

Text of the Framework Agreement on First Nation Land Management (signed in 1996)

Includes modifications resulting from:

Amendment #1 1998

Amendment #2 1998

Amendment #3 2002

Amendment #4 2007

Amendment #5 2011

Amendment #6 2018

Framework Agreement on First Nation Land Management

**FRAMEWORK AGREEMENT ON FIRST NATION LAND MANAGEMENT  
BETWEEN:**

**THE FOLLOWING FIRST NATIONS:**

WESTBANK, MUSQUEAM, LHEIDLI T'ENNEH (formerly known as "LHEIT- LIT'EN"), N'QUATQUA, SQUAMISH, SIKSIKA, MUSKODAY, COWESSESS, OPASKWAYAK CREE, NIPISSING, MISSISSAUGAS OF SCUGOG ISLAND, CHIPPEWAS OF MNJIKANING, CHIPPEWAS OF GEORGINA ISLAND, SAINT MARY'S, as represented by their Chiefs and all other First Nations that have adhered to the Agreement

**AND**

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

**WHEREAS:**

The First Nations have a profound relationship with the land that is rooted in respect for the Spiritual value of the Earth and the gifts of the Creator and have a deep desire to preserve their relationship with the land;

Canada recognizes that First Nations have a unique connection to and constitutionally protected interest in their lands, including decision-making, governance, jurisdiction, legal traditions, and fiscal relations associated with those lands;

Canada has committed to implementing the United Nations Declaration on the Rights of Indigenous Peoples in a manner consistent with the Canadian Constitution;

The First Nations should have the option of withdrawing their lands from the land management provisions of the Indian Act in order to exercise control over their lands and resources for the use and benefit of their members;

The Parties wish to enter into a government to government agreement, within the framework of the constitution of Canada, to deal with the issues of land management;

The Parties understand that this Agreement must be ratified;

**NOW THEREFORE,**

In consideration of the exchange of promises contained in this Agreement and subject to its terms and conditions, the Parties agree that the First Nations shall have the option of exercising control over their lands and resources.

## **PART I**

### **PRELIMINARY MATTERS**

#### **1. INTERPRETATION**

**1.1** In this Agreement,

**"Canada"** or **"Crown"** means Her Majesty the Queen in right of Canada; ("Canada")

**"eligible voter"** means a member of a First Nation who is eligible, pursuant to clause 7.2, to vote under this Agreement; ("électeurs")

**"federal law"** means a law enacted by Canada and does not include a land code or a First Nation law; ("loi fédérale")

**"federal legislation"** means the legislation to be enacted by Canada under Part X; ("loi de ratification")

**"First Nation"** means a band that is a Party to this Agreement; ("première nation")

**"First Nation land"**, in respect of a First Nation, means all or part of a reserve or Lands Set Aside that the First Nation describes in its land code; ("terres de première nation")

**"First Nation Lands Register"** means the register established pursuant to clause 51 to register interests or land rights in First Nation land; ("registre des terres de premières nations")

**"First Nation law"** means a law enacted by a First Nation in accordance with its land code; ("texte législatif de la première nation")

**"interest"**, in relation to First Nation land in any province or territory other than Québec, means any interest, right or estate of any nature in or to that land, including a lease, easement, right of way, servitude, or profit à prendre, but does not include title to that land; ("intérêt")

**"land code"** means a code, approved by a First Nation in accordance with this Agreement, that sets out the basic provisions regarding the exercise of the First Nation's rights and powers over its First Nation land (although each First Nation can select its own name for the land code); ("code foncier")

**"land right"**, in relation to First Nation land in the Province of Québec, means any right of any nature in or to that land excluding title, and includes the rights of a lessee; ("droit foncier")

**"Lands Advisory Board"** means the board referred to in clause 38; ("Conseil consultatif des terres")

**“Lands Set Aside”** means land in the Yukon reserved or set aside by notation in the property records of the Northern Affairs organization, Department of Indian Affairs and Northern Development, for the use of indigenous people in the Yukon; (“terres mises de côté”)

**"licence"**, in relation to First Nation land, ("permis")

- (a) in a province or territory other than Québec, means any right of use or occupation of First Nation land, other than an interest in that land;
- (b) in the Province of Québec, any right to use or occupy First Nation land, other than a land right in that land;

**"member"**, in respect of a First Nation, means ("membre")

- (a) a person whose name appears on the Band List, or
- (b) a person who is entitled to have his or her name appear on the Band List;

**"Minister"** means the Minister of Indian Affairs and Northern Development, or such other member of the Queen's Privy Council as is designated by the Governor in Council for the purposes of this Agreement; ("ministre")

**“ratification officer”** means the person who may be appointed pursuant to clause 8; (“agent de ratification”)

**"verifier"** means the person appointed pursuant to clauses 8 and 44 ("vérificateur")

- 1.1.1 In this Agreement, the expressions “will” and “shall” are used interchangeably and are to be construed as imperative, and the expression “may” is to be construed as permissive.
- 1.2 Terms that are defined or used in the Indian Act have the same meaning in this Agreement, unless the context otherwise requires.
- 1.3 This Agreement is not a treaty and shall not be considered to be a treaty within the meaning of section 35 of the Constitution Act, 1982.
- 1.4 The Parties acknowledge that the Crown's special relationship with the First Nations will continue.
- 1.5 This Agreement does not affect any lands, or any rights in lands, that are not subject to this Agreement.
- 1.6 This Agreement is not intended to define or prejudice inherent rights, or any other rights, of First Nations to control their lands or resources or to preclude other negotiations in respect of those rights.

**1.7** If a provision of this agreement contains both civil law and common law terminology, or terminology that has different meanings in the civil law and the common law, the civil law terminology or meaning is intended to apply to this provision with respect to First Nations in the Province of Québec and the common law terminology or meaning is intended to apply with respect to First Nations in a province or territory other than Québec.

**1.8** In this Agreement a reference to a statute or regulation shall be interpreted to be a reference to the statute or regulation as amended from time to time.

**1.9** In this Agreement, the terms “family home” and “spouse” have the same meaning as in the Family Homes on Reserves and Matrimonial Interests or Rights Act.

## **2. FIRST NATION LAND**

**2.1** Land that is a reserve of a First Nation or is Lands Set Aside for a First Nation is eligible to be managed by that First Nation under a land code as First Nation land.

**2.1.1** A reserve that is set apart for the use and benefit of more than one First Nation is eligible to be managed as First Nation land by those First Nations if each of those First Nations has a land code in force and has:

(a) amended its individual agreement with the Minister; and

(b) amended its land code to provide for:

(i) a description of the external boundaries of the reserve;

(ii) a uniform set of rules and procedures for the management of the reserve;

(iii) uniform law-making or delegation of law-making in respect of First Nation laws on the reserve; and

(iv) the resolution of disputes between the First Nations concerning the management of the reserve.

**2.1.2** The amendments to the land codes and individual agreements in respect of a reserve that is set apart for the use and benefit of more than one First Nation will come into force on the same date and the reserve becomes First Nation land on that date.

**2.2** First Nation land includes all the interests and rights or all the land rights and other rights, as well as the resources that belong to that land, to the extent that these are under the jurisdiction of Canada and are part of that land.

**2.3** Reserves that become First Nation land continue to be lands reserved for the Indians within the meaning of section 91(24) of the Constitution Act, 1867.

