable by:
- a) Canada, K'ómoks or any other person in relation to:
    - i. the first registration in the Land Title Office of indefeasible title to a parcel of K'ómoks Lands or Other K'ómoks Lands in the name of K'ómoks, a K'ómoks Corporation or a K'ómoks 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 K'ómoks 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 9.a)i or 9.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 9.a)i or 9.a)ii;
    - v. the filing of a certificate in relation to a registered parcel that is to become K'ómoks 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 K'ómoks; or
  - b) Canada or K'ómoks 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 the Agreement.

**REGISTRATION OF INDEFEASIBLE TITLE**

10. Upon registration of any parcel under paragraph 2, if necessary, the Parties will amend Appendix B and any other applicable Appendices in accordance with paragraph 9 of the Amendment Chapter, to reflect any adjustments to the boundaries of K'ómoks Lands.
11. To the extent a transmission right of way in favour of BC Hydro is applicable to a parcel of land registered under paragraph 2, the Parties will make application for registration of that interest in priority to the registration of other interests.



## CHAPTER 8: SUBSURFACE RESOURCES

### GENERAL

1. On the Effective Date, K'ómoks owns those Subsurface Resources on or under K'ómoks Lands identified in Appendix K-1.
2. Subject to paragraph 24, where K'ómoks owns any Subsurface Resources on or under K'ómoks Lands, K'ómoks has exclusive authority to set, collect and receive any fees, rents, royalties or charges other than taxes, for the exploration, development, extraction or production of those Subsurface Resources.
3. Paragraph 2 does not limit British Columbia from collecting and receiving fees or other payments for administering the exploration, development, extraction or production of Subsurface Resources from K'ómoks Lands under Provincial Law.
4. Nothing in this Agreement confers jurisdiction on K'ómoks in relation to Nuclear Substances, nuclear facilities or prescribed equipment or information in relation to Nuclear Substances or nuclear facilities.
5. Nothing in this Agreement confers authority on K'ómoks to make laws in relation to:
  - a) spacing and target areas related to petroleum and natural gas, and conservation and allocation of petroleum and natural gas among parties having interests in the same reservoir;
  - b) the protection and reclamation of land and watercourses, in relation to Subsurface Resource exploration, development and production;
  - c) the closure, reclamation or abandonment of mines; or
  - d) Subsurface Tenures or Subsurface Resources to which those Subsurface Tenures apply.

### ADJUDICATIVE PROCESS

6. On or before the Effective Date, British Columbia will recommend to the Legislature amendments to Provincial Law to provide for an Independent Decision-Maker with the authority to adjudicate ownership claims to Freehold Subsurface Rights on or under lands identified in Appendix K-2.
7. For the purposes of this Chapter and Appendix K, a reference to the "adjudicative process" includes the Independent Decision-Maker's adjudicative process and any

- applicable review or appeal process under Provincial Law and, for greater certainty, the adjudicative process will be considered to have concluded and a final determination to have been made when all applicable limitation periods have expired and all applicable rights of review or appeal have been exhausted.
8. Subject to paragraph 9, a person who claims ownership of Freehold Subsurface Rights on or under any lands identified in Appendix K-2, including the registered owner of a charge identified in Appendix F-1 Part 8, may only retain those Freehold Subsurface Rights through the adjudicative process in accordance with Provincial Law.
  9. Paragraph 8 does not apply to:
    - a) a registered owner of the fee simple title in K'ómoks Lands in relation to ownership of Subsurface Resources that are included in that fee simple title; or
    - b) a Party.
  10. If no person has made a claim to the Independent Decision-Maker in respect of lands identified in Appendix K-2 by the third anniversary of the Effective Date, or such other date agreed by the Parties, then all Subsurface Resources on or under lands identified in Appendix K-2, except those Subsurface Resources identified in paragraphs 11.b) and 11.c), will vest in, or be confirmed to be vested in, British Columbia on that date, and paragraph 11 will not apply.
  11. If a claim has been made to the Independent Decision-Maker by the date set out in paragraph 10, then paragraph 10 will not apply and all Subsurface Resources located on or under lands identified in Appendix K-2 will vest in, or be confirmed to be vested in, British Columbia upon the conclusion of the adjudicative process in respect of all the claims made to the Independent Decision-Maker, excluding the following:
    - a) Freehold Subsurface Rights that were finally determined through the adjudicative process to be owned by a claimant;
    - b) Subsurface Resources owned by K'ómoks; and
    - c) Subsurface Resources included in the fee simple title of the registered owner of K'ómoks Lands.
  12. Within two years of the vesting of Subsurface Resources in British Columbia, or the confirmation of the vesting of Subsurface Resources in British Columbia, under paragraphs 10 or 11, or such other time period agreed by the Parties, British Columbia will transfer to K'ómoks, at no charge, all Subsurface Resources owned by British Columbia located on or under:
    - a) K'ómoks Lands identified in Appendix K-2 Part 1; and

- b) lands identified in Appendix K-2 Part 2 that have since become K'ómoks Lands.
13. Notwithstanding paragraphs 18, 91 and 102 of the Lands Chapter, paragraph 16.b) of the Crown Corridors and Rights of Way Chapter and section 27 of Appendix O-1, any obligation of British Columbia to transfer to K'ómoks Subsurface Resources located on or under K'ómoks Lands, other than those identified in Appendix K-1, will not take effect until such time as the adjudicative process has concluded.

### TENURED SUBSURFACE RESOURCES

14. For greater certainty, K'ómoks' ownership of Subsurface Resources is subject to the Subsurface Tenures.
15. Any 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.
16. Provincial Law applies to the exploration, development, extraction and production of Subsurface Resources to which the Subsurface Tenures apply as if the Subsurface Resources were owned by British Columbia, whether or not K'ómoks is or becomes the owner of those Subsurface Resources.
17. For greater certainty, a Subsurface Tenure holder must not begin a mining activity or energy resource activity on a Subsurface Tenure without first serving notice to K'ómoks in accordance with Provincial Law.
18. In administering the Subsurface Tenures and Subsurface Resources to which those Subsurface Tenures apply, British Columbia may grant, as necessary, any related extensions, renewals, continuations, replacements or issue any further rights as the Subsurface Tenures are developed and will give reasonable notice to K'ómoks of any such changes to the Subsurface Tenures.
19. British Columbia will Consult with K'ómoks before changing or eliminating any rents or royalties applicable to the Subsurface Resources to which the Subsurface Tenures apply.
20. British Columbia will:
- a) ensure that all rents and royalties applicable to Subsurface Resources to which the Subsurface Tenures apply that British Columbia is, or would have been, entitled to receive after the Effective Date and any interest earned on those rents and royalties, are paid to K'ómoks; and

- b) retain any fees, charges or other payments for administrative purposes applicable to Subsurface Tenures and those Subsurface Resources to which those Subsurface Tenures apply under Provincial Law.
21. For the purposes of resolving access issues and compensation rights associated with any proposed entry on, occupation or use of the surface by holders of Subsurface Tenures, K'ómoks Lands are treated as private lands under Provincial Law respecting Subsurface Resources.
  22. A dispute under paragraph 21 may be resolved under Provincial Law relating to entrance and compensation disputes involving Subsurface Resources.
  23. Where a Subsurface Tenure is forfeited, cancelled or expires, and is not restored under Provincial Law, K'ómoks Lands will no longer be subject to that Subsurface Tenure.
  24. Notwithstanding paragraph 2, K'ómoks does not have authority to establish fees, rents, royalties or other charges in relation to Subsurface Tenures, or the exploration, development, extraction or production of the Subsurface Resources to which those Subsurface Tenures apply.

***PETROLEUM AND NATURAL GAS (VANCOUVER ISLAND RAILWAY LANDS) ACT***

25. Section 3 of the *Petroleum and Natural Gas (Vancouver Island Railway Lands) Act* does not apply to K'ómoks Lands.

## CHAPTER 9: ACCESS

### GENERAL

1. Except as modified by this Agreement:
  - a) K'ómoks has the same rights and obligations in relation to public access to, occupation of, and trespass on, K'ómoks Lands owned by K'ómoks as owners of estates in fee simple in respect of their land; and
  - b) K'ómoks' liability for public access to unoccupied K'ómoks Lands owned by K'ómoks is comparable to the liability of the provincial Crown for public access to equivalent unoccupied provincial Crown lands.

### K'ÓMOKS ACCESS TO CROWN LANDS

2. Agents, employees, contractors, sub-contractors and other representatives of K'ómoks have access, in accordance with Federal Law and Provincial Law, at no charge, to Crown, Local Government and Islands Trust Body land in order to:
  - a) deliver and manage programs and services;
  - b) carry out inspections;
  - c) carry out duties under K'ómoks Law;
  - d) enforce K'ómoks Law;
  - e) respond to emergencies and natural disasters; or
  - f) carry out the terms of this Agreement.
3. For greater certainty, access under paragraph 2 may include payment of compensation for any damage where required by Federal Law or Provincial Law.
4. Unless otherwise agreed, K'ómoks will give reasonable notice to Canada, British Columbia, the Local Government or Islands Trust Body, as the case may be, of entry onto their land under paragraph 2:
  - a) before the entry if it is practicable to do so; or
  - b) as soon as practicable after the entry.

**K'ÓMOKS ACCESS TO K'ÓMOKS LANDS**

5. If an authorized use or disposition of provincial Crown land would deny K'ómoks Members reasonable access to K'ómoks Lands, British Columbia will provide K'ómoks Members with reasonable alternative means of access to K'ómoks Lands.
6. Where there is a dispute in relation to the reasonable alternative means of access referred to under paragraph 5, the dispute will be finally determined by arbitration under the Dispute Resolution Chapter.

**CROWN ACCESS TO K'ÓMOKS LANDS**

7. Agents, employees, contractors, sub-contractors, and other representatives of Canada, British Columbia, Local Governments, Islands Trust Bodies, Public Utilities, Railways and NAV CANADA, and members of the Canadian Armed Forces, members of foreign armed forces authorized by Canada and working with the Canadian Armed Forces and peace officers appointed under Federal Law or Provincial Law, have access, in accordance with Federal Law and Provincial Law, at no charge, to K'ómoks Lands in order to:
  - a) deliver and manage programs and services;
  - b) carry out inspections;
  - c) carry out duties under Federal Law or Provincial Law;
  - d) enforce laws;
  - e) respond to emergencies and natural disasters; or
  - f) carry out the terms of this Agreement.
8. For greater certainty, access under paragraph 7 may include payment of compensation for any damage to K'ómoks Lands where required by Federal Law or Provincial Law.
9. Unless otherwise agreed by K'ómoks, reasonable notice to K'ómoks of entry onto K'ómoks Lands under paragraph 7 will be provided by, as the case may be, Canada, British Columbia, Local Governments, Islands Trust Bodies, Public Utilities, Railways, NAV CANADA, members of the Canadian Armed Forces and members of foreign armed forces authorized by Canada and working with the Canadian Armed Forces:
  - a) before the entry, if it is practicable to do so; or
  - b) as soon as practicable after the entry.

10. The requirement to provide reasonable notice under paragraph 9 does not apply to peace officers, federal or provincial law enforcement officers or investigators carrying out duties under Federal Law or Provincial Law.
11. Nothing in this Agreement limits the authority of Canada or the Minister of National Defence to carry out activities related to national defence or security on K'ómoks Lands, without payment of any fees or other charges to K'ómoks except as provided for under Federal Law.

#### **ACCESS TO INTERESTS ON OR ADJACENT TO K'ÓMOKS LANDS**

12. Subject to paragraph 15, where an interest set out in Appendix F, except F-1 Parts 2 and 8, does not otherwise provide terms of access, K'ómoks will allow reasonable access at no charge consistent with the use of the interest.
13. Where no other reasonable access exists across Crown land, K'ómoks will allow reasonable access across K'ómoks Lands to any tenure located on or under lands adjacent or in close proximity to K'ómoks Lands, consistent with the terms and conditions of those tenures.
14. For greater certainty, nothing in paragraph 12 or 13 obligates K'ómoks to pay any costs associated with allowing access under those paragraphs.

#### **ACCESS TO ESTATES IN FEE SIMPLE**

15. K'ómoks will allow reasonable access at least as favourable as that which existed immediately before the Effective Date across K'ómoks Lands, at no charge, to the lands set out in Appendix F-3 Part 2 or to any subdivided portions thereof.
16. Where no other reasonable access exists across Crown land, K'ómoks will allow reasonable access across K'ómoks Lands to any fee simple estate adjacent or in close proximity to K'ómoks Lands.
17. For greater certainty, nothing in paragraph 15 or 16 obligates K'ómoks to pay any costs associated with allowing access to a fee simple estate referred to in those paragraphs.

#### **LAW-MAKING AUTHORITY**

18. K'ómoks may make laws regulating public access on K'ómoks Lands in relation to:
  - a) public safety;

- b) the prevention of nuisance or damage, including forest fire prevention;
  - c) the protection of sensitive habitat; and
  - d) the prevention of harvesting or extracting of resources owned by K'ómoks.
19. K'ómoks Law under paragraph 18.d) prevails to the extent of a Conflict with Federal Law or Provincial Law.
20. Federal Law or Provincial Law prevails to the extent of a Conflict with K'ómoks Law under paragraphs 18.a) to 18.c).

### **PUBLIC ACCESS TO K'ÓMOKS PUBLIC LANDS AND K'ÓMOKS TRIBAL PARKS**

21. K'ómoks will allow reasonable public access to K'ómoks Public Lands and K'ómoks Tribal Parks for temporary recreational and non-commercial purposes, but public access does not include:
- a) harvesting or extracting resources owned by K'ómoks, unless authorized by K'ómoks or in accordance with this Agreement;
  - b) causing mischief or nuisance;
  - c) causing damage to K'ómoks Public Lands or K'ómoks Tribal Parks or resources on those lands; or
  - d) interfering with other uses authorized by K'ómoks or with the ability of K'ómoks to authorize uses or dispositions of K'ómoks Public Lands or K'ómoks Tribal Parks in accordance with this Agreement.
22. For greater certainty, public access will be in accordance with K'ómoks Laws regulating public access to K'ómoks Lands.
23. If K'ómoks authorizes any use or disposition of K'ómoks Public Lands, in accordance with this Agreement, which has the effect of preventing public access to K'ómoks Public Lands, K'ómoks will:
- a) take reasonable measures to inform the public; and
  - b) if access to an area or location is prevented where there is a public right of access under Federal Law or Provincial Law, including Provincial Roads, allow reasonable alternative means of public access to that area or location.
24. If the designation of K'ómoks Public Lands as K'ómoks Private Lands under paragraph 24 or 25 of the Lands Chapter would have the effect of preventing access to an area or

location where there is a public right of access under Federal Law or Provincial Law, including navigable waters and Provincial Roads, K'ómoks will provide reasonable alternative means of public access to that area or location.

### **PUBLIC ACCESS PERMITS**

25. K'ómoks may, for the purpose of monitoring and regulating public access to K'ómoks Public Lands or K'ómoks Tribal Parks, require persons to obtain a permit or licence for access or to sign a waiver.
26. Except as provided under paragraph 27, K'ómoks will make any permits or licences which may be required under paragraph 25 reasonably available at a reasonable fee taking into account the administrative and other costs of monitoring and regulating access.
27. In the case of the K'ómoks Public Lands identified as “Wood Mountain” in Appendix D-1 Part 1 and the K'ómoks Tribal Park identified as “Jáji7em & Kw'ulh Tribal Park” in Appendix D-2 Part 1, if the funds necessary for the continued management of those lands for parks purposes are:
  - a) provided by British Columbia, K'ómoks may impose fees for access to these lands for comparable uses and at comparable rates as are imposed in relation to Protected Areas; or
  - b) not provided by British Columbia, K'ómoks will make any permits or licences which may be required for those lands reasonably available at a reasonable fee taking into account administrative, management, and infrastructure costs, as well as any other costs associated with monitoring and regulating access.
28. K'ómoks will take reasonable measures to inform the public of the terms and conditions respecting public access to K'ómoks Public Lands and K'ómoks Tribal Parks, including any requirements under paragraphs 25 and 27.



## CHAPTER 10: CROWN CORRIDORS AND RIGHTS OF WAY

### ACCESS TO K'ÓMOKS LANDS TO CARRY OUT WORKS

1. In addition to the provisions of the Access Chapter, British Columbia, a Public Utility, a Railway, a Local Government or an Islands Trust Body and their agents, employees, contractors, sub-contractors or other representatives may access K'ómoks Lands, including K'ómoks Roads, at no charge, for the purpose of carrying out works, including:
  - a) constructing drainage works;
  - b) maintaining slope stability;
  - c) removing dangerous Timber or other hazards;
  - d) carrying out normal repairs;
  - e) carrying out emergency repairs; or
  - f) carrying out vegetation management,where this is necessary for constructing, realigning, operating, maintaining, repairing, replacing, removing or protecting Crown Corridors, Provincial Roads, rights of way, Railway Corridors, Municipal Roads, or Public Utility works, or other works located on Crown Corridors, Provincial Roads, rights of way, Railway Corridors, or Municipal Roads, that are on or adjacent to K'ómoks Lands.
2. Paragraph 1 and the conditions under paragraphs 4 and 5 do not apply to the exercise of rights by British Columbia, a Public Utility, a Railway, a Local Government or an Islands Trust Body pursuant to the authority under 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 1.
3. For greater certainty, the removal of Timber from K'ómoks Lands under paragraph 1 does not change the ownership of that Timber.

### WORK PLAN

4. Before commencing any work under paragraph 1, British Columbia, a Public Utility, a Railway, a Local Government or an Islands Trust Body will:
  - a) notify K'ómoks;

- b) at the request of K'ómoks, deliver a work plan to K'ómoks describing the effect and extent of the proposed work on K'ómoks Lands; and
  - c) if a work plan is requested, obtain the approval of K'ómoks to the work plan, which approval will not be unreasonably withheld.
5. If a work plan submitted by British Columbia under paragraph 4 is not approved by K'ómoks within 30 days of receipt, the dispute will be finally determined by arbitration under the Dispute Resolution Chapter without having to proceed through Stage One or Stage Two.

### **CARRYING OUT WORKS**

6. Unless otherwise provided for in a grant, tenure or other form of agreement, in carrying out works under paragraph 1, British Columbia, a Public Utility, a Railway, a Local Government or an Islands Trust Body will:
- a) minimize damage to and time spent on K'ómoks Lands;
  - b) pay fair compensation for any interference with or damage to K'ómoks Lands resulting from the works; and
  - c) carry out such works in a manner consistent with public health and safety.
7. Where there is a dispute between British Columbia and K'ómoks on the fair compensation under paragraph 6.b), the dispute will be finally determined by arbitration under the Dispute Resolution Chapter.

### **EMERGENCY WORKS**

8. Notwithstanding any other provision of this Agreement, British Columbia, a Public Utility, a Railway, a Local Government or an Islands Trust Body, as the case may be, may carry out works and take steps on K'ómoks Lands that are urgently required in order to:
- a) protect works constructed on Crown Corridors, Provincial Roads, Municipal Roads, rights of way or Railway Corridors; or
  - b) protect persons or vehicles using Crown Corridors, Provincial Roads, Municipal Roads, rights of way or Railway Corridors.
9. British Columbia, a Public Utility, a Railway, a Local Government or an Islands Trust Body carrying out works under paragraph 8 will, if possible, notify K'ómoks in advance

of commencing such works and if advance notice is not possible, will notify K'ómoks that it has undertaken such works on K'ómoks Lands.

## **CROWN CORRIDORS**

10. For greater certainty, Crown Corridors set out in Appendix H are not K'ómoks Lands.
11. The width of Crown Corridors is 30 metres unless otherwise specified in Appendix H.
12. British Columbia is responsible for the maintenance and repair of Provincial Roads.
13. British Columbia may request that a portion of a Crown Corridor be realigned onto K'ómoks Lands and if:
  - a) the proposed new alignment is reasonably suitable for use as a Crown Corridor;
  - b) British Columbia pays, or causes to be paid, all reasonable costs associated with decommissioning that portion of the Crown Corridor;
  - c) British Columbia pays, or causes to be paid, all reasonable costs, including costs of design, planning, supervision, land and construction of the realignment; and
  - d) British Columbia and K'ómoks reach agreement on the value of the land exchange,

K'ómoks will not unreasonably refuse to provide its consent to the realignment.
14. If K'ómoks requires a portion of a Crown Corridor for another purpose, K'ómoks may request that a portion of a 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 K'ómoks reach agreement on the value of the land exchange; and
  - c) K'ómoks pays all reasonable costs, including costs of design, planning, supervision, land and construction of the realignment,

British Columbia will not unreasonably refuse to undertake the realignment.
15. If a Crown Corridor is realigned as a result of a consent provided by British Columbia or K'ómoks in accordance with paragraph 13 or 14:

- a) any portion of provincial Crown land from within a Crown Corridor transferred to K'ómoks will cease to be provincial Crown land and will become K'ómoks Lands; and
  - b) any K'ómoks Lands transferred to British Columbia will cease to be K'ómoks Lands and will become a Crown Corridor,
- and, upon any such transfer, the Parties will amend Appendix B in accordance with paragraph 9 in the Amendment Chapter to reflect the relocation of the Crown Corridor, and the change in the status of the lands will occur when the amendment takes effect.
16. If British Columbia no longer requires any portion of a Crown Corridor set out in Appendix H-2, it will:
    - a) notify K'ómoks; and
    - b) subject to paragraph 17, transfer, at no charge to K'ómoks, the estate in fee simple in provincial Crown land from within that portion of the Crown Corridor, including Subsurface Resources where British Columbia owns those Subsurface Resources, subject to paragraph 13 of the Subsurface Resources Chapter.
  17. The transfer of any provincial Crown land from within a Crown Corridor under paragraph 16 is subject to British Columbia and K'ómoks:
    - 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.
  18. The Parties agree that any provincial Crown land from within a Crown Corridor transferred to K'ómoks in accordance with paragraph 16 will be added to K'ómoks Lands and, upon the effective date of such transfer, Appendix B and Appendix H will be amended in accordance with paragraph 9 of the Amendment Chapter to reflect the addition of lands to K'ómoks Lands, and the change in status will occur when the amendment takes effect.

## **K'ÓMOKS ROADS**

19. K'ómoks Roads are part of K'ómoks Lands.
20. K'ómoks is responsible for maintenance and repair of K'ómoks Roads.

21. Subject to the terms of this Agreement, K'ómoks Roads are open to the public unless designated otherwise by K'ómoks.
22. K'ómoks may temporarily close K'ómoks Roads for safety, public order or cultural reasons.
23. K'ómoks may permanently close a K'ómoks Road.
24. Before K'ómoks permanently closes a K'ómoks Road, K'ómoks will:
  - a) provide public notice and an opportunity for affected persons to make representations to K'ómoks; and
  - b) notify the operators of Public Utilities whose facilities or works may be affected.

## **PUBLIC UTILITIES**

25. A Public Utility may extend, install, operate and maintain electrical distribution, natural gas distribution or telecommunications works on K'ómoks Lands:
  - a) in the case of BC Hydro and FortisBC, on substantially the same terms and conditions contained in the applicable agreement in Appendix G, or on such other terms and conditions as may be agreed by K'ómoks and BC Hydro or FortisBC, as applicable; and
  - b) in any other case, on such other terms as may be agreed to by K'ómoks and the Public Utility.
26. If a Public Utility requests the grant of a statutory right of way for transmission purposes on K'ómoks Lands:
  - a) in the case of BC Hydro or FortisBC, in substantially the form of the applicable agreement in Appendix G, or such other terms as may be agreed to by K'ómoks and BC Hydro or FortisBC, as applicable; and
  - b) in any other case, on such other terms as may be agreed to by K'ómoks and the Public Utility,

K'ómoks' consent is required for the grant of the statutory right of way and that consent will not be unreasonably withheld.

27. K'ómoks Law does not apply to the regulation of the business or undertaking of a Public Utility.

28. Without limiting the generality of paragraph 27, K'ómoks will not, directly or indirectly, through K'ómoks Law or K'ómoks' use or occupation of K'ómoks Lands, frustrate, unreasonably delay, place conditions on, limit or impair a Public Utility's authorized use of K'ómoks Lands.

### ACCESS AND SAFETY REGULATION

29. 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, including K'ómoks Roads, with Provincial Roads or Crown Corridors, including:
    - i. regulating or requiring signs, signals or other traffic control devices on Crown Corridors or Provincial Roads;
    - ii. regulating and requiring merging lanes, on ramps and off ramps; or
    - iii. requiring contributions to the cost of the matters referred to in paragraphs 29.a)i and 29.a)ii; and
  - b) the height and location of structures on K'ómoks Lands adjacent to Crown Corridors or Provincial Roads to the extent reasonably required to protect the safety of the users of the Crown Corridors or Provincial Roads or the functional capacity of the Crown Corridor or Provincial Roads.
30. British Columbia will provide K'ómoks with any licence, permit or approval required under Provincial Law to join or intersect a Provincial Road with a K'ómoks Road where:
- a) the application for the required licence, permit or approval complies with Provincial Law, including the payment of any prescribed fees; and
  - b) the intersecting or joining K'ómoks Road complies with standards established under Provincial Law for equivalent Provincial Roads.
31. Where British Columbia and K'ómoks fail to agree on the location of an intersecting or joining K'ómoks Road under paragraph 30, the dispute will be resolved in accordance with the Dispute Resolution Chapter.

### ADJACENT CROWN CORRIDORS

32. K'ómoks will engage with British Columbia on land use decisions relating to the development of K'ómoks Lands adjacent to Provincial Roads or Crown Corridors.

33. British Columbia will Consult with K'ómoks regarding:
- a) new uses of Crown Corridors, including decommissioning Provincial Roads thereon; and
  - b) major construction on Provincial Roads located on Crown Corridors.
34. At K'ómoks' request, British Columbia will engage with K'ómoks with respect to the regulation of traffic and transportation on a Provincial Road that is adjacent to a settled area on K'ómoks Lands.

