

# Lheidli T'enneh Final Agreement

October 29, 2006

Canada



Lheidli T'enneh



The Best Place on Earth

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## **PREAMBLE**

### **WHEREAS:**

- A. Lheidli T'enneh are an aboriginal people of Canada;
- B. Section 35 of the *Constitution Act, 1982* recognizes and affirms the existing aboriginal and treaty rights of the aboriginal peoples of Canada and the courts have stated that aboriginal rights include aboriginal title;
- C. The courts have stated that reconciliation of the prior presence of aboriginal people and the assertion of sovereignty by the Crown is best achieved through negotiation and agreement rather than through litigation;
- D. The Lheidli T'enneh treaty negotiations have been concluded in an atmosphere of mutual respect and openness;
- E. The Parties have negotiated this Agreement under the British Columbia treaty process;
- F. The Parties desire certainty with respect to Lheidli T'enneh ownership and use of lands and resources, Lheidli T'enneh law-making authority and the relationship of Federal Law, Provincial Law and Lheidli T'enneh Law;
- G. The Parties intend that this Agreement will achieve certainty by agreeing to the continuation of rights as expressed in this Agreement, rather than by the extinguishment of rights;
- H. Lheidli T'enneh are Carrier people who speak a dialect of the Carrier language and who assert that their heritage, history and culture, including their language and religion, are tied to the lands and waters surrounding the confluence of the Fraser and Nechako Rivers as stated in their Statement of Intent submitted to the British Columbia Treaty Commission; and
- I. It is an important objective of the Lheidli T'enneh to preserve, protect, and enhance the Lheidli T'enneh economy, heritage, language and culture.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:



## CHAPTER 1 DEFINITIONS

In this Agreement:

“Adopted Child” means an individual who while a Child was adopted under the law in Canada;

“Agreed-Upon Programs and Services” means those programs and services agreed by the Parties to be made available by Lheidli T'enneh, towards which Canada or British Columbia agree to contribute funding, and set out in a Fiscal Financing Agreement;

“Agreement” means this Lheidli T'enneh Final Agreement between Lheidli T'enneh, Canada and British Columbia and all Schedules and Appendices to this Lheidli T'enneh Final Agreement;

“Agricultural Land Reserve” means lands designated as an agricultural land reserve in accordance with the *Agricultural Land Commission Act*;

“Annual Fishing Plan” means a plan as described in paragraph 93 of the Fisheries Chapter;

“Applicant” means an individual applying for enrolment as a Participant and includes an individual applying on behalf of a Child or an adult whose affairs that individual has the legal authority to manage;

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

“Assurance Fund” means the assurance fund established under Part 19.1 of the *Land Title Act*;

“Available Flow” means the volume of flow of water, determined by British Columbia, to be above that required:

- a. to ensure conservation of Fish and Stream habitats;
- b. to continue navigability; and
- c. under Water Licences issued before June 19, 2006 and Water Licences issued under applications made before June 19, 2006,

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

“Band” means an Indian band within the meaning of section 2 of the *Indian Act*;

“British Columbia” means, unless the context otherwise requires, Her Majesty the Queen in right of British Columbia;

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

“Canada” means, unless the context otherwise requires, Her Majesty the Queen in right of Canada;

“Canadian Total Allowable Catch”, with respect to a stock or species of Fish, means the amount of the stock or species that the Minister determines is available for harvest or is harvested in Canadian waters;

“Capital Transfer” means an amount paid by Canada or British Columbia to Lheidli T'enneh under the Capital Transfer and Negotiation Loan Repayment Chapter;

“Chief and Councillors” means the chief and councillors of the Lheidli T'enneh Band under the *Indian Act*;

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

“Child Care” means the care, supervision, social or educational training, including preschool 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 Lheidli T'enneh Law under paragraph 98 of the Governance Chapter;

“Child in Care” means a Child who is in the custody, care or guardianship of a Director or an individual with comparable authority under Lheidli T'enneh Law;

“Child in Need of Protection” has the same meaning as under the *Child, Family and Community Service Act*;

“Child Protection Services” means services that provide for the protection of Children, where the primary objective is the safety and well-being of Children, having due regard for:

- a. the protection from abuse, neglect, and harm, or threat of abuse, neglect or harm, and any need for intervention;
- b. guardianship responsibilities for Children in care;
- c. the support of families and caregivers to provide a safe environment and prevent abuse, neglect, and harm, or threat of abuse, neglect, or harm; and

- d. the support of kinship ties and a Child's attachment to the extended family;

"Community Correctional Services" means:

- a. community supervision of offenders subject to court orders, including youth justice court orders, and offenders on conditional and interim release, including temporary release from a youth custody centre;
- b. preparation of reports for courts, correctional centers, youth custody centres, crown counsel and parole boards;
- c. supervision of Diverted offenders and development and operation of Diversion programs;
- d. community-based programs and interventions for offenders, including alternative to custody programs;
- e. identification of and referral to appropriate community resources;
- f. programs to meet the needs of youth in conflict with the law; and
- g. other community correctional and community youth justice services as may be delivered by British Columbia or Canada from time to time;

"Conflict" means an actual conflict in operation;

"Consult" or "Consultation" means provision to a Party of:

- a. notice of a matter to be decided, in sufficient detail to permit the Party to prepare its views on the matter;
- b. if requested by a Party, sufficient information with respect to the matter to permit the Party to prepare its views on the matter;
- c. a reasonable period of time to permit the Party to prepare its views on the matter;
- d. an opportunity for the Party to present its views on the matter; and
- e. a full and fair consideration of any views on the matter so presented by the Party;

"Crown" means Her Majesty the Queen in right of Canada or in right of British Columbia, as the case may be;

"Crown Road" means a road or highway, including the Road Allowance, that is on federal or provincial Crown land or that is on Lheidli T'enneh Lands that have been acquired or expropriated for highway purposes under the *Transportation Act*;

“Cultural Heritage Resources” means Heritage Sites and Lheidli T'enneh Artifacts;

“Designated Migratory Bird Population” means a population of a species of Migratory Bird that has been designated by the Minister under paragraph 35 of the Migratory Birds Chapter;

“Designated Wildlife Species” means a species of Wildlife for which it has been determined that there should be a Total Allowable Wildlife Harvest in the Lheidli T'enneh Area;

“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 under the *Child, Family and Community Service Act* or the *Adoption Act*, as applicable;

“Disagreement” means any matter to which the Dispute Resolution Chapter applies as set out in paragraph 7 of that Chapter;

“Diversion” means the use of options other than court proceedings to deal with a person alleged to have committed an offence;

“Ecological Reserve” means provincial Crown land that is set aside as an ecological reserve under Provincial Law;

“Effective Date” means the date upon which this Agreement takes effect;

“Eligibility Criteria” means the criteria listed in paragraph 2 of the Eligibility and Enrolment Chapter;

“Eligible Voter” means an individual who:

- a. is eligible to vote under paragraph 7 of the Ratification Chapter; or
- b. who votes under paragraph 8 and whose vote is counted under paragraph 9 of the Ratification Chapter;

“Enrolled” means being entered on the Enrolment Register;

“Enrolment Appeal Board” means the enrolment appeal board established under paragraph 20 of the Eligibility and Enrolment Chapter;

“Enrolment Committee” means the enrolment committee established under paragraph 11 of the Eligibility and Enrolment Chapter;

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

“Environment” means the components of the Earth, and includes:

- a. land, water and air, 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 subparagraphs a. and b.;

“Environmental Emergency” means an uncontrolled, unplanned, or accidental release, or release in contravention of Federal Law, Provincial Law or Lheidli T'enneh 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;

“Federal Expropriating Authority” means Canada or any other entity authorized under Federal Law to expropriate land or an interest in land;

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

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

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

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

“Fiscal Financing Agreement” means an agreement negotiated between the Parties in accordance with the Fiscal Relations Chapter;

“Fish” means Salmon and Freshwater Fish:

“Fixed”, in relation to Harvest Levels, means a constant quantity or quota of Salmon that does not change with abundance;

“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 Plants and Timber Resources including, all biota, but does not include Wildlife, Migratory Birds, water, Fish or Aquatic Plants;

“Former Federal Lands” means any lands transferred to Lheidli T'enneh in accordance with this Agreement which were under the ownership, administration or control of Canada immediately before the Effective Date;

“Fossils” means remains, traces or imprints of animals or plants that have been preserved in rocks, and includes bones, shells, casts and tracks;

“Freshwater Fish” means any fish, shellfish or crustacean that spends all or part of its life cycle in fresh water other than Salmon and includes:

- a. parts of any such fish, shellfish or crustacean; and
- b. the eggs, sperm, spawn, larvae, spat, juvenile stages and adult stages of any such fish, shellfish or crustacean;

“Harvest Level” means a defined harvest quantity or quota, or a formula for calculating a harvest quantity or quota for Lheidli T'enneh;

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

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

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

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

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

“Initial Enrolment Period” means a period of up to two years before the Effective Date, during which the Enrolment Committee operates;

“Initial Surveys” means the initial surveys of Lheidli T'enneh Lands set out in Appendix A carried out before the Effective Date, or as soon as practicable after the Effective Date, in accordance with Schedule A to the Lands Chapter;

“Intellectual Property” means any intangible property right resulting from intellectual activity in the industrial, scientific, literary or artistic fields, including any right relating to patents, copyrights, trademarks, industrial designs, or plant breeders' rights;

“International Legal Obligation” means an international obligation binding on Canada under international law, including those that are in force before, on, or after the Effective Date;

“International Treaty” means an agreement governed by international law and concluded in written form:

- a. between states; or
- b. between one or more States and one or more international organizations,

whether that agreement is embodied in a single instrument or in two or more related instruments and whatever its particular designation;

“International Tribunal” means any international court, committee, treaty body, tribunal, arbitral tribunal, or other international mechanism or procedure that has jurisdiction to consider the performance of Canada with regard to the International Legal Obligation in question;

“Joint Fisheries Committee” means the joint fisheries committee established under paragraph 67 of the Fisheries Chapter;

“Lheidli T'enneh” means the collectivity of those aboriginal people, and their descendants, who:

- a. assert that their heritage, history and culture, including their language and their religion, are tied to the lands and waters surrounding the confluence of the Fraser and the Nechako Rivers; or
- b. are eligible to be a Participant under this Agreement;

“Lheidli T'enneh Area” means the area set out in Appendix F, including Provincial Parks and Protected Areas, but does not include lands that are administered or occupied by the Minister of National Defence, or areas temporarily being used for military exercises, in accordance with Federal Law, from the time that notice has been given to the Lheidli T'enneh until the temporary use is completed;

“Lheidli T'enneh Artifact” means any object created by, traded to, commissioned by or given as a gift to a Lheidli T'enneh individual or Lheidli T'enneh community, or that originated from a Lheidli T'enneh community, or Lheidli T'enneh Heritage Site and that has past and ongoing importance to Lheidli T'enneh culture or spiritual practices, but does not include any object traded to, commissioned by or given as a gift to another First Nation or person;

“Lheidli T'enneh Band” means the Lheidli T'enneh Indian Band within the meaning of section 2 of the *Indian Act*;

“Lheidli T'enneh Capital” means all land, cash, and other assets transferred to, or recognized as owned by, Lheidli T'enneh under this Agreement;

“Lheidli T'enneh Certificate” means a certificate of the Lheidli T'enneh Government described in paragraph 7 of the Land Title Chapter;

“Lheidli T'enneh Child” means a Child who is a Lheidli T'enneh Citizen;

“Lheidli T'enneh Citizen” means an individual who is a member of Lheidli T'enneh under Lheidli T'enneh Law;

“Lheidli T'enneh Constitution” means the constitution of Lheidli T'enneh provided for by, and ratified in accordance with, this Agreement;

“Lheidli T'enneh Corporation” means a body corporate incorporated under Federal or Provincial Law that is wholly owned by Lheidli T'enneh or the Lheidli T'enneh Government;

“Lheidli T'enneh Fish Area” is the area described in Appendix K;

“Lheidli T'enneh Government” means the government of Lheidli T'enneh as set out in the Governance Chapter and the Lheidli T'enneh Constitution;

“Lheidli T'enneh Institution” means the Lheidli T'enneh Government or a Lheidli T'enneh Public Institution;

“Lheidli T'enneh Lands” means those lands identified as Lheidli T'enneh lands under paragraph 1 of the Lands Chapter;

“Lheidli T'enneh Law” means a law made pursuant to Lheidli T'enneh law-making authority set out in this Agreement and includes the Lheidli T'enneh Constitution;

“Lheidli T'enneh Public Institution” means a Lheidli T'enneh Government body, board, commission or any other similar entity established by Lheidli T'enneh under Lheidli T'enneh Law, including a school board or health board;

“Lheidli T'enneh Public Officer” means:

- a. a member, commissioner, director, or trustee of a Lheidli T'enneh Public Institution;
- b. a director, officer or employee of a Lheidli T'enneh 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 Lheidli T'enneh or a Lheidli T'enneh Institution;
- d. an election official within the meaning of a First Nation Law; or
- e. a volunteer who participates in the delivery of services by Lheidli T'enneh, a Lheidli T'enneh Institution, or a body referred to in subparagraph b, under the supervision of an officer or employee of Lheidli T'enneh, a Lheidli T'enneh Institution, or a body referred to in subparagraph b.

“Lheidli T'enneh Road” means a road, including the Road Allowance, on Lheidli T'enneh Lands, but does not include a Crown Road;

“Local Government” means:

- a. the council of a municipality; or
- b. the board of a regional district;

“Logs” means logs of all species of wood which are controlled under Canada's Export Control List, Group 5, Item number 5101, pursuant to subparagraph 3.e of the *Export and Import Permits Act*;

“Migratory Birds” means migratory birds, as defined under Federal Law enacted further to international conventions, and includes their eggs;

“Mineral” means an ore of metal, or a natural substance that can be mined, and includes rock and other materials from mine tailings, dumps, and previously mined deposits of minerals;

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

“Municipal Road” means a highway that is vested, or the right to possession of which is vested, in a municipality in accordance with section 35 of the *Community Charter*;

“National Historic Site” means any place declared to be of national historic interest or significance by the Minister;

“National Park” means federal Crown land established under Federal Law and administered by Canada as a national park;

“Natural Gas” means all fluid hydrocarbons that are not defined as Petroleum, and includes coalbed gas and hydrogen sulphide, carbon dioxide and helium produced from a well;

“Neutral” means a person appointed to assist the Parties to resolve a Disagreement and, except in paragraph 23 of the Dispute Resolution Chapter and Appendix P-4, includes an arbitrator;

“Neutral Appointing Authority” means the British Columbia International Commercial 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;

“Non-Member” means an individual who is ordinarily resident on Lheidli T'enneh Lands and who is not a Lheidli T'enneh Citizen;

“Non-Timber Resources” means all Forest Resources, other than Timber Resources;

“Official Voters List” means the list of Eligible Voters prepared by the Ratification Committee under paragraph 6 of the Ratification Chapter;

“Offset”, for the purposes of paragraph 14 of the Roads and Rights of Way Chapter, means the described perpendicular distance from the centreline of a road;

“Park” means a Provincial Park or a National Park in British Columbia;

“Participant” means an individual who is on the Enrolment Register;

“Party” means a party to this Agreement;

“Payment Date” means each of the first 50 anniversaries of the Effective Date of this Agreement;

“Periodic Review Date” means the 15th anniversary of the Effective Date or a date that occurs every 15 years after that date;

“Person”, for purposes of the Taxation Chapter, includes an individual, a partnership, a corporation, a trust, an unincorporated association or other entity or government or any agency or political subdivision thereof, and their heirs, executors, administrators and other legal representatives;

“Petroleum” means crude petroleum and all other hydrocarbons, regardless of specific gravity, that are or can be recovered in liquid form from a pool or that are or can be recovered from oil sand or oil shale;

“Placer Mineral” means:

- a. ore of metal; and
- b. every natural substance that:
  - i. can be mined;
  - ii. is either loose, or found in fragmentary or broken rock that is not talus rock; and
  - iii. occurs in loose earth, gravel and sand,

and includes rocks or other materials from placer mine tailings, dumps and previously mined deposits of placer minerals;

“Plants” means all flora and fungi and, subject to Federal and Provincial Laws, plants used for traditional medicinal purposes, but does not include Aquatic Plants or Timber Resources except for the bark, branches, and roots of Timber Resources.