### **3. INDIAN OIL AND GAS**

- 3.1** The Indian Oil and Gas Act will continue to apply to any First Nation lands, or interests or land rights in First Nation land, that are "Indian lands" within the meaning of that Act.
- 3.2** Any interest or land right in First Nation land that is granted to Canada for the exploitation of oil and gas under a land code will be deemed to be "Indian lands" within the meaning of the Indian Oil and Gas Act.
- 3.3** Section 4 of the Indian Oil and Gas Act will continue to apply to revenues and royalties from oil or gas on First Nation land, despite anything to the contrary in clause 12.

### **4. RESERVES**

- 4.1.1** Any reserve managed by a First Nation under a land code will continue to be a reserve within the meaning of the Indian Act.
- 4.1.2** Any reserve, title to which is vested in Canada, and managed by a First Nation under a land code, will continue to be vested in Canada for the use and benefit of the respective First Nation for which it was set apart.
- 4.1.3** Where a First Nation wishes to manage a reserve, the whole of the reserve will be included as First Nation land to avoid disjointed administration of the reserve, except as provided in sub-clauses 4.4, 4.5 and 4.5A.
- 4.1.4** Subject to sub-clause 4.5A, a portion of a reserve may be excluded from a land code only if:
  - (a)** the portion of the reserve is in an environmentally unsound condition and the condition cannot be remedied by measures that are technically and financially feasible before the land code is expected to be submitted for community approval;
  - (b)** the portion of the reserve is the subject of ongoing litigation that is unlikely to be resolved before the land code is expected to be submitted for community approval;
  - (c)** the portion of the reserve is uninhabitable or unusable as a result of a natural disaster; or
  - (d)** there exist one or more other reasons which the First Nation and the Minister agree justify excluding a portion of a reserve.
- 4.1.5** A portion of a reserve may not be excluded if the exclusion would have the effect of placing the administration of a lease or other interest or right in land in more than one land management regime.

- 4.1.6** Land may be excluded from the application of the land code when it is uncertain whether the land forms part of the reserve. An exclusion for this reason shall be without prejudice to the right of the First Nation or Her Majesty to assert that the land forms part of the reserve. If excluding the land would have the effect of placing a lease, other interest or right in land in more than one land management regime, then all land that is subject to that lease, interest or right shall be excluded from the application of the land code.
- 4.1.7** The First Nation will make provision to amend the description of its First Nation land in its land code to include the excluded portion of the reserve when the First Nation and the Minister agree that the condition justifying the exclusion no longer exists and the individual agreement will be amended accordingly.

## **4.2. LANDS SET ASIDE**

- 4.2.1** Lands Set Aside for a First Nation are eligible to be managed by that First Nation under a land code as First Nation land.
- 4.2.2** For greater certainty, Lands Set Aside that become First Nation land do not become a reserve within the meaning of the Indian Act.
- 4.2.3** The provisions of this Agreement dealing with exclusions of land from the application of a land code apply to Lands Set Aside with such changes or modifications as may be required.

## **PART II**

### **OPTING IN PROCEDURE**

#### **5. DEVELOPMENT OF A LAND CODE**

**5.1** A First Nation that wishes to manage one or more of its reserves or its Lands Set Aside will first develop a land code.

**5.2** The land code of a First Nation will:

- (a)** describe the lands that are subject to the land code;
- (b)** set out the general rules and procedures that apply to the use and occupancy of First Nation land, including use and occupancy under:
  - (i)** licenses and leases, and
  - (ii)** interests or land rights in First Nation land held pursuant to allotments under subsection 20(1) of the Indian Act or pursuant to the custom of the First Nation;
- (c)** set out the procedures that apply to the transfer, by testamentary disposition or succession, of any interest or land rights in First Nation land;
- (d)** set out the general rules and procedures that apply to revenues from natural resources belonging to First Nation land;
- (e)** set out the requirements for accountability to First Nation members for the management of moneys and First Nation lands under the land code;
- (f)** set out the procedures for making and publishing its First Nation laws;
- (g)** set out the conflict of interest rules for land management;
- (h)** identify or establish a forum for the resolution of disputes in relation to interests or land rights in First Nation lands, including the review of land management decisions where a person, whose interest or land right in First Nation land is affected by a decision, disputes that decision;
- (i)** set out the general rules and procedures that apply to the First Nation when granting or expropriating interests or land rights in First Nation land, including provisions for notice and the service of notice;
- (j)** set out the general authorities and procedures whereby the First Nation council delegates administrative authority to manage First Nation land to another person or

entity;

- (k) set out the procedure by which the First Nation can amend its land code or approve an exchange of its First Nation land; and
- (l) set out that it will come into force within six months of certification.

**5.3** A land code may also contain the following provisions:

- (a) any general conditions or limits on the power of the First Nation council to make First Nation laws;
- (b) in any province or territory other than Québec, any general exceptions, reservations, conditions or limitations to be attached to the rights and interests that may be granted in First Nation land;
- (c) in the Province of Québec, any general exceptions, reservations, conditions or limits to be attached to the land rights or other rights that may be granted in First Nation land;
- (d) any provisions respecting encumbering, seizing, or executing a right or an interest or land right in First Nation land as provided in clause 15;
- (e) rules and procedures that apply when accepting land to be added to reserve that will become First Nation land, including rules and procedures regarding the granting of new or replacement interests or land rights in that land;
- (f) provisions respecting First Nation laws which may be made under this Agreement that apply during a conjugal relationship, when that relationship breaks down or on the death of a spouse or common-law partner, or provisions for obtaining community input regarding those laws;
- (g) general authorities and procedures whereby the First Nation council delegates administrative authority to manage First Nation land to a person or entity who also has authority to manage First Nation land of another First Nation or First Nations; and
- (h) any other matter respecting the management of First Nation land.

## **6. DEVELOPMENT OF INDIVIDUAL FIRST NATION AGREEMENT**

**6.1** The Minister and each First Nation that intends to manage its First Nation land will also enter into an individual agreement to settle the actual level of operational funding for the First Nation and the specifics of the transfer of administration between Canada and the First Nation.

**6.2** The First Nation and the Minister will each choose a representative to develop the individual agreement and to assist in transferring administration of the First Nation land.

**6.3** Upon the request of a First Nation that is developing a land code, the Minister will provide it with the following information, as soon as practicable:

- (a)** a list of all the interests or land rights and licences, in relation to the proposed First Nation land, that are recorded in the Reserve Land Register and the Surrendered and Designated Lands Register under the Indian Act; or, with respect to Lands Set Aside, the property records of the Northern Affairs organization, Department of Indian Affairs and Northern Development;
- (b)** all existing information, in Canada's possession, respecting any actual or potential environmental problems with the proposed First Nation land; and
- (c)** any other information in Canada's possession that materially affects the interests or land rights and licences mentioned in clause 6.3(a).

**6.4** An amendment to an individual agreement must be made in accordance with the procedure in that agreement.

## **7. COMMUNITY APPROVAL**

**7.1** Both the First Nation's land code and its individual agreement need community approval in accordance with this clause.

**7.2** Every person who is a First Nation member, whether resident on or off-reserve, who is at least 18 years of age, is eligible to vote on whether to approve their First Nation's proposed land code and its individual agreement.

**7.3** The land code and individual agreement will be considered approved by the community if a majority of participating eligible voters vote to approve them.

**7.4** Despite 7.3, the First Nation council may, by resolution prior to a vote, do either or both of the following:

- (a)** establish a percentage of eligible voters who must participate in the vote in order for the result to be binding;
- (b)** require that a percentage greater than fifty percent of participating eligible voters must vote to approve the land code and individual agreement in order to obtain community approval.

**7.5** A First Nation will take reasonable steps to locate its eligible voters and inform them of:

- (a) their right to participate in the voting process and the manner in which that right can be exercised;
- (b) the content of this Agreement, the individual agreement, the proposed land code and the federal legislation; and
- (c) resolutions, if any, adopted by the First Nation council pursuant to sub-clause 7.4.