### **RAILWAY CORRIDORS**

35. For greater certainty, Railway Corridors are not K'ómoks Lands.



# **HARVESTING RIGHTS**



**CHAPTER 11: FISHERIES****GENERAL**

1. K'ómoks has the right to harvest Fish and Aquatic Plants for Domestic Purposes in the K'ómoks Fishing Area in accordance with this Agreement.
2. K'ómoks may determine the portions of the K'ómoks Fish Allocations prescribed in Schedule 1 that may be harvested in the K'ómoks Fishing Area for Domestic Purposes or sale purposes, in accordance with paragraphs 40 to 46 and this Agreement.
3. The Parties acknowledge that, prior to the Effective Date, K'ómoks harvested Fish for Domestic Purposes within K'ómoks Traditional Territory and Pacific Fisheries Management Areas 11 – 14 through the Johnstone Strait Communal Fishing Licence.
4. K'ómoks may harvest Fish for Domestic Purposes outside the K'ómoks Fishing Area in accordance with paragraphs 5 and 6.
5. As indicated in the K'ómoks Annual Fishing Plan, K'ómoks may delegate the harvest of allocated or non-allocated Fish species to the A-Tlegay Fisheries Society, or another vessel, individual or entity designated by K'ómoks in accordance with paragraph 97.b) or 98.c), and this delegated harvest will be conducted within Pacific Fisheries Management Areas listed in the Fisheries Operational Guidelines and defined in Appendix Q-2 in accordance with an Aboriginal Communal Fishing Licence or other licence issued by the Minister.
6. Any allocated Fish species harvested under paragraph 5 will be counted towards the K'ómoks Fish Allocation for that species.
7. The K'ómoks Fishing Right is limited by duly authorized measures necessary for conservation, public health or public safety.
8. The Minister will Consult with K'ómoks regarding any conservation, public health or public safety measure proposed by the Minister that may adversely affect the K'ómoks Fishing Right.
9. For greater certainty, the obligation to Consult under paragraph 8 is subject to paragraphs 72 to 79 of the General Provisions Chapter.
10. Where the Parties agree, the Joint Fisheries Committee may be relied upon to facilitate a Specific Consultation Process for matters related to fisheries management.
11. The Specific Consultation Process referred to in paragraph 10 will be described in the Fisheries Operational Guidelines.

12. The K'ómoks Fishing Right is held by K'ómoks and cannot be alienated.
13. The K'ómoks Fishing Right will be exercised in accordance with K'ómoks Harvest Documents and K'ómoks Law.
14. 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.
15. For greater certainty, the Minister's authority referred to in paragraph 14 will be exercised in accordance with applicable constitutional principles respecting the priority of rights under section 35 of the *Constitution Act, 1982*.
16. This Agreement does not alter Federal Law or Provincial Law in respect of property in Fish or Aquatic Plants.
17. K'ómoks has the right to Trade and Barter Fish and Aquatic Plants harvested under the K'ómoks Fishing Right among K'ómoks Members or with other Aboriginal People.
18. K'ómoks Members may exercise the right to Trade and Barter under paragraph 17 except as otherwise provided in K'ómoks Law.
19. Nothing in this Agreement precludes:
  - a) K'ómoks Members from harvesting Fish and Aquatic Plants under a licence, permit or other document issued under a Federal Law or Provincial Law;
  - b) K'ómoks from concluding agreements that are in accordance with Federal Law and Provincial Law with other Indigenous groups in respect of designations to harvest Fish or Aquatic Plants; or
  - c) K'ómoks Members from being designated by another Indigenous group to harvest Fish and Aquatic Plants under federal or provincial arrangements with that Indigenous group.

#### **CONSULTATION REGARDING CROWN DISPOSITIONS**

20. Subject to paragraphs 171, 172 and 175, British Columbia may authorize the use or disposition of provincial Crown land subject to the consultation obligations in paragraphs 66 to 79 of the General Provisions Chapter and any such authorized use or disposition may affect the method, timing and location of harvesting under the K'ómoks Fishing Right.
21. When contemplating the authorization of proposed uses or dispositions of provincial Crown land under paragraph 20, British Columbia will Consult with K'ómoks regarding

- any Contemplated Crown Conduct with the aim of securing the free, prior and informed consent of K'ómoks in accordance with paragraph 67 of the General Provisions Chapter.
22. At the request of British Columbia or K'ómoks, British Columbia and K'ómoks will negotiate and attempt to reach agreement on a Specific Consultation Process to be relied upon as the process for consultation under paragraph 21, and unless otherwise agreed in writing that Specific Consultation Process will:
- a) require that decision-makers consider the preferred method, timing and location of harvesting under the K'ómoks 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 K'ómoks Fishing Right are identified, proposed and implemented, if appropriate.
23. The K'ómoks 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 20.
24. For greater certainty, where British Columbia and K'ómoks have an agreed upon Specific Consultation Process in effect that addresses Contemplated Crown Conduct under paragraph 22, the processes set out in that agreement will be relied upon by British Columbia and K'ómoks for the purposes of consultation in respect of that conduct.
25. For greater certainty, nothing in this Agreement or any Specific Consultation Process under paragraph 22 precludes K'ómoks from raising the issue of whether there has been an unjustified infringement of the K'ómoks Fishing Right.
26. British Columbia and K'ómoks 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 K'ómoks Members under the K'ómoks Fishing Right and may agree to amend the Specific Consultation Process under paragraph 22 to include those processes.

## ALLOCATIONS

27. The K'ómoks Fish Allocations for species managed by Canada are described in Schedule 1 as amended from time to time.
28. For a species or species group where the K'ómoks Fish Allocation is defined as a fixed number, K'ómoks may harvest the maximum K'ómoks 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 K'ómoks Fishing Area.
29. Subject to paragraph 28, for a species or species group where the K'ómoks 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 K'ómoks and other Indigenous groups for Domestic Purposes due to abundance concerns for that stock or species, the Minister will take into account recommendations from the Joint Fisheries Committee or any of the Parties and may reduce any one or more of those allocations for that year.
  30. In any year, where the Joint Fisheries Committee or any Party makes a recommendation to the Minister to increase a maximum K'ómoks Fish Allocation described in Schedule 1, the Minister will take into account that recommendation.
  31. Where the Minister does not follow a recommendation referred to in paragraph 29 or 30, the Minister will provide written reasons to the Joint Fisheries Committee.
  32. The annual K'ómoks Fish Allocations for Fraser River Sockeye salmon will vary with the Canadian Total Allowable Catch for Fraser River 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, which will:
    - a) provide that if the Canadian Total Allowable Catch is set at zero for conservation purposes, the annual allocation to K'ómoks will be zero;
    - b) provide that if the Canadian Total Allowable Catch is at an upper abundance level, then the allocation to K'ómoks will be the maximum annual allocation set out in Schedule 1; and
    - c) establish an approach or formulae for determining the annual allocation to K'ómoks when the estimated abundance is between a Canadian Total Allowable Catch of zero and the upper abundance level.
  33. The methods for determining the annual Canadian Total Allowable Catch for Fraser River Sockeye salmon will be described in the Fisheries Operational Guidelines.
  34. An abundance-based approach may be developed for Chinook salmon, Coho salmon, Chum salmon or Pink salmon and, where Canada or K'ómoks proposes the establishment of an abundance-based formula for one or more of these species, Canada and K'ómoks will negotiate and attempt to reach agreement on the formula that will be set out in the Fisheries Operational Guidelines.

35. Allocations of specific rockfish species may be determined annually by the Minister, taking into account recommendations of the Joint Fisheries Committee, as appropriate.
36. The specific allocations in paragraph 35 may take into account conservation, which includes sustainability of specific rockfish species and associated area-based management measures.
37. Subject to paragraphs 35 and 36, the specific allocations for individual rockfish stocks or species will be described in the applicable K'ómoks Harvest Document, however, the maximum amount for the species group Rockfish set out in Schedule 1 will not be reduced.
38. If permitted by, and subject to the conditions of, a K'ómoks Harvest Document or a licence, non-target stocks or species harvested in K'ómoks commercial fisheries targeting Halibut within the K'ómoks Fishing Area and the areas defined in Appendix Q-2 may be retained for Domestic Purposes and will be counted towards the defined maximum allocation for that non-targeted stock or species in Schedule 1, unless those non-targeted stocks or species are retained under a commercial licence.
39. Any Periodic Renewal regarding K'ómoks Fish Allocations will be conducted in accordance with the process outlined in the Periodic Renewal and Orderly Process Chapter and in the Fisheries Operational Guidelines.

#### **ALLOCATION DISPOSITION**

40. For greater certainty, Fish and Aquatic Plants harvested under the K'ómoks Fishing Right for Domestic Purposes cannot be sold.
41. K'ómoks may designate any portion of the K'ómoks Fish Allocations described in Schedule 1 to be harvested for sale purposes if the following conditions are met:
  - a) the portion of K'ómoks 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 K'ómoks Fish Allocations between harvests for Domestic Purposes and sale purposes is set out in the K'ómoks 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 Joint Fisheries Committee and in the Fisheries Operational Guidelines.
42. Any portion of an allocation designated for sale purposes pursuant to paragraph 41 has the same priority in fisheries management decisions as commercial fisheries.

43. K'ómoks may only harvest that portion of the K'ómoks Fish Allocation designated for sale purposes under paragraph 41 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 K'ómoks Harvest Document to harvest for sale purposes, setting out terms and conditions.
44. In relation to harvesting that portion of the K'ómoks Fish Allocation designated for sale purposes under paragraph 43, K'ómoks will comply with:
- a) requirements for monitoring and reporting set out in the Fisheries Operational Guidelines, K'ómoks Harvest Documents or regulations;
  - b) Federal Law 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 K'ómoks Harvest Documents; and
  - d) any other requirements agreed to by the Parties.
45. For greater certainty, Non-Allocated Species harvested under this Agreement may not be sold.
46. Details and processes regarding paragraphs 41 to 44 will be described in the Fisheries Operational Guidelines.

#### **EXCESS SALMON TO SPAWNING REQUIREMENTS**

47. In paragraphs 48 to 53, “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.
48. Each year the Minister may declare a surplus of a species or stock of salmon originating in the K'ómoks Fishing Area, the size of the surplus, and access to that surplus.
49. The Joint Fisheries Committee, or any Party, may recommend to the Minister with respect to a species or stock of salmon returning to spawn to the K'ómoks 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.
50. The Minister will consider any recommendations of the Joint Fisheries Committee, or any Party, when determining whether to declare a surplus in accordance with paragraph 48.
51. Where the Minister declares a surplus in accordance with paragraph 48, the Minister will determine:
- a) if a portion of the declared surplus may be harvested by K'ómoks; and
  - b) the terms and conditions for the harvest of the K'ómoks portion of the declared surplus.
52. For greater certainty, nothing in paragraph 50 limits the ability of the Minister to declare a surplus of a species or stock of salmon originating in the K'ómoks Fishing Area in the absence of recommendations from the Joint Fisheries Committee or any Party.
53. At the request of Canada or K'ómoks, Canada and K'ómoks will negotiate and attempt to reach agreement concerning the harvest of surpluses of a species of salmon in the terminal area that result from an approved Enhancement Initiative associated with the Puntledge and Courtenay River Watersheds.
54. Canada and K'ómoks commit to working collaboratively regarding the annual production, stock assessment and broodstock collection planning processes associated with salmon enhancement at the Puntledge River Hatchery.
55. Paragraphs 53 and 54 do not affect the Minister's authority to manage hatcheries within the Puntledge and Courtenay River Watersheds.
56. The operational details for implementation of abundance-based calculations, stock assessment and resulting terminal fishing opportunities for K'ómoks in the Puntledge and Courtenay River Watersheds will be set out in the Fisheries Operational Guidelines.
57. Notwithstanding Federal Law or policy regarding the disposal of federal real property, K'ómoks has a right of first refusal to acquire the Puntledge Hatchery if it is declared surplus or made available for divestiture by Canada.

**PROCESS FOR NON-ALLOCATED SPECIES MANAGED BY CANADA**

58. Paragraphs 59 to 76 apply only to those species of Fish and Aquatic Plants managed by Canada.
59. For greater certainty, a Non-Allocated Species managed by Canada may be harvested for Domestic Purposes under the K'ómoks Fishing Right in accordance with K'ómoks Harvest Documents.
60. No sooner than five years after the Effective Date, or unless otherwise agreed, Canada or K'ómoks may propose the establishment of a K'ómoks Fish Allocation for a Non-Allocated Species or stock by providing the Parties and the Joint Fisheries Committee with a written proposal.
61. Where Canada or K'ómoks provides a proposal under paragraph 60, they will seek to agree on a Basic Harvest, including the Base Period, for a Non-Allocated Species or stock in accordance with the process set out in paragraphs 62 to 66.
62. The duration of the Base Period referred to in paragraph 61 may consist of:
  - a) a number of life cycles where specified in the Fisheries Operational Guidelines for that species;
  - b) a number of calendar years where specified in the Fisheries Operational Guidelines for that species; or
  - c) a quantum of time as agreed to by Canada and K'ómoks.
63. Where Canada and K'ómoks seek to reach an agreement on an allocation for a Non-Allocated Species or stock, the Joint Fisheries Committee will facilitate this process and provide recommendations to the Parties regarding the information needed to define the K'ómoks Fish Allocation, the Basic Harvest amount and the Base Period.
64. Any agreement between Canada and K'ómoks in respect of the Basic Harvest, including Base Period, for a Non-Allocated Species or stock will be in writing.
65. Where Canada and K'ómoks have not agreed on a Basic Harvest, including a Base Period, for a Non-Allocated Species or stock within one year of the receipt of a written proposal under paragraph 64, the Basic Harvest, including the Base Period, will be finally determined by arbitration under the Dispute Resolution Chapter without having to proceed through Stage One or Stage Two.
66. Where Canada and K'ómoks agree to a Basic Harvest, including the Base Period, for a Non-Allocated Species or stock, or an Arbitral Tribunal determines the Basic Harvest,

- including the Base Period, for that species, Canada and K'ómoks will seek to agree on a K'ómoks Fish Allocation for that species or stock.
67. The K'ómoks Fish Allocation for the Non-Allocated Species or stock 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 K'ómoks Fishing Area.
68. Where Canada and K'ómoks seek to agree on a K'ómoks Fish Allocation for a Non-Allocated Species or stock, Canada and K'ómoks will provide each other with written recommendations in respect of that K'ómoks Fish Allocation and with any material that they consider relevant to the recommendations.
69. Where Canada and K'ómoks seek to agree on the K'ómoks Fish Allocation for a Non-Allocated Species or stock, they will take into account:
- a) Base Period information on the harvests by K'ómoks of that Non-Allocated Species or stock 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 K'ómoks Fishing Area;
  - e) impact of other fisheries on the K'ómoks Fishing Right;
  - f) K'ómoks interests in a species or stock for Domestic Purposes including data on community needs;
  - g) K'ómoks population growth; and
  - h) other relevant matters.
70. Where Canada and K'ómoks agree on the K'ómoks Fish Allocation for a Non-Allocated Species or stock, the agreement will be in writing.
71. Where Canada and K'ómoks do not agree on an allocation for a Non-Allocated Species or stock, the Minister will determine the K'ómoks Fish Allocation in accordance with paragraphs 72 and 73.
72. In determining an allocation for a Non-Allocated Species or stock, the Minister will take into account:

- a) written recommendations and other material in respect of an allocation for a Non-Allocated Species or stock provided by the Joint Fisheries Committee or by K'ómoks; and
  - b) the considerations referred to in paragraph 69.
73. Where the Minister determines a K'ómoks Fish Allocation for a Non-Allocated Species or stock, the K'ómoks Fish Allocation for that species will not be less than the Basic Harvest during the Base Period, adjusted to include an additional amount that accounts for K'ómoks population growth.
74. Where the Minister determines a K'ómoks Fish Allocation for a Non-Allocated Species or stock the determination will be provided to K'ómoks and the Joint Fisheries Committee in writing.
75. Where the K'ómoks Fish Allocation for a Non-Allocated Species or stock that has been determined by the Minister varies from the written recommendations of K'ómoks, the Minister will provide written reasons to K'ómoks in respect of the basis of the determination of the K'ómoks Fish Allocation for that species by the Minister.
76. Where Canada and K'ómoks agree on the K'ómoks Fish Allocation under paragraph 70 or the Minister determines the K'ómoks Fish Allocation and provides that determination to K'ómoks under paragraph 74, the Parties will amend Schedule 1 in accordance with paragraph 9 of the Amendment Chapter to document the allocation.

#### **PROCESS FOR NON-ALLOCATED SPECIES MANAGED BY BRITISH COLUMBIA**

77. Paragraphs 78 to 87 apply only to those species of Fish and Aquatic Plants managed by British Columbia.
78. For greater certainty, a Non-Allocated Species managed by British Columbia may be harvested for Domestic Purposes under the K'ómoks Fishing Right in accordance with K'ómoks Harvest Documents.
79. British Columbia or K'ómoks may propose the establishment of a K'ómoks Fish Allocation for a Non-Allocated Species by providing British Columbia or K'ómoks, as applicable, with a written proposal and providing a copy of the proposal to the Joint Fisheries Committee.
80. Where British Columbia or K'ómoks proposes the establishment of a K'ómoks Fish Allocation under paragraph 79, British Columbia and K'ómoks will negotiate and attempt to reach agreement on the K'ómoks Fish Allocation.

81. Where agreement is not reached between British Columbia and K'ómoks under paragraph 80, British Columbia and K'ómoks will resolve the matter in accordance with paragraphs 82 to 86.
82. Notwithstanding paragraphs 28 and 29 of the Dispute Resolution Chapter, after completing Stage One and Stage Two, a dispute referenced in paragraph 81 will, on delivery of a notice by a Disputing Party to all Parties as required under Appendix P-6, be referred to and resolved by arbitration in accordance with the Dispute Resolution Chapter and Appendix P-6, as modified by paragraphs 83 to 86.
83. In determining an Arbitral Award under paragraph 82, the Arbitral Tribunal will take into account all relevant information provided by British Columbia and K'ómoks.
84. Notwithstanding paragraph 33 of the Dispute Resolution Chapter, an Arbitral Award under paragraph 82 is only binding on the Parties where the Minister determines the Arbitral Award upholds the honour of the Crown with regard to British Columbia's obligations to K'ómoks and Other Indigenous Nations.
85. Prior to implementing an Arbitral Award under paragraph 82, the Minister may:
  - a) consult with Other Indigenous Nations about the Arbitral Award and any potential adverse impacts to the rights under section 35 of the *Constitution Act, 1982* of those Other Indigenous Nations that may occur; and
  - b) as a result of consultation under paragraph 85.a), and in a manner consistent with the honour of the Crown, amend the Arbitral Award.
86. Where the Minister amends an Arbitral Award under paragraph 85.b):
  - a) K'ómoks may, where a cause of action exists, commence or pursue judicial proceedings; and
  - b) the Dispute Resolution Chapter does not apply to disputes in relation to that decision.
87. Where British Columbia and K'ómoks agree on a K'ómoks Fish Allocation under paragraph 80, the Arbitral Tribunal determines a K'ómoks Fish Allocation under paragraph 82, or an Arbitral Award is varied under paragraph 85.b), the Parties will amend this chapter in accordance with paragraph 9 of the Amendment Chapter by adding a new Schedule to document the allocation.

## **POWER TO MAKE LAWS**

88. K'ómoks may make laws in relation to:

- a) the designation of vessels to harvest Fish and Aquatic Plants under the K'ómoks Fishing Right;
  - b) the designation of individuals who may harvest Fish and Aquatic Plants under the K'ómoks Fishing Right; and
  - c) the distribution among K'ómoks Members of Fish and Aquatic Plants harvested under the K'ómoks Fishing Right.
89. A K'ómoks Law under paragraph 88 prevails to the extent of a Conflict with Federal Law or Provincial Law.
90. K'ómoks may make laws in relation to:
- a) the portion of the K'ómoks Fish Allocation that may be harvested for Domestic Purposes or sale purposes pursuant to paragraph 41;
  - b) the designation of individuals who may participate in a sale fishery described in paragraphs 41 to 44 and the documentation required;
  - c) the harvest of that portion of the K'ómoks Fish Allocation identified for sale purposes pursuant to paragraphs 41 and 43; and
  - d) the sale of that portion of the K'ómoks Fish Allocation identified for sale purposes pursuant to paragraphs 41 and 43.
91. K'ómoks may make laws in relation to:
- a) the documentation of vessels that are designated to be used by K'ómoks to harvest Fish and Aquatic Plants under the K'ómoks Fishing Right;
  - b) the documentation of individuals who are designated by K'ómoks to harvest Fish and Aquatic Plants under the K'ómoks Fishing Right; and
  - c) Trade and Barter under paragraph 17.
92. Federal Law or Provincial Law prevails to the extent of a Conflict with a K'ómoks Law made under paragraphs 90 and 91.

## DESIGNATION

93. K'ómoks Fishing Right may only be exercised by those designated by K'ómoks to harvest Fish and Aquatic Plants.

94. The K'ómoks 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.
95. Designation of a vessel by K'ómoks does not affect the application of Federal Law or Provincial Law in respect of foreign fishing vessels in Canadian waters.
96. Subject to paragraph 99, where an individual is designated by K'ómoks to harvest Fish and Aquatic Plants under the K'ómoks 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 K'ómoks Fishing Right.
97. Where a K'ómoks Fish Allocation for a species of Fish or Aquatic Plants has been established under this Agreement, K'ómoks may designate:
  - a) vessels and K'ómoks Members and other individuals to harvest that species under the K'ómoks Fishing Right; or
  - b) A-Tlegay Fisheries Society, or other entities, vessels, K'ómoks Members or individuals, to harvest that species in Schedule 1 in accordance with paragraph 4.
98. Where a K'ómoks allocation for a species of Fish or Aquatic Plant has not been established under the Agreement, K'ómoks may designate:
  - a) vessels and K'ómoks Members to harvest that species under the K'ómoks Fishing Right;
  - b) any other individual to harvest the species under the K'ómoks Fishing Right in accordance with a K'ómoks Harvest Document; and
  - c) A-Tlegay Fisheries Society, or other entities, vessels, K'ómoks Members or individuals, to harvest that Non-Allocated Species in accordance with paragraph 4.

## DOCUMENTATION

99. Where K'ómoks designates an individual or a vessel, K'ómoks will issue documentation to that individual or vessel to evidence the designation.
100. Documentation issued under paragraph 99 will:
  - a) be in the English language, which version will be the authoritative version and, at the discretion of K'ómoks, in Pentlatch, Kwak'wala or Ayajuthem (ʔayʔajuθəm);
  - 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 K'ómoks Harvest Documents and the K'ómoks Fisheries Operational Guidelines.

### **K'ÓMOKS HARVEST DOCUMENTS**

101. K'ómoks will provide, to the Minister, biological samples, catch data and other information related to Fish and Aquatic Plants harvested under the K'ómoks Fishing Right as may be required by a K'ómoks Harvest Document or Federal Law or Provincial Law.
102. The Minister will issue, in a timely manner, one or more K'ómoks Harvest Documents to K'ómoks in respect of the K'ómoks Fishing Right and all such K'ómoks Harvest Documents will be issued in a manner consistent with this Agreement.
103. K'ómoks will notify individuals designated by K'ómoks to harvest Fish and Aquatic Plants under the K'ómoks Fishing Right of the provisions of the K'ómoks Harvest Documents.
104. In addition to the matters set out in the proposed K'ómoks Annual Fishing Plan, where the Minister issues a K'ómoks 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 Joint Fisheries Committee;
  - c) the priority of the harvest in accordance with paragraph 15 or 42, as applicable;
  - d) efficient and effective harvesting and management of fisheries resources; and
  - e) any other relevant matters.
105. The Minister will provide written reasons to K'ómoks and the Joint Fisheries Committee if K'ómoks Harvest Documents vary from the K'ómoks Annual Fishing Plan submitted in accordance with paragraph 130 or 131 or written recommendations received from K'ómoks in accordance with paragraph 123.
106. In addition to any duty to consult, and subject to paragraph 107, where any amendments to a K'ómoks Harvest Document are contemplated, the Minister will discuss the contemplated amendments with the Joint Fisheries Committee prior to issuing an amended K'ómoks Harvest Document.

107. Where special circumstances make it impracticable to discuss a contemplated amendment to the K'ómoks Harvest Document with the Joint Fisheries Committee under paragraph 106, the Minister:
- a) may amend the K'ómoks Harvest Document without receiving recommendations from the Joint Fisheries Committee; and
  - b) as soon as practicable after making the amendment, will notify the Joint Fisheries Committee and K'ómoks of the special circumstances and the reasons for the amendment.
108. Canada or British Columbia will not charge any fee for a K'ómoks Harvest Document, or any management fee or landing fee in respect of fisheries authorized by a K'ómoks Harvest Document.

### **K'ÓMOKS ANNUAL FISHING PLAN**

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

**K'ÓMOKS COLLABORATIVE FISH MANAGEMENT PLAN**

111. K'ómoks may develop a proposed collaborative Fish management plan for the K'ómoks Focus Area described in Appendix Q-3 for the following:
- a) Chinook salmon, Coho salmon, Chum salmon, Pink salmon and Steelhead returning to the Puntledge and Courtenay River Watersheds;
  - b) herring, pinnipeds, crab, shrimp, prawns, urchin, sea cucumber, intertidal bivalves; and
  - c) other species as agreed to by the Parties.
112. The proposed collaborative Fish management plan will be developed and finalized in accordance with the process described in the K'ómoks Fisheries Operational Guidelines.
113. The proposed collaborative Fish management plan will address the management of fish stocks and fisheries based on the following principles:
- a) commitment to the conservation and rebuilding of local Fish stocks;
  - b) protection and restoration of Fish habitat;
  - c) reduce potential for conflict;
  - d) non-exclusive use;
  - e) collaboration with First Nations; and
  - f) collaboration with other groups.