“Private Lands” means land that is not Crown land;

“Protected Area” includes any land that is set aside or designated for any representative natural resource, recreation, conservation, historic or similar values under the authority of Federal or Provincial Law, but does not include a Park, Ecological Reserve or National Historic Site;

“Provincial Expropriating Authority” means a provincial ministry or agency or any person who would otherwise have the authority to expropriate land under Provincial Law;

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

“Provincial Park” means provincial Crown land established as a park under Provincial Law;

“Provincial Settlement Legislation” means the Act of the Legislative Assembly of British Columbia that gives effect to this Agreement;

“Public Planning Process” means a planning process established by British Columbia to develop:

- a. regional land or resource use management plans or guidelines, including land and resource management plans, landscape unit plans and integrated watershed plans; and
- b. public plans or guidelines for specific sectors such as commercial recreation,

but not operational plans that give specific direction to government staff;

“Public Utility” means a person, or the person’s lessee, trustee, receiver or liquidator that owns or operates in British Columbia equipment or facilities for the:

- a. 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
- b. 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,

and for the purposes of this definition, person includes a partnership and a corporation, including a Crown corporation or agent of the Crown;

“Railway”, as the context requires:

- a. means a company, established under Federal or Provincial Law, authorized to construct, own or operate a railway; or

- b. 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 communications or signalling systems and related facilities and equipment used for railway purposes;

“Range Practices” means:

- c. grazing of livestock;
- d. cutting of hay;
- e. activities relating to grazing of livestock or cutting of hay; or
- f. 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 paragraph 4 of the Ratification Chapter;

“Ratification Vote” means the vote conducted by the Ratification Committee for the ratification of this Agreement;

“Ratification Vote Date” means the date Lheidli T'enneh vote on the ratification of this Agreement;

“Records” means records including 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 that document Lheidli T'enneh culture;

“Resource Revenue Payment” means the amount calculated under paragraph 3 of the Resource Revenue Sharing Chapter;

“Registrar” means the registrar appointed under the *Land Title Act* for the land title district in which Lheidli T'enneh Lands are located;

“Responsible Person” has the same meaning as in the *Environmental Management Act*;

“Review Period” means a time period beginning on a Periodic Review Date, and ending on a date 6 months later, or another date as the Parties may agree;

“Right of Way” means an interest in a defined area of land granted for a specified use, including use for a road or by a Public Utility or Railway;

“Road Allowance” means the land used for a road or a highway, including the travelled portion and the shoulders of the road or highway and adjacent ditches, as surveyed;

“Salmon” means pink, chinook, coho and chum salmon that originate in the Fraser River drainage system in or upriver of Naver Creek and Sockeye Salmon, and includes:

- a. parts of any such salmon; and
- b. the eggs, sperm, spawn, larvae, spat, juvenile stages and adult stages of any such salmon;

“Section 35 Rights of Lheidli T'enneh” means the rights, anywhere in Canada of Lheidli T'enneh, that are recognized and affirmed by section 35 of the *Constitution Act, 1982*;

“Settlement Legislation” means the Federal Settlement Legislation and the Provincial Settlement Legislation;

“Sockeye Salmon” means sockeye salmon that originate in the Fraser River drainage system in or upriver of Naver Creek, but does not include kokanee;

“Specific Claim Settlement” means any sum paid as compensation by Canada to Lheidli T'enneh, which sum represents the amount negotiated by Canada and Lheidli T'enneh in accordance with the Specific Claims Policy, as compensation for that claim;

“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 ground water;

“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, including Placer Minerals;
- d. coal, Petroleum and Natural Gas;
- e. Fossils; and
- f. geothermal resources;

“Surrendered Lands” has the same meaning as in the *Indian Act*;

“Tax Treatment Agreement” means the agreement under paragraph 21 of the Taxation Chapter;

“Tenure” means a permit, lease, licence, claim, reserve, grant, including a Right of Way, and other legal interest in lands;

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

“Time Limited Federal Funding” means “time limited federal funding” as defined in the initial Fiscal Financing Agreement;

“Time Limited Provincial Funding” means “time limited provincial funding” as defined in the initial Fiscal Financing Agreement;

“Total Allowable Migratory Bird Harvest” means the maximum number of a Designated Migratory Bird Population that may be harvested in a specified period of time;

“Total Allowable Wildlife Harvest” means the maximum number of a Designated Wildlife Species that may be harvested in the Lheidli T'enneh Area in each year;

“Transaction Tax” includes a tax imposed under:

- a. the *Motor Fuel Act*, R.S.B.C. 1996, c. 317;
- b. the *Social Service Tax Act*, R.S.B.C. 1996, c. 431 (except those sections pertaining to alcohol);
- c. the *Tobacco Tax Act*, R.S.B.C. 1996, c. 452;
- d. the *Property Transfer Tax Act*, R.S.B.C. 1996, c. 378;
- e. the *Hotel Room Tax Act*, R.S.B.C. 1996, c. 207;
- f. section 4 of the *Insurance Premium Tax Act*, R.S.B.C. 1996, c. 232; and
- g. Part IX of the *Excise Tax Act*, R.S.C. 1985, c. E-15;

“Treaty Harvest Document” means a licence, permit, document, or amendment thereto, that is issued by the Minister under Federal or Provincial Law with respect to the Lheidli T'enneh Fishing Right;

“Upper Fraser River Watershed” means that part of the Fraser River basin upstream of the confluence with the Nechako River;

“Voting Officer” means an individual authorized by the Ratification Committee to issue ballots for the Ratification Vote;

“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;

“Wildlife” means raptors, threatened species, endangered species, game or other species of vertebrates defined as wildlife under Federal or Provincial Law, but does not include Fish or Migratory Birds;

“Wildlife Harvest Level” means a defined harvest quantity or quota, or a formula for calculating a harvest quantity or quota, of a Designated Wildlife Species for Lheidli T'enneh food, social and ceremonial purposes; and

“Wildlife Harvest Plan” means a harvest plan developed in accordance with the Wildlife Chapter.



## **CHAPTER 2**

### **GENERAL PROVISIONS**

#### **NATURE OF AGREEMENT**

1. This Agreement is a treaty and a land claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.

#### **AGREEMENT IS BINDING**

2. This Agreement is binding on the Parties and on all persons.
3. The Parties and all persons are entitled to rely on this Agreement.
4. Canada and British Columbia will recommend to Parliament and the Legislature of British Columbia, respectively, that Settlement Legislation provide that this Agreement is approved, given effect, declared valid and has the force of law.

#### **REPRESENTATION AND WARRANTY**

5. Lheidli T'enneh represents and warrants to Canada and British Columbia that, with respect to the matters dealt with in this Agreement, it has the authority to enter into this Agreement on behalf of all individuals who collectively comprise Lheidli T'enneh and who have or may exercise any aboriginal rights, including aboriginal title, in Canada, or may make any claims to those rights.
6. Canada and British Columbia represent and warrant to Lheidli T'enneh that, with respect to the matters dealt with in this Agreement, they have the authority to enter into this Agreement within their respective authorities.

#### **LHEIDLI T'ENNEH LANGUAGE AND CULTURE**

7. Lheidli T'enneh Citizens have the right to practice the Carrier culture, and to use the Lheidli T'enneh dialect of the Carrier language, in a manner consistent with this Agreement.

#### **CONSTITUTION OF CANADA**

8. This Agreement does not alter the Constitution of Canada, including:

- a. the distribution of powers between Canada and British Columbia;
  - b. the identity of Lheidli T'enneh as an aboriginal people of Canada within the meaning of the *Constitution Act, 1982*; and
  - c. sections 25 and 35 of the *Constitution Act, 1982*.
9. The *Canadian Charter of Rights and Freedoms*, including section 25, applies to the Lheidli T'enneh Government with respect to all matters within its authority.
10. There are no "Lands reserved for the Indians" within the meaning of the *Constitution Act, 1867* for Lheidli T'enneh, and there are no "reserves" as defined in the *Indian Act* for the use and benefit of Lheidli T'enneh, and, for greater certainty, Lheidli T'enneh Lands are not "Lands reserved for the Indians" within the meaning of the *Constitution Act, 1867*, and are not "reserves" as defined in the *Indian Act*.

## INTERNATIONAL LEGAL OBLIGATIONS

11. After the Effective Date, before consenting to be bound by a new International Treaty that would give rise to a new International Legal Obligation that may adversely affect a right of Lheidli T'enneh under this Agreement, Canada will Consult with Lheidli T'enneh with respect to the International Treaty either separately or through an appropriate forum that Canada determines is appropriate.
12. Where Canada informs Lheidli T'enneh that it considers that a Lheidli T'enneh Law or other exercise of power of the Lheidli T'enneh Government causes Canada to be unable to perform an International Legal Obligation, Lheidli T'enneh and Canada will discuss remedial measures to enable Canada to perform the International Legal Obligation.
13. Subject to paragraph 14, Lheidli T'enneh will remedy the Lheidli T'enneh Law or other exercise of power of the Lheidli T'enneh Government to the extent necessary to enable Canada to perform the International Legal Obligation.
14. Subject to paragraph 16, where Canada and Lheidli T'enneh disagree over whether a Lheidli T'enneh Law or other exercise of power of the Lheidli T'enneh Government causes Canada to be unable to perform an International Legal Obligation, the dispute will be finally determined by arbitration, and:
- a. if the arbitrator, having taken into account all relevant considerations, including any reservations and exceptions taken by Canada, determines that the Lheidli T'enneh Law or other exercise of power of the Lheidli T'enneh Government does not cause Canada to be unable to perform the International Legal Obligation, or that the remedial measures are sufficient to enable Canada to perform the International Legal Obligation, Canada will not take any further action for this

reason aimed at changing the Lheidli T'enneh Law or other exercise of power of the Lheidli T'enneh Government; or

- b. if the arbitrator, having taken into account all relevant considerations including any reservations and exceptions available to Canada, determines that the Lheidli T'enneh Law or other exercise of power of the Lheidli T'enneh Government causes Canada to be unable to perform the International Legal Obligation, or that the remedial measures are insufficient to enable Canada to perform the International Legal Obligation, Lheidli T'enneh will remedy the Lheidli T'enneh Law or other exercise of power of the Lheidli T'enneh Government to the extent necessary to enable Canada to perform the International Legal Obligation.
15. Canada will Consult with Lheidli T'enneh with respect to the development of positions taken by Canada before an International Tribunal where a Lheidli T'enneh Law or other exercise of power of the Lheidli T'enneh Government has given rise to an issue concerning the performance of an International Legal Obligation of Canada and Canada's positions before the International Tribunal will take into account the commitment of the Parties to the integrity of this Agreement.
16. If there is a finding of an International Tribunal of non-performance of an International Legal Obligation of Canada attributable to a Lheidli T'enneh Law or other exercise of power of the Lheidli T'enneh Government, Lheidli T'enneh will, at the request of Canada, remedy the Lheidli T'enneh Law or other exercise of power of the Lheidli T'enneh Government to enable Canada to perform the International Legal Obligation consistent with the compliance of Canada, including British Columbia, as applicable, with respect to that International Legal Obligation.

#### **APPLICATION OF FEDERAL AND PROVINCIAL LAWS**

17. 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. a superior court of a province, the Federal Court of Canada or the Supreme Court of Canada finally determines that the delegation of that authority is invalid,
- then the reference to British Columbia will be deemed to be a reference to Canada.
18. 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. a superior court of a province, the Federal Court of Canada or the Supreme Court of Canada finally determines that the delegation of that authority is invalid,
- then the reference to Canada will be deemed to be a reference to British Columbia.
- 19. Federal Law, Provincial Law, and Lheidli T'enneh Law apply to Lheidli T'enneh, the Lheidli T'enneh Government, Lheidli T'enneh Public Institutions, Lheidli T'enneh Corporations, Lheidli T'enneh Citizens and Lheidli T'enneh Lands.
- 20. Unless otherwise provided in this Agreement, Lheidli T'enneh Law does not apply to Canada or British Columbia.
- 21. If there is an inconsistency or Conflict between this Agreement and a Federal or Provincial Law, this Agreement prevails to the extent of the inconsistency or Conflict.
- 22. If there is an inconsistency or Conflict between this Agreement and a Lheidli T'enneh Law, the Lheidli T'enneh Law is of no force or effect to the extent of the inconsistency or Conflict.
- 23. If there is a Conflict between Federal Settlement Legislation and any other Federal Law, the Federal Settlement Legislation prevails to the extent of the Conflict.
- 24. If there is a Conflict between Provincial Settlement Legislation and any other Provincial Law, the Provincial Settlement Legislation prevails to the extent of the Conflict.
- 25. Any licence, permit, Tenure or other authorization, required to be issued by Canada or British Columbia as a result of this Agreement, will be issued under Federal or Provincial Law, as the case may be, and will not form part of this Agreement, but in the event of an inconsistency or Conflict between this Agreement and any term or condition of the licence, permit or other authorization, this Agreement prevails to the extent of the inconsistency or Conflict.
- 26. For greater certainty, Lheidli T'enneh law-making authorities set out in this Agreement do not extend to criminal law and procedure, Intellectual Property, official languages of Canada, aeronautics and labour relations and working conditions.
- 27. Notwithstanding any other rule of priority in this Agreement, Federal and Provincial Law prevail over Lheidli T'enneh Law to the extent of a Conflict involving a provision of a Lheidli T'enneh Law that has a double aspect with or an incidental impact on:
  - a. any area of federal or provincial jurisdiction for which the Lheidli T'enneh Government does not have any law-making authority set out in this Agreement; or
  - b. any area of jurisdiction set out in this Agreement for which Federal or Provincial Law prevail.

28. Notwithstanding any other rule of priority in this Agreement, Federal Law prevails over Lheidli T'enneh Law to the extent of any Conflict involving a provision of a Lheidli T'enneh Law that Conflicts with a Federal Law in relation to peace, order and good government, criminal law, human rights, the protection of health and safety of all Canadians, or other matters of overriding national importance.