**7.6** A First Nation may use electronic voting for the purpose of any vote contemplated in this Agreement.

**7.7** Reasonable steps to locate and inform eligible voters may include:

- (a) mailing out information to eligible voters at their last known addresses;
- (b) making enquiries of family members and others to locate eligible voters whose addresses are not known or are uncertain;
- (c) making follow up contact with eligible voters by mail or telephone;
- (d) placing advertisements in newspapers circulating in the community and in newspapers circulating in other localities where the number of eligible voters warrants;
- (e) posting notices in the community;
- (f) holding information meetings in the community and in other places where appropriate;
- (g) making copies of the documents referred to in clause 7.5(b) available at the administration office of the First Nation and in other places where appropriate;
- (h) posting notices and information on the internet; and
- (i) using electronic mail to communicate with eligible voters.

**7.8** A First Nation will, within a reasonable time before the vote, also take appropriate measures to inform other persons having an interest or land right in its lands of the federal legislation, the proposed land code and the date of the vote.

**7.9** An amendment to a land code must be made in accordance with the procedure in the First Nation's land code.

## **8. VERIFICATION PROCESS**

- 8.1** Where a First Nation develops a proposed land code and resolves to submit it to the community for approval, an independent person will be appointed as a verifier. The verifier will be chosen in accordance with clause 44.
- 8.2** The council of the First Nation may appoint a person to act as ratification officer.
- 8.3** The representatives of the First Nation and the Minister, who have been assisting in the process of transferring administration of the land, will meet with the verifier and, if applicable, the ratification officer, and provide information and advice to them, after consulting with their respective Parties.
- 8.4** The First Nation will submit the following information to the verifier and, if one has been appointed, the ratification officer:
- (a)** a copy of the proposed land code;
  - (b)** an initial list of the names of every First Nation member who, according to the First Nation's records at that time, would be eligible to vote on whether to approve the proposed land code; and
  - (c)** a detailed description of the community approval process that the First Nation proposes to use under clause 7.
- 8.5** The verifier will:
- (a)** decide whether the proposed land code conforms with the requirements of clause 5; and
  - (b)** decide whether the proposed community approval process conforms with the requirements of clause 7.
- 8.6** The verifier also has the power to make a final decision to resolve:
- (a)** any dispute regarding whether a portion of a reserve may be excluded from a land code pursuant to clause 4.4; and
  - (b)** any dispute regarding the specifics of the transfer of administration between Canada and the First Nation.
- 8.7** A verifier will make decisions that are consistent with clauses 4.4 and 4.5.
- 8.8** A verifier will not deal with disputes over funding.
- 8.9** Within 30 days of receiving the First Nation's information pursuant to clause 8.4, the verifier will issue a written notice to the First Nation and the Minister stating whether the proposed land code and community approval process are consistent with this Agreement.

**8.10** The verifier will provide written reasons to the First Nation and the Minister if he or she decides that the proposed land code or community approval process are not consistent with this Agreement.

## **9. CONDUCT OF COMMUNITY VOTE**

**9.1** Once the verifier confirms that the proposed land code and community approval process are consistent with this Agreement, the First Nation may proceed to submit its proposed land code, and the individual agreement, for community approval.

**9.2** The verifier or the ratification officer will publish one or more notices advising the community of the date, time and place of the First Nation's approval vote.

**9.3** The verifier or the ratification officer may designate one or more assistants to help observe the conduct of the vote.

**9.4** The verifier or the ratification officer and any assistant observers will have complete authority to observe the approval process.

**9.5** Within 15 days of the conclusion of the vote, the verifier or the ratification officer will issue a written report to the First Nation and to the Minister on whether the community approval process was conducted in accordance with the process as previously confirmed. If the ratification officer issues this report, he or she will also send a copy to the verifier.

## **10. DISPUTED VOTE**

**10.1** Any eligible voter may, within five days after the conclusion of the vote, report any irregularity in the voting process to the verifier.

**10.2** A verifier will not certify a land code if he or she is of the opinion that the following conditions exist:

(a) the process by which the land code was approved varied from the process previously confirmed by the verifier or was otherwise irregular; and

(b) the land code might not have been approved but for the irregularity in the process.

**10.3** Before making a decision under this clause, the verifier will provide the First Nation with a reasonable opportunity to make submissions on the issue.

**10.4** Any decision by a verifier under this clause must be made within 10 days of the conclusion of the vote.

## **11. CERTIFICATION OF LAND CODE**

- 11.1** Where a First Nation approves a land code and its individual agreement in accordance with the process as previously confirmed, the First Nation council must, without delay, send a true copy of the land code to the verifier together with a true copy of the signed individual agreement.
- 11.2** Upon receiving a copy of a First Nation's land code, and signed individual agreement, the verifier will, subject to clause 10, certify the land code as being valid.
- 11.3** The verifier will immediately provide the First Nation, the Lands Advisory Board and the Minister with a copy of any certified land code.
- 11.4** The Lands Advisory Board will publish a notice announcing the certification of a land code and the date the land code comes into force and advising the public of the means of obtaining copies of it.
- 11.4.1** Immediately upon the land code coming into force, and upon the coming into force of any amendment to the land code, the First Nation will post a copy of the land code on the website of the First Nation, if the First Nation has a website, and will make a copy available to any member of the public, upon request.
- 11.5** Once a land code is certified by a verifier and comes into force, the land code has the force of law and will be given judicial notice.
- 11.6** A land code that has been certified pursuant to this Agreement is deemed to have been validly approved by the First Nation.

## **PART III**

### **FIRST NATION LAND MANAGEMENT RIGHTS AND POWER**

#### **12. LAND MANAGEMENT POWERS**

- 12.1** A First Nation with a land code in force will, subject to clause 13, have the power to manage its First Nation land and exercise its powers under this Agreement.
- 12.2** This power includes:
- (a)** all the rights, powers and privileges of an owner, in relation to its First Nation land; and
  - (b)** the authority to grant interests or land rights and licences in relation to its First Nation land and to manage its natural resources, subject to clauses 3, 18.10 and 23.6.
- 12.3** In any province or territory other than Québec, an interest or licence granted in relation to First Nation land is subject to any exception, reservation, condition or limitation established by the First Nation in its land code.
- 12.3.1** In the Province of Québec, a land right or licence granted in relation to First Nation land is subject to any exceptions, reservations, conditions or limits established by the First Nation in its land code.
- 12.4** For any purpose related to First Nation land, a First Nation will have legal capacity to acquire and hold property, to borrow, to contract, to expend and invest money, to be a party to legal proceedings, to exercise its powers and to perform its duties.
- 12.5** First Nation land, revenues, royalties, profits and fees in respect of that land will be managed by the First Nation council or its delegate for the use and benefit of the First Nation.
- 12.6** If a First Nation establishes an entity for the purpose of administering its First Nation land, the entity shall be deemed to be a legal entity with the capacity, rights, powers and privileges of a natural person.
- 12.7** A First Nation has the right, in accordance with its land code, to receive and use all moneys acquired by or on behalf of the First Nation under its land code.
- 12.8** Subject to 12.10, when a First Nation's land code comes into force, all revenue and capital moneys collected, received or held by Canada for the use and benefit of the First Nation before that date, and from time to time thereafter, shall cease to be Indian moneys under the Indian Act and shall be transferred by Canada to the First Nation.