**JOINT FISHERIES COMMITTEE**

114. On the Effective Date, the Parties will establish a Joint Fisheries Committee to facilitate discussion of any matters relating to the exercise of the K'ómoks Fishing Right, including the cooperative assessment, planning and management of Fish, Fish habitat, and Aquatic Plants.
115. The Parties will each appoint one representative to the 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 Joint Fisheries Committee.
116. Each representative will be notified of and may participate in all meetings of the Joint Fisheries Committee.

117. Canada may choose not to attend Joint Fisheries Committee meetings on fisheries matters related to species managed by British Columbia. British Columbia may choose not to attend Joint Fisheries Committee meetings on fisheries matters related to species managed by Canada.
118. The 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.
119. The Joint Fisheries Committee will establish its own operating procedures and a copy of these will be included in the Fisheries Operational Guidelines.
120. Subject to paragraph 84 of the General Provisions Chapter and any confidentiality limitations on the disclosure of information under K'ómoks Law, the Parties will provide each other with information necessary to enable the Joint Fisheries Committee to carry out its functions and activities.
121. Subject to paragraph 125, the Joint Fisheries Committee may, where consensus is reached, make decisions in respect of some or all of:
  - a) components of the K'ómoks 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 Joint Fisheries Committee will be coordinated with activities and functions of other regional fisheries processes;
  - e) in-season amendments that are needed to a K'ómoks Harvest Document issued by the federal Minister pursuant to paragraphs 106 and 107; and
  - f) any other matters that the Parties agree to in writing.
122. Subject to paragraph 125, the 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 K'ómoks Fishing Right;
  - b) the management of fisheries both within and outside of the K'ómoks Fishing Area that could affect the K'ómoks Fishing Right;

- c) the proposed collaborative Fish management plan referred to in paragraph 111;
  - d) in-season management that could affect harvesting under the K'ómoks Fishing Right;
  - e) the management objectives and biological considerations for Fish and Aquatic Plants harvested under the K'ómoks Fishing Right;
  - f) the management and protection of Fish and Aquatic Plants habitat in the K'ómoks Fishing Area;
  - g) Enhancement Initiatives, Stewardship Activities or habitat restoration activities conducted in the K'ómoks Fishing Area; and
  - h) other fisheries matters relevant to the exercise of the K'ómoks Fishing Right.
123. Where the Joint Fisheries Committee does not reach a consensus decision under paragraph 121, or a consensus recommendation under paragraph 122, any Party may provide their written recommendations to the other Parties and submit a copy to the Joint Fisheries Committee.
124. The Minister will consider a consensus recommendation under paragraph 122 or written recommendation made under paragraph 123 prior to making a decision.
125. If the federal Minister makes a decision that differs from a consensus decision under paragraph 121, or a consensus recommendation under paragraph 122, or a recommendation under paragraph 123, the federal Minister will provide written reasons to the Joint Fisheries Committee.
126. If the provincial Minister makes a decision that differs from a consensus recommendation under paragraph 122, or a written recommendation under paragraph 123, the provincial Minister will provide written reasons to the Joint Fisheries Committee.
127. Notwithstanding paragraphs 124 to 126, if there is an emergency, the Minister:
- a) may make the decision or take the action that the Minister considers necessary, without receiving recommendations from the Parties to the Joint Fisheries Committee; and
  - b) will provide written reasons to the Parties of the Joint Fisheries Committee, as soon as possible, of the special circumstances and the decision made or action taken.

128. The Joint Fisheries Committee will, in a timely manner, review the draft K'ómoks Annual Fishing Plan provided to it in accordance with paragraph 109 and may make recommendations to K'ómoks with respect to the draft K'ómoks Annual Fishing Plan.
129. K'ómoks will consider any recommendations from the Joint Fisheries Committee on the draft K'ómoks Annual Fishing Plan and will submit a K'ómoks Annual Fishing Plan to the Joint Fisheries Committee.
130. Where the Joint Fisheries Committee has reached a consensus decision regarding one or more components of the K'ómoks Annual Fishing Plan those agreed to components will be submitted to the Minister and, subject to paragraph 125, will form the basis of the K'ómoks Harvest Documents issued in accordance with paragraph 102.
131. Where the Joint Fisheries Committee does not reach a consensus decision on one or more components of the K'ómoks Annual Fishing Plan, K'ómoks will, in a timely manner, submit the K'ómoks Annual Fishing Plan to the Minister for consideration in the issuance of a K'ómoks Harvest Document in accordance with paragraph 102, with a copy to the Joint Fisheries Committee.
132. The Joint Fisheries Committee will establish and include in the Fisheries Operational Guidelines, appropriate dates for:
  - a) submission of the draft K'ómoks Annual Fishing Plan to the Joint Fisheries Committee in accordance with paragraph 109;
  - b) the collaborative discussion by the Joint Fisheries Committee of the draft K'ómoks Annual Fishing Plan;
  - c) submission of the K'ómoks Annual Fishing Plan to the Minister; and
  - d) the issuance of a K'ómoks Harvest Document by the Minister.
133. Each year the Joint Fisheries Committee will conduct a post-season review of matters related to the exercise of K'ómoks 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**

134. Canada or British Columbia, as applicable, will Consult with K'ómoks where a regional fisheries process for Aboriginal fisheries is proposed between Indigenous groups and Canada or British Columbia in an area that includes all or part of the K'ómoks Fishing Area or that may adversely affect the exercise of the K'ómoks Fishing Right.

135. The Parties will endeavour to coordinate the activities of the Joint Fisheries Committee with activities undertaken pursuant to any fisheries agreement between K'ómoks and another Indigenous group.
136. Any representative may, in accordance with paragraph 121.d), request to the other representatives on the Joint Fisheries Committee that a function or activity of the Joint Fisheries Committee be addressed by a regional fisheries process.
137. Where the Parties agree, in accordance with paragraph 121.d), that a function or activity of the Joint Fisheries Committee will be carried out by a regional fisheries process:
  - a) the Parties will amend the Fisheries Operational Guidelines, as required, to reflect the change; and
  - b) a reference in this Agreement to the Joint Fisheries Committee will be read as a reference to the regional fisheries process for that function or activity.
138. Where the regional fisheries process carries out a function or activity of the 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 Joint Fisheries Committee.
139. On receipt of a recommendation in accordance with paragraph 138, the Minister will respond in writing to the recommending Party with a copy to the Joint Fisheries Committee.
140. Where a Party is of the view that the regional fisheries process is not effectively carrying out a function or activity of the Joint Fisheries Committee, that Party may request that the Joint Fisheries Committee resume carrying out that function and activity, and no Party will unreasonably withhold their consent to such request.
141. Where the Parties agree to vary or terminate an agreement made under paragraph 137, the Parties will amend the Fisheries Operational Guidelines, as required, to reflect any change.
142. If a regional fisheries process is terminated and is not replaced by another process, the Joint Fisheries Committee will resume its original functions or activities. The Parties will amend the Fisheries Operational Guidelines, as required, to reflect the change.
143. 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 Joint Fisheries Committee.

144. For greater certainty, a regional fisheries process does not include an international advisory process.

### **PUBLIC FISHERIES ADVISORY PROCESS**

145. Where Canada or British Columbia has established or establishes a public fisheries advisory process that includes all or part of the K'ómoks Fishing Area, Canada or British Columbia will, if requested by K'ómoks, provide for participation by K'ómoks.
146. A public fisheries advisory process referred to in paragraph 145 does not include an international fisheries advisory process.
147. The design, establishment and termination of public fisheries advisory processes are at the discretion of the Minister.

### **FISHERIES OPERATIONAL GUIDELINES**

148. Prior to Effective Date, the Parties will jointly develop guidelines, called the Fisheries Operational Guidelines, to assist the Parties in implementing the provisions of this chapter. The Fisheries Operational Guidelines may include operational principles and procedures.
149. The Joint Fisheries Committee will update the Fisheries Operational Guidelines to reflect any amendments made under paragraph 150 and maintain them as required.
150. Any amendments to the Fisheries Operational Guidelines will require the written agreement of the Parties.
151. The Fisheries Operational Guidelines do not create legal obligations.

### **FISHERIES ENFORCEMENT**

#### **Enforcement of K'ómoks Law by Fishery Officers and Fishery Guardians**

152. Fishery Officers and Fishery Guardians have the authority to, and may in their discretion, enforce K'ómoks Law 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 155.
153. K'ómoks may make laws, consistent with a fisheries enforcement agreement negotiated pursuant to paragraph 155, to limit the powers of Fishery Officers and Fishery Guardians enforcing K'ómoks Law under paragraph 152.

154. A K'ómoks Law under paragraph 153 prevails to the extent of a Conflict with Federal Law or Provincial Law.
155. At the request of Canada or K'ómoks, Canada and K'ómoks will negotiate and attempt to reach agreement regarding the enforcement of K'ómoks Law made pursuant to this chapter, by Fishery Officers and Fishery Guardians pursuant to a fisheries enforcement agreement.
156. For greater certainty, any fisheries enforcement agreement made pursuant to paragraph 155 may be informed by the Administration of Justice Chapter with regard to enforcement of K'ómoks Law made pursuant to this chapter.
157. The fisheries enforcement agreement referred to in paragraph 155 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 K'ómoks Law made pursuant to this chapter;
  - j) operational matters, including enforcement procedures and cultural protocols;
  - k) identifying the organizations and individuals responsible for implementing the agreement; and
  - l) any other matter to which the Parties may agree.
158. 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 K'ómoks Law in accordance with paragraph 152.

**Enforcement of Federal Law respecting Fisheries**

159. At the request of Canada or K'ómoks, Canada and K'ómoks will negotiate and attempt to reach agreement regarding the process and standards necessary for K'ómoks Enforcement Officers to have the authority to enforce Federal Law in respect of fisheries matters.
160. The negotiations referred to in paragraph 159 may result in an agreement that addresses the following matters:
- a) training programs for K'ómoks Enforcement Officers;
  - b) identification of which Federal Laws K'ómoks Enforcement Officers have the authority to enforce;
  - c) standards of enforcement;
  - d) responsibilities of K'ómoks as the employer of K'ómoks Enforcement Officers; and
  - e) any other matter to which the Parties may agree.

**STEWARDSHIP AND ENHANCEMENT**

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

**MARINE PROTECTED AREAS**

163. Canada will Consult with K'ómoks when Canada proposes to establish or terminate, or change the boundaries of, a Marine Protected Area that is wholly or partly within the K'ómoks Fishing Area.
164. K'ómoks 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 K'ómoks Fishing Area.
165. Where K'ómoks makes a written recommendation under paragraph 164, Canada will review the recommendation and provide a written response.

**ECONOMIC OPPORTUNITIES**

166. On or after the Effective Date, K'ómoks and Canada or British Columbia, as applicable, may enter into a K'ómoks Commercial Harvest Agreement.
167. If a Party terminates a K'ómoks Commercial Harvest Agreement, that Party will recompense K'ómoks in accordance with the terms of that agreement.
168. On the Effective Date, or as soon as practicable after the Effective Date, Canada will provide a fisheries reconciliation payment to K'ómoks of \$5,149,806, to advance its fisheries capabilities or as K'ómoks sees fit.
169. For greater certainty, any commercial fishing access obtained by K'ómoks may be added to a K'ómoks 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 K'ómoks Fishing Area, the Minister will Consult with K'ómoks on the proposal to establish the fishery, the process for participants to enter the fishery and how the fishery should be allocated among participants, which may include K'ómoks.

**SPECIFIC SHELLFISH HARVEST AREAS – K'ÓMOKS ESTUARY AND JÁJI7EM & KW'ULH (SANDY ISLAND AND SEAL ISLETS)**

171. Only K'ómoks may be issued shellfish aquaculture tenures or Aquatic Plant tenures in respect of the K'ómoks Shellfish Intertidal Harvest Areas surrounding Jáji7em & Kw'ulh (Sandy Island including Seal Islets) identified in Appendix Q-4 Part 1.
172. Except for those authorizations issued in accordance with the K'ómoks Estuary Consent Agreement, British Columbia will not issue authorizations for uses of the K'ómoks Shellfish Intertidal Harvest Areas identified in Appendix Q-4 Part 2 for activities that are incompatible with the harvesting of shellfish by Other Indigenous Nations or K'ómoks for food, social and ceremonial purposes.
173. If, as part of the Integrated Fisheries Management Plan process for Intertidal Bivalves, the Minister is considering to authorize a commercial fishery for Intertidal Bivalves in the K'ómoks Shellfish Intertidal Harvest Areas identified in Appendix Q-4 Parts 1 and 2, the Minister will Consult with K'ómoks.
174. Any authorization referred to in paragraph 173 is required to be consistent with the proposed collaborative Fish management plan referred to in paragraph 111.

**SPECIFIC SHELLFISH HARVEST AREAS - SALMON RIVER ESTUARY AND H'KUSAM BAY**

175. British Columbia will not issue authorizations for uses of the K'ómoks Shellfish Intertidal Harvest Areas identified in Appendix Q-4 – Part 3 for activities that are incompatible with the harvesting of shellfish by Other Indigenous Nations or K'ómoks for food, social and ceremonial purposes.
176. If, as part of the Integrated Fisheries Management Plan process for Intertidal Bivalves, the Minister is considering to authorize a commercial fishery for Intertidal Bivalves in the K'ómoks Shellfish Intertidal Harvest Areas identified in Appendix Q-4 – Part 3, the Minister will Consult with K'ómoks.

**SCHEDULE 1 – K'ÓMOKS FISH ALLOCATIONS FOR SPECIES MANAGED BY CANADA**

<b>Species/group</b>	<b>Maximum Annual Allocation</b>
Fraser River Sockeye salmon (pieces)*	15,226 + 0.097% of the Fraser River Sockeye salmon Canadian Total Allowable Catch above 5.8 million
Chinook salmon (pieces)**	1,250 – Marine 2,000 – Terminal
Coho salmon (pieces)**	700 – Marine 3500 – Terminal
Fraser River Pink salmon (pieces)**	0.2% of Fraser River Pink salmon Canadian Total Allowable Catch
Chum salmon (pieces)***	4,000
Herring (whole pounds)	30,800
Rockfish (whole pounds)	3,500
Lingcod (whole pounds)	2,000
Red Sea Urchins (whole pounds)	1,800
Prawn (whole pounds)	26,000
Crab (whole pounds)	12,000

\* Abundance-based allocation as per paragraph 32.

\*\* May be abundance-based as per paragraph 34 and the Fisheries Operational Guidelines.

\*\*\* Marine, Terminal, or abundance-based as per paragraph 34 and the Fisheries Operational Guidelines.

**CHAPTER 12: WILDLIFE, MIGRATORY BIRDS AND PLANTS****GENERAL**

1. K'ómoks has the right to harvest:
  - a) Wildlife;
  - b) Migratory Birds; and
  - c) Plants on provincial Crown lands;within the K'ómoks Harvest Area for Domestic Purposes, throughout the year, in accordance with this Agreement.
2. The K'ómoks Right to Harvest is a communal right held by K'ómoks and cannot be alienated.
3. The K'ómoks Right to Harvest is limited by duly authorized measures necessary for conservation, public health or public safety.
4. K'ómoks Members may exercise the K'ómoks Right to Harvest except as otherwise provided under K'ómoks Law.
5. The Minister retains authority for managing and conserving:
  - a) Wildlife and Wildlife habitat;
  - b) Migratory Birds and Migratory Bird habitat; and
  - c) Plants and Plant habitat;and will exercise that authority in a manner consistent with this Agreement.
6. For greater certainty, the Minister's authority referred to in paragraph 5 will be exercised in accordance with applicable constitutional principles respecting the priority of rights under section 35 of the *Constitution Act, 1982*.
7. This Agreement does not alter Federal Law or Provincial Law in respect of property in Wildlife, Migratory Birds or Plants.
8. Subject to paragraph 9, K'ómoks Members are not required to have federal or provincial permits or licences or pay any fees, or royalties to Canada or British Columbia relating to the exercise of the K'ómoks Right to Harvest.

9. Nothing in this Agreement affects the application of Federal Law or Provincial Law in relation to the possession, use and regulation of firearms for the purposes of exercising the K'ómoks Right to Harvest.
10. Resources on provincial Crown land within the K'ómoks Harvest Area may be used for purposes reasonably incidental to the exercise of the K'ómoks Right to Harvest subject to duly authorized measures necessary for conservation, public health or public safety.

### **HARVESTING ON CROWN, PRIVATE AND OTHER LANDS**

11. The K'ómoks Right to Harvest may be exercised on lands that are owned in fee simple within the K'ómoks Harvest Area that are not K'ómoks Lands, but access for the purposes of harvesting will be in accordance with Federal Law and Provincial Law.
12. The K'ómoks Right to Harvest may be exercised on lands owned by another First Nation within the K'ómoks Harvest Area, provided access for purposes of harvesting will be in accordance with Federal Law, Provincial Law and the laws or agreements of the other First Nation respecting access to those lands.
13. Nothing in this Agreement precludes K'ómoks Members from harvesting Wildlife, Migratory Birds or Plants outside of the K'ómoks Harvest Area, throughout Canada, in accordance with Federal Law, Provincial Law and, where applicable:
  - a) any agreements between K'ómoks and other Indigenous groups;
  - b) any arrangements between other Indigenous groups and Canada or British Columbia; or
  - c) any agreements between K'ómoks and Canada or British Columbia.
14. For greater certainty, K'ómoks Members who are Indians and reside in British Columbia may harvest Wildlife, Migratory Birds or Plants outside the K'ómoks Harvest Area in the same manner as other Indians who reside in British Columbia, in accordance with Federal Law and Provincial Law.

### **NATIONAL WILDLIFE AREAS**

15. At the request of Canada or K'ómoks, Canada and K'ómoks will negotiate and attempt to reach agreement on a Harvesting in Qualicum National Wildlife Area Agreement that addresses Wildlife, Migratory Birds and Plants harvested by K'ómoks within the Qualicum National Wildlife Area.

16. Where a Harvesting in Qualicum National Wildlife Area Agreement is finalized, the K'ómoks Right to Harvest may be exercised on lands contained within the Qualicum National Wildlife Area in accordance with the Harvesting in Qualicum National Wildlife Area Agreement.
17. The Harvesting in Qualicum National Wildlife Area Agreement will prevail to the extent of an inconsistency or Conflict with Federal Law.
18. For greater certainty, in the absence of a finalized Harvesting in Qualicum National Wildlife Area Agreement, the K'ómoks Right to Harvest may be exercised on lands contained within the Qualicum National Wildlife Area in accordance with this Agreement.
19. Canada will Consult with K'ómoks with respect to:
  - a) any proposed change to the boundary, or to the level or scope of protection, of the Qualicum National Wildlife Area;
  - b) the establishment of any new National Wildlife Area; and
  - c) any proposed management plan for the Qualicum National Wildlife Area or any National Wildlife Area,that is located wholly or partly within the K'ómoks Traditional Territory.

## **CONSULTATION AND CROWN DISPOSITIONS**

20. The Minister will Consult with K'ómoks regarding any conservation, public health or public safety measure proposed by the Minister that may adversely affect the K'ómoks Right to Harvest.
21. For greater certainty, the obligation to Consult under paragraph 20 is subject to paragraphs 72 to 79 of the General Provisions Chapter.
22. British Columbia may authorize the use or disposition of provincial Crown lands subject to the consultation obligations in paragraphs 66 to 79 of the General Provisions Chapter and any such authorized use or disposition may affect the method, timing and locations of harvesting under the K'ómoks Right to Harvest.
23. When contemplating the authorization of proposed uses or dispositions of provincial Crown land under paragraph 22, British Columbia will Consult with K'ómoks regarding any Contemplated Crown Conduct with the aim of securing the free, prior and informed consent of K'ómoks in accordance with paragraph 67 of the General Provisions Chapter.

24. At the request of British Columbia or K'ómoks, British Columbia and K'ómoks will negotiate and attempt to reach agreement on a Specific Consultation Process to be relied upon as the process for consultation under paragraph 23, and unless otherwise agreed in writing that Specific Consultation Process will:
  - a) require that decision-makers consider the preferred method, timing and location of harvesting under the K'ómoks Right to Harvest; 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 K'ómoks Right to Harvest are identified, proposed and implemented, if appropriate.
25. The K'ómoks Right to Harvest 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 22.
26. For greater certainty, where British Columbia and K'ómoks have an agreed upon Specific Consultation Process in effect that addresses Contemplated Crown Conduct under paragraph 22, the processes set out in that agreement will be relied upon by British Columbia and K'ómoks for the purposes of consultation in respect of that conduct.
27. For greater certainty, nothing in this Agreement or any Specific Consultation Process under paragraph 24 precludes K'ómoks from raising the issue of whether there has been an unjustified infringement of the K'ómoks Right to Harvest.
28. British Columbia and K'ómoks 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 K'ómoks Members under the K'ómoks Right to Harvest and, if agreed by British Columbia and K'ómoks, may amend the Specific Consultation Process under paragraph 24 to include those processes.

#### **LAW-MAKING AUTHORITY**

29. K'ómoks may make laws in relation to the K'ómoks Right to Harvest in respect of:
  - a) the designation of K'ómoks Members who may exercise the K'ómoks Right to Harvest;
  - b) the designation of Designated Harvesters in accordance with this Agreement;
  - c) the administration of documentation to identify individuals designated under paragraph 29.a) or 29.b);

- d) the methods, timing and location of the exercise of the K'ómoks Right to Harvest;
  - e) the distribution of harvested Wildlife, Migratory Birds or Plants among K'ómoks Members;
  - f) Trade and Barter under paragraph 48; and
  - g) the sale of down and inedible by-products of harvested Migratory Birds under paragraph 52.
30. A K'ómoks Law under paragraph 29 prevails to the extent of a Conflict with Federal Law or Provincial Law.
31. K'ómoks may make laws in respect of the sale of Migratory Birds, other than down and inedible by-products of harvested Migratory Birds, if sale is permitted by Federal Law and Provincial Law.
32. Federal Law or Provincial Law prevails to the extent of a Conflict with a K'ómoks Law under paragraph 31.
33. K'ómoks will:
- a) issue documentation to identify those K'ómoks Members who may exercise the K'ómoks Right to Harvest in relation to Wildlife and Migratory Birds and Designated Harvesters; and
  - b) make laws to require K'ómoks Members and Designated Harvesters to carry the documentation issued under paragraph 33.a) when:
    - i. harvesting Wildlife or Migratory Birds under the K'ómoks Right to Harvest; or
    - ii. transporting Wildlife carcasses or Migratory Birds harvested under the K'ómoks Right to Harvest.
34. Where documentation is required under Federal Law or Provincial Law, K'ómoks will:
- a) issue documentation to identify those K'ómoks Members who may exercise the K'ómoks Right to Harvest in relation to Plants and Designated Harvesters; and
  - b) make laws to require K'ómoks Members and Designated Harvesters to carry the documentation issued under paragraph 34.a) when gathering or transporting Plants under the K'ómoks Right to Harvest.
35. Documentation issued under paragraphs 33.a) and 34.a) will:

- a) be in the English language, which version is authoritative, and at the discretion of K'ómoks, in Pentlatch, Kwak'wala or Ayajuthem (ʔayʔajuθəm);
- b) include the name of, and sufficient information to identify, the individual harvester;
- c) be identifiable as issued by K'ómoks; and
- d) meet any other requirements under K'ómoks Law.

### **DESIGNATED HARVESTER AGREEMENT FOR WILDLIFE**

36. At the request of British Columbia or K'ómoks, British Columbia and K'ómoks will negotiate and attempt to reach agreement on a designated harvester agreement for Wildlife.
37. Where a designated harvester agreement for Wildlife is in effect between British Columbia and K'ómoks, and in accordance with that agreement, K'ómoks may authorize Designated Harvesters to exercise the K'ómoks Right to Harvest in relation to Wildlife on behalf of a K'ómoks Member who is unable to exercise the K'ómoks Right to Harvest in relation to Wildlife.
38. Subject to paragraph 39, neither K'ómoks nor a K'ómoks Member may pay any remuneration to, or accept any payment from, a Designated Harvester in relation to harvesting under paragraph 37.
39. K'ómoks, the K'ómoks Government or a K'ómoks Member may reimburse a Designated Harvester for reasonable out of pocket expenses incurred while harvesting on behalf of a K'ómoks Member.
40. Notwithstanding paragraph 7, all Wildlife and Wildlife parts, including meat and furs, harvested by a Designated Harvester is the property of the K'ómoks Member on whose behalf the Designated Harvester is harvesting.
41. K'ómoks may only designate an individual who 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.
42. The designated harvester agreement for Wildlife will include:
  - a) required criteria that individuals must meet to be a Designated Harvester;
  - b) the duration of designations;

- c) the number of individuals that may be designated on behalf of a K'ómoks Member;
- d) documentation requirements for those designated;
- e) any reporting requirements;
- f) clarification of reasonable expenses referenced in paragraph 39; and
- g) other matters as agreed to by the Parties.

#### **DESIGNATED HARVESTER AGREEMENT FOR MIGRATORY BIRDS**

- 43. At the request of K'ómoks, Canada and K'ómoks will negotiate and attempt to reach agreement on a designated harvester agreement for Migratory Birds.
- 44. Where a designated harvester agreement for Migratory Birds is in effect between Canada and K'ómoks, and in accordance with that agreement, K'ómoks may authorize Designated Harvesters to exercise the K'ómoks Right to Harvest in relation to Migratory Birds on behalf of a K'ómoks Member who is unable to exercise the K'ómoks Right to Harvest in relation to Migratory Birds.
- 45. The designated harvester agreement for Migratory Birds will include:
  - a) required criteria that individuals must meet to be a Designated Harvester;
  - b) the duration of designations;
  - c) the number of individuals that may be designated on behalf of a K'ómoks Member;
  - d) documentation requirements for those designated;
  - e) return of the products of the harvest to the K'ómoks Member;
  - f) limitations on remuneration; and
  - g) other matters as agreed to by the Parties.

#### **DESIGNATED HARVESTER AGREEMENT FOR PLANTS**

- 46. At the request of British Columbia or K'ómoks, British Columbia and K'ómoks will negotiate and attempt to reach agreement on a designated harvester agreement for Plants.