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

29. Lheidli T'enneh Citizens who are Canadian citizens or permanent residents of Canada continue to be entitled to all of the rights and benefits of other Canadian citizens or permanent residents of Canada, applicable to them from time to time.
30. Subject to paragraph 31, nothing in this Agreement affects the ability of Lheidli T'enneh, Lheidli T'enneh Institutions, Lheidli T'enneh Corporations or Lheidli T'enneh Citizens to participate in, or benefit from, federal or provincial programs or services for aboriginal people, registered Indians or other Indians, in accordance with general criteria established for those programs or services from time to time.
31. This Agreement does not affect the eligibility of Lheidli T'enneh Citizens for federal and provincial programs or services for aboriginal people unless Lheidli T'enneh has assumed responsibility for delivery of those programs or services.
32. Nothing in this Agreement affects the ability of Lheidli T'enneh or Lheidli T'enneh Citizens to apply for or bid on any commercial, economic or other activity or project for which they would otherwise be eligible.
33. Subject to the Transition Chapter, the Taxation Chapter, and paragraph 57 of the Lands Chapter, the *Indian Act*, the Framework Agreement on First Nation Land Management, the *First Nations Land Management Act*, and the *Lheidli T'enneh First Nation Land Code* do not apply to Lheidli T'enneh, the Lheidli T'enneh Government, Lheidli T'enneh Public Institutions, Lheidli T'enneh Corporations, Lheidli T'enneh Lands or Lheidli T'enneh Citizens, except for the purpose of determining whether an individual is an Indian.

#### **JUDICIAL DETERMINATIONS WITH RESPECT TO VALIDITY**

34. If a superior court of a province, the Federal Court of Canada or the Supreme Court of Canada finally 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.
- 35. No Party will challenge, or support a challenge to, the validity of this Agreement or any provision of this Agreement.
- 36. A breach of this Agreement by a Party does not relieve any Party from its obligations under this Agreement.

## **CERTAINTY**

### **Full and Final Settlement**

- 37. This Agreement constitutes the full and final settlement with respect to the aboriginal rights, including aboriginal title, in Canada of Lheidli T'enneh.

### **Exhaustively Sets Out Rights**

- 38. This Agreement exhaustively sets out the Section 35 Rights of Lheidli T'enneh, the attributes and the geographic extent of those rights, and the limitations to those rights to which the Parties have agreed, and those rights are:
  - a. the aboriginal rights, including aboriginal title, modified as a result of this Agreement, in Canada, of Lheidli T'enneh in and to Lheidli T'enneh Lands and other lands and resources in Canada;
  - b. the jurisdictions, authorities and rights of the Lheidli T'enneh Government; and
  - c. the other Section 35 Rights of Lheidli T'enneh.

### **Modification**

- 39. Notwithstanding the common law, as a result of this Agreement and the Settlement Legislation, the aboriginal rights, including the aboriginal title, of Lheidli T'enneh, as they existed anywhere in Canada before the Effective Date, including their attributes and geographic extent, are modified, and continue as modified, as set out in this Agreement.
- 40. For greater certainty, the aboriginal title of Lheidli T'enneh anywhere that it existed in Canada before the Effective Date, including its attributes and geographic extent, is modified and continues as the estates in fee simple to those areas identified in this Agreement as Lheidli T'enneh Lands and Lheidli T'enneh-owned private fee simple lands described in Appendix H.

### **Purpose of Modification**

41. The purpose of the modification referred to in paragraph 39 is to ensure that as of the Effective Date:
- a. Lheidli T'enneh has, and can exercise, the Section 35 Rights of Lheidli T'enneh as set out in this Agreement, including the attributes and geographic extent of those rights, and the limitations to those rights to which the Parties have agreed;
  - b. Canada, British Columbia and all other persons can exercise their rights, authorities, jurisdictions and privileges in a manner consistent with this Agreement; and
  - c. Canada, British Columbia and all other persons do not have any obligations with respect to any aboriginal rights, including aboriginal title, of Lheidli T'enneh to the extent that those rights, including title, might be in any way other than, or different in attributes or geographic extent from, the Section 35 Rights of Lheidli T'enneh as set out in this Agreement.

### **Release of Past Claims**

42. Lheidli T'enneh releases Canada, British Columbia and all other persons from all claims, demands, actions, or proceedings, of whatever kind, whether known or unknown, that Lheidli T'enneh ever had, now has or may have in the future, relating to or arising from any act or omission before the Effective Date that may have affected, interfered with or infringed any aboriginal right, including aboriginal title, in Canada of Lheidli T'enneh.

### **Indemnities**

43. Lheidli T'enneh will indemnify and save harmless Canada or British Columbia, as the case may be, from any:

- a. costs, excluding fees and disbursements of solicitors and other professional advisors;
- b. damages;
- c. losses; or
- d. liabilities,

that Canada or British Columbia, respectively, may suffer or incur in connection with, or as a result of, any claims, demands, actions or proceedings relating to or arising out of any act or omission, before the Effective Date, that may have affected or infringed any aboriginal right, including aboriginal title, in Canada of Lheidli T'enneh.

44. Lheidli T'enneh will indemnify and save harmless Canada or British Columbia, as the case may be, from any:

- a. costs, excluding fees and disbursements of solicitors and other professional advisors;
- b. damages;
- c. losses; or
- d. liabilities,

that Canada, or British Columbia, respectively, 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 existence of an aboriginal right, including aboriginal title, of Lheidli T'enneh in Canada that is other than, or different in attributes or geographical extent from, the Section 35 Rights of Lheidli T'enneh as set out in this Agreement.

45. A Party who is the subject of a claim, demand, action or proceeding that may give rise to a requirement to provide payment to that Party under an indemnity under this Agreement:

- a. will vigorously defend the claim, demand, action or proceeding; and
- b. will not settle or compromise the claim, demand, action or proceeding except with the consent of the Party who has granted that indemnity, which consent will not be arbitrarily or unreasonably withheld or delayed.

#### **Specific Claim**

46. Notwithstanding any other provision in this Agreement, nothing in this Agreement precludes Lheidli T'enneh from pursuing its claim, respecting the 1911 surrender of Fort George Indian Reserve #1, in accordance with Canada's specific claim policy or in court.

47. For greater certainty, the Lheidli T'enneh claim referred to in paragraph 46 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 Lheidli T'enneh, or a "reserve" as defined in the *Indian Act* for the use and benefit of Lheidli T'enneh.

#### **CONSULTATION**

48. Neither Canada nor British Columbia has any obligation to consult with Lheidli T'enneh except:

- a. as provided for in this Agreement;

- b. as may be provided for in federal or provincial legislation;
  - c. as may be provided for in an agreement with Lheidli T'enneh other than this Agreement; and
  - d. as may be required at common law in relation to an infringement of a Section 35 Right of Lheidli T'enneh.
49. Nothing in this Agreement, nor any action or authority taken, exercised or carried out by Canada or British Columbia in accordance with this Agreement is, or is to be interpreted as, an infringement of a Section 35 Right of Lheidli T'enneh.

## PROVINCIAL LAW

50. Canada will recommend to Parliament that Federal Settlement Legislation include a provision that, to the extent that a Provincial Law does not apply of its own force to Lheidli T'enneh, the Lheidli T'enneh Government, Lheidli T'enneh Public Institutions, Lheidli T'enneh Corporations, Lheidli T'enneh Lands or Lheidli T'enneh Citizens, that Provincial Law, subject to the Federal Settlement Legislation, any other Act of Parliament and this Agreement, will apply to Lheidli T'enneh, the Lheidli T'enneh Government, Lheidli T'enneh Public Institutions, Lheidli T'enneh Corporations, Lheidli T'enneh Lands or Lheidli T'enneh Citizens, as the case may be.

## OTHER ABORIGINAL PEOPLE

51. Nothing in this Agreement affects, recognizes or provides any rights under section 35 of the *Constitution Act, 1982* for any aboriginal people other than Lheidli T'enneh.
52. If a superior court of a province, the Federal Court of Canada or the Supreme Court of Canada finally determines that any aboriginal people, other than Lheidli T'enneh, have rights under section 35 of the *Constitution Act, 1982* that are adversely affected by a provision of this Agreement:
- a. the provision will operate and have effect to the extent that it does not adversely affect those rights; and
  - b. if the provision cannot operate and have effect in a way that it does not adversely affect those rights, the Parties will make best efforts to amend this Agreement to remedy or replace the provision.
53. If Canada or British Columbia enters into a treaty or a land claims agreement, within the meaning of sections 25 and 35 of the *Constitution Act, 1982*, with any other aboriginal people and that treaty or land claims agreement adversely affects a Section 35 Right of Lheidli T'enneh as set out in this Agreement:

- a. Canada or British Columbia, or both, as the case may be, will provide Lheidli T'enneh with additional or replacement rights or other appropriate remedies;
- b. at the request of Lheidli T'enneh, the Parties will negotiate and attempt to reach agreement on the provision of those additional or replacement rights or other appropriate remedies; and
- c. if the Parties are unable to reach agreement on the provision of the additional or replacement rights or other appropriate remedies, the provision of those additional or replacement rights or remedies will be determined in accordance with Stage 3 of the Dispute Resolution Chapter.

## **AMENDMENT PROVISIONS**

- 54. Any Party may propose an amendment to this Agreement.
- 55. If a Party proposes an amendment under paragraph 54, before proceeding with an amendment to this Agreement, the Parties will attempt to find other means of satisfying the interests of the Party proposing the amendment.
- 56. Except for any provision of this Agreement that provides that an amendment requires the consent of only Lheidli T'enneh and either Canada or British Columbia, all amendments to this Agreement, including the Schedules and Appendices to this Agreement, require the consent of all three Parties.
- 57. Canada will give consent to an amendment to this Agreement by order of the Governor in Council.
- 58. British Columbia will give consent to an amendment to this Agreement by resolution of the Legislative Assembly of British Columbia.
- 59. Lheidli T'enneh will give consent to an amendment to this Agreement by a resolution adopted by at least two-thirds of the elected members of the Lheidli T'enneh Government.
- 60. If 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 recommend to Parliament or the Legislature of British Columbia that the required legislation be enacted.
- 61. An amendment to this Agreement takes effect once the consent requirements under paragraph 57, 58 or 59, as applicable are completed and any legislation referred to in paragraph 60, if applicable, has been brought into force.

62. Each Party will give notice to the other Parties when consent under paragraphs 57, 58 or 59, as applicable, has been given and when any legislation referred to in paragraph 60, if applicable, has been brought into force.

**Deemed Amendments**

63. Notwithstanding paragraphs 56 to 62, if:
- a. this Agreement provides:
    - i. that Lheidli T'enneh and Canada or British Columbia will negotiate and attempt to reach agreement with respect to a matter that will result in an amendment to this Agreement, including a change to a Schedule or an Appendix; and
    - ii. that 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 negotiated an agreement or the matter is determined by arbitration,
- this Agreement will be deemed to be amended on the date the agreement or arbitrator's decision takes effect, as the case may be.
64. Notwithstanding paragraphs 56 to 62, if this Agreement provides that a provision of this Agreement will be amended upon the happening of an event, this Agreement will be deemed to be amended on the happening of that event.
65. With respect to deemed amendments under paragraphs 63 and 64, the Parties will:
- a. provide notice to the other Parties of any agreement reached or arbitrator's decision under paragraph 63 or the happening of an event referred to under paragraph 64; and
  - b. agree on the wording or form of the deemed amendment.
66. In the case of an arbitrator's decision under paragraph 63, if the Parties are unable to agree, the wording or form of the deemed amendment will be finally determined by the arbitrator.

**Implementation of Amendments**

67. The Parties will take the necessary steps to implement an amendment to this Agreement as soon as possible after the amendment takes effect.

68. Each Party will be responsible for publishing all amendments to this Agreement as follows:
- a. Lheidli T'enneh in the Lheidli T'enneh registry of Lheidli T'enneh Law;
  - b. British Columbia in the British Columbia Gazette; and
  - c. Canada in the Canada Gazette.
69. After ratification of this Agreement by Lheidli T'enneh, but before the Parties sign this Agreement, the Chief Negotiators on behalf of Canada, British Columbia and Lheidli T'enneh respectively, may agree to minor amendments to this Agreement.

## **PERIODIC REVIEW**

70. The Parties recognize and acknowledge that this Agreement provides a foundation for an ongoing relationship amongst the Parties and commit to conducting a periodic review of this Agreement in accordance with paragraphs 71 through 77.
71. Sixty days before each Periodic Review Date, each Party will provide the other Parties with written notice if the Party wishes to discuss a matter contemplated by paragraph 72, and if no notice is provided by any Party, the Parties will forego engaging in a review for that Review Period.
72. The purpose of the periodic review is to provide an opportunity for the Parties to meet and discuss:
- a. practicability of the harmonization of the Lheidli T'enneh legal and administrative systems, including law-making authorities that are being exercised by Lheidli T'enneh under this Agreement, with those of British Columbia and Canada;
  - b. practicability of processes established by the Parties in accordance with this Agreement; and
  - c. other matters with respect to the implementation of the provisions of this Agreement as the Parties may agree in writing.
73. Unless the Parties agree otherwise, the discussion under paragraph 72 will take place on the Periodic Review Date and such other dates as the Parties agree, but will not exceed the applicable Review Period, and within 60 days of the end of that discussion each Party will provide the other Parties with its written response on any matter discussed during that Review Period.
74. The periodic review contemplated by paragraphs 70 to 77 and all discussions and information relating to the matter of the periodic review are without prejudice to the

respective legal positions of the Parties, unless the Parties otherwise agree, and nothing made or done with respect to a periodic review, including the discussions or the responses provided by the Parties, except for any amendments made pursuant to paragraph 76, creates any legally binding rights or obligations.

75. Except for the Parties' commitment to meet and provide written responses as set out in paragraph 73, neither the periodic review process contemplated by paragraphs 70 to 77, nor the decisions and actions of the Parties relating in any way to the periodic review process are:
- a. subject to the process set out in the Dispute Resolution Chapter; or
  - b. reviewable by a court or in any other forum.
76. For greater certainty:
- a. none of the Parties are required to agree to amend this Agreement or any agreement contemplated by this Agreement as a result of the periodic review contemplated by paragraphs 70 to 77;
  - b. if the Parties agree to amend this Agreement, any such amendment will be made in accordance with this Chapter; and
  - c. if the Parties agree to amend an agreement contemplated by this Agreement, the agreement will be amended in accordance with its terms.
77. Each of the Parties will be responsible for its own costs in relation to the periodic review process.

## **INFORMATION AND PRIVACY**

78. For the purposes of federal and provincial access to information and privacy legislation, information that the Lheidli T'enneh Government provides to Canada or British Columbia in confidence is deemed to be information received or obtained in confidence from another government.
79. If the Lheidli T'enneh Government 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 the Lheidli T'enneh Government information that is only available to a particular province or particular provinces.
80. The Parties may enter into agreements with respect to any one or more of the collection, protection, retention, use, disclosure and confidentiality of personal, general or other information.

81. Canada or British Columbia may provide information to the Lheidli T'enneh Government in confidence if the Lheidli T'enneh Government has made a Lheidli T'enneh Law or Lheidli T'enneh has entered into an agreement with Canada or British Columbia, as the case may be, under which the confidentiality of the information will be protected.
82. 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 a Federal or Provincial Law, including under sections 37 to 39 of the *Canada Evidence Act*;
  - b. if federal or provincial legislation allows the disclosure of certain information only if specified conditions for disclosure are satisfied, Canada and British Columbia are not required to disclose that information unless those conditions are satisfied; and
  - c. the Parties are not required to disclose any information that may be withheld under a privilege at law.

#### **OBLIGATION TO NEGOTIATE**

83. If 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.
84. Where this Agreement provides that the Parties, or any two of them, "will negotiate and attempt to reach agreement", those negotiations will be conducted as set out in 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 27 of the Dispute Resolution Chapter.
85. Except as set out in this Agreement, an agreement that is reached as a result of negotiations that are required or permitted under any paragraph of this Agreement is not part of this Agreement.