- 12.9** For greater certainty, nothing in this Agreement affects the application of paragraph 90(1)(a) of the Indian Act.
- 12.10** Canada and a First Nation that has a land code in force on the date this sub-clause comes into effect may amend the individual agreement to provide for the transfer of that First Nation's capital moneys collected, received or held by Canada for the use and benefit of the First Nation whether or not those monies are collected, received or held before the date of the amendment of the individual agreement, or from time to time thereafter.
- 12.11** The Council of a First Nation will, at least 30 days before the amendment of the individual agreement to transfer capital moneys, inform the members of the First Nation of the amount of capital moneys held for the First Nation and the intention of Council to amend the individual agreement.
- 12.12** Upon amendment of the individual agreement to transfer capital moneys, those capital moneys shall cease to be Indian moneys under the Indian Act and shall be transferred by Canada to the First Nation.

### **13. PROTECTION OF FIRST NATION LAND**

- 13.1** Title to First Nation land is not changed when a First Nation's land code comes into force.
- 13.2** The Parties declare that it is of fundamental importance to maintain the amount and integrity of First Nation land.
- 13.3** First Nation land will not be sold, exchanged, conveyed or transferred, except for any exchange or expropriation of First Nation land made in accordance with this Agreement.

### **14. VOLUNTARY EXCHANGE OF FIRST NATION LAND**

- 14.1.1** A First Nation has the right to exchange a parcel of First Nation land for another parcel of land, if that other parcel of land becomes First Nation land. An exchange of First Nation land may provide for additional compensation, including land that may not become First Nation land, and may be subject to any other terms and conditions.
- 14.1.2** Any exchange of First Nation land will require community approval in accordance with the process established in the land code.
- 14.1.3** First Nation land will only be exchanged for land that Canada consents to set apart as a reserve or as Lands Set Aside. In addition, the agreement of Canada is required on the technical aspects of the exchange.
- 14.1.4** The title to the land to be received in exchange for that First Nation land will be transferred to Canada and will be set apart by Canada as a reserve or as Lands Set Aside, as of the date of the land exchange or such later date as the First Nation may specify. This

does not apply to land that is received by the First Nation as additional compensation and that is not intended to become First Nation land.

- 14.1.5** Where an exchange of First Nation land is approved by a First Nation in accordance with its land code, the First Nation can execute an authorization to Canada to transfer title to the land.
- 14.1.6** Upon the issuance to Canada of an authorization to transfer title to First Nation land under clause 14.5, Canada will transfer title to the land in accordance with the authorization and the applicable terms and conditions of the exchange.
- 14.1.7** A copy of the instruments or acts transferring title to First Nation land will be registered in the First Nation Lands Register.
- 14.1.8** As of the date of the land exchange, or such later date as the First Nation may specify, the description of First Nation land in the land code will be deemed to be amended to delete the description of the First Nation land that was exchanged and to add the description of the First Nation land received in exchange.
- 14.1.9** For greater certainty, the First Nation land that was exchanged will cease to be a reserve or Lands Set Aside, as the case may be.

## **14.2. ADDITION OF LAND TO FIRST NATION LAND**

- 14.2.1** In accordance with any request made by a First Nation that has a land code in force, the Minister may, by order, set apart as a reserve, for the use and benefit of the First Nation, any lands the title to which is vested in Canada, and provide in the order that the lands are First Nation land.
- 14.2.2** Before the lands are transferred to Canada by the First Nation or a third party for the purpose of being set apart as a reserve, or before the lands are set apart as a reserve, the First Nation may, in accordance with its land code,
- (a)** grant interest or land rights in and licences in relation to the lands, and
  - (b)** enact zoning or other laws within the scope of this Agreement in relation to the lands that will come into force only if and when the lands become First Nation land.
- 14.2.3** As of the date of any ministerial order adding land to First Nation land, the description of the First Nation land in the land code and in the individual agreement will be deemed to be amended to add the description of the First Nation land set out in the order.
- 14.2.4** The Minister will register a copy of any ministerial order adding land to First Nation land in the First Nation Land Register.

**14.2.5** Without limiting the generality of clause 50, Canada will not be liable for, and the First Nation will indemnify Canada from, any loss arising from any act or omission by the First Nation, or any person or entity acting on behalf of the First Nation, in relation to the obtaining of any discharges or granting of any interests or land rights or licences prior to a ministerial order adding land to First Nation land.

**14.2.6** Without limiting the generality of clause 50, the First Nation will not be liable for, and Canada will indemnify the First Nation from, any loss arising from any act or omission by Canada, or any person or entity acting on behalf of Canada, in relation to the obtaining of any discharges or granting of any interests or land rights or licences prior to a ministerial order adding land to First Nation land.

**14.2.7** Nothing in this Agreement precludes Canada from setting apart lands as a reserve for a First Nation under the royal prerogative or an Act of Parliament.

## **15. IMMUNITY FROM SEIZURE, ETC.**

**15.1** The Parties confirm that section 29 and subsections 89(1) and (2) of the Indian Act will continue to apply to any reserve that is First Nation land.

**15.2** Subsection 89(1.1) of the Indian Act will continue to apply to all leasehold interests or leases that existed when the land code came into force if the First Nation land was designated land at that time.

**15.3** A land code may provide that some or all of the provisions of subsection 89(1.1) of the Indian Act are also applicable to other leasehold interests or leases in any First Nation lands.

**15.4** The Parties confirm that section 87 of the Indian Act continues to apply to First Nation land, so that:

- (a)** the interest of an Indian or a First Nation in a reserve that is First Nation land remains exempt from taxation, subject to section 83 of the Indian Act; and
- (b)** the personal property or the movables of an Indian or a First Nation, situated on a reserve that is First Nation land, remains exempt from taxation.

## **16. THIRD PARTY INTERESTS**

**16.1** Interests or land rights or licences held by third parties or Canada in First Nation land, that exist at the time the land code came into force, continue in force according to their terms and conditions.

**16.2** For greater certainty, the terms of a designation or surrender made by a First Nation under the Indian Act do not restrict the ability of the First Nation and third parties, by agreement, to modify an interest, land right or licence in First Nation land.

- 16.3** Any rights of locatees in possession of First Nation land, either by custom or by allotment under the Indian Act, to transfer, lease and share in natural resource revenues will be defined in the land code.
- 16.4** Once a land code comes into force, no interest, land right or licence in relation to First Nation land may be acquired or granted except in accordance with the land code.
- 16.5** For greater certainty, disputes in relation to third party interests shall be dealt with in the forum identified or established in a land code pursuant to clause 5.2(g).

## **17. EXPROPRIATION BY FIRST NATIONS**

- 17.1** A First Nation with a land code in force has the right to expropriate interests or land rights in First Nation lands without consent if deemed by the First Nation council to be necessary for community works or other First Nation purposes.
- 17.2** A First Nation's power of expropriation will be exercised in accordance with the rules and procedures specified in its land code, its laws and this Agreement.
- 17.3** In any province or territory other than Québec, an interest in First Nation land that a First Nation expropriates becomes the property of the First Nation free of any previous claim or encumbrance in respect of the interest.
- 17.3.1** In the Province of Québec, the First Nation that expropriates a land right in its First Nation lands becomes the holder of that right free of any previous right, charge or claim in respect of that land right.
- 17.4** A First Nation that expropriates an interest or land right in First Nation land will give fair compensation based on the heads of compensation set out in the Expropriation Act (Canada).
- 17.5** A First Nation will establish a mechanism to resolve disputes over compensation it pays for expropriation.
- 17.6** Any interest in First Nation land that was obtained pursuant to section 35 of the Indian Act or any interest or land right that has been acquired by Canada, or that is acquired after this Agreement comes into force by Canada in accordance with this Agreement, is not subject to First Nation expropriation.
- 17.7** A First Nation is not precluded from entering into an agreement with a utility or public body for the purpose of granting it an interest or land right in First Nation land that is exempt from expropriation by the First Nation.
- 17.8** No expropriation of an interest or land right in First Nation land by a First Nation takes effect earlier than either of the following days:

- (a) the date the notice of expropriation is registered in the First Nation Lands Register;  
or
- (b) the 30th day after the day the last copy of the notice is served.