47. Where the harvest of Plants is regulated under Provincial Law and a designated harvester agreement for Plants is in effect between British Columbia and K'ómoks, K'ómoks may, in accordance with that agreement, authorize Designated Harvesters to exercise the K'ómoks Right to Harvest in relation to Plants on behalf of a K'ómoks Member who is unable to exercise the K'ómoks Right to Harvest in relation to Plants.

### **TRADE AND BARTER**

48. K'ómoks has the right to Trade and Barter among K'ómoks Members, or with other Aboriginal People, any:
- a) Wildlife carcasses;
  - b) Migratory Birds;
  - c) Plants; and
  - d) goods made from Wildlife, Migratory Birds and Plants,
- harvested under the K'ómoks Right to Harvest.
49. K'ómoks Members may exercise the right to Trade and Barter under paragraph 48 except as otherwise provided in K'ómoks Law.

### **SALE**

50. K'ómoks and K'ómoks Members may, in accordance with Federal Law and Provincial Law, sell Wildlife carcasses and Plants harvested under the K'ómoks Right to Harvest.
51. If the sale of Migratory Birds is permitted by Federal Law and Provincial Law, K'ómoks and K'ómoks Members may sell Migratory Birds harvested under the K'ómoks Right to Harvest, and such sale will be in accordance with Federal Law, Provincial Law and any K'ómoks Law made under paragraph 31.
52. Notwithstanding paragraph 51, K'ómoks and K'ómoks Members may sell the down and inedible by-products of Migratory Birds harvested under the K'ómoks Right to Harvest in accordance with any K'ómoks Law made under paragraph 29.g).

### **TRANSPORTATION AND EXPORT**

53. Any transport of Wildlife carcasses, Migratory Birds or Plants harvested under the K'ómoks Right to Harvest will be in accordance with Federal Law, Provincial Law and

- K'ómoks Law, including any requirement under the *Wildlife Act* to possess a record of receipt for Wildlife carcasses.
54. Notwithstanding paragraph 53, Wildlife carcasses, Migratory Birds and Plants harvested under the K'ómoks Right to Harvest may be transported throughout the year.
  55. For the transportation of Wildlife carcasses or Migratory Birds harvested under the K'ómoks Right to Harvest the information in the documentation issued pursuant to paragraph 33.a) will serve as a hunting permit or licence number under Federal Law or Provincial Law pertaining to the transport of Wildlife carcasses or Migratory Birds.
  56. Any export of Wildlife carcasses, Migratory Birds or Plants harvested under the K'ómoks Right to Harvest will be in accordance with Federal Law and Provincial Law.

#### **COLLABORATIVE MIGRATORY BIRDS AGREEMENT**

57. At the request of Canada or K'ómoks, Canada and K'ómoks will negotiate and attempt to reach agreement related to achieving Migratory Bird population and habitat conservation objectives, including information sharing agreements regarding harvesting under the K'ómoks Right to Harvest.

#### **COLLABORATIVE WILDLIFE MANAGEMENT**

58. British Columbia and K'ómoks 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 K'ómoks Harvest Area;
  - b) any issues related to Designated Harvesters;
  - c) public health, public safety and conservation measures that may affect the K'ómoks Right to Harvest in relation to Wildlife;
  - d) any issues related to trapping, guiding and angling tenures on K'ómoks Lands if applicable; and
  - e) any other matter agreed to by British Columbia and K'ómoks.
59. Where the Minister disagrees with any recommendations under paragraph 58, the Minister will provide written reasons.

60. Where the Parties agree that changes are required to K'ómoks harvesting activities, K'ómoks will take measures reasonably necessary to ensure K'ómoks Members comply with any additional harvesting requirements or restrictions.
61. If K'ómoks proposes the development of a Co-Management Agreement for the management of Wildlife within K'ómoks Traditional Territory, British Columbia and K'ómoks will follow the process outlined in the Co-Management Chapter.

### **CONSERVATION MEASURES**

62. The Minister will provide to K'ómoks a copy of any conservation measure duly authorized after the Effective Date that limits the K'ómoks Right to Harvest.
63. K'ómoks will provide notice to K'ómoks Members regarding any conservation measure received under paragraph 62.

### **K'ÓMOKS ROOSEVELT ELK ALLOCATION**

64. Subject to paragraphs 65 to 68, as of the Effective Date, the K'ómoks Roosevelt Elk Allocation is 13.8 percent of the Total Allowable Harvest of Roosevelt elk within the K'ómoks Roosevelt Elk Harvest Area.
65. If the percentage of the Total Allowable Harvest of Roosevelt elk available for harvest by the combination of K'ómoks and Other Indigenous Nations is increased, K'ómoks will collaborate with those Other Indigenous Nations who harvest Roosevelt elk within the K'ómoks Roosevelt Elk Harvest Area and seek to collectively agree to an increase to the K'ómoks Roosevelt Elk Allocation percentage.
66. Where British Columbia is satisfied that agreement is reached under paragraph 65, K'ómoks will provide British Columbia with written confirmation of the relevant details of that agreement and the K'ómoks Roosevelt Elk Allocation will reflect the increased percentage for the term of that agreement.
67. Where agreement is not reached under paragraph 65, at the request of K'ómoks, British Columbia and K'ómoks will discuss an increase to the K'ómoks Roosevelt Elk Allocation percentage and, if agreement is reached, the K'ómoks Roosevelt Elk Allocation will reflect the increased percentage for the term of that agreement.
68. Where agreement is not reached between British Columbia and K'ómoks under paragraph 67 within 30 days, British Columbia and K'ómoks will resolve the dispute in accordance with the Dispute Resolution Chapter, as modified by paragraphs 90 to 95, without having to proceed through Stage One or Stage Two.

**K'ómoks Roosevelt Elk Harvest Plan**

69. The first draft K'ómoks Roosevelt Elk Harvest Plan will be submitted by K'ómoks to the Minister for approval 180 days before the Effective Date and, once approved by the Minister, will apply to the remainder of the Wildlife Harvest Allocation Cycle in effect at that time.
70. At least 180 days before the beginning of a new Wildlife Harvest Allocation Cycle, K'ómoks will develop and submit to the Minister for approval a draft K'ómoks Roosevelt Elk Harvest Plan for the term of the next Wildlife Harvest Allocation Cycle.
71. The draft K'ómoks Roosevelt Elk Harvest Plan will include the methodology for, or the determination of, the number and class of Roosevelt elk to be harvested by K'ómoks in different Harvesting Zones within the K'ómoks Roosevelt Elk Harvest Area.
72. If an agreement is reached or a dispute is resolved under paragraphs 65 to 68, K'ómoks may submit, at any point within a Wildlife Harvest Allocation Cycle, a draft K'ómoks Roosevelt Elk Harvest Plan to the Minister for approval, and, upon approval, this plan will come into effect and replace the previous K'ómoks Roosevelt Elk Harvest Plan.
73. Subject to paragraphs 74 and 83, the number of Roosevelt elk available for harvest in a draft K'ómoks Roosevelt Elk Harvest Plan submitted to the Minister for approval will not exceed the K'ómoks Roosevelt Elk Allocation.
74. Notwithstanding paragraph 73, if the calculation of Roosevelt Elk available for harvest by K'ómoks in accordance with the K'ómoks Roosevelt Elk Allocation results in a fractional number, the number of Roosevelt Elk available for harvest by K'ómoks will be:
  - a) the next higher whole number, if the number is 0.5 or greater; or
  - b) the next lower whole number, if the number is less than 0.5.
75. Upon receipt of a draft K'ómoks Roosevelt Elk Harvest Plan, the Minister will:
  - a) approve the plan as submitted; or
  - b) make changes to the plan as required after taking into account:
    - i. measures necessary for conservation, public health or public safety; or
    - ii. potential adverse impacts on the rights under section 35 of the *Constitution Act, 1982* of Other Indigenous Nations and measures that may be appropriate to avoid, mitigate or otherwise accommodate those potential adverse impacts,

and approve the plan as amended.

76. The Minister will make good faith efforts to approve the draft K'ómoks Roosevelt Elk Harvest Plan in a timely manner and, if applicable, before the start of the next Wildlife Harvest Allocation Cycle.
77. For greater certainty, the Minister may, during the term of an approved K'ómoks Roosevelt Elk Harvest Plan, vary that plan in accordance with paragraphs 3 and 20.
78. The Minister may only decrease the total number of Roosevelt elk permitted to be harvested in a K'ómoks Roosevelt Elk Harvest Plan in accordance with duly authorized measures necessary for conservation, public health or public safety.
79. A dispute in relation to the exercise of the Minister's authority to amend a draft K'ómoks Roosevelt Elk Harvest Plan under paragraphs 75.b) or vary a K'ómoks Roosevelt Elk Harvest Plan in accordance with paragraph 77, will be resolved in accordance with the Dispute Resolution Chapter, as modified by paragraphs 90 to 95, without having to proceed through Stage One or Stage Two.
80. If, at any point within the term of a K'ómoks Roosevelt Elk Harvest Plan, significant changes to Roosevelt elk populations impact the number of Roosevelt elk available for K'ómoks to harvest as approved in the K'ómoks Roosevelt Elk Harvest Plan, at the request of British Columbia or K'ómoks, British Columbia and K'ómoks will negotiate and attempt to reach agreement on amendments to the K'ómoks Roosevelt Elk Harvest Plan, and any such amendment will not cause the number of Roosevelt elk available for harvest by K'ómoks to exceed the K'ómoks Roosevelt Elk Allocation.
81. Where agreement is not reached under paragraph 80 the dispute will be resolved in accordance with the Dispute Resolution Chapter, as modified by paragraphs 90 to 95.

#### **Multi-Nation Roosevelt Elk Harvest Agreement**

82. Where there is a Multi-Nation Roosevelt Elk Harvest Agreement, and British Columbia confirms that:
  - a) the total number and class of Roosevelt elk proposed for harvest under that agreement does not exceed the percentage of the Total Allowable Harvest available for harvest by the combination of K'ómoks and Other Indigenous Nations; and
  - b) K'ómoks and those Other Indigenous Nations are in agreement,then K'ómoks may submit, at any point within a Wildlife Harvest Allocation Cycle, a draft K'ómoks Roosevelt Elk Harvest Plan consistent with the Multi-Nation Roosevelt Elk Harvest Agreement to the Minister for approval under paragraph 75 and, upon

approval, this plan will come into effect and replace the previous K'ómoks Roosevelt Elk Harvest Plan.

83. Notwithstanding paragraphs 64 and 73, the number of Roosevelt elk available for harvest in a draft K'ómoks Roosevelt Elk Harvest Plan submitted to the Minister for approval under paragraph 82 may exceed the K'ómoks Roosevelt Elk Allocation.

### **K'ómoks Endorsements**

84. Following approval of a draft K'ómoks Roosevelt Elk Harvest Plan under paragraph 75 or variance of a K'ómoks Roosevelt Elk Harvest Plan under paragraph 77, K'ómoks will issue endorsements in accordance with the K'ómoks Roosevelt Elk Harvest Plan to those K'ómoks Members who may exercise the K'ómoks Right to Harvest Roosevelt elk and Designated Harvesters, and such endorsements will set out the number and class of Roosevelt elk which may be harvested and the Harvesting Zone where the harvest may occur.
85. K'ómoks will make laws to require K'ómoks Members and Designated Harvesters to:
- a) carry the endorsement issued under paragraph 84; and
  - b) harvest in accordance with those endorsements,
- when harvesting Roosevelt elk under the K'ómoks Right to Harvest.

### **Monitoring and Harvest Reporting**

86. British Columbia and K'ómoks will share monitoring data and available harvesting data, including annual post-season Roosevelt elk harvest reporting data.
87. The Minister will take into account the data provided by K'ómoks under paragraph 86 in determining the Total Allowable Harvest.

### **K'ÓMOKS WILDLIFE ALLOCATION**

88. Where the Minister determines that establishing or varying a K'ómoks Wildlife Allocation is a necessary conservation measure, British Columbia and K'ómoks will negotiate and attempt to reach agreement on the K'ómoks Wildlife Allocation, and such allocations shall be expressed as a percentage of the Total Allowable Harvest within the relevant Harvesting Zones.
89. Where agreement is not reached between British Columbia and K'ómoks under paragraph 88, British Columbia and K'ómoks will resolve the dispute in accordance with the Dispute Resolution Chapter, as modified by paragraphs 90 to 95.

**USE OF ARBITRATION IN ALLOCATION DECISIONS**

90. Notwithstanding paragraphs 28 and 29 of the Dispute Resolution Chapter, after completing Stage One and Stage Two, where applicable, a dispute referenced in paragraph 68, 79, 81 or 89 will, on delivery of a notice by a Disputing Party to all Parties as required under Appendix P-6, be referred to and resolved by arbitration in accordance with the Dispute Resolution Chapter and Appendix P-6, as modified by paragraphs 91 to 95.
91. In determining an Arbitral Award under paragraph 90, the Arbitral Tribunal will take into account all relevant information provided by British Columbia and K'ómoks.
92. Notwithstanding paragraph 33 of the Dispute Resolution Chapter, an Arbitral Award related to a dispute referred in paragraph 90 is only binding on the Parties where the Minister determines the Arbitral Award upholds the honour of the Crown with regard to British Columbia's obligations to K'ómoks and Other Indigenous Nations.
93. Prior to implementing an Arbitral Award under paragraph 90, the Minister may:
  - a) consult with Other Indigenous Nations about the Arbitral Award and any potential adverse impacts to the rights under section 35 of the *Constitution Act, 1982* of those Other Indigenous Nations that may occur; and
  - b) as a result of consultation under paragraph 93.a), and in a manner consistent with the honour of the Crown, amend the Arbitral Award.
94. With regard to a dispute referenced in paragraph 79 or 81, after receiving an Arbitral Award under paragraph 90 or amending an Arbitral Award under paragraph 93.b), the Minister will amend and approve the K'ómoks Roosevelt Elk Harvest Plan accordingly.
95. Where the Minister amends an Arbitral Award under paragraph 93.b):
  - a) K'ómoks may, where a cause of action exists, commence or pursue judicial proceedings; and
  - b) the Dispute Resolution Chapter does not apply to disputes in relation to that decision.

**GUIDING AND TRAPPING**

96. For the purposes of guide outfitting, guide angling and trapping, K'ómoks Lands will be treated as Private Lands.

97. Where, by operation of Provincial Law, a registered trapline or a guiding territory certificate within the K'ómoks Traditional Territory becomes available, British Columbia will notify K'ómoks that an opportunity is available.
98. For greater certainty, paragraph 97 does not apply to the transfer of a registered trapline or a guiding territory certificate in accordance with Provincial Law.



# **RESOURCE MANAGEMENT**



## CHAPTER 13: 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 K'ómoks for land and resource decisions within the K'ómoks Traditional Territory;
  - b) K'ómoks Exercisable Section 35 Rights; and
  - c) recognition of K'ómoks' Aboriginal rights and title, including the inherent right to self-government, 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 land and resource management and decision-making within the K'ómoks Traditional Territory in respect of any of the 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; or
  - 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 land 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 K'ómoks 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 Law 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 Law 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 work plan 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 K'ómoks 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 K'ómoks and Canada or British Columbia, as appropriate.
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 bargaining 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-maker;
  - 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 or subject matter of a Co-Management Agreement requires otherwise, a Co-Management Agreement will constitute a Specific Consultation Process for the Contemplated Crown Conduct addressed in the agreement and agree that a Co-Management Agreement will specify whether it is a Specific Consultation Process in respect of those matters.
11. Any decision-making process that may be established under a Co-Management Agreement will ensure that principles of transparency, accountability, administrative fairness and due process are addressed.

### SHARED TERRITORY MATTERS

12. A Co-Management Agreement will not abrogate or derogate 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 Canada and British Columbia's duty 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 duty they may have to consult in accordance with the common law in respect of a Co-Management Agreement has been fulfilled.

**GOOD FAITH 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 any Party failed to participate in those processes in good faith to be finally determined by arbitration under the Dispute Resolution Chapter without having to proceed through Stage One or Stage Two.

**SPECIFIC COLLABORATIVE DECISION-MAKING AGREEMENT NEGOTIATIONS**

16. The Parties recognize that K'ómoks has specific interest in collaboratively developing a framework under paragraphs 2 to 7 respecting the following matters:
- a) Groundwater management;
  - b) management of archeological sites;
  - c) aquaculture and Aquatic Plants;
  - d) elk management; and
  - e) Subsurface Resources in the Comox Valley.

**K'ÓMOKS ESTUARY CONSENT AGREEMENT**

17. On the Effective Date, British Columbia and K'ómoks will enter into a K'ómoks Estuary Consent Agreement relating to the exercise of certain statutory powers under the *Land Act* within the K'ómoks Estuary as defined in Appendix J.
18. The K'ómoks Estuary Consent Agreement applies to a statutory power under the *Land Act* that is identified in the agreement and in provincial legislation.
19. The K'ómoks Estuary Consent Agreement will:
- a) identify the area within the K'ómoks Estuary where the agreement applies;
  - b) identify the statutory powers under the *Land Act* to which the agreement applies;
  - c) set out the consent-based decision-making process that British Columbia and K'ómoks will implement in relation to the exercise of the statutory powers identified under paragraph 18.

20. For greater certainty, as long as the K'ómoks Estuary Consent Agreement is in effect, British Columbia will not exercise the statutory powers referenced in paragraph 18 without the consent of K'ómoks, unless otherwise set out in the K'ómoks Estuary Consent Agreement.

## CHAPTER 14: PARKS

### PROVINCIAL PROTECTED AREAS

1. If K'ómoks proposes the development of a Co-Management Agreement for the management of Protected Areas within the K'ómoks Traditional Territory, British Columbia and K'ómoks will follow the process outlined in the Co-Management Chapter.
2. For greater certainty, the development of a framework, in accordance with paragraphs 2 to 7 of the Co-Management Chapter, respecting a Co-Management Agreement for the management of Protected Areas may include discussions regarding:
  - a) Protected Area planning;
  - b) management and operations;
  - c) economic opportunities; and
  - d) other matters agreed to by British Columbia and K'ómoks.

### NATIONAL PARKS, NATIONAL MARINE CONSERVATION AREAS AND NATIONAL HISTORIC SITES

3. Canada will Consult with K'ómoks prior to:
  - a) the establishment or changes to the boundaries of any National Park, National Historic Site 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) the transfer of lands from the Parks Canada Agency that are part of a National Historic Site; or
  - d) the transfer of lands proposed as a National Historic Site to the Parks Canada Agency,wholly or partly within the K'ómoks Traditional Territory.
4. Prior to establishing any National Park, National Marine Conservation Area or National Historic Site that lies wholly or partly within the K'ómoks Traditional Territory, Canada and K'ómoks will negotiate and attempt to reach agreement regarding K'ómoks' 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

5. K'ómoks 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 K'ómoks Traditional Territory; and
  - b) any National Historic Site wholly or partly within the K'ómoks Traditional Territory where an opportunity to harvest Renewable Resources exists,in accordance with this Agreement.
6. The K'ómoks Right to Harvest Renewable Resources is limited by duly authorized measures necessary for conservation, public health or public safety.
7. The K'ómoks Right to Harvest Renewable Resources is a communal right held by K'ómoks and cannot be alienated.
8. Prior to establishing any National Park, National Marine Conservation Area or National Historic Site in which there would be a K'ómoks Right to Harvest Renewable Resources, Canada and K'ómoks will negotiate and attempt to reach agreement on terms and conditions for the exercise of:
  - a) the K'ómoks Right to Harvest Renewable Resources;
  - b) the K'ómoks Fishing Right; and
  - c) other K'ómoks cultural activities,in that National Park, National Marine Conservation Area or National Historic Site.
9. For greater certainty, in the absence of an agreement on the terms and conditions for the exercise of the K'ómoks Right to Harvest Renewable Resources, K'ómoks Members that are designated to do so by K'ómoks may exercise their K'ómoks Right to Harvest Renewable Resources, subject to measures necessary for conservation, public health or public safety.
10. After Consultation with K'ómoks, the Minister may authorize the closure of areas in any National Park, National Marine Conservation Area or National Historic Site to harvesting for the purposes of conservation, public health or public safety.

11. 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 15: ENVIRONMENTAL ASSESSMENT AND PROTECTION**

### **ENVIRONMENTAL ASSESSMENT**

1. Notwithstanding any decision made by Canada or British Columbia in respect of a Federal Project or Provincial Project, no Federal Project or Provincial Project on or under K'ómoks Lands will proceed without the consent of K'ómoks unless:
  - a) the K'ómoks Lands, or any interest in the K'ómoks Lands, required for the Federal Project or Provincial Project has been expropriated in accordance with the Lands Chapter;
  - b) the Federal Project or Provincial Project is within the rights granted under the interests set out in Appendix F; or
  - c) the Federal Project or Provincial Project proposes to use or extract Subsurface Resources on or beneath K'ómoks Lands and those Subsurface Resources are not owned by K'ómoks.

### **K'ÓMOKS PARTICIPATION IN PROVINCIAL ENVIRONMENTAL ASSESSMENTS OR FEDERAL IMPACT ASSESSMENTS**

2. If a Federal Project or Provincial Project is located within K'ómoks Traditional Territory, or may reasonably be expected to adversely affect K'ómoks Traditional Territory, the residents on K'ómoks Lands, K'ómoks Heritage Sites or K'ómoks Exercisable Section 35 Rights, then Canada or British Columbia, as appropriate, will aim to secure the free, prior and informed consent of K'ómoks through:
  - a) the Specific Consultation Process established pursuant to paragraphs 3 to 12; or
  - b) a Specific Consultation Process set out in an agreement between K'ómoks and Canada or British Columbia in accordance with paragraph 71 of the General Provisions Chapter.
3. Canada or British Columbia, as applicable, will inform K'ómoks of any potential Federal Project or Provincial Project within K'ómoks Traditional Territory as soon as reasonably possible, and where possible within seven days, after the responsible Party is notified of the potential Federal Project or Provincial Project in accordance with impact assessment legislation or environmental assessment legislation.

4. K'ómoks and Canada or British Columbia, as applicable, will collaborate during a Federal Impact Assessment or an Environmental Assessment process up to the final project decision, including seeking to achieve consensus regarding:
  - a) planning for the conduct of the assessment, including any early decisions about whether or not to proceed with the assessment, identifying information, study and procedural requirements, and, where applicable, timeline requirements;
  - b) the sufficiency of information to inform the assessment of effects including, but not limited to, the environmental, social, health, economic and cultural effects, of the Federal Project or Provincial Project on K'ómoks Traditional Territory, residents on K'ómoks Lands, K'ómoks Heritage Sites or K'ómoks Exercisable Section 35 Rights;
  - c) the assessment of effects, including the environmental, social, health, economic and cultural effects, of the Federal Project or Provincial Project on K'ómoks Traditional Territory, residents on K'ómoks Lands, K'ómoks Heritage Sites or K'ómoks Exercisable Section 35 Rights;
  - d) the identification of appropriate mitigation and accommodation measures and incorporation into potential conditions relating to, but not limited to, the environmental, social, health, economic and cultural effects, of the Federal Project or Provincial Project on K'ómoks Traditional Territory, residents on K'ómoks Lands, K'ómoks Heritage Sites or K'ómoks Exercisable Section 35 Rights, which may include K'ómoks involvement in the design and implementation of monitoring programs;
  - e) conclusions related to the seriousness of impacts including, but not limited to, the environmental, social, health, economic and cultural effects, of the Federal Project or Provincial Project on K'ómoks Traditional Territory, residents on K'ómoks Lands, K'ómoks Heritage Sites or K'ómoks 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, K'ómoks will be provided with the opportunity to:
  - a) review the materials that will be referred to Provincial Environmental Assessment Decision Makers, subject to the requirements of provincial legislation; and
  - b) provide notice to British Columbia with written reasons regarding its consent or non-consent to the proposed Provincial Project.

6. If the recommendation to Provincial Environmental Assessment Decision Makers referenced under paragraph 4.f) is contrary to the notification of consent or lack of consent provided by K'ómoks under paragraph 5.b), the Provincial Environmental Assessment Decision Makers must, before making a decision, offer to meet with K'ómoks to seek consensus.
7. Federal Impact Assessments and Provincial Environmental Assessments will give full and fair consideration to:
  - a) K'ómoks Laws and Indigenous knowledge provided by K'ómoks; and
  - b) studies completed according to the outcomes of consensus seeking under 4.a).
8. Nothing in paragraph 4 or 7 precludes K'ómoks from providing additional information, including studies, to decision makers for Canada and British Columbia.
9. If, notwithstanding the Parties efforts under paragraph 4, K'ómoks and Canada or British Columbia, as applicable, are unable to reach consensus with respect to a substantive matter contemplated in paragraphs 4.a) to 4.f), K'ómoks and Canada or British Columbia, as applicable, may agree to retain a technical expert or mediator, as appropriate, to assist them in achieving consensus on any outstanding matter.
10. If a proposed Federal Project or Provincial Project is referred to a panel during a Federal Impact Assessment or Environmental Assessment and may reasonably be expected to adversely affect K'ómoks Lands or K'ómoks Exercisable Section 35 Rights under this Agreement, Canada or British Columbia will provide K'ómoks 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 Law or Provincial Law, unless K'ómoks is a proponent of the Federal Project 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 proposed Federal Project or Provincial Project is referred to a panel during a Federal Impact Assessment or Environmental Assessment and will be located on K'ómoks Lands, Canada or British Columbia will provide K'ómoks 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 Law or Provincial Law, unless K'ómoks is a proponent of the proposed Federal Project 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, K'ómoks may appear before and make written or oral submissions to the commission.
13. Application of a Specific Consultation Process in accordance with paragraph 2.a) or 2.b) does not preclude K'ómoks from participating in any additional opportunities, including funding opportunities, not addressed in that Specific Consultation Process.
14. Where a Federal Project proceeds within K'ómoks Traditional Territory pursuant to a federal decision statement or a Provincial Project proceeds under an Environmental Assessment Certificate, Canada or British Columbia will assign a primary contact responsible for working with K'ómoks in relation to some or all of the following, where feasible:
- a) engaging K'ómoks as required to identify compliance concerns;
  - b) communicating with K'ómoks, in a timely way, about compliance and enforcement activities;
  - c) identifying and facilitating training and mentorship opportunities to support K'ómoks' participation in compliance and enforcement; and
  - d) including K'ómoks on Federal Project or Provincial Project inspections.
15. K'ómoks and Canada, or British Columbia, may seek to strengthen collaboration through the exploration of agreements regarding K'ómoks' 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 a federal decision statement, or Environmental Assessment Certificate, proposes a change to a Federal Project or Provincial Project located within K'ómoks Traditional Territory, or which may reasonably be expected to adversely affect K'ómoks Traditional Territory, the residents on K'ómoks Lands, K'ómoks Heritage Sites or K'ómoks Exercisable Section 35 Rights, then before making a decision on the proposed

change Canada, or British Columbia, will collaborate through a process agreed to by the Parties, and seek to achieve, with respect to the change, consensus with K'ómoks.