#### **ENTIRE AGREEMENT**

86. This Agreement is the entire agreement among the Parties with respect 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.
87. The Schedules and Appendices to this Agreement form part of this Agreement.

## INTERPRETATION

88. In the event of an inconsistency between a provision of this Chapter and any other provision of this Agreement, the provision of this Chapter prevails to the extent of the inconsistency.
89. There will be no presumption that doubtful expressions, terms or provisions in this Agreement are to be resolved in favour of any particular Party.
90. In this Agreement:
- a. the use of the word “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. the word “or” is used in its inclusive sense, meaning A or B, or both A and B; and the word “and” is used in its joint sense, meaning A and B, but not either alone;
  - c. unless it is otherwise clear from the context, the use of the word “including” means “including, but not limited to”, and the use of the word “includes” means “includes, but is not limited to”;
  - d. a reference to “paragraphs A to B” includes both paragraphs A and B;
  - e. unless it is otherwise clear from the context, a reference to a “Chapter”, “paragraph”, “subparagraph”, “Schedule” or “Appendix” means a chapter, paragraph, subparagraph, schedule or appendix, respectively, of this Agreement;
  - f. unless it is otherwise clear from the context, a reference in a chapter of this Agreement to a “paragraph”, “subparagraph” or “Schedule” means a paragraph, subparagraph or schedule, respectively, of that Chapter;
  - g. 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;
  - h. a reference to a statute includes:
    - i. every law enacted in substitution or in replacement of it;
    - ii. every amendment made to it whether amended before or after the Effective Date; and
    - iii. every regulation made under it and every amendment to that regulation whether made or amended before or after the Effective Date.

- i. unless it is otherwise clear from the context, “provincial” refers to the province of British Columbia and “provincial” has a corresponding meaning;
- j. unless it is otherwise clear from the context, the use of the singular includes the plural, and the use of the plural includes the singular; and
- k. a reference to “harvest” includes attempt to harvest.

## **OFFICIAL LANGUAGES**

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

## **NO IMPLIED WAIVER**

92. A provision of this Agreement, the performance by a Party of an obligation under this Agreement, or the default by a Party of an obligation under this Agreement, may not be waived unless the waiver is in writing and signed by the Party or Parties giving the waiver.
93. No written waiver of a provision of this Agreement, of the performance by a Party of an obligation under this Agreement or of the default by a Party of an obligation under this Agreement, will be a waiver of any other provision, obligation or subsequent default.

## **ASSIGNMENT**

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

## **ENUREMENT**

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

## **NOTICE**

96. In paragraphs 97 to 101, “Communication” includes a notice, document, request, approval, authorization or consent.

97. Unless otherwise set out in this Agreement, a Communication must be:
- a. delivered personally or by courier;
  - b. transmitted by fax or e-mail; or
  - c. mailed by any method of delivery for which confirmation of delivery to a named person is provided.
98. A Communication will be considered to have been given, made or delivered, and received:
- a. if delivered personally or by courier, at the start of business on the next business day after the business day on which it was received by the addressee or a responsible representative of the addressee;
  - b. if transmitted by fax or e-mail and the sender receives confirmation of the transmission, at the start of business on the business day next following the day on which it was transmitted; or
  - c. if mailed by any method of delivery for which confirmation of delivery to a named person is provided, when the postal receipt is acknowledged by the addressee.
99. In addition to the provisions of paragraphs 97 and 98, the Parties may agree to give, make, or deliver a Communication by means other than those provided in paragraph 98.
100. The Parties will provide to each other addresses for delivery of Communications under this Agreement, and subject to paragraph 101, will deliver a Communication to the address provided by each Party.
101. If no other address for delivery of a particular Communication has been provided by a Party, a Communication will be delivered, mailed to the address, or transmitted to the fax number, of the intended recipient as set out below:

For: Canada  
Attention: Minister of Indian Affairs and Northern Development  
House of Commons  
Room 583, Confederation Building  
Ottawa, Ontario  
K1A 0A6  
Fax Number: (819) 953-4941

For: British Columbia  
Attention: Minister of Aboriginal Relations and Reconciliation  
Room 310, Parliament Buildings

PO Box 9052 Stn Prov Govt  
Victoria, British Columbia  
V8W 9E2  
Fax Number: (250) 356-6595

For: Lheidli T'enneh  
Attention: General Manager  
1041 Whenun Road  
Prince George, British Columbia  
V2K 5X8  
Fax Number: (250) 963-6954

### **CHAPTER 3**

#### **ELIGIBILITY AND ENROLMENT**

##### **GENERAL**

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

##### **ELIGIBILITY CRITERIA**

2. An individual is eligible to be Enrolled under this Agreement if that individual is:
  - a.
    - i. an individual with Lheidli T'enneh ancestry by matrilineal or patrilineal descent; or
    - ii. a band member listed or entitled to be listed as a band member on the Lheidli T'enneh Band list under the *Indian Act* as of the day before the Effective Date;
  - b. an individual who has been adopted under Lheidli T'enneh custom; or
  - c. a descendant, including an Adopted Child and his or her descendant, of an individual described in subparagraph 2.a or 2.b, notwithstanding any adoption or any birth outside marriage.

##### **APPLICATIONS FOR ENROLMENT**

3. An individual may:
  - a. apply to the Enrolment Committee 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 a Child, or an adult, whose affairs the individual has legal authority to manage.

4. Each individual has the burden of demonstrating to the Enrolment Committee that he or she, or the Child or adult on whose behalf the individual makes an application, meets the Eligibility Criteria.

#### **OTHER LAND CLAIMS AGREEMENTS**

5. An individual who:
  - a. receives benefits under another treaty or land claims agreement in Canada; or
  - b. is enrolled under another treaty or land claims agreement in Canada,may not at the same time be Enrolled under this Agreement.
6. If an individual described in paragraph 5 applies to be Enrolled or has an application filed on their behalf, the Applicant will notify the Enrolment Committee, upon application, that the individual:
  - a. receives benefits under another treaty or land claims agreement in Canada; or
  - b. is enrolled under another treaty or land claims agreement in Canada.
7. If an individual described in paragraph 5 applies to be Enrolled or has an application filed on their behalf and the individual's application is accepted under subparagraph 14.e, the individual:
  - a. will no longer be entitled to receive benefits under the other treaty or land claims agreement; or
  - b. must withdraw from enrolment under the other treaty or land claims agreement.
8. An individual described in paragraph 7 will be notified in writing by the Enrolment Committee that the individual has been conditionally enrolled and that the individual will be Enrolled after the individual has satisfied the conditions set out in paragraph 36.

#### **BAND AFFILIATION OTHER THAN LHEIDLI T'ENNEH**

9. If an individual who is listed on the Indian Register with a Band affiliation other than Lheidli T'enneh applies to be Enrolled, or has an application filed on their behalf, the Applicant will include in their application a letter signed by the Applicant stating their intention to become a member of Lheidli T'enneh.

10. An individual described in paragraph 9 whose application is approved under paragraph 14.e will be notified in writing by the Enrolment Committee that the individual has been conditionally enrolled and that the individual will be Enrolled after the individual has satisfied the conditions set out in paragraph 38.

#### **THE ENROLMENT COMMITTEE**

11. The Enrolment Committee will be established by Lheidli T'enneh at a time agreed upon by the Parties, and will be comprised of three members appointed by Lheidli T'enneh.
12. The Enrolment Committee will operate for the Initial Enrolment Period, which period may be extended by agreement of the Parties.
13. Lheidli T'enneh will notify Canada and British Columbia of the members of the Enrolment Committee as soon as practicable upon their appointment.
14. The Enrolment Committee will:
  - a. establish its enrolment procedures and set its time limits;
  - 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;
  - 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, consider and make a decision on each application based on the Eligibility Criteria, request further information if required, enrol on or before the Ratification Vote Date the Applicants who meet the Eligibility Criteria, and maintain a record of those decisions;
  - f. establish and maintain the Enrolment Register and a list of the individuals conditionally enrolled under paragraphs 8 and 10;
  - g. 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;
  - h. notify in writing each Applicant and the Parties of its decision and, if enrolment is refused, provide written reasons;
  - i. provide information with respect to an Applicant's enrolment application, in confidence, on request to the Parties and the Enrolment Appeal Board;

- j. unless otherwise provided in this Chapter, keep information provided by and about Applicants confidential;
  - k. provide a copy of the Enrolment Register and a list of the individuals conditionally enrolled under paragraphs 8 and 10, and any other relevant information requested, to the Ratification Committee in a timely manner;
  - l. provide a true copy of the Enrolment Register to the Parties on request; and
  - m. report to the Parties on the enrolment process as requested.
15. After a decision by the Enrolment Committee during the Initial Enrolment Period, the Applicant may submit new information to the Enrolment Committee.
16. 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.
17. 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.
18. If:
- a. an individual who is Enrolled; or
  - b. an individual who has legal authority to manage the affairs of an individual who is Enrolled,
- applies to have the name of the individual who is Enrolled removed from the Enrolment Register, the Enrolment Committee will remove that individual's name and will notify the Participant or the individual who made the application.
19. Subject to this Chapter, a decision of the Enrolment Committee that is not appealed to the Board will be final and binding.

#### **THE ENROLMENT APPEAL BOARD**

20. Lheidli T'enneh and Canada will establish the Enrolment Appeal Board 120 days before the Ratification Vote Date or at a date to be agreed to by the Parties.
21. The Enrolment Appeal Board will be comprised of two members appointed by Lheidli T'enneh and one member appointed by Canada.

22. A member of the Enrolment Committee will not be a member of the Enrolment Appeal Board.
23. An Applicant may appeal by written notice to the Enrolment Appeal Board:
  - a. any decision of the Enrolment Committee made under subparagraph 14.e or paragraph 16; and
  - b. an application deemed to be refused under paragraph 17,with respect to an application made by that Applicant under paragraph 3.
24. A Party may appeal by written notice to the Enrolment Appeal Board:
  - a. any decision of the Enrolment Committee made under subparagraph 14.e or paragraph 16; and
  - b. an application deemed to be refused under paragraph 17.
25. The Enrolment Appeal Board will:
  - a. establish its own procedures and set its time limits;
  - b. publish its procedures;
  - c. hear and determine any appeal brought under paragraph 23 or paragraph 24 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 as requested.
26. As of the Effective Date, the Enrolment Appeal Board may:
  - a. by subpoena 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.
- 27. If an individual fails to comply with a direction of the Enrolment Appeal Board made under subparagraphs 26.a or 26.b, on application by the Enrolment Appeal Board, a judge of the Provincial Court of British Columbia may enforce a subpoena or direction.
- 28. Any Applicant, Party or witness appearing before the Enrolment Appeal Board may be represented by counsel or agent.
- 29. Subject to paragraphs 39 to 42, all decisions of the Enrolment Appeal Board will be final and binding.

### **ACTIONS AGAINST THE ENROLMENT APPEAL BOARD**

- 30. As of the Effective Date, no action lies or may be commenced against the Enrolment Appeal Board, or any member of 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**

- 31. Canada and British Columbia will provide an amount of funding agreed upon by the Parties for the Enrolment Committee and the Enrolment Appeal Board to carry out the duties and responsibilities set out in this Chapter with respect to applications or appeals commenced before the end of the Initial Enrolment Period.
- 32. The Enrolment Committee and the Enrolment Appeal Board will operate within their approved budgets.

### **ENROLMENT AFTER THE INITIAL ENROLMENT PERIOD**

- 33. The Enrolment Committee and the Enrolment Appeal Board will be dissolved when they have rendered decisions with respect to those applications or appeals commenced before the end of the Initial Enrolment Period.
- 34. As of the Effective Date, Lheidli T'enneh 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.
- 35. On dissolution, the Enrolment Committee and the Enrolment Appeal Board will provide their records to Lheidli T'enneh and to Canada or British Columbia upon request.
- 36. Within 120 days after the Effective Date, if an individual who has been conditionally enrolled under paragraph 8, or an individual having legal authority to manage the affairs of that individual, provides written evidence to Lheidli T'enneh demonstrating that the individual has:
  - a. ceased receiving benefits under the other treaty or land claims agreement; or
  - b. withdrawn from enrolment under the other treaty or land claims agreement,Lheidli T'enneh will remove the individual's name from the list of conditional enrollees.
- 37. An individual described in paragraph 36 will be Enrolled when the individual:
  - a. ceases receiving benefits under the other treaty or land claims agreement; or
  - b. is withdrawn from enrolment under the other treaty or land claims agreement.
- 38. Within 120 days after the Effective Date, an individual who has been conditionally enrolled under paragraph 10, or an individual having legal authority to manage the affairs of that individual, and Lheidli T'enneh will do all things necessary to request Canada to change the affiliation to Lheidli T'enneh and to issue a new status card for the individual.

## **JUDICIAL REVIEW**

- 39. 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 subparagraph 34.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.
- 40. 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 subparagraph 34.a for determination in accordance with such directions as the Court considers appropriate.
- 41. If the Enrolment Appeal Board, or any body established under subparagraph 34.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.
- 42. An Applicant or Party may apply for judicial review of a decision of the Enrolment Appeal Board or body established under subparagraph 34.a within 60 days of receiving notification of the decision or a longer period that may be determined by the Court.

## **CHAPTER 4**

### **RATIFICATION**

#### **GENERAL**

1. Ratification of this Agreement by the Parties in accordance with this Chapter is a condition precedent to the validity of this Agreement and, unless so ratified, this Agreement has no force or effect.

#### **RATIFICATION BY LHEIDLI T'ENNEH**

2. Ratification of this Agreement by Lheidli T'enneh requires:
  - a. at a meeting called by the Lheidli T'enneh Community Treaty Council, adoption by consensus of a motion to refer this Agreement to a Ratification Vote;
  - b. conduct of the Ratification Vote;
  - c. in the Ratification Vote, at least fifty percent plus one of Eligible Voters vote in favour of entering into this Agreement; and
  - d. that this Agreement be signed by an individual authorized to sign on behalf of Lheidli T'enneh.
3. The Ratification Vote will be by secret ballot.

#### **THE RATIFICATION COMMITTEE**

4. The Ratification Committee will be established by Lheidli T'enneh.
5. The Ratification Committee will be comprised of three members, and will include a representative of Lheidli T'enneh, a representative of Canada and a representative of British Columbia.
6. Conduct of the Ratification Vote requires that the Ratification Committee:
  - a. establish and publish its procedures;
  - b. set its time limits;
  - c. take reasonable steps to provide an opportunity for Eligible Voters to review this Agreement;

- d. prepare and publish a preliminary list of voters based on the information provided by the Enrolment Committee under subparagraph 14.k of the Eligibility and Enrolment Chapter;
- e. prepare and publish an Official Voters List based on the preliminary list of voters prepared under subparagraph 6.d at least 30 days before the first day of general voting in the Ratification Vote by:
  - i. determining whether each individual whose name is provided to it by the Enrolment Committee is eligible to vote under paragraph 7; and
  - ii. including on the Official Voters List the name of each individual whom the Ratification Committee determines to be eligible to vote under subparagraph 6.e.i;
- f. update the Official Voters List by:
  - i. at any time before the end of general voting, adding to the Official Voters List the name of each individual whom the Ratification Committee determines to be eligible to vote under paragraph 7;
  - ii. adding to the Official Voters List the name of each individual who casts a ballot under paragraph 8 and whose ballot is counted under paragraph 9;
  - iii. removing from the Official Voters List the name of each individual who died on or before the last day of voting without having voted in the Ratification Vote; and
  - iv. removing from the Official Voters List the name of each individual who did not vote in the Ratification Vote and who provides, within seven days of the last scheduled day of voting in the Ratification Vote, certification by 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;
- g. approve the form and content of the ballot;
- h. authorize and provide general direction to Voting Officers;
- i. conduct the Ratification Vote on a day or days determined by the Ratification Committee; and
- j. publish the results of the Ratification Vote.