## **PART IV**

### **FIRST NATION LAW MAKING**

#### **18. LAW MAKING POWERS**

**18.1** The council of a First Nation with a land code in force will have the power to make laws, in accordance with its land code, respecting the development, conservation, protection, management, use and possession of First Nation land and interests or land rights and licences in relation to that land. This includes laws on any matter necessary or ancillary to the making of laws in relation to First Nation land.

**18.2** The following examples illustrate some of the First Nation laws contemplated by the Parties:

- (a)** laws on the regulation, control and prohibition of zoning, land use, subdivision control and land development;
- (b)** laws on the creation, regulation and prohibition of interests or land rights and licences in relation to First Nation land;
- (c)** laws on environmental assessment and protection;
- (d)** laws on the provision of local services in relation to First Nation land and the imposition of equitable user charges; and
- (e)** laws on the provision of services for the resolution, outside the courts, of disputes in relation to First Nation land.

**18.3** A First Nation with a land code in force has the power to make First Nation laws that apply during a conjugal relationship, when that relationship breaks down or on the death of a spouse or common-law partner, respecting:

- (a)** use, occupation and possession of family homes on its First Nation land;
- (b)** the division of the value of any interests or land rights held by spouses or common-law partners in or to structures and lands on its First Nation land; and
- (c)** the period of cohabitation in a conjugal relationship to qualify as a common-law partner.

**18.4** First Nation laws made pursuant to sub-clause 18.3 may include provisions for:

- (a)** administering those laws;

- (b) despite subsection 89(1) of the Indian Act, provisions for enforcing, on First Nation land, an order of a court or a decision made or an agreement reached under those laws; and
  - (c) procedures for amendment and repeal of those laws.
- 18.5** The council of a First Nation will provide, to the Attorney General of any province or territory in which its First Nation land is situated, notice of its intent to make laws pursuant to sub-clause 18.3 and, upon enactment, provide a copy of those laws to the Attorney General.
- 18.6** The council of a First Nation with a land code in force will have the power to make laws providing for limits on liability, defences and immunities to any person or entity in respect of any act or omission occurring in the exercise of a power or the performance of a duty under the land code or a First Nation law.
- 18.7** The limits on liability, defences and immunities in a First Nation law shall be no greater than those that would apply to a person or entity performing a similar duty under the laws of the province or territory in which the First Nation land is situated.
- 18.8** A land code will not address the taxation of real or personal property or of immovables or movables. Federal laws that address the taxation of real or personal property or of immovables or movables on reserve will continue to apply to First Nation land.
- 18.9** In any proceeding, a copy of a First Nation law, appearing to be certified as a true copy by an officer of the First Nation is, without proof of the officer's signature or official character, evidence of its enactment on the date specified in the law.
- 18.10** This Agreement does not affect or extend existing rights and powers, or create additional rights and powers, related to fisheries.
- 18.11** For greater certainty, a First Nation may enter into agreements with other governments or government agencies in Canada regarding the performance of duties under First Nation laws by officials or bodies of those governments or agencies.

## **19. ENFORCEMENT OF FIRST NATION LAWS**

- 19.1** To enforce its land code and its First Nation laws, a First Nation will have the power to:
  - (a) establish offences that are punishable on summary conviction;
  - (b) provide for fines, imprisonment, restitution, community service, and alternative means for achieving compliance;
  - (c) establish comprehensive enforcement procedures consistent with federal, provincial or territorial law, including inspections, searches, seizures and compulsory

sampling, testing and the production of information; and

- (d) provide for the collection of non-tax debts, fees or charges owed to the First Nation using taxation collection remedies made under First Nation taxation laws.
- 19.2** A First Nation may enter into agreements with other governments or government agencies to collect any fines, debts, fees or other penalties imposed by its land code or First Nation laws.
- 19.3** First Nation laws may adopt or incorporate by reference the summary conviction procedures of the Criminal Code for the purpose of enforcement.
- 19.4** Persons may be appointed by the First Nation or the Governor in Council to act as justices of the peace for the purposes of enforcement. If no justice of the peace is appointed, then First Nation laws will be enforced through the provincial or territorial courts.
- 19.5** A person appointed as a justice of the peace under this clause will have jurisdiction to try offences established by or under a land code or a First Nation law.
- 19.6** Decisions made by a justice of the peace appointed under this clause may be appealed to a court of competent jurisdiction.
- 19.7** The First Nation will protect the independence of each justice of the peace it appoints in a way similar to that in a province or territory, for example tenure, removal and remuneration.
- 19.8** The First Nation and Canada may enter into agreements for the training, supervision and administrative support for justices of the peace appointed by the First Nation. Provinces or territories may also be parties to such agreements with First Nations.
- 19.9** The First Nation and Canada will enter into an agreement for the appointment, training, supervision and administrative support for any justice of the peace appointed under this clause by the Governor in Council. The affected province or territory will be invited to participate in the development of and to be a party to such agreement.
- 19.10** For the purpose of prosecuting offences, the First Nation will retain its own prosecutor or enter into an agreement with a province or territory to arrange for a provincial or territorial prosecutor.
- 20. APPLICATION OF FEDERAL LAWS**
- 20.1** Federal laws applicable on First Nation land will continue to apply, except to the extent that they are inconsistent with the federal legislation.

- 20.2** Notwithstanding any inconsistency with the federal legislation, the Emergencies Act will apply on First Nation land, but any expropriation of an interest or land right in First Nation land under the Emergencies Act shall be authorized expressly by an order in council.
- 20.3** Notwithstanding any inconsistency with the federal legislation, the Nuclear Safety and Control Act and the Nuclear Energy Act apply on First Nation land, but any expropriation of an interest or land right in First Nation land under the Nuclear Energy Act shall be subject to the expropriation rules under Part VII of this Agreement.

## **21. INAPPLICABLE SECTIONS OF INDIAN ACT AND REGULATIONS**

- 21.1** Once a land code comes into force, the First Nation, its members and its First Nation land will not be subject to the following:
- (a)** sections 18 to 20 and 22 to 28 of the Indian Act;
  - (b)** sections 30 to 31 and 34 to 35 of the Indian Act;
  - (c)** sections 37 to 41 of the Indian Act;
  - (d)** sections 49, 50(4) and 53 to 60 of the Indian Act;
  - (e)** sections 61 to 69 and 71 of the Indian Act;
  - (f)** section 93 of the Indian Act;
  - (g)** regulations made under section 57 of the Indian Act; and
  - (h)** regulations made under sections 42 and 73 of the Indian Act to the extent that they are inconsistent with this Agreement or the land code or the laws of the First Nation.
- 21.2** Notwithstanding sub-clause 21.1, a First Nation whose capital moneys are transferred to it by way of an amendment to the individual agreement remains subject to sections 61 to 65 and 67 to 68 of the Indian Act until such time as the amendment to the individual agreement takes effect.
- 21.3** Notwithstanding sub-clauses 21.1 and 21.2, sections 61 to 65 and 67 to 68 of the Indian Act continue to apply to the extent necessary in respect of moneys collected, received or held by Canada under the Indian Act for the use and benefit of an individual.