### **LAW-MAKING AUTHORITY**

17. K'ómoks may make laws applicable on K'ómoks Lands in relation to:
  - a) environmental assessments for K'ómoks 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.
18. Any K'ómoks Law made under paragraph 17.a) in relation to K'ómoks Projects that are also Federal Projects will be designed to maintain or exceed the requirements of federal impact assessment legislation.
19. Where K'ómoks exercises law-making authority under paragraph 17.a), Canada and K'ómoks will work collaboratively to provide a timely and efficient review through:
  - a) coordinating their respective assessment requirements; and
  - b) avoiding duplication where a K'ómoks Project is also a Federal Project.
20. Federal Law or Provincial Law prevails to the extent of a Conflict with a K'ómoks Law under paragraph 17.

### **CANADA'S PARTICIPATION IN K'ÓMOKS' ENVIRONMENTAL ASSESSMENT**

21. Where K'ómoks' 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 K'ómoks Project to be carried out, K'ómoks will ensure that Canada:
  - a) receives timely notice of, and relevant information in K'ómoks' possession on, the K'ómoks Project and the potential environmental effects, subject to the relevant privacy legislation; and

- b) is engaged and provided with an opportunity to participate in the environmental assessment of the applicable K'ómoks Project.
22. During the course of the environmental assessment of the K'ómoks Project, K'ómoks 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 K'ómoks Project to proceed in whole or in part.

### **ENVIRONMENTAL EMERGENCIES**

23. K'ómoks may enter into agreements with Canada, British Columbia, Local Government, Islands Trust Body or Other Indigenous Nations for the prevention of, preparedness for, response to and recovery from Environmental Emergencies occurring on K'ómoks Lands or on land or waters adjacent to K'ómoks Lands.

## CHAPTER 16: FOREST RESOURCES

1. Subject to paragraphs 4 to 10 of the Lands Chapter, K'ómoks owns all Forest Resources on K'ómoks Lands owned by K'ómoks on the Effective Date.
2. K'ómoks Lands will be treated as Private Lands for the purposes of Provincial Law with respect to Forest Resources, Forest Practices and Range Practices.
3. K'ómoks has the exclusive authority to determine, collect and administer any fees, rents, stumpages or other charges, except taxes, relating to Forest Resources owned by K'ómoks on K'ómoks Lands.

### LAW-MAKING AUTHORITY

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

### TIMBER MARKING AND SCALING

6. Nothing in this Agreement confers authority on K'ómoks to make laws in relation to timber marks, timber marking or timber scaling.

### MANUFACTURE AND EXPORT OF TIMBER

7. Timber Resources harvested from K'ómoks Lands are not subject to any requirements under Provincial Law for use or manufacturing in British Columbia.
8. K'ómoks, or a person authorized by K'ómoks, may export Logs harvested from K'ómoks Lands in accordance with Federal Law and policy.

### FOREST AND RANGE HEALTH

9. K'ómoks is responsible on K'ómoks Lands for the control of insects, diseases, invasive Plants, animals or abiotic factors that may affect the health of Forest Resources on K'ómoks Lands.

10. If Canada or British Columbia becomes aware of insects, diseases, invasive Plants, animals or abiotic factors on Crown land that may threaten the health of Forest Resources on K'ómoks Lands, Canada or British Columbia, as the case may be, will notify K'ómoks.
11. If K'ómoks becomes aware of insects, diseases, invasive Plants, animals or abiotic factors on K'ómoks Lands that may threaten the health of Forest Resources on Crown land, K'ómoks will notify Canada or British Columbia, as the case may be.
12. Following notification under paragraph 10 or 11, K'ómoks and Canada or British Columbia, as applicable, will develop an appropriate and reasonable co-operative response to minimize the impacts of such insects, diseases, invasive Plants, animals or abiotic factors.

### **WILDFIRE SUPPRESSION AND CONTROL**

13. Subject to the Wildfire Suppression Agreement entered into in accordance with paragraph 14 and subject to paragraphs 15 and 20, Provincial Law in respect of the protection of resources from wildfire and for wildfire prevention and control applies to K'ómoks Lands as Private Lands.
14. 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 the K'ómoks Lands for wildfires that originate on such lands, will be shared by British Columbia, Canada and K'ómoks.
15. Subject to paragraphs 16 and 17 and subject to the limitations on the scope of K'ómoks' responsibility to pay wildfire control costs set out in the Wildfire Suppression Agreement, K'ómoks is responsible for one third of the costs incurred by British Columbia for wildfire control on K'ómoks Lands for wildfires that originate on such lands.
16. If K'ómoks caused or contributed to the start or spread of any wildfire due to its own wilful misconduct, K'ómoks' responsibility for costs is not limited by paragraph 15.
17. K'ómoks will not be responsible under paragraph 15 for wildfire control costs incurred by British Columbia on K'ómoks Lands if Canada or British Columbia caused or contributed to the start or spread of that wildfire due to the wilful misconduct of Canada or British Columbia.
18. For greater certainty, the responsibility of K'ómoks under paragraph 15 for the costs incurred by British Columbia for wildfire control does not include responsibility for any costs associated with wildfire control off K'ómoks Lands.

19. For greater certainty, cost recovery for wildfires that originate off K'ómoks Lands and subsequently spread on to K'ómoks Lands will be in accordance with the *Wildfire Act*.
20. British Columbia will respond to a wildfire originating on K'ómoks Lands on the same priority basis as for provincial Crown lands and in accordance with any priorities as set by the Minister.
21. For the purposes of paragraph 14:
  - a) unless terminated at the written request of K'ómoks, the Wildfire Suppression Agreement remains in effect between British Columbia and K'ómoks, on the same terms, subject to those terms that British Columbia and K'ómoks negotiate on a periodic basis; and
  - b) Canada's participation in the Wildfire Suppression Agreement is limited to assuming a share of costs under that agreement for a period of 10 years commencing on the Effective Date.
22. Subject to any cost-sharing arrangement that may be in effect between Canada and British Columbia regarding wildfire suppression on lands provided under land claims agreements, Canada and British Columbia may, at their respective discretion, enter into new agreements from time to time in respect of Canada's continuing participation in the Wildfire Suppression Agreement following the 10 year period referred to in paragraph 21.b).
23. Nothing in paragraph 14 or 15 limits the ability of any Party to pursue legal action against third parties.
24. At the request of K'ómoks, or in accordance with Provincial Law, British Columbia may enter on K'ómoks Lands and assist in the provision of, or carry out, wildfire control.

#### **FOREST RESEARCH PLOT**

25. For greater certainty, on the Effective Date, K'ómoks will grant British Columbia a licence under paragraph 49.b) of the Lands Chapter for the purpose of conducting forestry-related studies, tests and experiments for the research plot on the parcel of K'ómoks Lands identified as "Salmon River" in Appendix B-3 Part 1.
26. For greater certainty, for the term of the licence under paragraph 25, British Columbia and K'ómoks will not materially change or alter the Forest Resources in any manner incompatible with the purposes or terms of that licence unless otherwise agreed to by British Columbia and K'ómoks.

**DISPOSITION OF THIRD PARTY RIGHTS**

27. Except for Woodlot Licence W1968, as of 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 K'ómoks Lands is invalid.

**FULFILLMENT OF THIRD PARTY OBLIGATIONS**

28. Unless otherwise requested by K'ómoks, British Columbia will ensure that any obligation that applies on K'ómoks Lands with respect to Forest Practices and Range Practices, including road deactivation and reforestation, will be fulfilled in accordance with Provincial Law.
29. K'ómoks will provide access to K'ómoks Lands at no cost to British Columbia or to any person whose rights to Forest Resources cease to be valid under paragraph 27, and to their respective employees, agents, contractors, sub-contractors, successors or assigns, for the purpose of fulfilling the obligations referred to in paragraph 28.

**INFORMATION SHARING**

30. British Columbia and K'ómoks agree to share information from time to time with respect to Forest Practices and Range Practices on K'ómoks Lands and on provincial Crown land immediately adjacent to K'ómoks Lands.

**TIMBER FOR DOMESTIC USE****General**

31. K'ómoks has the right to harvest Timber for Domestic Use on provincial Crown land within the K'ómoks Harvest Area in accordance with this Agreement.
32. On the Effective Date, British Columbia and K'ómoks will enter into a Domestic Use Timber Harvest Agreement.
33. The K'ómoks Right to Harvest Timber will be exercised in accordance with a Domestic Use Timber Harvest Agreement.

34. 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 within the K'ómoks Harvest Area.
35. In the absence of a Domestic Use Timber Harvest Agreement, K'ómoks Members may harvest Timber for traditional and cultural activities in accordance with Provincial Law.
36. The K'ómoks Right to Harvest Timber is limited by duly authorized measures necessary for conservation, public health or public safety.
37. The Minister will Consult with K'ómoks regarding any conservation, public health or public safety measure proposed by the Minister that may adversely affect the K'ómoks Right to Harvest Timber.
38. For greater certainty, the obligation to Consult under paragraph 37 is subject to paragraphs 72 to 79 of the General Provisions Chapter.
39. British Columbia may authorize the use or disposition of provincial Crown lands subject to the consultation obligations in paragraphs 66 to 79 of the General Provisions Chapter and any such authorized use or disposition may affect the method, timing and locations of the K'ómoks Right to Harvest Timber.
40. When contemplating the authorization of proposed uses or dispositions of provincial Crown land under paragraph 39, British Columbia will Consult with K'ómoks regarding any Contemplated Crown Conduct with the aim of securing the free, prior and informed consent of K'ómoks in accordance with paragraph 67 of the General Provisions Chapter.
41. At the request of British Columbia or K'ómoks, British Columbia and K'ómoks will negotiate and attempt to reach agreement on a Specific Consultation Process to be relied upon as the process for consultation under paragraph 40, and unless otherwise agreed in writing that Specific Consultation Process will:
  - a) require that decision-makers consider the preferred method, timing and location of harvesting under the K'ómoks Right to Harvest Timber; 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 K'ómoks Right to Harvest Timber are identified, proposed and implemented, if appropriate.

42. The K'ómoks 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 39.
43. For greater certainty, where British Columbia and K'ómoks have an agreed upon Specific Consultation Process in effect that addresses Contemplated Crown Conduct under paragraph 39, the processes set out in that agreement will be relied upon by British Columbia and K'ómoks for the purposes of consultation in respect of that conduct.
44. For greater certainty, nothing in this Agreement or any Specific Consultation Process under paragraph 41 precludes K'ómoks from raising the issue of whether there has been an unjustified infringement of the K'ómoks Right to Harvest Timber.
45. British Columbia and K'ómoks 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 K'ómoks Right to Harvest Timber and, if agreed by British Columbia and K'ómoks, may amend the Specific Consultation Process under paragraph 41 to include those processes.
46. The K'ómoks Right to Harvest Timber may only be exercised by K'ómoks and those designated by K'ómoks under paragraph 50.a).
47. The K'ómoks Right to Harvest Timber is a communal right held by K'ómoks and cannot be alienated.
48. Timber volumes set out in the Domestic Use Timber Harvest Agreement will be additional to any other sources of Timber available to K'ómoks.
49. K'ómoks or any person designated by K'ómoks under paragraph 50.a) will not be required to pay any fees, rents or stumpage to British Columbia relating to the harvest of Timber under K'ómoks' Right to Harvest Timber.

### **Law-Making Authority**

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

- ii. persons other than those identified in paragraph 50.a)i designated by K'ómoks;
  - b) the reporting of Timber harvested under the K'ómoks Right to Harvest Timber to K'ómoks;
  - c) the distribution of harvested Timber to and its use by K'ómoks, a K'ómoks Institution, a K'ómoks Corporation or a K'ómoks Member;
  - d) the administration of documentation to identify K'ómoks Members or other persons designated to exercise the K'ómoks Right to Harvest Timber; and
  - e) Trade and Barter under paragraph 55.
51. A K'ómoks Law under paragraph 50 prevails to the extent of a Conflict with Federal Law or Provincial Law.
52. The Minister retains authority to manage Timber on provincial Crown land, and will exercise that authority in a manner consistent with this Agreement.
53. This Agreement does not alter Federal Law or Provincial Law in respect of property in Timber.
54. For greater certainty, the Minister's authority referred to in paragraph 52 will be exercised in accordance with applicable constitutional principles respecting the priority of rights under section 35 of the *Constitution Act, 1982*.

### **Sale, Trade And Barter**

55. K'ómoks or K'ómoks Members may not trade, barter or sell Timber harvested under the K'ómoks 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**

56. K'ómoks will issue documentation to those designated by K'ómoks under paragraph 50.a) to harvest Timber under the K'ómoks Right to Harvest Timber.
57. Documentation issued under paragraph 56 will:
- a) be in the English language, which version is authoritative, and at the discretion of K'ómoks, in Pentlatch, Kwak'wala or Ayajuthem (ʔayʔajuθəm);
  - b) include the name and address or other identifying information of the individual harvester;

- c) be identifiable as issued by K'ómoks; and
- d) meet any other requirements as set out by K'ómoks.

## FORESTRY TENURE

58. Woodlot Licence W0085 and Woodlot Licence W1677 are no longer replaceable and expire on the twenty-fifth anniversary of the Effective Date.
59. The Minister may enter an agreement with the holder of Woodlot Licence W0085 to:
- a) offer a Forest Tenure; or
  - b) provide compensation for harvesting rights for the remaining term of Woodlot Licence W0085 calculated in the manner set out in Part 16 of the *Forest Act*;
- if the holder of Woodlot Licence W0085 applies to surrender the woodlot and the Minister accepts the surrender.
60. The Minister may enter an agreement with the holder of Woodlot Licence W1677 to:
- a) offer a Forest Tenure; or
  - b) provide compensation for harvesting rights for the remaining term of Woodlot Licence W1677 calculated in the manner set out in Part 16 of the *Forest Act*;
- if the holder of Woodlot Licence W1677 applies to surrender the woodlot and the Minister accepts the surrender.
61. On the twenty-fifth anniversary of the Effective Date, the area identified as “WL0026” in Appendix E-1 Part 2b is deleted from Woodlot Licence W0026.
62. The Minister may enter an agreement with the holder of Woodlot Licence W0026 to:
- a) offer a Forest Tenure; or
  - b) provide compensation for harvesting rights in the manner set out in Part 16 of the *Forest Act* that would be applicable if the area of Woodlot Licence W0026 identified as “WL0026” in Appendix E-1 Part 2b had been deleted under Division 3 of Part 15 of the *Forest Act*;
- if the boundary of Woodlot Licence W0026 is amended to remove the area identified as “WL0026” in Appendix E-1 Part 2b.

63. Agreements entered into under paragraph 59, 60 or 62 must not provide compensation for improvements or cutting permits in Woodlot Licence W0085, Woodlot Licence W1677 or the area of Woodlot Licence W0026 identified as “WL0026” in Appendix E-1 Part 2b.
64. No compensation is payable by British Columbia and proceedings must not be commenced or continued to claim compensation from British Columbia or to obtain a declaration that compensation is payable by British Columbia in relation to:
  - a) the expiry of Woodlot Licence W0085 or Woodlot Licence W1677 under paragraph 58;
  - b) the deletion of the area of Woodlot Licence W0026 identified as “WL0026” in Appendix E-1 Part 2b under paragraph 61;
  - c) improvements or cutting permits in Woodlot Licence W0085, Woodlot Licence W1677 or the area of Woodlot Licence W0026 identified as “WL0026” in Appendix E-1 Part 2b; or
  - d) the reduction or cancellation of harvesting rights, or the deletion of the area identified in Appendix B-3 Part 2o as “H’kusam”, from Woodlot Licence W2030 or the cancellation of rights under a road permit or deemed amendment of any road permits in the area identified as “H’kusam” in Appendix B-3 Part 2o.
65. Nothing in this Agreement relieves the holders of Woodlot Licence W0026, Woodlot Licence W0085 or Woodlot Licence W1677 of obligations including the obligation under section 29 of the *Forest and Range Practices Act* to establish free-growing stands.
66. Following any expiry, surrender or cancellation of Woodlot Licence W0085, Woodlot Licence W1677 or Woodlot Licence W0026 or deletion of the area identified as “WL0026” in Appendix E-1 Part 2b from Woodlot Licence W0026, British Columbia will offer an Area-based Licence under the *Forest Act* to K’ómoks or a K’ómoks Corporation in accordance with section 47.3 of the *Forest Act* over the lands identified as “WL0026”, “WL0085”, or “WL1677” in Appendix E-1 that, as a result of an expiry, surrender, cancellation or deletion of an area, are no longer subject to Woodlot Licence W0085, Woodlot Licence W1677 or Woodlot Licence W0026.
67. The offer of an Area-based Licence under paragraph 66 will remain in effect for a period of 180 days from the date of offer after which time the offer will be rescinded.
68. If K’ómoks or a K’ómoks Corporation refuses or fails to respond within the timeline set out in paragraph 67 to a direct award of an Area-based Licence offered in accordance with paragraph 67, British Columbia will have no further obligation to K’ómoks with respect to the Timber subject to the offered Area-based Licence or the right to purchase the associated land pursuant to paragraph 77 of the Lands Chapter.



## CHAPTER 17: WATER

### GENERAL

1. This Agreement does not alter Federal Law or Provincial Law in respect of property in water.
2. Storage, diversion, extraction or use of water will be in accordance with Federal Law and Provincial Law.
3. K'ómoks may only sell water in accordance with Federal Law or Provincial Law that permit the sale of water.
4. Notwithstanding paragraph 2, the *Water Utility Act* does not apply to K'ómoks, a K'ómoks Public Institution or a K'ómoks Corporation for the provision of services on K'ómoks Lands.

### LAW-MAKING AUTHORITY

5. K'ómoks may make laws in relation to:
  - a) the consent of K'ómoks under paragraph 11 to applications for Water Licences from the K'ómoks water reservations established in accordance with paragraph 8; and
  - b) the supply and use of water from a Water Licence issued under paragraph 12.
6. A K'ómoks Law under paragraph 5.a) prevails to the extent of a Conflict with Federal Law or Provincial Law.
7. Federal Law or Provincial Law prevails to the extent of a Conflict with a K'ómoks Law under paragraph 5.b).

### WATER RESERVATIONS

8. On the Effective Date, British Columbia will establish water reservations under the *Water Sustainability Act* in favour of K'ómoks of:
  - a) 14,953,000 cubic metres (14,953 cubic decametres) of water per year from Streams set out in Schedule 1, and
  - b) 11,192,000 cubic metres (11,192 cubic decametres) of Groundwater per year from the Aquifers beneath K'ómoks Lands as set out in Schedule 2,

for all purposes under the *Water Sustainability Act* including domestic, agricultural and industrial uses but excluding those purposes set out in paragraph 34.

9. Any Water Licences issued from a water reservation established in accordance with paragraph 8.a) will have a date of precedence of January 14, 2011.
10. Any Water Licences issued from a water reservation established in accordance with paragraph 8.b) will have a date of precedence of January 1, 1892.

## WATER LICENCES

11. A person seeking a Water Licence for volumes of water to be applied against a K'ómoks water reservation established in accordance with paragraph 8 must obtain written consent from K'ómoks before submitting an application to British Columbia.
12. If a person applies to British Columbia for a Water Licence under paragraph 11, 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 provision for storage where the monthly Available Flow is insufficient to meet proposed demand,British Columbia will approve the application and issue the Water Licence.
13. The volume of flow approved in a Water Licence issued under paragraph 12 will be deducted from the unrecorded volume of flow in the K'ómoks water reservations established in accordance with paragraph 8.
14. If a Water Licence issued under paragraph 12 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 the K'ómoks water reservation established in accordance with paragraph 8.
15. A Water Licence issued under paragraph 12 for use on K'ómoks Lands will not be subject to any rents or fees by British Columbia.
16. Nothing in this Agreement precludes K'ómoks, K'ómoks Public Institutions, K'ómoks Corporations or K'ómoks Members from applying for additional Water Licences under Provincial Law not provided for under the K'ómoks water reservations established in accordance with paragraph 8.

**COMOX RESERVOIR**

17. The Parties acknowledge that K'ómoks and BC Hydro have entered into an agreement on *(insert date)* related to use of water in the Comox Reservoir.
18. For greater certainty, the agreement referred to in paragraph 17 is not a part of this Agreement, and paragraph 17 does not impose any obligation on BC Hydro under this Agreement.
19. If British Columbia issues a Water Licence to K'ómoks from the Comox Reservoir for use on K'ómoks Lands, the Water Licence will not be subject to any rents or fees by British Columbia.

**WATER LICENCE ACCESS**

20. Where K'ómoks, a K'ómoks Public Institution, K'ómoks Corporation or K'ómoks Member has a Water Licence issued under paragraph 12 or obtains a Water Licence under paragraph 16 and reasonably requires access across, or an interest in, provincial Crown land for the construction, maintenance, improvement or operation of works authorized under that licence, British Columbia will grant the access or interest on reasonable terms in accordance with Provincial Law.
21. British Columbia will Consult with K'ómoks respecting applications for Water Licences made after the Effective Date where the applicant may reasonably require access across, or an interest in, K'ómoks Lands.
22. Where a person other than K'ómoks, a K'ómoks Public Institution, K'ómoks Corporation or K'ómoks Member:
  - a) has a Water Licence;
  - b) reasonably requires access across, or an interest in, K'ómoks 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 interest affected,K'ómoks may not unreasonably withhold consent to, and will take reasonable steps to ensure, that access or the granting of that interest.
23. Paragraph 22 does not apply to works, or access to works, on K'ómoks Lands authorized under the associated Water Licences set out in Appendix F-1 Part 1, which for greater certainty are continued under paragraph 45 of the Lands Chapter and in relation to which

- K'ómoks will provide access in accordance with the terms and conditions of the applicable interests granted under paragraph 49 of the Lands Chapter.
24. For greater certainty, in addition to any consent required under paragraph 22, where K'ómoks has disposed of an estate or interest in K'ómoks Lands, K'ómoks will take reasonable steps to ensure the granting of the access across, or the interest in, K'ómoks Lands for the construction, maintenance, improvement or operation of works authorized under the Water Licence.
  25. British Columbia or K'ómoks may refer a dispute arising under paragraph 22 to be finally determined by arbitration in accordance with the Dispute Resolution Chapter and, for the purposes of this paragraph, British Columbia will act on behalf of the third party on such terms and conditions as British Columbia and the third party may agree.
  26. Sections 32, 33, 34 and 35 of the *Water Sustainability Act* respecting a licensee's right to expropriate land do not apply on K'ómoks Lands.
  27. Access to K'ómoks Lands to extract Groundwater requires the consent of K'ómoks.

#### **WATER MANAGEMENT**

28. On the Effective Date, British Columbia and K'ómoks will enter into a Water Scarcity Management Agreement.
29. The Water Scarcity Management Agreement will be based on the following shared guiding principles:
  - a) Groundwater sources associated with K'ómoks water reservations referred to in paragraph 8.b) will be managed collaboratively to maintain the health and function of aquatic ecosystems;
  - b) collaborative processes will be developed to support shared accountability and the good governance of the reserved Groundwater sources associated with K'ómoks water reservations referred to in paragraph 8.b); and
  - c) in times of water scarcity, measures will be collaboratively developed to manage water usage across relevant Water Authorization Holders with the objective of avoiding mandatory water reduction measures, including the precedence of rights provisions of the *Water Sustainability Act*, to the greatest extent possible.
30. The Water Scarcity Management Agreement will:

- a) provide a framework for collaborative management of water usage from the reserved Groundwater sources and licences issued from the K'ómoks water reservations referred to in paragraph 8.b) in situations of water scarcity;
  - b) include provisions addressing the role of governments, and other relevant Water Authorization Holders in the collaborative processes set out in the agreement; and
  - c) address how other interested parties are considered in the collaborative processes set out in the agreement.
31. Where, as a result of a collaborative process in accordance with the Water Scarcity Management Agreement, British Columbia requests that K'ómoks reduce the use of water licensed under the K'ómoks water reservations in paragraph 8.b), K'ómoks will make good faith efforts to reduce the usage of water under those Water Licences.
  32. If the Water Scarcity Management Agreement is not in place on the Effective Date, British Columbia and K'ómoks will pursue the process described in Stage One and, if necessary, Stage Two of the Dispute Resolution Chapter to seek resolution.
  33. Where a watershed includes both K'ómoks Lands and provincial Crown land, and British Columbia or K'ómoks consider the watershed to be an important source of drinking water, British Columbia and K'ómoks may negotiate agreements on the protection of drinking water in that watershed.

### **K'ÓMOKS HYDRO POWER RESERVATION**

34. At the request of K'ómoks, British Columbia and K'ómoks will negotiate and attempt to reach agreement on water reservations of the unrecorded waters of the Beech Creek, Rosewall Creek, Tsable River and Cruickshank River to enable K'ómoks to investigate the suitability of those Streams for hydro power purposes, including related water storage purposes.