## **ELIGIBLE VOTERS**

7. An individual is eligible to vote in the Ratification Vote 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 16 years of age on the last scheduled day of voting for the Ratification Vote.
8. An individual whose name is not included on the Official Voters List may cast a ballot in the Ratification Vote if that individual:
  - a. provides a Voting Officer with a completed enrolment application form or 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 subparagraph 7.b.
9. The ballot of an individual described under paragraph 8 will be counted in the Ratification Vote only if the Enrolment Committee notifies the Ratification Committee that the individual meets the Eligibility Criteria.

## **FUNDING**

10. 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**

11. Ratification of this Agreement by British Columbia requires:
  - a. that this Agreement be signed by a Minister of the Crown authorized by the Lieutenant Governor in Council; and
  - b. the coming into force of Provincial Settlement Legislation giving effect to this Agreement.

## **RATIFICATION BY CANADA**

12. Ratification of this Agreement by Canada requires:
- a. that this Agreement be signed by a Minister of the Crown authorized by the Governor in Council; and
  - b. the coming into force of Federal Settlement Legislation giving effect to this Agreement.

## **LHEIDLI T'ENNEH CONSTITUTION**

13. The Lheidli T'enneh Constitution will be ratified if a majority of Eligible Voters participate in the vote on the Lheidli T'enneh Constitution and a majority of those participating voters vote to ratify the Lheidli T'enneh Constitution.

## **CHAPTER 5**

### **LANDS**

#### **GENERAL**

1. On the Effective Date, Lheidli T'enneh Lands consist of all lands as set out in Appendix A except Submerged Lands, Crown Roads listed in Appendix C-1, Municipal Roads listed in Appendix C-2, and Railway Rights of Way listed in Appendix C-3.
2. On the Effective Date, Lheidli T'enneh Lands comprise approximately 4,275 hectares, including:
  - a. 677 hectares, more or less, of former Lheidli T'enneh Indian Reserves identified in Appendix A-2;
  - b. 237 hectares, more or less, of former federal Crown land identified in Appendix A-3; and
  - c. 3,361 hectares, more or less, of former provincial Crown land identified in Appendix A-4.
3. On the Effective Date, Lheidli T'enneh owns private fee simple lands comprising 55 hectares, more or less, of former provincial Crown land identified in Appendix H-1.
4. On the Effective Date, lands listed in Appendix B will be registered under the *Land Title Act*.
5. On the Effective Date, British Columbia will assign to Lheidli T'enneh the statutory right of way that is registered in the records of the Prince George Land Title Office under number BX537995.

#### **OWNERSHIP OF LHEIDLI T'ENNEH LANDS**

6. On the Effective Date, Lheidli T'enneh owns Lheidli T'enneh Lands in fee simple, being the largest estate known in law.
7. Subject to paragraphs 21 to 32, Lheidli T'enneh fee simple ownership of Lheidli T'enneh Lands is not subject to any condition, proviso, restriction, exception or reservation set out in the *Land Act*, or any comparable limitation under Federal or Provincial Law.
8. The transfer of Former Federal Lands to Lheidli T'enneh in accordance with this Agreement will not, in and of itself, result in British Columbia being determined to be a

Responsible Person with respect to any potential contaminated site on any Former Federal Lands.

9. British Columbia is not required to prepare and provide a site profile under Part 4 of the *Environmental Management Act* in relation to lands transferred to Lheidli T'enneh in accordance with this Agreement.
10. In accordance with this Agreement, the Lheidli T'enneh Constitution, and Lheidli T'enneh Law, Lheidli T'enneh may:
  - a. dispose of the whole of its estate in fee simple in any parcel of Lheidli T'enneh Lands to any person; and
  - b. from the whole of its estate in fee simple, or its interest, in any parcel of Lheidli T'enneh 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*,without the consent of Canada or British Columbia.
11. If a fee simple estate in a parcel of Lheidli T'enneh Lands is acquired through an agreement between Lheidli T'enneh and a federal department or agency, those lands will no longer be Lheidli T'enneh Lands and Appendix A will be amended in accordance with the process set out in paragraph 64 of the General Provisions Chapter.
12. Subject to paragraphs 11, 88, and 124, following the disposition of a fee simple estate in a parcel of Lheidli T'enneh Lands by Lheidli T'enneh, the land disposed of does not cease to be Lheidli T'enneh Lands.
13. If Lheidli T'enneh wishes to dispose of a fee simple estate in a parcel of Lheidli T'enneh Lands, the indefeasible title to which is not registered under the *Land Title Act*, it will, before the disposition, apply under the *Land Title Act* in accordance with the Land Title Chapter, for the registration of indefeasible title to that parcel.
14. If Lheidli T'enneh disposes of a fee simple estate in a parcel of Lheidli T'enneh Lands and that estate is held by a person other than a Lheidli T'enneh Citizen, a Lheidli T'enneh Corporation or a Lheidli T'enneh Public Institution, paragraphs 78 to 87, 90 to 103, 105 to 123 and 125 to 140 of this Chapter will not apply to the expropriation of an interest or estate in that parcel of land, including any interest or estate that is less than a fee simple estate that is held by Lheidli T'enneh in that parcel of land.
15. Lheidli T'enneh may request the consent of Canada and British Columbia to have a parcel of land, with respect to which Lheidli T'enneh wishes to dispose of a fee simple estate, removed from Lheidli T'enneh Lands.

16. In deciding whether to consent to the removal of a parcel of land from Lheidli T'enneh Lands under paragraph 15 Canada and British Columbia may consider:
  - a. necessary jurisdictional, administrative and servicing arrangements;
  - b. the views of any affected Local Government and neighbouring First Nations;
  - c. whether removal of the land will have an impact on negotiated fiscal arrangements; or
  - d. whether removal of the land will create legal or financial exposure to Canada or British Columbia.
17. If Canada and British Columbia consent to the removal of a parcel of land from Lheidli T'enneh Lands under paragraph 15, the parcel will cease to be Lheidli T'enneh Lands upon receipt by Lheidli T'enneh of written notice of the consent of each of Canada and British Columbia, and Appendix A will be amended in accordance with the process set out in paragraph 64 of the General Provisions Chapter.
18. 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, will be abolished with respect to Lheidli T'enneh Lands.
19. If a parcel of Lheidli T'enneh Lands, or any interest or estate in a parcel of Lheidli T'enneh Lands, finally escheats to the Crown, the Crown will transfer that parcel, interest or estate to Lheidli T'enneh at no charge.
20. No interest, estate, reservation or exception of Lheidli T'enneh in any parcel of Lheidli T'enneh Lands, the indefeasible title to which parcel, under the *Land Title Act*, is not registered in fee simple or subject to an application for registration in fee simple, is subject to attachment, charge, seizure, distress, execution or sale, except:
  - a. pursuant to:
    - i. a lien, charge or other encumbrance in favour of Canada or British Columbia, or
    - ii. the terms of a security instrument granted by Lheidli T'enneh; or
  - b. if allowed under a law made by the Lheidli T'enneh Government under paragraph 58.

## **AGRICULTURAL LAND RESERVE**

21. On the Effective Date, any portion of Lheidli T'enneh Lands identified in Appendices A-2, A-3, and A-4 Plan 2 through A-4 Plan 5 that is designated as an Agricultural Land Reserve in accordance with the *Agricultural Land Commission Act* is excluded from the Agricultural Land Reserve.
22. On the Effective Date, the Lheidli T'enneh Lands identified in Appendix A-4 Plan 1 retain the designation as an Agricultural Land Reserve in accordance with the *Agricultural Land Commission Act*.
23. Any lands designated as an Agricultural Land Reserve which are added to the Lheidli T'enneh Lands in accordance with this Agreement, retain the designation as an Agricultural Land Reserve in accordance with the *Agricultural Land Commission Act*.
24. The designation of areas of Lheidli T'enneh Lands as an Agricultural Land Reserve may be removed by the Agricultural Land Commission in accordance with the *Agricultural Land Commission Act*.
25. Notwithstanding paragraph 59, with respect to Lheidli T'enneh Lands that retain the designation as an Agricultural Land Reserve under paragraphs 22 and 23, in the event of a Conflict between a Lheidli T'enneh Law under paragraph 58 and the *Agricultural Land Commission Act*, the *Agricultural Land Commission Act* prevails to the extent of the Conflict.
26. For Lheidli T'enneh Lands that retain the designation as an Agricultural Land Reserve, the Agricultural Land Commission will explore with Lheidli T'enneh opportunities to include Lheidli T'enneh in Agricultural Land Commission processes with respect to those Lheidli T'enneh Lands, including the delegation of decision-making under section 26 of the *Agricultural Land Commission Act*.
27. To the extent that any part of Lheidli T'enneh Lands is not designated as an Agricultural Land Reserve, those lands will not be designated as an Agricultural Land Reserve without the consent of Lheidli T'enneh.

## **SHELLEY TIMBER RESERVATION**

28. On the Effective Date, British Columbia will reserve to itself, in perpetuity, all coniferous Timber on the lands identified in Appendices A-4 Plan 1 to A-4 Plan 4.
29. The harvest of coniferous Timber reserved under paragraph 28 will be managed in accordance with the Shelley Timber Agreement agreed to by British Columbia and Lheidli T'enneh.

30. On the Effective Date, the Shelley Timber Agreement will be registered as a covenant under section 219 of the *Land Title Act* on title to the lands identified in Appendices A-4 Plan 1 to A-4 Plan 4 by British Columbia in priority to all financial charges on title to the lands and Lheidli T'enneh will do everything required of it to enable such registration and will obtain all agreements necessary to grant the covenant priority over all financial charges on title to the lands.
31. The Shelley Timber Agreement:
- a. is not part of this Agreement; and
  - b. is not a treaty or land claims agreement and does not recognize or affirm any aboriginal or treaty rights within the meaning of sections 25 or 35 of the *Constitution Act, 1982*.
32. Upon termination of the Shelley Timber Agreement, British Columbia will issue a supplemental grant of Timber to Lheidli T'enneh of all Timber reserved under paragraph 28.

#### **MILLAR GRAVEL PIT**

33. On the Effective Date, British Columbia will grant to the British Columbia Transportation Financing Authority a determinable fee simple estate in the lands identified in Appendix D for so long as the lands are required for the purpose of gravel extraction and other associated activities or until the 25th anniversary of the Effective Date, whichever occurs earlier.
34. British Columbia will assign to Lheidli T'enneh the benefit of the possibility of reverter created by the transfer of the lands identified in Appendix D for the purpose described in paragraph 33.
35. The management of gravel extraction and associated activities on the lands identified in Appendix D will be in accordance with the Millar Pit Gravel Management Plan agreed to by British Columbia and Lheidli T'enneh.
36. On the Effective Date, the Millar Pit Gravel Management Plan will be registered as a covenant under section 219 of the *Land Title Act* on title to the lands identified in Appendix D by British Columbia in priority to all financial charges on title to the lands and Lheidli T'enneh will do everything required of it to enable such registration and will obtain all agreements necessary to grant the covenant priority over all financial charges on title to the lands.
37. The Millar Pit Gravel Management Plan:
- a. is not part of this Agreement; and

- b. is not a treaty or land claims agreement and does not recognize or affirm any aboriginal or treaty rights within the meaning of sections 25 or 35 of the *Constitution Act, 1982*.
- 38. Upon reversion of the lands identified in Appendix D to Lheidli T'enneh, the lands will be Lheidli T'enneh Lands and Appendix A will be amended in accordance with the process set out in paragraph 64 of the General Provisions Chapter.

## **SUBMERGED LANDS**

- 39. British Columbia owns the Submerged Lands within Lheidli T'enneh Lands.
- 40. Lheidli T'enneh will own natural accretions to Lheidli T'enneh Lands and boundary adjustments relating to accretions will be made in accordance with the boundary resolution procedures under paragraphs 74 to 77.

## **SUBSURFACE RESOURCES**

- 41. Lheidli T'enneh owns all Subsurface Resources on or beneath the surface of Lheidli T'enneh Lands.
- 42. Subject to paragraph 43, as owners of Subsurface Resources, Lheidli T'enneh has the exclusive authority to determine, collect and administer any fees, rents, royalties or charges other than taxes, with respect to the development and extraction of Subsurface Resources owned by Lheidli T'enneh on or beneath the surface of Lheidli T'enneh Lands.
- 43. Paragraph 42 does not limit British Columbia from determining, collecting and receiving administrative fees, charges or other payments relating to the exploration, development, extraction and production of Subsurface Resources from Lheidli T'enneh Lands.
- 44. Lheidli T'enneh and British Columbia may enter into agreements with respect to the application on Lheidli T'enneh Lands of provincial administrative systems relating to:
  - a. subsurface Tenure management;
  - b. recording and inspecting of subsurface exploration and development;
  - c. the collection of fees, rents, royalties and other charges by British Columbia on behalf of Lheidli T'enneh; and
  - d. other similar matters.

45. Nothing in this Agreement confers authority on the Lheidli T'enneh Government to make laws with respect to:
- a. the exploration for, development, production, use and application of nuclear energy and atomic energy and the production, possession and use, for any purpose, of nuclear substances, prescribed substances, prescribed equipment and prescribed information; and
  - b. labour relations and working conditions with respect to the exploration, development and production of nuclear energy and atomic energy.
46. Nothing in this Agreement confers authority on the Lheidli T'enneh Government to make laws with respect 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. labour relations and working conditions including occupational health and safety and labour standards with respect to Subsurface Resources exploration, development, production and site reclamation;
  - c. the protection and reclamation of land and watercourses, with respect to Subsurface Resource exploration, development and production; and
  - d. the closure, reclamation or abandonment of mines.

#### **INTERESTS ON LHEIDLI T'ENNEH LANDS**

47. On the Effective Date, Lheidli T'enneh title to Lheidli T'enneh Lands is free and clear of all interests, except:
- a. those set out in Appendix E-1; and
  - b. those set out in Appendix E-2.
48. Subject to paragraph 47, every interest that, before the Effective Date, encumbered or applied to the lands that are Lheidli T'enneh Lands, ceases to exist.
49. Lheidli T'enneh will grant Tenures or issue replacement Tenures to those persons who are named in Appendix E-2 as persons who, immediately before the Effective Date, had interests in the lands that comprise Lheidli T'enneh Lands on the Effective Date.

50. On the Effective Date, Lheidli T'enneh will execute Tenure documents granting or issuing to each person named in Appendix E-2 that person's interest, as set out in that Appendix.
51. Tenure documents executed under paragraph 50 for an interest set out in Appendix E-2 will be in the applicable forms set out in Appendices E-3 and E-4 and will include any modifications agreed upon in writing before the Effective Date by Lheidli T'enneh and the person entitled to the Tenure.
52. Tenure documents referred to in paragraph 50 will be deemed to be:
- a. delivered by Lheidli T'enneh on the Effective Date; and
  - b. executed and delivered by each person referred to in those paragraphs on the Effective Date, whether or not the Tenure document is actually executed or delivered by that person.
53. Lheidli T'enneh will, as soon as practicable after the Effective Date, physically deliver the applicable Tenure document:
- a. to each person named in Appendix E-2; or
  - b. to any person who, before the Effective Date, was identified in writing to Lheidli T'enneh by Canada or British Columbia as the person who, instead of a person named in Appendix E-2, should receive a Tenure for an interest referred to in Appendix E-2 by reason of death, any form of transfer, error or operation of law and the Appendix will be amended to reflect the change.
54. If Canada or British Columbia notifies Lheidli T'enneh that a Tenure granted under paragraph 49 or 50:
- 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 responsible Parties will take reasonable measures to rectify the error.
55. Any Right of Way of the nature described in section 218 of the *Land Title Act* that is granted by Lheidli T'enneh under this Agreement is legally binding and enforceable notwithstanding that Lheidli T'enneh Lands to which the Right of Way applies are not registered under the *Land Title Act*.