## **22. EXISTING FIRST NATION BY- LAWS**

- 22.1** A First Nation will continue to have the authority under the Indian Act to make by- laws.

## **PART V**

### **ENVIRONMENT**

#### **23. GENERAL PRINCIPLES**

**23.1** The council of a First Nation with a land code in force will have the power to make environmental laws relating to First Nation land.

**23.1.1** The following examples illustrate some of the First Nation environmental laws relating to First Nation land contemplated by the Parties:

- (a)** laws relating to contaminants on First Nation lands;
- (b)** environmental protection requirements, including requirements in respect of natural resources, soils, water and ground water;
- (c)** environmental emergencies and natural disasters;
- (d)** conservation and heritage management requirements;
- (e)** nuisances, including noise, odours and vibrations;
- (f)** recycling, solid waste management and garbage disposal;
- (g)** unsightly premises;
- (h)** sewage and effluent discharges; and
- (i)** implementation of any provisions of a First Nation environmental management plan.

**23.2** The Parties intend that there should be both an environmental assessment and an environmental protection regime for each First Nation.

**23.3** The principles of these regimes are set out below.

**23.4** The environmental assessment and protection regimes will be implemented through First Nation laws.

**23.5** The Parties agree to harmonize their respective environmental regimes and processes, with the involvement of the provinces or territories where they agree to participate, to promote effective and consistent environmental regimes and processes and to avoid uncertainty and duplication.

**23.6** This Agreement is not intended to affect rights and powers relating to migratory birds or endangered species. These matters may be dealt with in the context of other negotiations. This Agreement is not intended to determine or prejudice the resolution of these issues.

## **24. ENVIRONMENTAL MANAGEMENT**

**24.1** Subject to clause 27, a First Nation with a land code in force will develop an environmental protection regime, with the assistance of the appropriate federal agencies to the extent that they agree to participate.

**24.2** Each First Nation agrees to harmonize environmental protection with the province or territory in which the First Nation is situated, where the province or territory agrees to participate.

**24.3** The First Nation environmental protection standards and punishments will have at least the same effect as those in the laws of the province or territory in which the First Nation is situated.

**24.4** For greater certainty, if there is an inconsistency between the provision of a federal law respecting the protection of the environment and a provision in a land code or First Nation law respecting the protection of the environment, the federal provision will prevail to the extent of any inconsistency.

## **25. ENVIRONMENTAL ASSESSMENT**

**25.1** Subject to clause 27, a First Nation will, with the assistance of the Lands Advisory Board and the appropriate federal agencies, make best efforts to develop an environmental assessment process within one year after the First Nation's land code comes into force, or within such longer period as the Minister and the First Nation may agree to.

**25.2** The First Nation and the Minister will, in the individual agreement referred to in clause 6, address how to conduct the environmental assessment of projects on First Nation land during the interim period until the First Nation's environmental assessment process is developed.

**25.3** The First Nation's environmental assessment process will be consistent with requirements of the Canadian Environmental Assessment Act.

**25.4** The First Nation's environmental assessment process will be triggered in appropriate cases where the First Nation is approving, regulating, funding or undertaking a project on First Nation land. The assessment will occur as early as possible in the planning stages of the project before an irrevocable decision is made.

**25.5** The Parties agree to use their best efforts to implement the principle that the First Nation's environmental assessment process be used where an environmental assessment of a

project on First Nation land is required by the Canadian Environmental Assessment Act.

- 25.6** The Parties agree to develop a plan to harmonize their respective environmental assessment processes, with the involvement of the provinces or territories where they agree to participate.

**26. OTHER AGREEMENTS**

- 26.1** The First Nation and Canada recognize that it may be advisable to enter into other agreements with each other and other jurisdictions to deal with environmental issues like harmonization, implementation, timing, funding and enforcement.
- 26.2** Where matters being negotiated pursuant to clause 26.1 normally fall within provincial or territorial jurisdiction, or may have significant impacts beyond the boundaries of First Nation land, the Parties will invite the affected province or territory to be a party to such negotiations and resulting agreements.

**27. RESOURCES**

- 27.1** The Parties understand that the obligation of a First Nation to establish environmental assessment and environmental protection regimes depends on adequate financial resources and expertise being available to the First Nation.

## **PART VI**

### **FUNDING**

#### **28. APPROPRIATION**

**28.1** Any amounts provided by Canada to the First Nations pursuant to funding arrangements in relation to First Nation land shall be paid out of such moneys as may be appropriated by Parliament for this purpose.

#### **29. DEVELOPMENTAL FUNDING**

**29.1** Canada and the Lands Advisory Board will enter into a funding arrangement to allow the First Nations to develop land codes and community approval processes for their land codes, to negotiate the individual agreements mentioned in clause 6 and to seek community approval under clause 7.

#### **30. OPERATIONAL FUNDING**

**30.1** An individual agreement between the Minister and a First Nation will determine the resources to be provided by Canada to the First Nation to manage First Nation lands and make, administer and enforce its laws under a land code. The agreement will determine specific funding issues, for example period of time, and terms and conditions.

**30.2** A method for allocating such operating funds as may have been appropriated by Parliament will be developed by the Parties and the Lands Advisory Board.

**30.3** Unless a First Nation and Canada agree otherwise, an individual agreement respecting the provision of funding under this clause will have a maximum term of five years and will include provisions for its amendment and renegotiation.

#### **31. LANDS ADVISORY BOARD FUNDING**

**31.1** Canada will enter into a funding arrangement with the Lands Advisory Board for the five year period following the coming into force of this Agreement.

## **PART VII**

### **EXPROPRIATION OF FIRST NATION LAND BY CANADA**

#### **32. RESTRICTIONS**

- 32.1** In accordance with the principle stated in clause 13.2, the Parties agree, as a general principle, that First Nation lands will not be subject to expropriation.
- 32.2** Despite the general principle against expropriation, First Nation land may be expropriated by Canada:
- (a)** only with the consent of the Governor in Council; and
  - (b)** only by and for the use of a federal department or agency.
- 32.3** The Governor in Council will only consent to an expropriation of First Nation land if the expropriation is justifiable and necessary for a federal public purpose that serves the national interest.
- 32.4** When making a decision to expropriate First Nation land, the Governor in Council, in addition to other steps that may be required before making such a decision, will at a minimum follow these steps:
- (a)** it will consider using means other than expropriation and will use those other means where reasonably feasible;
  - (b)** it will use non-First Nation land, where such land is reasonably available;
  - (c)** if it must use First Nation land, it will make reasonable efforts to acquire the land through agreement with the First Nation, rather than by expropriation;
  - (d)** if it must expropriate First Nation land, it will expropriate only the smallest interest or land right necessary and for the shortest time required; and
  - (e)** in every case, it will first provide the First Nation with information relevant to the expropriation.
- 32.5** Prior to the Governor in Council issuing an order consenting to the expropriation of First Nation land, the federal department or agency will make public a report on the reasons justifying the expropriation and the steps taken in satisfaction of this clause and will provide a copy of the report to the First Nation.
- 32.6** Where a First Nation objects to a proposed expropriation it may refer the issue to an independent third party for a neutral evaluation under Part IX, within 60 days of the release of the report referred to in clause 32.5.

**32.7** An order of the Governor in Council consenting to the expropriation will not be issued earlier than

- (a) the end of the 60 day period referred to in clause 32.6; or
- (b) the day the opinion or recommendation of the neutral evaluator is released, where the First Nation referred the proposed expropriation to an independent evaluator under clause 32.6.

### **33. COMPENSATION BY CANADA**

**33.1** In the event of the expropriation of First Nation land by Canada under this Part, Canada will provide compensation to the First Nation in accordance with this clause.