**SCHEDULE 1 – SURFACE WATER RESERVATIONS**

<b>Stream Name</b>	<b>Reserved Volume</b>
Puntledge River	3,056,000 m <sup>3</sup> /yr (3056 dam <sup>3</sup> /yr)
Trent River	3,362,000 m <sup>3</sup> /yr (3,362 dam <sup>3</sup> /yr)
Hart Creek	1,668,000 m <sup>3</sup> /yr (1,668 dam <sup>3</sup> /yr)
Oyster River	3,807,000 m <sup>3</sup> /yr (3,807 dam <sup>3</sup> /yr)
Salmon River	3,060,000 m <sup>3</sup> /yr (3,060 dam <sup>3</sup> /yr)

**SCHEDULE 2 – GROUNDWATER RESERVATIONS**

<b>K'ómoks Land Parcel</b>	<b>Aquifer</b>	<b>Reserved Volume</b>
Royston Forest	951 unconsolidated	156,000 m <sup>3</sup> /yr (156 dam <sup>3</sup> /yr)
	1293 unconsolidated	3,585,000 m <sup>3</sup> /yr (3,585 dam <sup>3</sup> /yr)
	411 bedrock	1,459,000 m <sup>3</sup> /yr (1,459 dam <sup>3</sup> /yr)
Browns River	1292 unconsolidated	700,000 m <sup>3</sup> /yr (700 dam <sup>3</sup> /yr)
Williams Beach	408 unconsolidated	917,000 m <sup>3</sup> /yr (917 dam <sup>3</sup> /yr)
	411 bedrock	183,000 m <sup>3</sup> /yr (183 dam <sup>3</sup> /yr)
Mt Washington Gravel Pit	411 bedrock	1,300,000 m <sup>3</sup> /yr (1,300 dam <sup>3</sup> /yr)
Wood Mountain	1294 unconsolidated	600,000 m <sup>3</sup> /yr (600 dam <sup>3</sup> /yr)
Waveland Beacon	408 unconsolidated	114,000 m <sup>3</sup> /yr (114 dam <sup>3</sup> /yr)
	411 bedrock	61,000 m <sup>3</sup> /yr (61 dam <sup>3</sup> /yr)
DL 50	417 unconsolidated	70,000 m <sup>3</sup> /yr (70 dam <sup>3</sup> /yr)
Hornby Island	438 bedrock	47,000 m <sup>3</sup> /yr (47 dam <sup>3</sup> /yr)
Salmon River	1055 unconsolidated	259,000 m <sup>3</sup> /yr (259 dam <sup>3</sup> /yr)
	1295 bedrock	241,000 m <sup>3</sup> /yr (241 dam <sup>3</sup> /yr)
Salmon River 1 (K'ómoks) and H'kusam	1115 unconsolidated	29,000 m <sup>3</sup> /yr (29 dam <sup>3</sup> /yr)
	1295 bedrock	1,471,000 m <sup>3</sup> /yr (1,471 dam <sup>3</sup> /yr)



## CHAPTER 18: CULTURE AND HERITAGE

### GENERAL

1. K'ómoks has the right to practice K'ómoks culture and use K'ómoks languages in a manner consistent with this Agreement.
2. K'ómoks Members may exercise the right under paragraph 1 except as otherwise provided under K'ómoks Law.
3. For greater certainty, nothing in paragraph 1 creates or implies any financial obligations or service delivery responsibilities on the part of any Party.

### LAW-MAKING AUTHORITY

4. K'ómoks may make laws applicable on K'ómoks Lands in relation to:
  - a) the preservation, promotion and development of K'ómoks culture and languages;
  - b) the conservation, protection and management of K'ómoks Artifacts owned by K'ómoks;
  - c) the establishment, conservation, protection and management of Heritage Sites, including public access to those sites; and
  - d) the cremation or interment of Archaeological Human Remains found on K'ómoks Lands or returned to K'ómoks.
5. Any K'ómoks Law made under paragraph 4.c) will:
  - a) establish standards and processes for the conservation and protection of Heritage Sites; and
  - b) ensure the Minister is provided with information relating to:
    - i. the location of Heritage Sites; and
    - ii. any materials recovered from Heritage Sites.
6. Information provided by K'ómoks to British Columbia under paragraph 5.b) will not be subject to public disclosure without K'ómoks' prior written consent.

7. Where K'ómoks makes a law under paragraph 4.c), British Columbia's standards and permitting processes for heritage inspections, heritage investigations and the alteration of Heritage Sites will not apply on K'ómoks Lands.
8. A K'ómoks Law under paragraph 4 prevails to the extent of a Conflict with Federal Law or Provincial Law.

### **ARTIFACTS**

9. The Parties recognize the integral role of K'ómoks Artifacts in the continuation of K'ómoks culture, values and traditions, whether those artifacts are held by K'ómoks, the Canadian Museum of History, the Royal British Columbia Museum or other public collections.
10. K'ómoks owns any K'ómoks Artifact discovered within an archaeological context on K'ómoks Lands after the Effective Date, unless another person establishes ownership of the artifact.
11. After the Effective Date, where any K'ómoks Artifact discovered outside of K'ómoks Lands comes into the permanent possession of Canada, at the request of K'ómoks, Canada may lend or transfer its legal interest in that K'ómoks Artifact to K'ómoks in accordance with an agreement negotiated between Canada and K'ómoks.
12. Canada or British Columbia, at the request of K'ómoks, will make reasonable efforts to facilitate K'ómoks' access to K'ómoks Artifacts and K'ómoks Archaeological Human Remains in other public collections in Canada.

### **CANADIAN MUSEUM OF HISTORY**

13. Where an artifact held by the Canadian Museum of History as of the Effective Date is established to the satisfaction of K'ómoks and the Canadian Museum of History to be a K'ómoks Artifact, K'ómoks and the Canadian Museum of History will, at the request of either Party, negotiate and attempt to reach agreement with respect to the disposition of, including repatriation, or Custodial Arrangements for, that artifact.

### **ROYAL BRITISH COLUMBIA MUSEUM**

14. As soon as practicable following a request by K'ómoks, the Royal British Columbia Museum will transfer to K'ómoks all its legal interests in K'ómoks Artifacts in the permanent collection of the Royal British Columbia Museum listed in an agreement

- negotiated between the Royal British Columbia Museum and K'ómoks, in accordance with that agreement, at no cost to K'ómoks and without condition.
15. At the request of K'ómoks or the Royal British Columbia Museum, K'ómoks and the Royal British Columbia Museum will discuss Custodial Arrangements for K'ómoks Artifacts that remain in the possession of the Royal British Columbia Museum.
  16. The Royal British Columbia Museum will notify K'ómoks if any artifact in the possession of the Royal British Columbia Museum is subsequently considered to be a K'ómoks Artifact or a K'ómoks Artifact comes into the permanent possession of the Royal British Columbia Museum after the Effective Date, and, at the request of K'ómoks, will discuss the terms of transfer of the legal interests or Custodial Arrangements with respect to that K'ómoks Artifact.
  17. Where possible, and subject to budget availability, if any K'ómoks Artifact comes into the temporary possession or control of the Royal British Columbia Museum after the Effective Date, the Royal British Columbia Museum will use reasonable efforts to notify K'ómoks and ensure that any research, interpretation, display or use of that K'ómoks Artifact by the Royal British Columbia Museum respects K'ómoks culture and protocols.
  18. Custodial Arrangements or any other agreement between K'ómoks and the Royal British Columbia Museum will respect K'ómoks Law and will comply with Federal Law and Provincial Law, including the statutory mandate of the Royal British Columbia Museum.
  19. At the request of K'ómoks or the Royal British Columbia Museum, K'ómoks and the Royal British Columbia Museum will discuss other matters of interest or concern to K'ómoks, which may result in additional agreements between the relevant parties.
  20. The Royal British Columbia Museum will provide K'ómoks with reasonable access to Records in its possession and, at the request of K'ómoks, will provide a copy of any of those Records to K'ómoks at no cost to K'ómoks according to the Royal British Columbia Museum's policies and procedures.

#### **ARCHAEOLOGICAL HUMAN REMAINS**

21. Subject to paragraph 22, Canada or British Columbia, as applicable, will negotiate and attempt to reach agreement with K'ómoks with respect to the delivery to K'ómoks of Archaeological Human Remains that are reasonably considered to be of K'ómoks ancestry that come into the possession of Canada or British Columbia after the Effective Date.
22. If there are competing claims of other First Nations to Archaeological Human Remains referred to in paragraph 21, K'ómoks will provide Canada or British Columbia, as

applicable, with written confirmation that the claims have been resolved before any delivery proceeds.

### KEY GEOGRAPHIC FEATURES

23. On or as soon as practicable after the Effective Date, British Columbia will name or rename the geographical features set out in Appendix N-1 with names in Pentlatch, Kwak'wala or Ayajuthem (ʔayʔajuθəm) in accordance with Provincial Law, provincial policies and procedures.
24. British Columbia acknowledges that K'ómoks has a specific interest in naming or renaming the geographical features set out in Appendix N-2 with names in Pentlatch, Kwak'wala or Ayajuthem (ʔayʔajuθəm).
25. K'ómoks may propose that British Columbia name or rename those geographical features set out in Appendix N-2, or other geographical features, with names in Pentlatch, Kwak'wala or Ayajuthem (ʔayʔajuθəm), and British Columbia will consider those proposals in accordance with Provincial Law, provincial policies and procedures.
26. On the Effective Date, British Columbia will add the place names proposed by K'ómoks, set out in Appendix N-2, to the British Columbia Geographical Names Information System.
27. At the request of K'ómoks, British Columbia will record, in the British Columbia Geographical Names Information System, names in Pentlatch, Kwak'wala or Ayajuthem (ʔayʔajuθəm) and historic background information of geographical features submitted by K'ómoks, in accordance with Provincial Law, provincial policies and procedures.

# **FISCAL RELATIONS**



**CHAPTER 19: FISCAL RELATIONS**

1. Canada and K'ómoks 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 K'ómoks through which Canada and K'ómoks will work together over time to ensure that K'ómoks has access to sufficient fiscal resources to carry out Federally Supported Government Responsibilities based on Expenditure Need Methodologies.
2. The fiscal relationship described in paragraph 1 shall be implemented through Fiscal Arrangements that will:
  - a) identify the areas of Government Responsibility which are Federally Supported Government Responsibilities;
  - b) identify how Federally Supported Government Responsibilities are to be funded, whether this is through Interim Funding Methodologies or Expenditure Need Methodologies;
  - c) set out the respective responsibilities and obligations of Canada and K'ómoks for Federally Supported Government Responsibilities; and
  - d) consider K'ómoks' fiscal capacity to provide support towards Federally Supported Government Responsibilities as appropriate.
3. The Parties acknowledge that they each have a role in supporting K'ómoks through direct financial support, as set out in Fiscal Arrangements and Fiscal Provisions, or indirect financial support, or through access to public programs and services.
4. Prior to terminating a Fiscal Arrangement, Canada will engage with K'ómoks in accordance with the process set out in that Fiscal Arrangement.
5. Prior to terminating a Fiscal Provision, British Columbia will engage with K'ómoks 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 K'ómoks 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 Provision, British Columbia and K'ómoks 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) K'ómoks' needs with respect to governmental operations and delivery of programs and services.
8. Notwithstanding paragraphs 4 and 6, Canada and K'ómoks intend that there will always be a Fiscal Arrangement in place in accordance with the provisions of this chapter, though they acknowledge their fiscal relationship and the associated needs of K'ómoks may evolve over time.
9. When K'ómoks' own fiscal capacity is considered in Fiscal Arrangements, own source revenue arrangements will not include:
  - a) transfers paid to K'ómoks under this Agreement;
  - b) a Specific Claims Settlement;
  - c) proceeds from the sale or expropriation of K'ómoks Lands or Other K'ómoks 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 K'ómoks Government; and
  - e) payments provided to K'ómoks in respect of actual or potential impacts on K'ómoks or K'ómoks Members arising from projects located off K'ómoks Lands. This exemption will not apply to payments made in respect of the purchase of goods or services provided by K'ómoks Government or an entity controlled by K'ómoks Government in connection with such projects.
10. Fiscal Arrangements or Fiscal Provisions that include consideration of K'ómoks' 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 K'ómoks; 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 K'ómoks.
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, K'ómoks is entitled to:
- a) participate in any national or regional collaborative process of engagement established by Canada with Indigenous self-governments on the proposed changes to the publicly available federal policy on self-government fiscal arrangement; or
  - b) where a regional or national collaborative process of engagement referred to in paragraph 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 K'ómoks Government, the recognition of the K'ómoks' law-making authority under this Agreement or the exercise of the K'ómoks' 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 K'ómoks, by the Legislature of K'ómoks.



**CHAPTER 20: CAPITAL TRANSFER**

1. On the Effective Date of this Agreement, a Capital Transfer in the amount of \$56,477,122 (Q2 2023) will be paid by Canada to K'ómoks in accordance with Schedule 1.
2. A Federal Capital Advance in the amount of \$5,936,136 may be paid by Canada to K'ómoks First Nation after a successful K'ómoks Treaty Ratification Vote 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 K'ómoks First Nation.
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. K'ómoks acknowledges that a Federal Capital Advance paid to K'ómoks First Nation is a partial payment of the Capital Transfer under paragraph 1 and that the Capital Transfer paid by Canada to K'ómoks under paragraph 1 will be reduced by the amount of any Federal Capital Advance as determined in Schedule 1.

**ECONOMIC DEVELOPMENT FUNDING**

6. The Parties acknowledge British Columbia paid to K'ómoks First Nation a Provincial Capital Advance in the amount of \$5,794,620 on March 31, 2023, to advance K'ómoks' forestry interests.
7. On the Effective Date, a Capital Transfer payment of \$14,205,380 will be paid by British Columbia to K'ómoks.
8. Provincial Capital Advances in the amount of:
  - a) \$8,400,000 for the extension of sewer services to K'ómoks Lands; and
  - b) \$5,805,380 for economic development purposes and to advance K'ómoks community priorities

may be paid by British Columbia to K'ómoks First Nation after a successful K'ómoks Treaty Ratification Vote but prior to Effective Date. A Provincial Capital Advance will be subject to the terms and conditions of a funding agreement between British Columbia and K'ómoks First Nation.

9. K'ómoks acknowledges that the Provincial Capital Advances paid to K'ómoks First Nation under paragraph 8 are payment of the Capital Transfer under paragraph 7 and that the Capital Transfer paid by British Columbia to K'ómoks under paragraph 7 will be reduced by the amount of any Provincial Capital Advance under paragraph 8 as determined in Schedule 1.
10. The Provincial Capital Advances paid 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 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 2<sup>nd</sup> quarter of 2023 as published at the same time as the FDDIPI<sub>ED</sub>;
  - b) the Federal Capital Advance described in paragraph 2 will be multiplied by the FDDIPI<sub>ED</sub> and divided by the value of the FDDIPI for the quarter in which the Federal Capital Advance was made as published at the same time as the FDDIPI<sub>ED</sub>; and
  - c) the Federal Capital Advance calculated through paragraph 1.b) of this Schedule will be deducted from the Capital Transfer amount calculated through paragraph 1.a) of this Schedule.
2. To arrive at the final value owing of a Provincial Capital Advance under paragraph 8 that may be paid by British Columbia after the successful ratification of this Agreement by K'ómoks, 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 4<sup>th</sup> quarter of 2022, as published at the same time.
3. The amount of the Provincial Capital Advances under paragraph 8 paid to K'ómoks, without including the adjustment under paragraph 2 of this Schedule, will be subtracted from the amount described in paragraph 7.



**CHAPTER 21: RESOURCE REVENUE SHARING**

1. The sharing of a resource revenue between British Columbia and K'ómoks will be within the highest range of British Columbia's sharing of that resource revenue with Aboriginal People, subject to the applicable Resource Revenue Sharing Agreement.
2. British Columbia will pay to K'ómoks on an annual basis amounts in accordance with a Resource Revenue Sharing Agreement.
3. On the Effective Date, British Columbia and K'ómoks will enter into a forestry Resource Revenue Sharing Agreement.
4. Unless British Columbia and K'ómoks otherwise agree, a Resource Revenue Sharing Agreement will include:
  - a) the manner in which paragraph 1 is to be 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 lands 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 British Columbia and K'ómoks.
5. If an amendment to Provincial Law or policy changing how British Columbia collects a revenue materially and unfairly reduces a Resource Revenue, British Columbia and K'ómoks will negotiate and attempt to reach agreement on an amended Resource Revenue Sharing Agreement or remedial measures.
  6. If British Columbia and K'ómoks 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 K'ómoks, this matter may be determined by arbitration under the Dispute Resolution Chapter.
  7. For greater certainty, reductions in Resource Revenues caused by or implemented in response to environmental stewardship, public safety, natural disasters or other events beyond the control of the Parties do not constitute an unfair reduction under paragraph 5.
  8. If British Columbia implements a new, or amends an existing, program or policy of general application for the negotiation of agreements to share resource revenues with First Nations then:
    - a) K'ómoks is entitled to the benefit of the new or amended program or policy, subject to its applicable terms and conditions; and
    - b) at the request of K'ómoks, British Columbia and K'ómoks will negotiate and attempt to reach agreement on a new or amended Resource Revenue Sharing Agreement so K'ómoks may benefit from that new or amended program or policy.
  9. At K'ómoks' request, British Columbia and K'ómoks 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 K'ómoks.
  10. Any funding required to be paid by British Columbia for the purposes of:
    - a) a Resource Revenue Sharing Agreement; or
    - b) any other agreement reached or permitted under any provision of this chapter that has financial obligations on the part of British Columbia,

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



## CHAPTER 22: TAXATION

### DIRECT TAXATION POWERS

1. K'ómoks may make laws in relation to:
  - a) Direct taxation of K'ómoks Members within K'ómoks Lands in order to raise revenue for K'ómoks purposes; and
  - b) the implementation of any taxation agreement entered into between K'ómoks and Canada or British Columbia.
2. K'ómoks 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 K'ómoks Law made under this chapter, or any exercise of power by K'ómoks, is subject to and shall conform with Canada's International Legal Obligations in respect of taxation, and paragraphs 27 to 30 of the General Provisions Chapter do not apply in respect of Canada's International Legal Obligations in respect of taxation.

### TAXATION POWERS AGREEMENTS

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

**Real Property Taxation**

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

**Adjudication**

6. Notwithstanding the provisions of the Administration of Justice Chapter, the parties to an agreement under this chapter may provide for an alternative approach to the appeal, enforcement or adjudication of a K'ómoks Law in respect of taxation.

**K'ÓMOKS LANDS**

7. K'ómoks is not subject to capital taxation, including real property taxes and taxes on capital or wealth, with respect to the estate or interest of K'ómoks in K'ómoks 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 K'ómoks Member;
  - b) an improvement, all or substantially all of which is used for a public purpose or a purpose ancillary or incidental to the public purpose, including:
    - i. a public governance or administration building, public meeting building, public hall, public school or other public educational institution, teacherage, public library, public health facility, public care facility, public seniors home, public museum, place of public worship, manse, fire hall, police facility, court, correction facility, public recreation facility, public park or an improvement used for K'ómoks cultural or spiritual purposes;
    - ii. works of public convenience constructed or operated for the benefit of K'ómoks Members, occupiers of K'ómoks Lands or individuals visiting or in transit through K'ómoks 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, K'ómoks 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 K'ómoks nor does it apply with respect to a disposition of K'ómoks Lands, or interests in those lands, by K'ómoks.
12. For federal and provincial income tax purposes, proceeds of disposition received by K'ómoks on expropriation of K'ómoks Lands in accordance with the Lands Chapter and Appendix O are not taxable.

#### **TRANSFER OF K'ÓMOKS CAPITAL**

13. A transfer under this Agreement of K'ómoks Capital is not taxable and a recognition of ownership of K'ómoks Capital under this Agreement is not taxable.
14. For purposes of paragraph 13, an amount paid to a K'ómoks Member is deemed to be a transfer of K'ómoks Capital under this Agreement if the payment:
- a) reasonably can be considered to be a distribution of the Capital Transfer received by K'ómoks; and
  - b) becomes payable to the K'ómoks Member within 90 days and is paid to the K'ómoks Member within 270 days from the date that K'ómoks receives the Capital Transfer.
15. For federal and provincial income tax purposes, K'ómoks Capital is deemed to have been acquired by K'ómoks 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 K'ómoks Member who is an Indian.
17. Subject to paragraph 1.a) and paragraphs 18 to 20, section 87 of the *Indian Act* applies on K'ómoks Lands that were an Indian Reserve or Surrendered Lands immediately before the Effective Date as if the lands were an Indian Reserve.
18. Paragraphs 16 and 17 only apply so long as section 87 of the *Indian Act* itself remains in force.
19. The application of section 87 of the *Indian Act* in paragraph 17 is subject to a law of Parliament, or a treaty, self-government agreement or similar agreement given force of law by Parliament, limiting the application of section 87 of the *Indian Act* to an Indian.
20. K'ómoks 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.

# **PROCEDURES**



## CHAPTER 23: ELIGIBILITY AND ENROLMENT

### ELIGIBILITY CRITERIA

1. Subject to paragraphs 2 to 4, an individual is eligible for enrolment under this Agreement if that individual:
  - a) is of K'ómoks ancestry by matrilineal or patrilineal descent;
  - b) is a Band member or entitled to be a Band member of the K'ómoks First Nation under the *Indian Act* as of the day before the Effective Date;
  - c) was adopted as a Child under a law recognized in Canada, including K'ómoks Law, by an individual eligible to be enrolled under this Agreement;
  - d) is a descendant of an individual eligible to be enrolled under this Agreement; or
  - e) after the Effective Date, is accepted according to a community acceptance process set out in K'ómoks 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 K'ómoks.
3. Where an individual having no K'ómoks ancestry became a Band member of K'ómoks First Nation under the *Indian Act* before April 17, 1985, because of marriage to a Band member of K'ómoks First Nation, and that individual subsequently has or adopts a Child with another individual who is not eligible for enrolment under this Agreement, that Child will not be entitled to be enrolled under paragraph 1.c) or 1.d).
4. On the day after the Effective Date, paragraphs 1 to 3 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 K'ómoks Constitution.
5. K'ómoks may, after the Effective Date and in accordance with this Agreement, change the Eligibility Criteria for enrolment under this Agreement by amending the K'ómoks Constitution.
6. The K'ómoks Constitution will provide:
  - a) that changes to the Eligibility Criteria must, in addition to any other steps required to amend the K'ómoks Constitution, be authorized by a referendum where more than 50 percent of K'ómoks Members who are eligible to vote cast a ballot and

- more than 50 percent of the votes cast are in favour of the change to the Eligibility Criteria;
- b) that individuals who are enrolled under this Agreement on the date immediately prior to the date that changes to the Eligibility Criteria come into effect will continue to be enrolled;
  - c) that individuals who have applied for enrolment under this Agreement on the date immediately prior to the date that changes 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 changes to the Eligibility Criteria come into effect; and
  - d) that individuals with K'ómoks ancestry and a Demonstrated Attachment to K'ómoks will always be eligible for enrolment.

#### **APPLICATIONS FOR ENROLMENT**

7. An individual may:
- a) apply:
    - i. before the Effective Date, to the Enrolment Committee; or
    - ii. on or after the Effective Date, to K'ómoks under paragraph 37.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,
- on the individual's own behalf, or on behalf of an individual whose affairs they have legal authority to manage.
8. Each Applicant under paragraph 7.a) or 7.b) has the burden of demonstrating how the Eligibility Criteria are met.

#### **OTHER LAND CLAIMS AGREEMENTS AND MEMBERSHIP IN A BAND OTHER THAN THE K'ÓMOKS BAND**

9. On or after the Effective Date, an individual may not at the same time be enrolled under this Agreement and:

- a) receive benefits under another treaty or land claims agreement in Canada;
  - b) be enrolled under another treaty or land claims agreement in Canada; or
  - c) be on an *Indian Act* Band list.
10. Where an application under paragraph 11 is accepted, the Applicant will be notified in writing by the Enrolment Committee, or by K'ómoks in accordance with paragraph 37.a), that the individual has been conditionally enrolled.
11. Upon submitting an application for enrolment under this Agreement, an Applicant must notify the Enrolment Committee, or K'ómoks under paragraph 37.a), as applicable, if the application is respecting:
- a) a beneficiary of another treaty or land claims agreement in Canada;
  - b) an individual enrolled under another treaty or land claims agreement in Canada; or
  - c) an individual on an *Indian Act* Band list, other than that of K'ómoks First Nation.
12. An individual who has been conditionally enrolled under paragraph 10 will, on or after the Effective Date:
- a) withdraw from enrolment under the other treaty or land claims agreement;
  - b) where there is no enrolment procedure or registry under the other treaty or land claims agreement, not exercise or assert any rights as a beneficiary under the other treaty or land claims agreement; or
  - c) in accordance with paragraph 13, request in writing that they be removed from the *Indian Act* Band list on which they are registered.
13. Where an Applicant demonstrates that an individual who has been conditionally enrolled under paragraph 10 has fulfilled the applicable requirements under paragraph 12 within 120 days of the later of:
- a) the Effective Date; or
  - b) receiving written notification of conditional enrolment by the Enrolment Committee, or by K'ómoks in accordance with paragraph 37.a),
- the Enrolment Committee, or K'ómoks in accordance with paragraph 37.a), will add that individual's name to the Enrolment Register and, where applicable, request that Canada change the individual's affiliation on the Indian Register and issue a new status card for the individual.