## INDEMNITIES

56. British Columbia will indemnify and save harmless Lheidli T'enneh from any damages, losses, liabilities or costs, excluding fees and disbursements of solicitors and other professional advisors, that Lheidli T'enneh 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 E-2 of the name of a person who, immediately before the Effective Date, had an interest in Lheidli T'enneh Lands that had been granted by British Columbia; or
  - b. the incorrect naming of a person in Appendix E-2 as a person entitled to an interest, where another person was actually entitled, immediately before the Effective Date, to the interest in Lheidli T'enneh Lands that had been granted by British Columbia.
57. Section 34 of the *First Nations Land Management Act*, section 50 of the Framework Agreement on First Nation Land Management and the Individual Transfer Agreement dated August 25, 2000 between the Lheidli T'enneh First Nation and the Government of Canada as it relates to indemnities, will continue to apply.

## LAW-MAKING

58. The Lheidli T'enneh Government may make laws with respect to:
- a. the use of Lheidli T'enneh Lands, including:
    - i. management, which includes trespass and nuisance, and
    - ii. planning, zoning and development of Lheidli T'enneh Lands;
  - b. the ownership and disposition of interests or estates in Lheidli T'enneh Lands;
  - c. the establishment and operation of a Lheidli T'enneh land title or land registry system for Lheidli T'enneh Lands;
  - d. expropriation for public purposes and public works by the Lheidli T'enneh Government of interests or estates in Lheidli T'enneh Lands other than:
    - i. Tenures, including Rights of Way, granted or continued on the Effective Date, or thereafter replaced in accordance with this Agreement, unless specifically provided for otherwise in this Agreement; and

- ii. interests or estates expropriated or otherwise acquired by a Federal Expropriating Authority or expropriated by British Columbia or otherwise acquired by a Provincial Expropriating Authority,

if Lheidli T'enneh 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.

- 59. Subject to paragraph 60, in the event of a Conflict between a Lheidli T'enneh law under paragraph 58 and a Federal or Provincial Law, the Lheidli T'enneh law prevails to the extent of the Conflict.
- 60. In the event of a Conflict between a Lheidli T'enneh Law under subparagraph 58.b and a Federal or Provincial Law with respect to matrimonial real property, the Federal or Provincial Law prevails to the extent of the Conflict.
- 61. A Lheidli T'enneh Law under paragraph 58.b with respect to interests or estates that are recognized under Federal or Provincial Law must be consistent with Federal and Provincial Law with respect to interests or estates in land.

## **FLOOD PROTECTION**

- 62. Where Lheidli T'enneh Lands are vulnerable to flooding, Lheidli T'enneh will, in the management of land use and development of those lands, consider any provincial guidelines respecting flood hazard management and land use and development.

## **ADDITIONS TO LHEIDLI T'ENNEH LANDS**

- 63. At any time after the Effective Date, with the agreement of Canada and British Columbia, Lheidli T'enneh may add to Lheidli T'enneh Lands, land that is:
  - a. owned in fee simple by Lheidli T'enneh;
  - b. within the Lheidli T'enneh Area; and
  - c. outside of municipal boundaries, or within municipal boundaries if the municipality consents.
- 64. In addition to the requirements under paragraph 63, Canada may require that any addition of land to Lheidli T'enneh Lands will be in an area that is not an area to which another First Nation has a claim of legal interest, an area subject to treaty negotiations or an area subject to a treaty or land claims agreement, unless consent is obtained from the First Nation that has made the claim of legal interest or is party to the treaty negotiation or treaty.

65. When making a decision pursuant to paragraph 63, Canada and British Columbia may take into account other factors including:
- a. whether the land is contiguous to existing Lheidli T'enneh Lands;
  - b. interests of a Regional District in cases where the land is within a Regional District but not within a municipality; and
  - c. other matters that Canada or British Columbia considers relevant.
66. Nothing in paragraph 63 obligates Canada or British Columbia to pay any costs associated with the purchase or transfer of the land that is added to Lheidli T'enneh Lands under paragraph 63 or any other costs related to the addition of the land to Lheidli T'enneh Lands.
67. Any interest in the land that is added to Lheidli T'enneh Lands under paragraph 63 will remain unless Lheidli T'enneh and the person holding that interest agree to a replacement Tenure.
68. Lheidli T'enneh will own the Subsurface Resources on land that is added to Lheidli T'enneh Lands under paragraph 63 if:
- a. the fee simple title includes ownership of the Subsurface Resources; or
  - b. British Columbia owns the Subsurface Resources and British Columbia and Lheidli T'enneh agree.
69. British Columbia will not unreasonably withhold agreement under subparagraph 68.b.
70. If Lheidli T'enneh adds land to Lheidli T'enneh Lands under paragraph 63, the land will, if necessary, be surveyed in accordance with the procedure set out in Schedule A, and Appendix A will be amended in accordance with the process set out in paragraph 64 of the General Provisions Chapter.

## INITIAL SURVEYS

71. Before the Effective Date, or as soon as practicable after the Effective Date, Initial Surveys will be conducted of the boundaries of Lheidli T'enneh Lands.
72. Canada and British Columbia will, as agreed between them, pay the full cost of the Initial Surveys.
73. If the Initial Surveys are completed after the Effective Date, Appendix A will be amended in accordance with the process set out in paragraph 64 of the General Provisions Chapter to reflect the Initial Surveys.

## **BOUNDARY RESOLUTION**

74. If a Party provides the other Parties with a proposal to clarify the location of any part of a boundary of Lheidli T'enneh Lands, the Parties will follow the survey procedure set out in Schedule A of this Chapter.
75. If a boundary clarification under paragraph 74 results in the adjustment of a boundary of any part of Lheidli T'enneh Lands, Appendix A will be deemed to be amended in accordance with the process set out in paragraph 64 of the General Provisions chapter.
76. Unless the Parties otherwise agree, the cost of any boundary clarification under paragraph 74 will be borne by:
  - a. the Party authorizing an activity causing the need for the clarification of the boundary location; or
  - b. the Party proposing clarification of the boundary location, if no Party has authorized an activity causing the need for clarification of the boundary location.
77. If the Parties do not agree on whether or at whose cost to undertake the proposed boundary clarification, any Party may refer the matter to be finally determined by arbitration in accordance with the Dispute Resolution Chapter.

## **PROVINCIAL EXPROPRIATION OF LHEIDLI T'ENNEH LANDS**

78. British Columbia and Lheidli T'enneh agree that as a general principle Lheidli T'enneh Lands will not be subject to expropriation.
79. Notwithstanding paragraph 78, British Columbia may expropriate Lheidli T'enneh Lands in accordance with this Chapter.
80. British Columbia may expropriate an interest or estate in Lheidli T'enneh Lands only with the consent and by the order of the Lieutenant Governor in Council for the use of a Provincial Expropriating Authority.
81. If a Provincial Expropriating Authority has determined that it must use Lheidli T'enneh Lands, the Provincial Expropriating Authority will make reasonable efforts to acquire the necessary interest or estate in Lheidli T'enneh Lands through agreement with Lheidli T'enneh.
82. The Lieutenant Governor in Council may issue an order consenting to an expropriation of an interest or estate in Lheidli T'enneh Lands only:
  - a. after the conclusion of the procedures described in paragraphs 83 to 85; and

- b. if the expropriation is justifiable in accordance with paragraph 87.
83. Before the Lieutenant Governor in Council makes a final decision respecting the expropriation of an interest or estate in Lheidli T'enneh Lands, the Provincial Expropriating Authority will provide to Lheidli T'enneh and, where applicable, British Columbia, a report stating the reasons for the expropriation and the steps taken to satisfy the requirements under paragraph 87.
84. If Lheidli T'enneh responds to the report required under paragraph 83, and objects to the expropriation of the interest or estate in Lheidli T'enneh Lands, British Columbia and Lheidli T'enneh will, within 60 days of the delivery to Lheidli T'enneh of that report, make reasonable efforts to resolve the objection raised by Lheidli T'enneh.
85. The Lieutenant Governor in Council will not consent to the expropriation before the end of the period provided for in paragraph 84.
86. Notwithstanding paragraphs 82 to 85, the Lieutenant Governor in Council may consent to the expropriation if the Minister or Lieutenant Governor in Council has declared a state of emergency.
87. For the purposes of subparagraph 82.b, an expropriation is justifiable where the Lieutenant Governor in Council is satisfied that the following requirements have been met:
- a. there is no other reasonably feasible alternative to the expropriation, including the use of lands that are not Lheidli T'enneh Lands;
  - b. reasonable efforts have been made by the Provincial Expropriating Authority to acquire the interest or estate in Lheidli T'enneh Lands through agreement with Lheidli T'enneh;
  - c. the most limited interest or estate in Lheidli T'enneh Lands necessary is expropriated for the shortest time possible; and
  - d. information relevant to the expropriation, other than documents that would be protected from disclosure under Provincial Law, has been provided to Lheidli T'enneh.
88. If British Columbia expropriates an interest or estate in a parcel of Lheidli T'enneh Lands, that parcel of land retains its status as Lheidli T'enneh Lands unless the expropriation is of the fee simple estate and British Columbia and Lheidli T'enneh agree that the land is no longer Lheidli T'enneh Lands.
89. If, under paragraph 88, a parcel of land is no longer Lheidli T'enneh Lands, the fee simple estate in that parcel of land includes Subsurface Resources unless British Columbia and Lheidli T'enneh otherwise agree.

90. British Columbia will provide compensation to Lheidli T'enneh for the expropriation of Lheidli T'enneh Lands in accordance with this Agreement.
91. Lheidli T'enneh will, from the amount of compensation provided by British Columbia to Lheidli T'enneh, provide full compensation to a person or entity whose interest or estate has been expropriated.
92. The total value of the compensation provided by British Columbia will take into account the following factors:
  - a. the market value of the expropriated interest or estate;
  - b. the replacement value of any improvement to the land where it is reasonably necessary to rebuild the improvement on other land;
  - 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 Lheidli T'enneh Lands by the Lheidli T'enneh to the extent that this value is not otherwise compensated; and
  - e. damages for any reduction in the value of a remaining interest.
93. In the event of the expropriation of a fee simple estate in a parcel of Lheidli T'enneh Lands, British Columbia will make reasonable efforts to identify replacement land within the Lheidli T'enneh Area, being either provincial Crown land or land available on a "willing-seller, willing-buyer" basis, of equivalent or greater size and comparable value and, if acceptable to Lheidli T'enneh, to acquire and offer the replacement land to Lheidli T'enneh as compensation for the expropriation.
94. If British Columbia or Lheidli T'enneh do not agree on the value of replacement land offered as compensation under paragraph 93, either British Columbia or Lheidli T'enneh may refer the matter to be finally determined by arbitration in accordance with the Dispute Resolution Chapter.
95. If the replacement land provided under paragraph 93 is of less than comparable value, British Columbia will provide additional compensation in accordance with paragraph 92.
96. If British Columbia and Lheidli T'enneh do not agree on the provision of replacement land as compensation under paragraph 93, British Columbia will provide Lheidli T'enneh with other compensation in accordance with paragraph 92.
97. The replacement land, including any Subsurface Resources, will continue to be subject to any interest which exists in such lands immediately before the transfer to Lheidli T'enneh, unless otherwise agreed by British Columbia and Lheidli T'enneh.

98. Unless Lheidli T'enneh requests otherwise, replacement land transferred by a Provincial Expropriating Authority to Lheidli T'enneh as part of compensation in accordance with paragraph 93, will be added to Lheidli T'enneh Lands if Canada and British Columbia consent.
99. British Columbia will consent to replacement land provided under paragraph 93 being added to Lheidli T'enneh Lands if:
- a. under paragraph 88, the expropriated land is no longer Lheidli T'enneh Lands;
  - b. the replacement land is located within the Lheidli T'enneh Area;
  - c. the addition of replacement lands to Lheidli T'enneh Lands will not obligate Canada or British Columbia to assume financial or other obligations; and
  - d. the replacement land is outside municipal boundaries, or is within municipal boundaries and the municipality consents.
100. Unless Lheidli T'enneh and British Columbia agree otherwise, replacement land that is added to Lheidli T'enneh Lands under paragraph 98 will include ownership of Subsurface Resources if British Columbia owns the Subsurface Resources in the replacement land immediately before the transfer of the land to Lheidli T'enneh.
101. A dispute on the total value of compensation under paragraph 92 or on the valuation of replacement land under paragraph 94, will not delay the expropriation.
102. If an expropriation has an adverse effect on the cultural or other special value of the land, British Columbia and Lheidli T'enneh will negotiate and attempt to reach agreement on reasonable remedial measures.
103. If a parcel of Lheidli T'enneh Lands is no longer Lheidli T'enneh Lands in accordance with paragraph 88, or where replacement lands are added to Lheidli T'enneh Lands in accordance with paragraph 99, Appendix A will be amended in accordance with the process set out in paragraph 64 of the General Provisions Chapter.
104. If British Columbia expropriates an interest or estate in a parcel of Lheidli T'enneh Lands and the land retains its status as Lheidli T'enneh Lands:
- a. the parcel of land remains subject to Lheidli T'enneh Law except to the extent that the Lheidli T'enneh Law is inconsistent with the use of land for which the expropriation took place; and
  - b. Lheidli T'enneh may continue to use and occupy the parcel of land, except to the extent that such use or occupation is inconsistent with the use of land for which the expropriation took place.

105. If an expropriated interest or estate in Lheidli T'enneh Lands is no longer required by the Provincial Expropriating Authority, the interest or estate will be returned to Lheidli T'enneh subject to terms to be negotiated.
106. The Minister responsible for the expropriating ministry or agency, without the consent of the Lieutenant Governor in Council, may:
  - a. decide that the interest or estate is no longer required; and
  - b. determine the disposition of any improvements.
107. For greater certainty, Provincial Law relating to expropriation applies to an expropriation of Lheidli T'enneh Lands by British Columbia except to the extent that this Agreement modifies the application of such Provincial Law.