**33.2** The compensation will include alternate land of equal or greater size or of comparable value. If the alternate land is of less than comparable value, then additional compensation will be provided. The alternate land may be smaller than the land being expropriated only if that does not result in the First Nation having less land area than when its land code came into force.

**33.3** The total value of the compensation provided by Canada under this clause will be based on the following:

- (a) the market value of the land or interest or land right that is acquired;
- (b) the replacement value of any improvement to the land that is acquired;
- (c) the damages attributable to disturbance;
- (d) the value of any special economic advantage arising out of or incidental to the occupation or use of the affected First Nation land to the extent that this value is not otherwise compensated;
- (e) damages for any reduction in the value of a remaining interest or land right; and
- (f) damages for any adverse effect on any cultural or other special value of the land.

**33.4** If the value and nature of the compensation cannot be agreed upon by the federal department or agency and the affected First Nation, either party may refer a dispute on compensation to arbitration under Part IX.

**33.5** In any province or territory other than Québec, any claim or encumbrance in respect of the interest, or in Québec any right, charge or claim in respect of the land right, expropriated by Canada may only be claimed against the amount of compensation that is otherwise payable to the person or entity whose interest or land right is being

expropriated.

- 33.6** Interest on the compensation is payable from the date the expropriation takes effect, at the same rate as for prejudgment interest in the superior court of the province or territory in which the First Nation land is located.

**34. STATUS OF LANDS**

- 34.1** Where less than the full interest or only part of the land right of the First Nation in First Nation land is expropriated by Canada:

- (a) the land retains its status as First Nation land;
- (b) the land remains subject to the land code and to any law of the First Nation that is otherwise applicable, except to the extent the land code or law is inconsistent with the expropriation; and
- (c) the First Nation may continue to use and occupy the land, except to the extent the use or occupation is inconsistent with the expropriation.

- 34.2** Alternate land accepted by the First Nation as part of the compensation will become both a reserve and First Nation land or, in Yukon, Lands Set Aside and First Nation land.

**35. REVERSION OR RETURN OF INTEREST OR LAND RIGHT IN FIRST NATION LAND**

- 35.1** In any province or territory other than Québec, where an expropriated interest in First Nation land which is less than the full interest of the First Nation in the land is no longer required by Canada for the purpose for which it was expropriated, the interest in land will revert to the First Nation.

- 35.1.1** In the Province of Québec, where the expropriated land right in First Nation land constitutes only part of the land right of the First Nation in the land, and it is no longer required by Canada for the purpose for which it was expropriated, the land right will return to the First Nation.

- 35.2** The Minister responsible for the expropriating department or agency, without the consent of the Governor in Council, may decide that the interest or the land right is no longer required and determine the disposition of any improvements.

**36. RETURN OF FULL INTEREST OR ENTIRE LAND RIGHT IN FIRST NATION LAND**

- 36.1** Where the full interest or the entire land right of a First Nation in First Nation land was expropriated but is no longer required by Canada for the purpose for which it was expropriated, the land will be returned to the First Nation on terms negotiated by the First

Nation and the federal department or agency, at the time of the expropriation or at a later date as agreed to by them.

**36.2** Where the terms and conditions of the return cannot be agreed upon by the First Nation and the federal department or agency, either party may refer the dispute to arbitration under Part IX.

**36.3** The Minister responsible for the expropriating department or agency, without the consent of the Governor in Council, may decide that the land is no longer required and determine the disposition of any improvements.

**37. APPLICATION OF EXPROPRIATION ACT**

**37.1** Any provisions of the Expropriation Act, (Canada) that are applicable to an expropriation of First Nation land by Canada continue to apply, unless inconsistent with this Agreement.

## **PART VIII**

### **LANDS ADVISORY BOARD**

#### **38. LANDS ADVISORY BOARD**

**38.1** The Lands Advisory Board shall consist of at least three members appointed by the Councils of the First Nations that have ratified this Agreement.

**38.2** The Lands Advisory Board will have all necessary powers and capacity to properly perform its functions under this Agreement.

**38.3** The Lands Advisory Board will select a chairperson to preside over the Board and, subject to the direction of the Board, to act on its behalf.

#### **39. FUNCTIONS OF THE LANDS ADVISORY BOARD**

**39.1** In addition to any other functions specifically assigned to it by the Parties, the Lands Advisory Board will be responsible for the following functions:

- (a)** developing model land codes, laws and land management systems;
- (b)** developing model agreements for use between First Nations and other authorities and institutions, including public utilities and private organizations;
- (c)** on request of a First Nation, assisting the First Nation in developing and implementing its land code, laws, land management systems and environmental assessment and protection regimes;
- (d)** assisting a verifier or ratification officer when requested by the verifier or ratification officer;
- (e)** establishing a resource centre, curricula and training programs for managers and others who perform functions pursuant to a land code;
- (f)** on request of a First Nation encountering difficulties relating to the management of its First Nation lands, helping the First Nation in obtaining the expertise necessary to resolve the difficulty;
- (g)** proposing regulations for First Nation land registration;
- (h)** proposing to the Minister such amendments to this Agreement and the federal legislation as it considers necessary or advisable;
- (i)** in consultation with First Nations, negotiating a funding method with the Minister;  
and

- (j) performing such other functions or services for a First Nation as are agreed to between the Board and the First Nation.

**39.2** The Lands Advisory Board will have authority to adopt rules for the procedure at its meetings and generally for the conduct of its affairs.

#### **40. RECORD KEEPING**

**40.1** The Lands Advisory Board shall, in consultation with the Minister, prescribe procedures for a First Nation to authorize the signing of this Agreement and for the formal signature of the First Nations to this Agreement, and shall advise the Minister when a First Nation has completed the procedures.

**40.2** Subject to sub-clause 40.1, a First Nation may only become a signatory under this section with the consent of Canada, and Canada shall advise the Lands Advisory Board if and when such consent is given.

**40.3** The Lands Advisory Board shall receive and record the adhesion of a First Nation party to this Agreement, made after January 1, 2001, and advise the Minister that the said First Nation has signed the Framework Agreement.

#### **41. ANNUAL REPORT**

**41.1** Within 90 days following the end of each year of operation, the Lands Advisory Board will deliver to the Parties an annual report, in both official languages, on the work of the Board for that year.

**42.** [Repealed]

## **PART IX**

### **DISPUTE RESOLUTION**

#### **43. GENERAL PRINCIPLES**

**43.1** The Parties are committed to resolving any dispute that may arise out of this Agreement among themselves, amicably and in good faith. Where they cannot resolve a dispute through negotiation, the Parties agree to establish and participate in the out- of-court processes referred to in this Part to resolve the dispute.

**43.2** Nothing in this Agreement is to be construed as preventing the Parties from using mediation to assist them in reaching an amicable agreement in respect of any issue in dispute. Where a Party has referred a dispute to mediation, the other Party is obliged to attend an initial meeting with the mediator. However, either Party can end a mediation process any time after the initial meeting.

**43.3** Subject to clause 43.4, any dispute arising from the implementation, application or administration of this Agreement, the federal legislation or an individual agreement may be resolved in either of two ways:

(a) Neutral evaluation - it may be referred to neutral evaluation by one party to the dispute; or

(b) Arbitration - it may be referred to arbitration by both parties to the dispute.

**43.4** Any dispute respecting compensation for First Nation land expropriated by Canada or the terms and conditions for the return of the full interest or the entire land right in First Nation land will be referred to arbitration.

**43.5** Any objection by a First Nation to a proposed expropriation under Part VII that has been referred to neutral evaluation will be evaluated and a report submitted by the neutral evaluator to the First Nation and Canada within 60 days of the referral to the neutral evaluator.