**THE ENROLMENT COMMITTEE**

14. The Enrolment Committee will be established by K'ómoks at a time agreed upon by the Parties, and will be comprised of three or four members appointed by K'ómoks.
15. K'ómoks will notify Canada and British Columbia of the members of the Enrolment Committee as soon as practicable upon their appointment.
16. The Enrolment Committee will:
  - a) establish its enrolment procedures and set its time limits, including a time limit for making enrolment decisions;
  - b) publish its procedures and time limits, including the Eligibility Criteria and a list of the documentation and information required of each Applicant, in time for any individual to review before making their application for enrolment;
  - c) take reasonable steps to notify individuals potentially eligible to be enrolled of the Eligibility Criteria and application procedures;
  - d) provide an application form to any individual who wishes to apply for enrolment;
  - e) receive enrolment applications, provide confirmation of receipt to the Applicant, consider and make a timely decision on each application based on the Eligibility Criteria, request further information if required, enrol individuals who meet the Eligibility Criteria and maintain a record of those decisions;
  - f) establish and maintain the Enrolment Register, and add names to, remove names from or amend names on the Enrolment Register in accordance with this chapter and decisions of the Enrolment Appeal Board;
  - g) notify in writing each Applicant and the Parties of its decision and, if enrolment is refused, provide written reasons;
  - h) on request, provide to a Party or the Enrolment Appeal Board, in confidence, information in respect of an individual's enrolment application;
  - i) unless otherwise provided in this chapter, keep information provided by and about Applicants confidential;
  - j) provide a copy of the Enrolment Register, and any other relevant information requested, to the Ratification Committee;
  - k) provide a true copy of the Enrolment Register to the Parties on request; and
  - l) report to the Parties on the enrolment process, on request.

17. Where the Enrolment Committee forms the opinion that an individual does not meet the Eligibility Criteria, the Enrolment Committee will provide the Applicant with a reasonable opportunity to present further information, in accordance with the enrolment procedures.
18. After a decision by the Enrolment Committee and before any appeal of that decision is commenced, the Applicant may submit new information to the Enrolment Committee.
19. The Enrolment Committee may, before an appeal of a decision is commenced, vary or rescind and re-make, the decision on the basis of new information, if it considers the decision was in error.
20. If the Enrolment Committee fails to decide upon an application for enrolment within the time established in its procedures, the application will be deemed to be refused and the deemed refusal will constitute grounds for appeal to the Enrolment Appeal Board.
21. If:
  - a) a K'ómoks Member; or
  - b) an individual who has legal authority to manage the affairs of a K'ómoks Member,applies to have the name of the K'ómoks Member removed from the Enrolment Register, the Enrolment Committee will remove the K'ómoks Member's name and will notify the individual who made the application.
22. Subject to this chapter, a decision of the Enrolment Committee that is not appealed to the Enrolment Appeal Board will be final and binding.

### **ENROLMENT APPEAL BOARD**

23. Canada and K'ómoks will establish the Enrolment Appeal Board at a date agreed upon by the Parties.
24. The Enrolment Appeal Board will be comprised of two members appointed by K'ómoks and one member appointed by Canada.
25. A member of the Enrolment Committee will not be a member of the Enrolment Appeal Board.
26. 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 16.e) or paragraph 19; and

- b) an application deemed to be refused under paragraph 20.
27. The Enrolment Appeal Board will:
- a) establish its own procedures and set time limits, including time limits for appealing decisions of the Enrolment Committee;
  - b) publish its procedures;
  - c) hear and determine any appeal brought under paragraph 26 and decide whether the individual will be enrolled;
  - d) maintain a record of its decisions and communicate them to the Enrolment Committee as required;
  - e) conduct its hearings in public unless it determines in a particular case that there are reasons for confidentiality that outweigh the public interest in an open hearing;
  - f) provide written reasons for its decision to the Applicant and the Parties; and
  - g) report to the Parties on the appeal process, on request.
28. 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) require any witness to answer on oath or solemn affirmation any relevant question posed to the witness.
29. If an individual fails to comply with a direction of the Enrolment Appeal Board made under paragraph 28 on application by the Enrolment Appeal Board, a judge of the Supreme Court of British Columbia or other court of competent jurisdiction may enforce a summons or direction.
30. Any Applicant, Party or witness appearing before the Enrolment Appeal Board may be represented by counsel or an agent.
31. Subject to this chapter, all decisions of the Enrolment Appeal Board will be final and binding.

**ACTIONS AGAINST THE ENROLMENT COMMITTEE AND THE ENROLMENT APPEAL BOARD**

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

**FUNDING**

33. Canada and British Columbia will provide agreed upon funding for the Enrolment Committee and the Enrolment Appeal Board.
34. The Enrolment Committee and the Enrolment Appeal Board will operate within their approved budgets.

**ENROLMENT AFTER THE EFFECTIVE DATE**

35. The Enrolment Committee will be dissolved when it has rendered decisions with respect to those applications commenced before the Effective Date.
36. The Enrolment Appeal Board will be dissolved when it has rendered decisions with respect to those appeals commenced before the Effective Date.
37. As of the Effective Date, K'ómoks 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 each year or as otherwise requested by Canada or British Columbia; and
  - d) provide information concerning enrolment to Canada and British Columbia upon request by Canada or British Columbia.

**JUDICIAL REVIEW**

38. An Applicant or a Party may apply to the Supreme Court of British Columbia to review or set aside a decision of the Enrolment Appeal Board, or any body established under paragraph 37.a), on the grounds that the Enrolment Appeal Board or body:
- a) acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction;
  - b) failed to observe procedural fairness;
  - c) erred in law; or
  - d) based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.
39. 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 any body established under paragraph 37.a) for determination in accordance with such directions as the Court considers appropriate.
40. If the Enrolment Appeal Board, or any body established under paragraph 37.a), 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 body to hear or decide the appeal in accordance with such directions as the Court considers appropriate.
41. An Applicant or Party may apply for judicial review within 60 days of receiving notification of the decision of the Enrolment Appeal Board or a longer time where determined by the court.

## CHAPTER 24: RATIFICATION OF THIS AGREEMENT

### GENERAL

1. This Agreement will be submitted to the Parties for ratification after it has been initialed by the Chief Negotiators and after any changes agreed to by the Chief Negotiators between initialing 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 BY K'ÓMOKS

#### K'ómoks Treaty

3. Ratification of this Agreement by K'ómoks requires:
  - a) that Eligible Voters have a reasonable opportunity to review this Agreement;
  - b) a vote by way of secret ballot;
  - c) that more than 50 percent of Eligible Voters on the Final Ratification Voters List cast their vote and more than 50 percent of the votes cast are in favour of this Agreement;
  - d) ratification of the K'ómoks Constitution under paragraph 4; and
  - e) that this Agreement be signed by an individual authorized to sign on behalf of K'ómoks.

#### K'ómoks Constitution

4. Ratification of the K'ómoks Constitution requires:
  - a) that Eligible Voters have a reasonable opportunity to review the K'ómoks Constitution;
  - b) a vote by way of secret ballot on or before the date of the K'ómoks Treaty Ratification Vote; and
  - c) that more than 50 percent of Eligible Voters on the Final Constitution Voters List cast a ballot and more than 50 percent of the votes cast are in favour of ratifying the K'ómoks Constitution.

**Ratification Committee**

5. The Ratification Committee will be comprised of three members, one member appointed by each of the Parties.
6. The Ratification Committee will:
  - a) establish and publish its procedures;
  - b) set its time limits;
  - c) satisfy itself that K'ómoks has taken reasonable steps to provide an opportunity for Eligible Voters to review this Agreement and the K'ómoks Constitution, as applicable;
  - d) prepare and publish a preliminary list of voters based on the Enrolment Register, and any other relevant information provided by the Enrolment Committee under paragraph 16.j) of the Eligibility and Enrolment Chapter;
  - e) prepare and publish an Official Voters List based on the preliminary list of voters prepared under paragraph 6.d) at least 30 days before the first day of general voting in the K'ómoks Constitution Ratification Vote or the K'ómoks Treaty Ratification Vote by:
    - i. determining whether each individual whose name is provided to it by the Enrolment Committee is eligible to vote under paragraph 8; and
    - ii. including on the Official Voters List the name of each individual whom the Ratification Committee determines to be eligible to vote under paragraph 6.e)i;
  - f) update the Official Voters List as required by:
    - i. adding to the Official Voters List the name of each individual whom the Ratification Committee determines to be eligible to vote under paragraph 8;
    - ii. adding to the Official Voters List the name of each individual who casts a ballot under paragraph 9 and whose ballot is counted under paragraph 10;
  - g) prepare and publish a Final Constitution Voters List and a Final Ratification Voters List, as applicable, which will be the Official Voters List as of the last scheduled day of voting for the K'ómoks Constitution Ratification Vote or the K'ómoks Treaty Ratification Vote, as applicable, less the following:

- i. the name of each individual who died on or before the last scheduled day of voting without having voted in the K'ómoks Constitution Ratification Vote or the K'ómoks Treaty Ratification Vote, as applicable;
  - ii. the name of each individual who did not vote in the K'ómoks Constitution Ratification Vote or the K'ómoks Treaty Ratification Vote, as applicable, and who provides, within four days of the last scheduled 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;
  - iii. the name of each individual who has applied, or on whose behalf an application has been made, within four days of the last scheduled day of voting in the K'ómoks Constitution Ratification Vote or the K'ómoks Treaty Ratification Vote, as applicable, to have their name removed from the Enrolment Register by the Enrolment Committee under paragraph 21 of the Eligibility and Enrolment Chapter, provided the individual has not already voted;
  - iv. the name of each individual with respect to whom K'ómoks has made a specific request to the Ratification Committee within four days of the last scheduled day of voting in the K'ómoks Constitution Ratification Vote or the K'ómoks Treaty Ratification Vote, as applicable, for removal from the Official Voters List due to an inability to contact that individual provided that K'ómoks provides documentation of the steps taken to contact the individual and the Ratification Committee is satisfied that those steps are reasonable;
- h) approve the form and content of the ballot;
  - i) authorize and provide general direction to Voting Officers;
  - j) establish polling stations;
  - k) conduct the K'ómoks Constitution Ratification Vote or the K'ómoks Treaty Ratification Vote, as applicable, on a day or days determined by the Ratification Committee;
  - l) ensure that information about the dates set for voting and the location of the polling stations are made publicly available;
  - m) count the vote and provide the results of the K'ómoks Constitution Ratification Vote or the K'ómoks Treaty Ratification Vote, as applicable, to the Parties;

- n) publish the results of the K'ómoks Constitution Ratification Vote or the K'ómoks Treaty Ratification Vote, as applicable; and
  - o) prepare and provide to the Parties a written report on the outcome of the K'ómoks Constitution Ratification Vote or the K'ómoks Treaty Ratification Vote, as applicable, within 90 days of the last scheduled day of voting.
7. For greater certainty, the K'ómoks Constitution Ratification Vote or the K'ómoks Treaty Ratification Vote may include voting by electronic means.

### **ELIGIBLE VOTERS**

8. An individual is eligible to vote in the K'ómoks Constitution Ratification Vote or the K'ómoks Treaty Ratification Vote, as applicable, if that individual:
- a) has been enrolled or conditionally enrolled under this Agreement in accordance with the Eligibility and Enrolment Chapter; and
  - b) will be at least 18 years of age on the last scheduled day of voting for the K'ómoks Constitution Ratification Vote or the K'ómoks Treaty Ratification Vote, as applicable.

### **PENDING ENROLMENT VOTERS**

9. An individual whose name is not included on the Official Voters List may cast a ballot in the K'ómoks Constitution Ratification Vote or the K'ómoks Treaty Ratification Vote, as applicable, if that individual:
- a) provides a Voting Officer with a copy of a completed enrolment application form that has been submitted to the Enrolment Committee, or other evidence satisfactory to a Voting Officer that the individual has submitted a completed enrolment application form to the Enrolment Committee; and
  - b) provides evidence satisfactory to a Voting Officer that the individual meets the requirements set out in paragraph 8.b).
10. The ballot of an individual described under paragraph 9 will be counted in the K'ómoks Constitution Ratification Vote or the K'ómoks Treaty Ratification Vote, as applicable, and the name of the individual added to the Official Voters List, effective as of the day the individual cast their ballot, only if the Enrolment Committee notifies the Ratification Committee, within four days of the last scheduled day of voting, that the individual meets the Eligibility Criteria.

**FUNDING**

11. Canada and British Columbia will provide an amount of funding agreed upon by the Parties for the Ratification Committee to carry out the duties and responsibilities set out in this chapter.

**RATIFICATION BY BRITISH COLUMBIA**

12. Ratification of this Agreement by British Columbia requires:
  - a) that this Agreement be signed by an authorized Minister; and
  - b) the coming into force of Provincial Treaty Implementation Legislation giving effect to this Agreement.

**RATIFICATION BY CANADA**

13. Ratification of this Agreement by Canada requires:
  - a) that this Agreement be signed by an authorized Minister; and
  - b) the coming into force of Federal Treaty Implementation Legislation giving effect to this Agreement.



## CHAPTER 25: IMPLEMENTATION

### GENERAL

1. The Parties will develop an Implementation Plan that covers a period of ten years beginning on the Effective Date, which may be extended upon agreement of the Parties.

### IMPLEMENTATION PLAN

2. The Implementation Plan:
  - a) identifies obligations in this Agreement requiring action, the activities and timeframes related to those obligations and the roles of the Parties;
  - b) specifies how the Implementation Plan may be amended 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 set out in this Agreement;
  - c) does not preclude any Party from asserting that rights or obligations exist under this Agreement even though they are not referred to in the Implementation Plan; and
  - d) is not to be used to interpret this Agreement.

### IMPLEMENTATION WORKING GROUP

4. During negotiations of this Agreement, the Parties agree to establish an implementation working group which will be responsible for the development of an Implementation Plan.

### IMPLEMENTATION COMMITTEE

5. On the Effective Date, the Parties will establish the Implementation Committee for a term of ten years which may be extended as agreed to by the Parties.

6. On the Effective Date, the Parties will each appoint one representative on the Implementation Committee and a Party may invite other individuals to participate in Implementation Committee meetings to support or assist their representative.
7. For greater certainty, where the Implementation Committee addresses an issue or matter outside the responsibility of the federal Minister for Crown-Indigenous Relations, Canada may invite an appropriate individual from the responsible federal department or agency to participate in the meetings to support or assist Canada's representative.
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 implementation issues arising among the Parties in relation to this Agreement;
  - b) establish its terms of reference, procedures and operating guidelines;
  - c) recommend revisions to the Implementation Plan to the Parties, as required;
  - d) prior to the expiry of the Implementation Plan, review the Implementation Plan and advise the Parties on the further implementation of the Agreement; and
  - e) address other matters agreed to by the Parties.

## CHAPTER 26: TRANSITION

### ESTATES AND ADMINISTRATION OF PROPERTY

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

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

who is a Child of an Indian is entitled, if the Minister was administering that property under the *Indian Act* immediately before the Effective Date, until the duties of the Minister with respect to the administration have been discharged.

### **TRANSFER OF K'ÓMOKS FIRST NATION ASSETS**

6. On the Effective Date, all of the rights, titles, interests, assets, obligations and liabilities of the K'ómoks First Nation vest in K'ómoks and the K'ómoks First Nation ceases to exist.
7. All moneys held by Canada pursuant to the *Indian Act* for the use and benefit of the K'ómoks First Nation, including capital and revenue moneys of the K'ómoks First Nation, will be transferred by Canada to K'ómoks on or as soon as practicable after the Effective Date.
8. Upon transfer of the moneys referred to in paragraph 7, Canada will no longer be responsible for the collection of moneys payable:
  - a) to or for the benefit of K'ómoks; or
  - b) except as provided in paragraphs 1, 3, 4 and 5, to or for the benefit of a K'ómoks Member.
9. For greater certainty, Canada will not be liable for any errors or omissions in the administration of all moneys held by K'ómoks for the use and benefit of K'ómoks that occur subsequent to the transfer of capital and revenue moneys of the K'ómoks First Nation from Canada to K'ómoks.

### **CONTINUATION OF *INDIAN ACT* BY-LAWS AND *K'ÓMOKS FIRST NATION LAND CODE***

10. The bylaws of the K'ómoks First Nation, the *K'ómoks First Nation Land Code* and any law made under the *K'ómoks First Nation Land Code*, that were in effect immediately before the Effective Date, continue in effect for 180 days after the Effective Date on Former K'ómoks First Nation Reserves.
11. As of the Effective Date, the relationship between a bylaw or law referred to in paragraph 10 and a Federal Law or Provincial Law will be governed by the provisions of this Agreement governing the relationship between K'ómoks Law and Federal Law or Provincial Law in relation to the subject matter of the bylaw or law.
12. K'ómoks may repeal, but not amend, a bylaw or law referred to in paragraph 10.

13. Nothing in this Agreement precludes a person from challenging the validity of a bylaw or law referred to in paragraph 10 in the same manner and on the same grounds as the validity of the bylaw or law could have been challenged prior to the Effective Date.



## CHAPTER 27: 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, 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 set out in this chapter, or in an Appendix, 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 P-1 to P-6 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 or negotiations 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 between or among the Parties that is ancillary, subsequent or supplemental, to this Agreement unless those Parties have agreed that this chapter applies to that agreement or other document;
  - b) the Implementation Plan; or
  - c) a dispute, where this Agreement provides this chapter does not apply.
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 law, to a dispute involving a person if that dispute is not a Disagreement.
  9. Nothing in Federal Law, Provincial Law or K'ómoks 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 P-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 P-2, P-3, P-4 or P-5 as applicable; and
  - c) Stage Three: final adjudication of a Disagreement in arbitral proceedings under Appendix P-6 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 a written notice, as required under Appendix P-1, to the other Parties, requiring collaborative negotiations to commence.
15. Upon receiving the notice under paragraph 14, a Party identified in that notice as a Disputing Party will participate in the collaborative negotiations.
16. A Party not identified in the notice under paragraph 14 as a Disputing Party may become a Participant in the collaborative negotiations by giving written notice to the Disputing Parties, preferably before the collaborative negotiations commence.
17. If the Parties have commenced negotiations as 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 P-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 the notice may become a Participant in the facilitated process by giving written notice to the Disputing Parties.

23. Within 30 days after delivery of notice under paragraph 19, the Disputing Parties will attempt to agree to use one of the following processes:
- a) mediation under Appendix P-2;
  - b) technical advisory panel under Appendix P-3;
  - c) neutral evaluation under Appendix P-4;
  - d) community advisory council under Appendix P-5; or
  - e) any other non-binding dispute resolution process assisted by a Neutral Individual, other than an arbitrator,
- and if they fail to agree, they will be deemed to have selected mediation under Appendix P-2.
24. A facilitated process terminates:
- a) in the circumstances set out in the applicable part of Appendices P-2 to P-5; or
  - b) as agreed by the Disputing Parties, if Appendices P-2 to P-5 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) recorded in writing;
  - b) signed by authorized representatives of the applicable Parties; 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 P-6 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 P-6.
29. Disagreements, other than Disagreements referred to in paragraph 28, will be referred to arbitration for final resolution in accordance with Appendix P-6 when the Disputing Parties agree in writing.
30. If two Disputing Parties make a written agreement under paragraph 29, they will deliver a copy of the agreement to the other 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 providing written notice to the Disputing Parties within 15 days of receiving the notice under paragraph 28 or a copy of a written agreement to arbitrate 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

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

### **EFFECT OF ARBITRAL AWARD**

33. An Arbitral Award is final and binding on all Parties whether or not a Party was a Participant in the arbitration.

34. Notwithstanding paragraph 33, an Arbitral Award is not binding on a Party that was not a Participant in the arbitration if:
- a) the Party did not receive copies of:
    - i. the notice to arbitrate under paragraph 28 or the written agreement to arbitrate under paragraph 30; or
    - ii. the documents referenced in sections 67, 68 and 71 of Appendix P-6; 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 P-6.

### **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. 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 P-6.

**COSTS**

41. Except as provided otherwise in Appendix P-1 to P-6, 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 provided otherwise in Appendix P-1 to P-6, the Participants will share equally all other costs in Stage One, Stage Two or Stage Three.
43. For purposes of paragraph 42, costs include:
  - a) fees of a Neutral Individual;
  - b) costs of hearing and meeting rooms;
  - c) actual and reasonable costs of communications, accommodation, meals and travel of a Neutral Individual;
  - d) costs of required secretarial and administrative support for the Neutral Individual, as permitted in Appendices P-2 to P-6; and
  - e) administration fees of a Neutral Appointing Authority.



**CHAPTER 28: AMENDMENT**

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) K'ómoks, by a resolution adopted by the K'ómoks Executive.
6. Where federal or provincial legislation is required to give effect to an amendment to this Agreement, Canada or British Columbia, as the case may be, will take all reasonable steps to enact the legislation.
7. Unless the Parties otherwise agree, an amendment to this Agreement takes effect once the consent requirements under paragraph 5 are completed and any legislation referred to in paragraph 6, if applicable, has been brought into force.
8. Each Party will provide notice to the other Parties when consent, in accordance with paragraph 5, has been given and when any legislation referred to in paragraph 6, if applicable, has been brought into force.
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 practicable after the happening of the event:

- i. the Parties will take all steps necessary to conclude and give effect to the amendment including those steps referred to in 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 by the Parties, but if no date is agreed to, on the date that the last Party provides notice to the other Parties that it has completed all of its requirements to conclude and give effect to the amendment.
10. Notwithstanding paragraphs 2 to 9, where:
  - a) this Agreement provides that:
    - i. the Parties, or any two of them, will negotiate and attempt to reach agreement in relation to 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 the Dispute Resolution Chapter; 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 Arbitral Tribunal takes effect, as the case may be.
11. In respect of deemed amendments contemplated by paragraph 10, the applicable Parties will:
  - a) provide notice to any Party not a party to the agreement reached or of an Arbitral Tribunal's decision, as the case may be; and
  - b) agree on the form and wording of the amendment.
12. In the case of an Arbitral Tribunal's decision referred to in paragraph 10, if the applicable Parties are unable to agree, the form and wording of the deemed amendment will be finally determined by the Arbitral Tribunal.
13. The Parties agree to 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 K'ómoks in the K'ómoks registry of laws contemplated by this Agreement.
15. For the purposes of paragraph 14.b), where an amendment to this Agreement relates to the description of K'ómoks Lands, including an amendment resulting from any re-surveying of K'ómoks Lands or any addition or removal of land from K'ómoks 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.



# **OTHER MATTERS**



## CHAPTER 29: DEFINITIONS

In this Agreement:

**“Aboriginal People”** means an Aboriginal people of Canada within the meaning of the *Constitution Act, 1982*;

**“Adequate Survey”** means an existing survey plan that meets the requirements set out below or the initial survey represented on a survey plan that:

- a) accurately and unambiguously describes the extent of a parcel of K'ómoks Lands or Other K'ómoks Lands, including the location of any natural boundary forming a perimeter boundary;
- 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 K'ómoks Institution, comprised of one or more Adjudicators, established or authorized in accordance with K'ómoks Law under paragraph 49 of the Administration of Justice Chapter;

**“Adjudicator”** means an individual appointed, authorized or designated in accordance with K'ómoks Law under paragraph 49 of the Administration of Justice Chapter;

**“Agreement”** means this Agreement among K'ómoks, Canada and British Columbia, including all Schedules and Appendices;

**“Applicant”** means an individual applying for enrolment under this Agreement on the individual's own behalf, or on behalf of an individual whose affairs they have legal authority to manage;

**“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 the Arbitral Tribunal on the substance of the Disagreement submitted to it, and includes:

a) an interim arbitral award, including an interim award made for the preservation of property; and

b) an award of interest or costs;

**“Arbitral Tribunal”** means a single arbitrator or a panel of arbitrators appointed under Appendix P-6;

**“Archaeological Human Remains”** means human remains that are determined to be of Indigenous ancestry and not the subject of a police or coroner investigation;

**“Area-based Licence”** has the same meaning as “area-based licence” under the *Forest Act*;

**“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 K'ómoks water reservations,

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

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

**“Base Period”** means, for a Non-Allocated Species, the duration of time immediately preceding the date of a proposal to establish a K'ómoks Fish Allocation made under paragraph 60 of the Fisheries Chapter, as agreed to by the Parties;

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

**“BCFDDIPI”** means the British Columbia Final Domestic Demand Implicit Price Index for British Columbia, series v62789718, published regularly by Statistics Canada in Table: 36-10-0223-01 (formerly: CANSIM 384-0039): Implicit price indexes, gross domestic product, provincial and territorial (2007 = 100) or its replacement series as specified by Statistics Canada;

“**BC Hydro**” means the British Columbia Hydro and Power Authority and its successors and assigns;

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

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

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

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

“**Capital Transfer**” means the total amount paid or acknowledged as paid by Canada or British Columbia to K'ómoks First Nation or K'ómoks under the Capital Transfer Chapter;

“**Certificate of Compliance**” means a certificate of compliance under the *Environmental Management Act*;

“**Chief of Police**” means the chief constable, chief officer or commissioner under the *Police Act* of the applicable Police Service providing policing and law enforcement on K'ómoks 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* or the *Independent School Act* or a K'ómoks Law under paragraph 116 of the Self-Government Chapter;

“**Co-Management Agreement**” means an agreement that Canada, British Columbia and K'ómoks, or K'ómoks and Canada or British Columbia, as applicable, agree to negotiate and attempt to reach agreement on in accordance with paragraph 8 of the Co-Management Chapter;

“**Common Objectives**” means those Common Objectives set out in recital (i) 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;

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

- a) ensure that K'ómoks is provided notice of the Contemplated Crown Conduct and all information that either Party, acting reasonably, considers necessary to permit K'ómoks to prepare its views regarding any potential adverse impacts on K'ómoks Exercisable Section 35 Rights;
- b) provide a reasonable period of time to permit K'ómoks to prepare its views on the potential adverse impacts on K'ómoks 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 K'ómoks, including any relevant Indigenous knowledge provided by K'ómoks, are seriously considered and, if appropriate, demonstrably integrated into the decision-making process for the Contemplated Crown Conduct;
- d) if appropriate, provide feedback to K'ómoks 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;

**“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 K'ómoks Exercisable Section 35 Rights;

**“Crown”** means Canada or British Columbia, as the case may be;

**“Crown Corridor”** means a road, highway or right-of-way, including the road allowance, that is on provincial 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*;

**“Cultural Property”** means ceremonial regalia and similar personal property associated with K'ómoks, and other personal property that has cultural significance to K'ómoks;