#### **FEDERAL EXPROPRIATION OF LHEIDLI T'ENNEH LANDS**

108. Canada and Lheidli T'enneh agree that as a general principle Lheidli T'enneh Lands will not be subject to expropriation.
109. Notwithstanding paragraph 108, Canada may expropriate Lheidli T'enneh Lands in accordance with this Chapter.
110. An interest or estate in Lheidli T'enneh Lands may be expropriated by a Federal Expropriating Authority in accordance with Federal Law and with the consent of the Governor in Council.
111. The Governor in Council may consent to an expropriation of an interest or estate in Lheidli T'enneh Lands only if the expropriation is justifiable in accordance with paragraph 112 and necessary for a federal public purpose.
112. For the purposes of paragraph 111, an expropriation is justifiable where the Governor in Council is satisfied that the following requirements have been met:
  - a. there is no other reasonably feasible alternative to the expropriation, including the acquisition of an interest in lands that are not Lheidli T'enneh Lands;
  - b. reasonable efforts have been made by the Federal Expropriating Authority to acquire the interest or estate in Lheidli T'enneh Lands through agreement with Lheidli T'enneh;
  - c. the most limited interest or estate in Lheidli T'enneh Lands necessary is expropriated for the shortest time possible; and

- d. information relevant to the expropriation, other than documents that would be protected from disclosure under Federal Law, has been provided to Lheidli T'enneh.
113. Before the Governor in Council issues an order consenting to the expropriation of an interest or estate in Lheidli T'enneh Lands, the Federal Expropriating Authority will provide to Lheidli T'enneh, and make available to the public, a report stating the justification for the expropriation and describing the steps taken to satisfy the requirements set out in paragraph 112.
114. If Lheidli T'enneh objects to a proposed expropriation of an interest or estate in Lheidli T'enneh Lands, it may, within 60 days after the report has been provided under paragraph 113, by providing notice in writing to the Federal Expropriating Authority, refer the matter for review of the steps taken to satisfy the requirements set out in paragraph 112 directly to neutral evaluation in accordance with subparagraph 23.c of the Dispute Resolution Chapter.
115. The Federal Expropriating Authority may not seek Governor in Council consent to the expropriation of an interest or estate in Lheidli T'enneh Lands:
- a. before the expiration of the period referred to in paragraph 114;
  - b. if Lheidli T'enneh has referred the matter to a neutral evaluator in accordance with paragraph 114, before the neutral evaluator has delivered an opinion on the matter, such opinion to be rendered within 60 days of the referral being made; or
  - c. within such additional time as Lheidli T'enneh and the Federal Expropriating Authority may agree.
116. Without limiting the generality of the Dispute Resolution Chapter, the opinion of the neutral evaluator under paragraph 114:
- a. is without prejudice to the legal positions that may be taken by a Federal Expropriating Authority and Lheidli T'enneh in court or in any other forum;
  - b. will not be admissible in any legal proceedings, unless otherwise required by law; and
  - c. is not binding on the Governor in Council under paragraphs 111 and 112.
117. If a fee simple estate in a parcel of Lheidli T'enneh Lands is expropriated by a Federal Expropriating Authority, the Federal Expropriating Authority will make reasonable efforts to identify replacement land within the Lheidli T'enneh Area, being either federal Crown land or land available on a "willing-seller, willing-buyer" basis, of equivalent or greater size and comparable value and, if acceptable to Lheidli T'enneh, to acquire and

offer the replacement land to Lheidli T'enneh as full or partial compensation for the expropriation.

118. If the Federal Expropriating Authority and Lheidli T'enneh are unable to agree on the provision of replacement land as compensation, the Federal Expropriating Authority will provide Lheidli T'enneh with other compensation in accordance with this Agreement.
119. Subject to paragraph 136, if the replacement land identified by the Federal Expropriating Authority would result in the total amount of Lheidli T'enneh Lands being less than at the Effective Date, and Lheidli T'enneh does not agree that the replacement land is of comparable value to the estate in Lheidli T'enneh Lands being expropriated, Lheidli T'enneh may refer the issue of whether the replacement land is of comparable value to the estate in Lheidli T'enneh Lands being expropriated to be finally determined by arbitration in accordance with the Dispute Resolution Chapter.
120. The total value of compensation for an interest or estate in Lheidli T'enneh Lands expropriated by a Federal Expropriating Authority pursuant to this Chapter will be determined by taking into account the following factors:
- a. the market value of the expropriated interest or estate;
  - b. the replacement value of any improvement to the Lheidli T'enneh Lands in which the interest or estate has been expropriated;
  - c. any expenses or losses resulting from the disturbance directly attributable to the expropriation;
  - d. any reduction in the value of any interest or estate in Lheidli T'enneh Lands that is not expropriated which directly relates to the expropriation;
  - e. any adverse effect on any cultural or other special value to the Lheidli T'enneh of Lheidli T'enneh Lands in which an interest or estate has been expropriated, provided that the cultural or other special value is only applied to an interest or estate in Lheidli T'enneh Lands recognized in law and held by Lheidli T'enneh, and provided that there is no increase in the total value of compensation on account of any Aboriginal rights, title or interest; and
  - f. the value of any special economic advantage arising out of or incidental to the occupation or use of the Lheidli T'enneh Lands by the Lheidli T'enneh to the extent that the value is not otherwise compensated.
121. Subject to paragraph 136, if the total value of compensation cannot be agreed upon between the Federal Expropriating Authority and Lheidli T'enneh, or where there is disagreement on whether the combination of replacement land and cash is equal to the total value of compensation, the Federal Expropriating Authority, or Lheidli T'enneh,

- may refer the issue of the total value of compensation for dispute resolution in accordance with the Dispute Resolution Chapter.
122. Any claim or encumbrance with respect to the interest or estate expropriated by a Federal Expropriation Authority may only be discharged against the amount of compensation payable under paragraph 120.
123. Interest on compensation is payable from the date of an expropriation, at the prejudgment interest rate payable under Federal Law.
124. If a fee simple estate in a parcel of Lheidli T'enneh Lands is expropriated by a Federal Expropriating Authority, the parcel of land will no longer be Lheidli T'enneh Lands.
125. If less than a fee simple estate in a parcel of Lheidli T'enneh Lands is expropriated by a Federal Expropriating Authority:
- a. the parcel of land retains its status as Lheidli T'enneh Lands;
  - b. the parcel of land remains subject to Lheidli T'enneh Law that is otherwise applicable, except to the extent that Lheidli T'enneh Law is inconsistent with the use of the parcel of land for which the parcel was expropriated; and
  - c. Lheidli T'enneh may continue to use and occupy the parcel of land, except to the extent the use or occupation is inconsistent with the expropriation as determined by the Federal Expropriating Authority.
126. Unless Lheidli T'enneh requests otherwise, replacement land transferred by a Federal Expropriating Authority to Lheidli T'enneh as part of compensation in accordance with paragraph 117, will be added to Lheidli T'enneh Lands if Canada and British Columbia consent.
127. Canada will, subject to paragraph 128, consent to replacement land transferred by a Federal Expropriating Authority to Lheidli T'enneh as part of the compensation under paragraph 117, being added to Lheidli T'enneh Lands if:
- a. the replacement land is located within the Lheidli T'enneh Area;
  - b. the addition of replacement lands to Lheidli T'enneh Lands will not obligate Canada or British Columbia to assume financial or other obligations; and
  - c. the replacement land is outside municipal boundaries, or is within municipal boundaries and the municipality consents.
128. In addition to the requirements under paragraph 127, Canada may require that any replacement land will be in an area that is not in an area where another First Nation has a claim of legal interest, an area subject to treaty negotiations or an area subject to a treaty

or land claims agreement, unless consent is obtained from the First Nation that has made the claim of legal interest or is party to the treaty negotiation or treaty or land claims agreement.

129. Replacement land that is added to Lheidli T'enneh Lands under paragraph 126 will include ownership of the Subsurface Resources if:
- a. the fee simple estate in Lheidli T'enneh Lands is expropriated by the Federal Expropriating Authority and includes the Subsurface Resources; and
  - b. the Federal Expropriating Authority owns the Subsurface Resources in the replacement land immediately before the transfer of the land to Lheidli T'enneh.
130. If an expropriated interest or estate in a parcel of Lheidli T'enneh Lands is no longer required for the purpose for which it was expropriated, the federal department, agency or person for whom the land was expropriated, or its successors or assigns, will ensure that the interest or estate in land is returned to Lheidli T'enneh on the terms and conditions of reversion negotiated in accordance with paragraph 134.
131. Where a fee simple estate in a parcel of land is returned to Lheidli T'enneh under paragraph 130, the parcel of land will become Lheidli T'enneh Lands on the date of the transfer of the fee simple estate in the parcel of land to Lheidli T'enneh.
132. If a parcel of Lheidli T'enneh Lands is no longer Lheidli T'enneh Lands under paragraph 124, or where replacement lands are added to Lheidli T'enneh Lands under paragraph 126, or where land is returned to Lheidli T'enneh under paragraph 130, Appendix A will be amended in accordance with the process set out in paragraph 64 of the General Provisions Chapter.
133. The consent of the Governor in Council is not required to give effect to a reversion under paragraph 130, and the federal department, agency or person for whom the land was expropriated, or its successors or assigns, may determine whether the expropriated interest or estate in land is no longer required and will determine the disposition of any improvements made to the land in a manner consistent with the agreement reached pursuant to paragraph 134.
134. The terms and conditions of the return of an expropriated interest or estate in Lheidli T'enneh Lands, including:
- a. requirements relating to financial considerations based on market value principles;
  - b. the condition of the land to be returned;
  - c. the disposition of any improvements; and

- d. the process for resolving disputes around the implementation of these terms and conditions,

will be negotiated by Lheidli T'enneh and the Federal Expropriating Authority at the time of the expropriation.

- 135. If the terms and conditions of the return of an expropriated interest or estate in Lheidli T'enneh Lands cannot be agreed upon by Lheidli T'enneh and the Federal Expropriating Authority at the time of the expropriation, Lheidli T'enneh or the Federal Expropriating Authority may refer the issue to be finally determined by arbitration in accordance with the Dispute Resolution Chapter.
- 136. A dispute on the valuation of replacement land under paragraph 119, or on the total value of compensation under paragraph 121, or on the terms and conditions of the return of land under paragraph 134, will not delay the expropriation.
- 137. Except as otherwise provided in paragraphs 108 to 140, no conflict or dispute between the Parties respecting the interpretation, application or implementation of paragraphs 108 to 140 will go to dispute resolution under the Dispute Resolution Chapter.
- 138. For greater certainty, and subject to paragraph 139, except to the extent that the provisions of this Chapter modify the application of Federal Law relating to an expropriation of Lheidli T'enneh Lands, Federal Law relating to expropriation applies to an expropriation of Lheidli T'enneh Lands under this Chapter.
- 139. Without limiting the generality of paragraph 21 of the General Provisions Chapter, in the event of a Conflict between this Agreement and the *Expropriation Act* (Canada) or other Federal Law relating to expropriation, the provisions of this Agreement prevail to the extent of the Conflict.
- 140. Nothing in this Agreement affects or limits the application of the *Emergencies Act* and the *Emergencies Act* will continue to apply in all aspects on Lheidli T'enneh Lands.
- 141. If Lheidli T'enneh disposes of a fee simple estate in a parcel of Lheidli T'enneh Land and that estate is held by a Lheidli T'enneh Citizen, a Lheidli T'enneh Corporation or a Lheidli T'enneh Public Institution, the following paragraphs will apply to the expropriation of an interest or estate in that parcel of land including any interest or estate that is less than a fee simple estate that is held by Lheidli T'enneh in that parcel of land:
  - a. paragraphs 108 to 116;
  - b. paragraphs 124 to 125;
  - c. paragraphs 130 and 131;
  - d. paragraph 132 as applicable;

- e. paragraphs 133 to 135;
- f. paragraph 136 as applicable; and
- g. paragraphs 137 to 140.

## **FUTURE ACQUISITIONS**

### **Canadian National Railway Company Sidings**

142. After the Effective Date, if Lheidli T'enneh acquires the lands identified in Appendix G-1 from Canadian National Railway or its successors or assigns, in fee simple, those lands will be added to Lheidli T'enneh Lands and Appendix A will be amended in accordance with the process set out in paragraph 64 of the General Provisions Chapter.

### **Destination Resort Sites**

143. Within five years after the Effective Date, Lheidli T'enneh may identify to British Columbia two areas of provincial Crown land of between ten and 100 hectares each from within the Lheidli T'enneh Area that Lheidli T'enneh has an interest in acquiring for purposes including destination resort development.
144. Subject to the Minister's review and approval, Lheidli T'enneh may acquire the lands identified under paragraph 143 from British Columbia.
145. The purchase price for the lands identified under paragraph 143 will be negotiated between British Columbia and Lheidli T'enneh and will reflect market value for the lands.
146. If British Columbia and Lheidli T'enneh do not agree on the market value for the lands identified under paragraph 143, either Party may refer the issue for resolution in accordance with the Dispute Resolution Chapter.
147. Any interest in the land that is identified under paragraph 143 will remain unless Lheidli T'enneh and the person holding that interest agree otherwise.

### **Cale Creek**

148. On the Effective Date, British Columbia will:
- a. withdraw the provincial Crown lands identified in Appendix G-2 from disposition under Section 16 of the *Land Act*;
  - b. establish a mineral reserve under the *Mineral Tenures Act*;

- c. establish a coal land reserve under the *Coal Act*; and
  - d. establish a no disposition notation under the *Petroleum and Natural Gas Act*,  
for a period of five years.
149. Within five years after the Effective Date, Lheidli T'enneh may acquire the lands identified in Appendix G-2 from British Columbia at a purchase price to be negotiated between British Columbia and Lheidli T'enneh that reflects market value for the lands.
150. If British Columbia and Lheidli T'enneh do not agree on the market value for the lands, either Party may refer the issue for resolution in accordance with the Dispute Resolution Chapter.
151. Any interest in the land that is identified in Appendix G-2 will remain unless Lheidli T'enneh and the person holding that interest agree otherwise.

#### **Purden Lake**

152. On the Effective Date, British Columbia will:
- a. withdraw the provincial Crown lands identified in Appendix G-3 from disposition under Section 16 of the *Land Act*;
  - b. establish a mineral reserve under the *Mineral Tenures Act*;
  - c. establish a coal land reserve under the *Coal Act*; and
  - d. establish a no disposition notation under the *Petroleum and Natural Gas Act*,  
for a period of five years.
153. Within five years of the Effective Date, Lheidli T'enneh may acquire the lands identified in Appendix G-3 from British Columbia at a purchase price to be negotiated between British Columbia and Lheidli T'enneh that reflects market value for the lands.
154. If British Columbia and Lheidli T'enneh do not agree on the market value for the lands identified in Appendix G-3, either Party may refer the issue for resolution in accordance with the Dispute Resolution Chapter.
155. If Lheidli T'enneh acquires the lands identified in Appendix G-3 within five years after the Effective Date, those lands will be added to Lheidli T'enneh Lands and Appendix A will be amended in accordance with the process set out in paragraph 64 of the General Provisions Chapter.

156. Any interest in the land that is identified in Appendix G-3 will remain unless Lheidli T'enneh and the person holding that interest agree to a replacement Tenure.

**Shelley B, C and D**

157. On the Effective Date, British Columbia will:
- a. withdraw the provincial Crown lands identified in Appendix G-4 from disposition under Section 16 of the *Land Act*;
  - b. establish a mineral reserve under the *Mineral Tenures Act*;
  - c. establish a coal land reserve under the *Coal Act*; and
  - d. establish a no disposition notation under the *Petroleum and Natural Gas Act*,
- for a period of five years.
158. Within five years after the Effective Date, Lheidli T'enneh may acquire the lands identified in Appendix G-4 from British Columbia at a purchase price to be negotiated between British Columbia and Lheidli T'enneh that reflects market value for the lands.
159. If British Columbia and Lheidli T'enneh do not agree on the market value for the lands identified in Appendix G-4, either Party may refer the issue for resolution in accordance with the Dispute Resolution Chapter.
160. If Lheidli T'enneh acquires the lands identified in Appendix G-4 within five years after the Effective Date, those lands will be added to Lheidli T'enneh Lands and Appendix A will be amended in accordance with the process set out in paragraph 64 of the General Provisions Chapter.
161. Subject to paragraph 162, any interest in the land that is acquired by Lheidli T'enneh under paragraph 158 will remain unless Lheidli T'enneh and the person holding that interest agree to a replacement Tenure.
162. Lheidli T'enneh will issue replacement Tenures to those persons who are named in Appendix G-5 in the form set out in Appendix E-3, Documents 3 and 4, including any modifications agreed to in writing by Lheidli T'enneh and the person entitled to the Tenure.