#### **44. PANELS OF ARBITRATORS, ETC.**

**44.1** The Parties and the Lands Advisory Board will jointly establish lists of mutually acceptable persons willing to act as mediators, arbitrators, verifiers and neutral evaluators.

**44.2** Parties who become involved in a dispute may select mediators, arbitrators and neutral evaluators from the appropriate list, or may agree to the appointment of an individual who is not on the list.

**44.3** The selection and assignment of verifiers and the procedure to be followed by verifiers will be arranged by the Lands Advisory Board, Canada and the First Nation.

**44.4** Individuals appointed to act as mediators, arbitrators, verifiers or neutral evaluators must be unbiased and free from any conflict of interest relative to the matter in issue and have knowledge or experience to act in the appointed capacity.

#### **45. NEUTRAL EVALUATION**

**45.1** Where a dispute is referred to neutral evaluation, the evaluator will where appropriate:

- (a)** identify the issues in the dispute;
- (b)** assess the strengths of each party's case;
- (c)** structure a plan for the progress of the case;
- (d)** encourage settlement of the dispute; and
- (e)** provide the parties with a non-binding opinion or recommendation to resolve the dispute.

#### **46. ARBITRATION**

**46.1** Unless otherwise agreed by the Parties, each arbitration will be conducted in accordance with this clause.

**46.2** The procedure will follow the Commercial Arbitration Code, which is a schedule to the Commercial Arbitration Act.

**46.3** If no appropriate procedural provision is in that Code, the parties in dispute may adopt the Commercial Arbitration Rules in force from time to time of the British Columbia International Commercial Arbitration Centre.

**46.4** The arbitrator will establish the procedures of the arbitration, subject to this clause.

#### **47. RELATED ISSUES**

**47.1** The parties to a dispute will divide the costs of the dispute resolution process equally between themselves.

**47.2** Any person whose interests will be adversely affected by a dispute that is referred to a dispute resolution process may participate in the process, if:

- (a)** all parties to the process consent; and

- (b) the person pays the costs of his or her participation, unless otherwise agreed by the other parties to the dispute.
- 47.3** The decision of a verifier and a decision or award of an arbitrator will be final and binding on the participating parties.
- 47.4** No order shall be made, processed, entered or proceeding taken in any court, whether by way of injunction, mandamus, certiorari, prohibition or quo warranto to contest, review, impeach or limit the action of a person acting as a verifier, a ratification officer, an arbitrator or a neutral evaluator under this Agreement.
- 47.5** Despite clause 47.4, judicial review may be taken under the Federal Court Act within 30 days of a decision of a person acting as a verifier, an arbitrator or a neutral evaluator under this Agreement in respect of such person exceeding his or her jurisdiction, refusing to exercise his or her jurisdiction or failing to observe a principal of natural justice.

## **PART X**

### **RATIFICATION AND ENACTMENTS BY THE PARTIES**

#### **48. RATIFICATION OF AGREEMENT**

**48.1** The Parties will seek to ratify this Agreement and implement it in the following manner:

- (a)** each First Nation agrees to develop a land code and to seek community approval;  
and
- (b)** following community approval by two First Nations, Canada agrees to recommend to Parliament the enactment of legislation.

**48.2** This Agreement will be considered to have been ratified by a First Nation when the First Nation approves a land code, and to have been ratified by Canada when the federal legislation comes into force.

#### **49. ENACTMENTS BY THE PARTIES**

**49.1** Canada agrees that the federal legislation that it recommends to Parliament will be consistent with and will ratify this Agreement.

**49.2** In the event of an inconsistency or conflict between the federal legislation and any other federal enactment, the federal legislation will prevail to the extent of the inconsistency or conflict.

**49.3** In the event of any inconsistency or conflict between the land code of a First Nation and the provisions of a First Nation law or of a by-law made by its council under section 81 of the Indian Act, the land code will prevail to the extent of the inconsistency or conflict.

## **PART XI**

### **OTHER MATTERS**

#### **50. LIABILITY**

- 50.1** The First Nation will not be liable for acts or omissions of Canada or any person or entity authorized by Canada to act in relation to First Nation land that occurred before the First Nation's land code comes into force.
- 50.2** Canada will not be liable for acts or omissions of the First Nation or any person or entity authorized by the First Nation to act in relation to First Nation land that occur after the First Nation's land code comes into force.
- 50.3** Canada will indemnify a First Nation for any loss arising from an act or omission by Canada, or any person or entity acting on behalf of Canada, in respect of First Nation land that occurred before the First Nation's land code comes into force.
- 50.4** The First Nation will indemnify Canada for any loss arising from an act or omission by the First Nation, or any person or entity acting on behalf of the First Nation, in respect of First Nation land that occurs after the land code comes into force.
- 50.5** No action or other proceeding lies or shall be commenced against a person acting as a member of the Lands Advisory Board, a mediator, verifier, ratification officer, neutral evaluator or arbitrator for or in respect of anything done, or omitted to be done, in good faith, during the course of and for the purposes of carrying out his or her functions under this Agreement.
- 50.6** Following the transfer to a First Nation of that First Nation's revenue or capital moneys Canada is not liable for the management of those moneys by the First Nation or any acts or omissions of the First Nation in respect of those moneys.

#### **51. FIRST NATION LANDS REGISTER**

- 51.1** Canada will establish a First Nation Lands Register to record documents respecting First Nation land or interests or land rights in First Nation land.
- 51.2** A separate register will be maintained for each First Nation with a land code in force.
- 51.3** The Governor in Council will be authorized in the federal legislation to make regulations respecting the First Nation Lands Register. These regulations will be developed by the Lands Advisory Board and the Minister.

#### **52. STATUS OF DOCUMENTS**

**52.1** The Statutory Instruments Act, or any successor legislation, will not apply to a land code or to First Nation laws.

### **53. PROVINCIAL AND TERRITORIAL RELATIONS**

**53.1** Where Canada and a First Nation intend to enter into an agreement that is not referred to in this Agreement but is required to implement this Agreement and where it deals with matters that normally fall within provincial or territorial jurisdiction, or may have significant impacts beyond the boundaries of First Nation land, Canada and the First Nation will invite the affected province or territory to be a party to the negotiations and resulting agreement.

### **54. TIME LIMITS**

**54.1** The time limits in this Agreement for the doing of anything may be waived on consent.

### **55. OTHER REGIMES**

**55.1** Nothing in this Agreement prevents a First Nation, at any time, from opting into any other regime providing for community decision-making and community control, if the First Nation is eligible for the other regime and opts into it in accordance with procedures developed for that other regime.

**55.2** Sub-clause 38.1 and clause 57 do not apply to a First Nation to which sub-clause 55.1 applies.

### **56. REVIEW PROCESS**

**56.1** The Lands Advisory Board will, on a continuing basis, consult with representatives of the Parties for the purpose of assessing the effectiveness of this Agreement and the federal legislation.

### **57. AMENDMENTS**

**57.1** No amendment affecting the powers, authorities, obligations, operations or operational funding of a First Nation that has ratified this agreement is effective with respect to that First Nation without the consent of that First Nation.

**57.2** This Agreement, may, subject to 57.1, be amended with the consent of Canada and 2/3 of the First Nations which have ratified the Agreement, before, on or after that day.

### **58. RECITALS**

**58.1** The recitals form part of this Agreement.

### **59. COMING INTO FORCE**

**59.1** This Agreement will come into force in respect of Canada and a First Nation when Canada and that First Nation both ratify this Agreement under Part X.