**“Custodial Arrangements”** means arrangements between K'ómoks and the Canadian Museum of History or the Royal British Columbia Museum, relating to curation, care, loan or potential sharing of K'ómoks Artifacts in the collection of the Canadian Museum of History or the Royal British Columbia Museum, which are informed by K'ómoks protocols and include but are not limited to meaningful participation in decisions and activities relating to:

- a) conservation;
- b) research;
- c) interpretation;
- d) display;
- e) storage; and
- f) collaborative initiatives involving K'ómoks members;

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

**“Debt Certificate”** means a document in a form prescribed by K'ómoks 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 K'ómoks;

**“Designated Harvester”** means an individual other than a K'ómoks Member designated in accordance with K'ómoks Law made under paragraph 29.b) of the Wildlife, Migratory Birds and Plants Chapter;

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

**“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 the Dispute Resolution Chapter;

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

- a) acting reasonably, provides written notice to another Party requiring their participation in a process described in the Dispute Resolution Chapter to resolve a Disagreement; or
- b) receives a notice from the Party described in paragraph a), requiring their participation in a process in the Dispute Resolution Chapter 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, or the construction of residential dwellings for K'ómoks Members, cultural or community buildings, but does not include the use of Timber for trade, barter or sale except as provided in paragraph 55 of the Forest Resources Chapter;

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

**“Eligibility Criteria”** means:

- a) until the Effective Date, the criteria under paragraphs 1 to 3 of the Eligibility and Enrolment Chapter; or
- b) from the day after the Effective Date, the criteria set out in the K'ómoks Constitution respecting who is eligible for enrolment under this Agreement;

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

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

**“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 board established under paragraph 23 of the Eligibility and Enrolment Chapter;

**“Enrolment Committee”** means the committee established under paragraph 14 of the Eligibility and Enrolment Chapter;

**“Enrolment Register”** means a list of individuals who have been accepted for enrolment under the Eligibility and Enrolment Chapter;

**“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 environmental 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 K'ómoks 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 K'ómoks Personal Property”** means personal property held by K'ómoks or a K'ómoks 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 K'ómoks or a K'ómoks Public Institution; or
- b) essential to the delivery of any programs and services by K'ómoks or a K'ómoks Public Institution;

**“Expenditure Need Methodology”** means a methodology for calculating the estimated cost of performing a Federally Supported Government Responsibility based on comparative measures or

standards drawn from governments with similar responsibilities or of a similar size and location and where appropriate, other organizations;

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

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

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

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

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

**“Federal Project”** means a “designated project”, as defined in the *Impact Assessment Act*, which 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, with respect to the K'ómoks Constitution Ratification Vote, the list prepared by the Ratification Committee under paragraph 6.g) of the Ratification Chapter;

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

**“Final Ratification Voters List”** means, with respect to the K'ómoks Treaty Ratification Vote, the list prepared by the Ratification Committee under paragraph 6.g) of the Ratification Chapter;

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

**“Fiscal Arrangements”** mean mechanisms, such as the Fiscal Relationship Agreement, through which Canada and K'ómoks implement the new fiscal relationship referred to in paragraph 1 of the Fiscal Relations Chapter;

**“Fiscal Provisions”** mean mechanisms, such as the Fiscal Relationship Agreement, through which British Columbia and K'ómoks implement their fiscal relationship;

**“Fiscal Relationship Agreement”** means a Fiscal Arrangement or a Fiscal Provision in the form of an agreement entered into with K'ómoks, initially coming into effect on the Effective Date;

**“Fish”** means:

- a) parts of fish;
- b) shellfish, crustaceans, marine animals and any parts of shellfish, crustaceans or marine animals; and
- c) the eggs, sperm, spawn, larvae, spat and juvenile stages of fish, shellfish, crustaceans and marine animals;

**“Fisheries Operational Guidelines”** means the guidelines established under paragraph 148 in the Fisheries Chapter;

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

**“Fishery Officer”** means, for the purposes of paragraphs 152 to 158 of the Fisheries Chapter, 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 and other related activities, including grazing for the purposes of brushing, botanical forest product 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 Plants, but does not include Aquatic Plants;

**“Forest Tenure”** means a forest licence or area-based licence as defined in the *Forest Act*;

**“Former K'ómoks First Nation Reserves”** means those K'ómoks Lands that were, immediately before the Effective Date, Indian Reserves set apart for the use and benefit of the K'ómoks First Nation, which are shown for illustrative purposes in Appendix B-2 Part 2 and, with the exception of the Pentledge 2 Alignment Lands, identified as “Former K'ómoks First Nation Reserves”;

**“Former K'ómoks Private Fee Simple Lands”** means those K'ómoks Lands described in Appendix B-5 Part 1 and shown for illustrative purposes in Appendix B-5 Part 2;

**“Former Provincial Crown Lands”** means those K'ómoks Lands described in Appendix B-3 Part 1 and shown for illustrative purposes in Appendix B-3 Part 2;

**“Freehold Subsurface Rights”** means a freehold estate or interest of a person in any Subsurface Resources, and any ancillary rights, whether or not that estate or interest is registered as a charge against the title of the land on or under which the Subsurface Resources are located, but does not include Subsurface Tenures or any licence, lease, mineral claim or other tenure issued under Provincial Law;

**“Goose Spit Improvements”** means the buildings, structures, works, facilities, infrastructure and utility services constructed by Canada on the Goose Spit Lease Area and the K'ómoks Estuary Water Lot, as listed in Appendix U;

**“Goose Spit Lease Area”** means those portions of the lands identified as “Goose Spit Site 1” and “Goose Spit Site 2” in Appendix B-3 that are leased by Canada from K'ómoks;

**“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;
  - xi. health; or
- b) otherwise agreed to in writing by Canada and K'ómoks for development of an Expenditure Need Methodology;

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

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

“**Harvesting in Qualicum National Wildlife Area Agreement**” means an agreement entered into by Canada and K'ómoks under paragraph 15 of the Wildlife, Migratory Birds and Plants Chapter;

“**Harvesting Zone**” is 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 archeological, historical or cultural significance and includes graves and burial sites;

“**Implementation Committee**” means the committee established under the Implementation Chapter of this Agreement;

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

“**Independent Decision-Maker**” means an independent decision-maker authorized by British Columbia to adjudicate on the ownership of Subsurface Resources in accordance with the process described in paragraphs 6 to 11 of the Subsurface Resources Chapter;

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

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

“**Intellectual Property**” includes any intangible property right resulting from intellectual activity in the industrial, scientific, literary or artistic fields, including 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 Body**” means any international body, mechanism or procedure, including a body that has been granted competence by International Treaty or resolution, to advise, recommend or provide views on Canada's compliance with an International Legal Obligation;

“**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 international agreement concluded between States, or between one or more States and one or more international organizations, in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation;

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

**“Islands Trust Area”** means the “trust area” or “local trust area,” as applicable, as defined in the *Islands Trust Act*;

**“Islands Trust Body”** means the “trust council,” the “executive committee,” the “local trust committee” or the “Islands Trust Conservancy,” as applicable, as defined in the *Islands Trust Act*;

**“Joint Fisheries Committee”** means the K’ómoks Joint Fisheries Committee established under paragraph 114 of the Fisheries Chapter;

**“K’ómoks”** means the collectivity that comprises all individuals who are enrolled or are eligible for enrolment under this Agreement;

**“K’ómoks Agricultural Lands”** means K’ómoks Lands that are designated as agricultural under K’ómoks Law;

**“K’ómoks Annual Fishing Plan”** means a K’ómoks annual fishing plan described in paragraph 109 in the Fisheries Chapter;

**“K’ómoks Artifact”** means any object created by, traded to, commissioned by, or given as a gift to a K’ómoks individual, K’ómoks, or a K’ómoks Institution or that originated from the K’ómoks community, or Heritage Site on K’ómoks Lands, and that has past and ongoing importance to K’ómoks culture or spiritual practices, but does not include any object traded to, or commissioned by or given as a gift to another Indigenous person or group;

**“K’ómoks Capital”** means all land, cash and other assets transferred to or recognized as owned by K’ómoks under this Agreement;

**“K’ómoks Certificate”** means a certificate of K’ómoks under section 25, 26, 27 or 28 of Schedule 1 of the *Land Title Act*;

**“K’ómoks Child”** means a Child who is a K’ómoks Member;

**“K’ómoks Commercial Harvest Agreement”** means the agreement described in paragraph 166 of the Fisheries Chapter;

**“K’ómoks Constitution”** means the constitution of K’ómoks described in the Self-Government Chapter;

**“K’ómoks Constitution Ratification Vote”** means the vote conducted under the Ratification Chapter to ratify the K’ómoks Constitution;

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

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

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

**“K’ómoks Court Judge”** means a judge appointed by K’ómoks in accordance with paragraph 81.b) of the Administration of Justice Chapter;

**“K’ómoks Ecological Lands”** means those K’ómoks Lands shown for illustrative purposes in Appendix D-3, which contain habitat for sensitive, vulnerable or at-risk species;

**“K’ómoks Enforcement Officer”** means an individual appointed by K’ómoks in accordance with paragraph 26 of the Administration of Justice Chapter;

**“K’ómoks Estuary Water Lot”** means those Submerged Lands shown for illustrative purposes in Appendix M-2 Part 1;

**“K’ómoks Estuary Water Lot Sublease Area”** means that portion of K’ómoks Estuary Water Lot that is subleased by Canada from K’ómoks;

**“K’ómoks Exercisable Section 35 Rights”** means the rights set out in this Agreement that can be exercised and asserted by K’ómoks, including the rights that can be exercised and asserted in and to K’ómoks 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*;

**“K’ómoks 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 K’ómoks Member; and

- b) at least one of the Children is a K'ómoks Child;

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

**“K'ómoks First Nation Land Code”** means the land code approved by K'ómoks First Nation in accordance with the Framework Agreement on First Nation Land Management;

**“K'ómoks 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;

**“K'ómoks Fishing Area”** means the geographic area set out in the map attached as Appendix Q-1, and, for greater certainty, includes any National Park, National Marine Conservation Area or National Historic Site that lies wholly or partly therein;

**“K'ómoks Fishing Right”** means the right to harvest Fish and Aquatic Plants set out in paragraph 1 of the Fisheries Chapter;

**“K'ómoks Focus Area”** means the marine portion of the K'ómoks Focus Area for fisheries of cultural and spiritual significance and the freshwater portion of the K'ómoks Focus Area for fisheries of cultural and spiritual significance as described in Appendix Q-3;

**“K'ómoks Government”** means the government of K'ómoks as set out in the Self-Government Chapter and the K'ómoks Constitution;

**“K'ómoks Gravelly Bay Water Lot”** means those Submerged Lands shown for illustrative purposes in Appendix M-1 Part 1;

**“K'ómoks Harvest Area”** means the area identified in Appendix A, but does not include:

- a) lands that are administered or occupied by the Minister of National Defence, or areas temporarily being used for military exercises from the time that notice has been provided to K'ómoks until the temporary use is completed or unless otherwise agreed to;  
b) Indian Reserves; or  
c) any National Park, National Marine Conservation Area or National Historic Site in which the K'ómoks Right to Harvest Renewable Resources applies;

**“K'ómoks Harvest Document”** means any fishing licence, permit or document, or amendments thereto, issued by the Minister under Federal Law or Provincial Law in respect of the K'ómoks Fishing Right;

**“K'ómoks Heritage Site”** means Heritage Sites within the K'ómoks Traditional Territory identified by K'ómoks as culturally important;

**“K'ómoks Institution”** means the K'ómoks Government or a K'ómoks Public Institution;

**“K'ómoks Lands”** means those lands set out in Appendix B and includes K'ómoks Private Lands, K'ómoks Public Lands, K'ómoks Ecological Lands and K'ómoks Tribal Parks;

**“K'ómoks Law”** means a law made under a K'ómoks law-making authority set out in this Agreement and includes regulations and the K'ómoks Constitution;

**“K'ómoks Member”** means an individual who is enrolled under this Agreement in accordance with the Eligibility and Enrolment Chapter;

**“K'ómoks Private Lands”** means all K'ómoks Lands except K'ómoks Public Lands, K'ómoks Ecological Lands and K'ómoks Tribal Parks;

**“K'ómoks Project”** means a project on K'ómoks Lands that is subject to an environmental assessment under K'ómoks Law, but does not include a Provincial Project;

**“K'ómoks Prosecutor”** means an individual appointed under K'ómoks Law in accordance with paragraph 59 of the Administration of Justice Chapter;

**“K'ómoks Public Institution”** means a body, board, committee, commission or any other similar entity, including societies and trusts, established by K'ómoks under K'ómoks 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;

**“K'ómoks Public Lands”** means those K'ómoks Lands shown for illustrative purposes in Appendix D-1;

**“K'ómoks Public Officer”** means:

- a) a member, commissioner, director or trustee of a K'ómoks Public Institution;
- b) a director, officer or employee of a K'ómoks 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 K'ómoks or a K'ómoks Institution;
- d) an election official within the meaning of a K'ómoks Law;
- e) a K'ómoks Enforcement Officer, an Adjudicator or K'ómoks Prosecutor; or

- f) a volunteer who participates in the delivery of public programs or services by K'ómoks, a K'ómoks Institution or a body referred to in paragraph b), under the supervision of an officer or employee of K'ómoks, a K'ómoks Institution, or a body referred to in paragraph b);

**“K'ómoks Right to Harvest”** means the right of K'ómoks to Harvest as set out under paragraph 1 of the Wildlife, Migratory Birds and Plants Chapter;

**“K'ómoks Right to Harvest Renewable Resources”** means the right of K'ómoks to Harvest Renewable Resources described in paragraph 5 of the Parks Chapter;

**“K'ómoks Right to Harvest Timber”** means the right of K'ómoks to harvest Crown Timber for Domestic Use on Provincial Crown land within the K'ómoks Harvest Area as set out in paragraph 31 of the Forest Resources Chapter;

**“K'ómoks Road”** means any road, including the road allowance, on K'ómoks Lands under the administration and control of K'ómoks;

**“K'ómoks Roosevelt Elk Allocation”** means the percentage of the Total Allowable Harvest of Roosevelt elk set out in paragraph 64 or modified in accordance with paragraphs 65 to 68 of the Wildlife, Migratory Birds and Plants Chapter;

**“K'ómoks Roosevelt Elk Harvest Area”** is the totality of the Harvesting Zones wholly within the K'ómoks Harvest Area;

**“K'ómoks Roosevelt Elk Harvest Plan”** means a plan approved in accordance with paragraphs 75 and 76 of the Wildlife, Migratory Birds and Plants Chapter;

**“K'ómoks Traditional Territory”** means the area identified in Appendix A;

**“K'ómoks Treaty Ratification Vote”** means the vote conducted under the Ratification Chapter to ratify this Agreement;

**“K'ómoks Tribal Parks”** means those K'ómoks Lands shown for illustrative purposes in Appendix D-2;

**“K'ómoks Wildlife Allocation”** means a defined harvest quantity or quota, or harvest quantity or quota determined by the use of a formula, for a given Wildlife species but does not include the K'ómoks Roosevelt Elk Allocation;

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

**“Local Government”** has the same meaning as “local government” under 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, such as feathers and down;

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

“**Multi-Nation Roosevelt Elk Harvest Agreement**” means a written agreement between K’ómoks and Other Indigenous Nations who harvest Roosevelt elk within the K’ómoks Roosevelt Elk Harvest Area with respect to the proposed number and class of Roosevelt elk that they each may harvest, as referred to in paragraph 82 of the Wildlife, Migratory Birds and Plants Chapter;

“**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 that is administered by the Parks Canada Agency and is of national historic interest or significance, and includes buildings or structures that are of national interest by reason of age or architectural design, that are commemorated under the *Historic Sites and Monuments Act*;

“**National Marine Conservation Area**” includes a national marine conservation area reserve and means the lands and waters named and described in the schedules to the *Canada National Marine Conservation Areas Act* and administered under Federal Law;

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

“**National Wildlife Area**” means a “wildlife area” as defined under Federal Law;

“**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 Parties;

**“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 K'ómoks Fish Allocation has not been established under this Agreement;

**“Non-Member”** means an individual who has reached the age of majority under Provincial Law, who is ordinarily resident on K'ómoks Lands and who is not a K'ómoks Member;

**“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;

**“Official Voters List”** means the list of Eligible Voters prepared by the Ratification Committee under the Ratification Chapter;

**“Orderly Process”** means the process set out in paragraphs 26 to 34 of the Periodic Renewal and Orderly Process Chapter;

**“Other Indigenous Nation”** means an Aboriginal People that holds established or asserted rights recognized and affirmed by section 35 of the *Constitution Act, 1982* within the K'ómoks Traditional Territory, other than K'ómoks;

**“Other K'ómoks Lands”** means those lands described in Appendix C Part 1 and shown for illustrative purposes in Appendix C Part 2, which, for greater certainty, are not K'ómoks Lands;

**“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 the Dispute Resolution Chapter to resolve a Disagreement; or
- c) is ordered to participate in an arbitration under paragraph 32 of the Dispute Resolution Chapter;

**“Parties”** means K'ómoks, Canada and British Columbia, and **“Party”** means any one of them;

**“Pentledge 2 Alignment Lands”** means all of Lots 7, 8, 9, 10 and 11, Pentledge Indian Reserve No. 2, Comox District, British Columbia, Canada Land Survey Records Plan 104984;

**“Perform”** means, for the purposes of paragraphs 97 to 105 of the Self-Government Chapter, solemnize as described under Provincial Law;

**“Periodic Renewal”** means the process to review this Agreement in accordance with paragraphs 1 to 25 of the Periodic Renewal and Orderly Process Chapter;

**“Periodic Renewal Date”** means the same day and month on which the first Periodic Renewal commenced as determined under paragraph 2 of the Periodic Renewal and Orderly Process Chapter;

**“Person”**, for the purposes of the Taxation Chapter, 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;

**“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;

**“Pre-approved Addition Lands”** means the Pre-approved Additions to K'ómoks Lands – Fee Simple Lands and Pre-approved Additions to K'ómoks Lands – Provincial Crown Lands;

**“Pre-approved Additions to K'ómoks Lands – Provincial Crown Lands”** means those lands identified as “Pre-approved Additions to K'ómoks Lands – Provincial Crown Lands” in Appendix E-1 Part 2;

**“Pre-approved Additions to K'ómoks Lands – Fee Simple Lands”** means:

- a) those lands identified as “Pre-approved Additions to K'ómoks Lands – Fee Simple Lands” in Appendix E-2 Part 2; and

- b) any lands that are included under paragraph 32.b) of the Lands Chapter;

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

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

**“Protocol”** means an agreement in effect between K'ómoks and an Other Indigenous Nation in respect of the exercise of K'ómoks Exercisable Section 35 Rights, and referred to in Schedule 1 of the Self-Government Chapter in accordance with paragraph 45 of that chapter;

**“Provincial Capital Advance”** means the amounts set out in paragraphs 6 and 8 of the Capital Transfer Chapter paid by British Columbia to K'ómoks First Nation as precursor to K'ómoks in the period between when the ‘Canada and British Columbia Offer to Further Negotiations with a View to Concluding a Treaty’ document was provided to K'ómoks First Nation on November 2, 2022 and the Effective Date;

**“Provincial Court Judge”** means a “judge” as defined in the *Provincial Court Act*;

**“Provincial Enforcement Officer”** means a conservation officer designated under the *Environmental Management Act* or a natural resource officer designated under the *Natural Resource Compliance Act*;

**“Provincial Environmental Assessment Decision Maker”** means the individual identified by Provincial Environmental Assessment legislation as the person responsible for a decision;

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

**“Provincial Law”** includes provincial statutes, regulations, ordinances, Orders-in-Council and the common law;

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

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

**“Provincial Treaty Implementation Legislation”** means the Acts of the Legislature that give effect to this Agreement;

**“Public Utility”** means:

- a) a person, or the person’s lessee, trustee, receiver or liquidator that 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 (including petroleum products or by-products), gas (including natural gas, natural gas liquids, propane and coalbed gas), electricity, steam, water, sewage or any other agent for the production of light, heat, cold or power; or
  - ii. 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 and a corporation, including a Crown corporation or agent of the Crown;

**“Qualicum National Wildlife Area”** means those portions of the “Qualicum National Wildlife Area” set out in the *Wildlife Area Regulations* of the *Canada Wildlife Act* that are within the K’ómoks Traditional Territory, as shown for illustrative purposes in Appendix L;

**“Railway”** means a company, established under Federal Law or Provincial Law, authorized to construct and operate a railway and for greater certainty includes:

- a) all branches, extensions, sidings, stations, depots, wharves, rolling stock, equipment, works, property and works connected with the railway and all railway bridges, tunnels or other structures connected with the railway; and
- b) communications or signalling systems and related facilities and equipment used for railway purposes;

**“Railway Corridor”** means a corridor of land on which any federally regulated Railway is located;

**“Range Practices”** mean:

- a) grazing of livestock;
- b) cutting of hay;
- c) activities relating to grazing of livestock or cutting of hay; or

- d) activities related to constructing, modifying or maintaining a structure, an excavation, a livestock trail or an improvement to forage quality or quantity for purposes of range development;

**“Ratification Committee”** means the committee established under the Ratification Chapter of this Agreement;

**“Records”** means records documenting K'ómoks 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;

**“Regional District”** has the same meaning as “regional district” under the *Local Government Act*;

**“Registrar”** has the same meaning as “registrar” under 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 K'ómoks 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 K'ómoks in accordance with the Resource Revenue Sharing Chapter;

**“Royston Forest”** means those K'ómoks Lands identified as “Royston Forest” in Appendix B-3;

**“Species at Risk”** means “species at risk” as defined in the *Species at Risk Act*, as may be amended or replaced from time to time;

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

**“Specific Claims Settlement”** means any sum paid by Canada to K'ómoks 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 K'ómoks and Canada or British Columbia, as applicable, have agreed in writing will be relied on to meet that Crown’s consultation obligations in respect of a particular type of Contemplated Crown Conduct and which is:

- a) set out in the Agreement;

- b) set out in a separate agreement that is referenced in the Agreement; or
- c) established pursuant to a Federal Law or Provincial Law, referenced in the Agreement, including related approval or regulatory processes;

**“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”** include the following:

- 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, namely an ore of metal or natural substance that can be mined, including:
  - i. rock and other materials from mine tailings, dumps and previously mined deposits of minerals;
  - ii. dimension stone; and
  - iii. precious and base metals;
- d) placer minerals, namely an 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;
- e) coal;
- f) petroleum, namely 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;
- g) natural gas, namely all fluid hydrocarbons that are not defined as petroleum, and includes coalbed gas and hydrogen sulphide, carbon dioxide and helium produced from a well;

- h) fossils, namely remains, traces or imprints of animals or Plants that have been preserved in rocks, and includes bones, shells, casts and tracks; and
- i) geothermal resources, namely the natural heat of the earth and all substances that derive thermal energy from it, including steam, water and water vapour heated by the natural heat of the earth and all substances dissolved in the steam, water and water vapour, but does not include:
  - i. water that has a temperature less than 80°C at the point where it reaches the surface; or
  - ii. hydrocarbons;

**“Subsurface Tenures”** means:

- a) those subsurface tenures listed in Appendix F-1 Part 2; and
- b) those subsurface tenures that exist on any lands added to K'ómoks Lands immediately before the parcel of land becomes K'ómoks Lands;

**“Superior Court”** means the following courts or any of their successors established under applicable law:

- a) the Supreme Court, Court of Queen'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;

**“Surrendered Lands”** has the same meaning as “surrendered lands” under the *Indian Act*;

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

**“Total Allowable Harvest”** means the maximum number of a given class of Wildlife that may be harvested by all harvesters each year in the K'ómoks Harvest Area, or any portion thereof;

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

**“Treaty Implementation Legislation”** means the Federal Treaty Implementation Legislation and the Provincial Treaty Implementation Legislation;

**“United Nations Declaration on the Rights of Indigenous Peoples”** 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;

**“Voting Officer”** means an individual authorized by the Ratification Committee in accordance with paragraph 6.i) of the Ratification Chapter;

**“Water Authorization Holder”** means a person who holds an authorization under the *Water Sustainability Act*;

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

**“Water Scarcity Management Agreement”** means an agreement entered into by British Columbia and K'ómoks under paragraph 28 of the Water Chapter;

**“Waveland Beacon”** means the lands described in Appendix B-4 Part 1 and shown for illustrative purposes in Appendix B-4 Part 2;

**“Wildfire Suppression Agreement”** means an agreement entered into by Canada, British Columbia and K'ómoks under paragraph 14 of the Forest Resources Chapter;

**“Wildlife”** means:

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

but does not include Fish or Migratory Birds;

**“Wildlife Harvest Allocation Cycle”** means the five-year period within which licensed hunting for limited entry hunts and quota for guided hunts are managed by British Columbia; and

**“Wildlife Management Area”** means provincial Crown land established as a Wildlife management area under Provincial Law.



**LIST OF REFERENCED STATUTES, REGULATIONS AND LAND  
CODES**

*Adoption Act*, R.S.B.C. 1996, c. 5

*Agricultural Land Commission Act*, S.B.C. 2002, c. 36

*British Columbia Building Code 2024*, MO 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

*Canada Wildlife Act*, R.S.C. 1985, c. W-9

*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

*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

*Firearms Act*, S.C. 1995, c. 39

*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

*Forest and Range Practices Act*, S.B.C. 2002, c. 69

*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

*Islands Trust Act*, R.S.B.C. 1996, c. 239

*K'ómoks First Nation Land Code*, 2016

*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

*Marriage Act*, R.S.B.C. 1996, c. 282

*National Defence Act*, R.S.C. 1985, c. N-5

*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)

*Patients Property Act*, R.S.B.C. 1996, c. 349

*Petroleum and Natural Gas Act*, R.S.B.C. 1996, c. 361

*Petroleum and Natural Gas (Vancouver Island Railway Lands) Act*, R.S.B.C. 1996, c. 362

*Police Act*, R.S.B.C. 1996, c. 367

*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

*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

*Wildlife Area Regulations*, C.R.C., c. 1609