**Transaction costs**

163. For any purchase of lands by Lheidli T'enneh in accordance with paragraphs 142 to 151, Lheidli T'enneh will be responsible for all transaction costs that are normally the responsibility of a purchaser of provincial Crown land.

**LHEIDLI T'ENNEH OWNERSHIP OF PRIVATE FEE SIMPLE LANDS**

164. On the Effective Date, Lheidli T'enneh owns private fee simple lands identified in Appendix H-1 in fee simple, subject to the interests set out in Appendix H-2.
165. The estate in fee simple to private fee simple lands owned by Lheidli T'enneh is subject to the conditions, provisos, restrictions, exceptions, and reservations set out in the *Land Act*, or any comparable limitation under Federal or Provincial Law.
166. Private fee simple lands owned by Lheidli T'enneh are not Lheidli T'enneh Lands.

## **SCHEDULE A – SURVEY PROCEDURE**

1. If the Parties agree to undertake a field survey of a part of Lheidli T'enneh Lands boundary, or if an arbitrator orders the field survey of a part of Lheidli T'enneh Lands boundary, the Parties will provide notice to the Surveyor General of British Columbia of the agreement of the Parties or the order of the arbitrator.
2. If an Initial Survey is to be undertaken after the Effective Date, or a survey of a Crown Road listed in Appendix C-1 or a Municipal Road listed in Appendix C-2 is to be undertaken, the Parties will provide notice to the Surveyor General of British Columbia.
3. Following receipt of a notice under paragraph 1 or 2, the Surveyor General of British Columbia will prepare survey instructions and, once approved by the Parties, issue them to the British Columbia land surveyor designated to undertake the survey.
4. The British Columbia land surveyor will provide copies of the initial and any subsequent survey returns to the Surveyor General of British Columbia and the Parties.
5. Within 30 days after a Party receives a copy of the survey return from the British Columbia land surveyor, the Party will provide, in writing, to the Surveyor General of British Columbia, its approval of the survey return or any recommendation that the Party wishes to make for the issuance of further instructions to the designated British Columbia land surveyor.
6. If all the Parties approve the survey return, the Surveyor General of British Columbia will request the British Columbia land surveyor to submit the final plan to the Surveyor General of British Columbia for confirmation.
7. If one or more of the Parties recommend the issuance of further instructions to the British Columbia land surveyor, the Surveyor General of British Columbia will, as soon as practicable, compile any recommendations received with respect to the survey return and submit the further instructions to the Parties for approval.
8. Upon receipt of the approval referred to under paragraph 7, the Surveyor General of British Columbia will issue the approved further instructions to the British Columbia land surveyor to amend the survey return.
9. Upon receipt of the amended survey return, the Surveyor General of British Columbia will seek written consent to the amendments from the Parties.
10. Upon receipt of consent under paragraph 9, the Surveyor General of British Columbia will request the British Columbia land surveyor to submit the final plan to the Surveyor General of British Columbia for confirmation.
11. Upon confirmation of the final plan, the Surveyor General of British Columbia will file one copy of the plan in the provincial Crown land registry and will forward one copy to each of the Parties.

## **CHAPTER 6**

### **LAND TITLE**

#### **FEDERAL TITLE REGISTRATION**

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

#### **LAND TITLES SYSTEM (TORRENS)**

2. The *Land Title Act* does not apply to a parcel of Lheidli T'enneh 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 under that Act in accordance with this Agreement.
3. If Lheidli T'enneh applies under the *Land Title Act* in accordance with this Agreement, for the registration of an indefeasible title to a parcel of Lheidli T'enneh Lands, then, effective from the time of application and until the application has been withdrawn or rejected, or the indefeasible title is cancelled, the *Land Title Act*, but not any Lheidli T'enneh Law with respect to land title or land registration made pursuant to this Agreement, applies to the parcel.

#### **APPLICATION FOR REGISTRATION OF INDEFEASIBLE TITLE**

4. Lheidli T'enneh, and no other person, may apply under the *Land Title Act* for the registration of an indefeasible title to a parcel of Lheidli T'enneh Lands for which no indefeasible title is registered at the time of application, and such application may be made in the name of Lheidli T'enneh or on behalf of another person.
5. Lheidli T'enneh will, as soon as practicable after the Effective Date, apply for the registration of indefeasible title under paragraph 4 to those parcels of Lheidli T'enneh Land for which no indefeasible title is registered and for which Lheidli T'enneh has granted a Tenure or replacement Tenure identified in Part 1 of Appendix E-2.

## **LAND TITLE FEES**

6. If Lheidli T'enneh applies for the registration of an indefeasible title to a parcel of Lheidli T'enneh Lands for which no indefeasible title has been registered after the Effective Date, and the proposed registered owner in fee simple is Lheidli T'enneh, a Lheidli T'enneh Corporation, or a Lheidli T'enneh Public Institution, no land title fees are payable with respect to the application by which the proposed registered owner becomes the registered owner.

## **LHEIDLI T'ENNEH CERTIFICATE**

7. Lheidli T'enneh, when applying for the registration of an indefeasible title to a parcel of Lheidli T'enneh Lands under paragraph 4, will provide to the Registrar:
  - a. a description of the boundaries of the parcel;
  - b. a certificate of the Lheidli T'enneh Government certifying that, on the date of the Lheidli T'enneh Certificate, the person named as the owner in fee simple in the Lheidli T'enneh Certificate is the owner of the estate in fee simple of the parcel, and certifying that the Lheidli T'enneh Certificate sets out all:
    - i. subsisting conditions, provisos, restrictions, exceptions, and reservations contained in the original or any other conveyance or disposition from the Lheidli T'enneh whether in favour of Lheidli T'enneh or another person;
    - ii. interests or estates; and
    - iii. charges with respect to a debt owed to Lheidli T'enneh,to which the estate in fee simple of the parcel is subject, and
  - c. registrable copies of all documents necessary to register all of the items referred to in subparagraph 7.b.
8. A Lheidli T'enneh Certificate will expire if:
  - a. within seven days of the date of the Lheidli T'enneh Certificate, Lheidli T'enneh has not made an application for registration of an indefeasible title to the parcel referred to in the Lheidli T'enneh Certificate; or
  - b. an application under subparagraph 8.a has been made but that application has been withdrawn or rejected.

## REGISTRATION OF INDEFEASIBLE TITLE

9. If Lheidli T'enneh makes an application for the registration of indefeasible title to a parcel of Lheidli T'enneh Lands under paragraph 4, and if the Registrar is satisfied that:
- a. a good safe holding and marketable title in fee simple for the parcel has been established by Lheidli T'enneh;
  - b. the boundaries of the parcel are sufficiently defined by the description provided by Lheidli T'enneh;
  - c. all of the estates, interests, and other charges set out in the Lheidli T'enneh Certificate are registrable under the *Land Title Act*; and
  - d. the Lheidli T'enneh Certificate has not expired under paragraph 8,
- then the Registrar must:
- e. register the indefeasible title to the parcel;
  - f. make a note on the indefeasible title that the parcel is Lheidli T'enneh Lands and may be subject to conditions, provisos, restrictions, exceptions, and reservations in favour of Lheidli T'enneh;
  - g. register as charges the estates and interests set out in subparagraph 7.b.ii and the other charges set out in subparagraph 7.b.iii; and
  - h. provide a copy of the indefeasible title to Lheidli T'enneh.
10. The Registrar is entitled to rely on, and is not required to make any inquiries with respect to, the matters certified in the Lheidli T'enneh Certificate and a person deprived of an estate, interest, condition, proviso, restriction, exception or reservation, in or to a parcel of Lheidli T'enneh Lands as a result of the reliance by the Registrar on the Lheidli T'enneh Certificate, and the issuance by the Registrar of an indefeasible title based on the Lheidli T'enneh Certificate, will have no recourse, at law or in equity, against the Registrar, the Assurance Fund or British Columbia or Canada.
11. No title adverse to, or in derogation of, the title of the registered owner of a parcel of Lheidli T'enneh Lands under the *Land Title Act* will be acquired by length of possession and, for greater certainty, subsection 23(4) of the *Land Title Act* does not apply with respect to Lheidli T'enneh Lands.

## **CANCELLATION OF INDEFEASIBLE TITLE**

12. Lheidli T'enneh, and no other person, may apply under the *Land Title Act* in accordance with this Chapter for cancellation of the registration of an indefeasible title to a parcel of Lheidli T'enneh Lands.
13. Lheidli T'enneh, when applying under the *Land Title Act* in accordance with this Chapter for the cancellation of the registration of an indefeasible title to a parcel of Lheidli T'enneh Lands, will provide to the Registrar an application for cancellation of registration and will deliver to the Registrar any duplicate indefeasible title that may have been issued with respect to that parcel.
14. Upon receiving an application from Lheidli T'enneh for cancellation of the registration of an indefeasible title to a parcel of Lheidli T'enneh Lands under paragraph 12 and 13, and if:
  - a. the registered owner of the estate in fee simple to the parcel is Lheidli T'enneh or a Lheidli T'enneh Corporation, and consents; and
  - b. the indefeasible title to the parcel is free and clear of all charges, except those in favour of Lheidli T'enneh,

the Registrar will cancel the registration of the indefeasible title.

## **AMENDMENTS TO *LAND TITLE ACT* WITH RESPECT TO APPROVING OFFICERS**

15. British Columbia will recommend to the Legislature of British Columbia that the *Land Title Act* will be amended to provide for the appointment of an approving officer by the Lheidli T'enneh Government for Lheidli T'enneh Lands.

## **CHAPTER 7**

### **ACCESS**

#### **GENERAL**

1. Except as modified by this Agreement:
  - a. Lheidli T'enneh, as owner of Lheidli T'enneh Lands, has the same rights and obligations with respect to public access to Lheidli T'enneh Lands as other owners of estates in fee simple have with respect to public access to their land; and
  - b. with respect to unoccupied Lheidli T'enneh Lands, Lheidli T'enneh has liabilities similar to those of the provincial Crown with respect to unoccupied provincial Crown land.

#### **PUBLIC ACCESS**

2. Lheidli T'enneh will allow reasonable public access to Lheidli T'enneh Lands for temporary non-commercial and temporary recreational uses, but public access does not include:
  - a. harvesting or extracting resources unless authorized by Lheidli T'enneh or as set out in this Agreement;
  - b. causing damage to Lheidli T'enneh Lands or resources on Lheidli T'enneh Lands;
  - c. causing nuisance; or
  - d. interfering with other uses authorized by Lheidli T'enneh, or interfering with the ability of Lheidli T'enneh to authorize uses or dispose of Lheidli T'enneh Lands.
3. Lheidli T'enneh will allow reasonable access for the public to hunt and fish on Lheidli T'enneh Lands and such access will be in accordance with Lheidli T'enneh Law respecting access to Lheidli T'enneh Lands.
4. Any hunting and fishing by the public under paragraph 3 will be in accordance with Federal and Provincial Law.
5. Public access to Lheidli T'enneh Lands will be in accordance with Lheidli T'enneh land use plans which will include provisions for harmonization with Local Government land use plans and notice provisions where public access will be affected.

6. For greater certainty, a Lheidli T'enneh land use planning process will include opportunities for public participation.
7. Lheidli T'enneh will take reasonable measures to notify the public of any use, authorized use or disposition of Lheidli T'enneh Lands referred to in subparagraph 2.d that has the effect of preventing public access to Lheidli T'enneh Lands.
8. If any use, authorized use or disposition of Lheidli T'enneh Lands has the effect of preventing public access to an area or location to which there is a public right of access under Federal or Provincial Law, including navigable waters or Crown Roads, Lheidli T'enneh will allow reasonable alternative means of public access to that area or location.
9. This Agreement does not affect the public right of navigation.

#### **CROWN ACCESS**

10. Agents, employees, and contractors of Canada or British Columbia, members of the Canadian Armed Forces, or peace officers appointed under Federal or Provincial Law, may, in accordance with Federal or Provincial Law, enter on, cross over and stay temporarily on, Lheidli T'enneh Lands, at no cost, in order to:
  - a. deliver and manage programs and services;
  - b. carry out inspections;
  - c. enforce law;
  - d. carry out the terms of this Agreement;
  - e. respond to emergencies and natural disasters; and
  - f. carry out other duties under Federal and Provincial Law.
11. This Agreement does not affect the ability of persons acting in an official capacity pursuant to lawful authority to have access to Lheidli T'enneh Lands.
12. This Agreement does not limit the authority of Canada or the Minister of National Defence to carry out activities related to national defence and security in accordance with Federal Law.
13. Unless otherwise agreed, Canada or British Columbia, as the case may be, will provide reasonable notice of entry to Lheidli T'enneh Lands under paragraphs 10 to 12 to Lheidli T'enneh:
  - a. before the entry if it is practicable to do so; or

- b. as soon as practicable after the entry.
- 14. The requirement to provide reasonable notice under paragraph 13 does not apply to peace officers, investigators or federal and provincial law enforcement officers carrying out duties under Federal and Provincial Law.

#### **ACCESS TO TENURES ON AND ADJACENT TO LHEIDLI T'ENNEH LANDS**

- 15. Lheidli T'enneh will allow access at no cost to any Tenure listed in Appendix E, located on or beneath Lheidli T'enneh Lands, consistent with the purpose of that Tenure.
- 16. If no other reasonable access exists across Crown land, Lheidli T'enneh will allow reasonable access at no cost across Lheidli T'enneh Lands to any Tenure located on or beneath lands adjacent or in close proximity to Lheidli T'enneh Lands, consistent with the purpose of that Tenure.
- 17. Lheidli T'enneh will not unreasonably restrict access to a Tenure referred to in paragraphs 15 and 16.

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

- 18. Lheidli T'enneh will allow access to an estate in fee simple listed in Appendix I, the nature of which will be:
  - a. at least as favourable as that which exists immediately before the Effective Date, at no cost; or
  - b. as may be agreed to between Lheidli T'enneh and an owner of a specific parcel listed in Appendix I, including the grant of a private road easement for those properties listed in Appendix E-2.

#### **LHEIDLI T'ENNEH ACCESS TO CROWN LANDS**

- 19. Agents, employees, and contractors of Lheidli T'enneh may, in accordance with Federal and Provincial Law and the terms of any uses authorized by Canada or British Columbia, as the case may be, enter on, cross over and stay temporarily on, Crown land, at no cost, in order to:
  - a. deliver and manage programs and services;
  - b. carry out inspections;
  - c. enforce laws; and

- d. carry out the terms of this Agreement.
20. Unless otherwise agreed, Lheidli T'enneh will provide reasonable notice of entry onto Crown land under paragraph 19 to Canada or British Columbia as the case may be:
- a. before the entry if it is practicable to do so; or
  - b. as soon as practicable after the entry.

## **CHAPTER 8**

### **ROADS AND RIGHTS OF WAY**

#### **LAW-MAKING**

1. The Lheidli T'enneh Government may make laws with respect to traffic, transportation and parking on Lheidli T'enneh Roads to the same extent as municipal governments have authority to make laws with respect to traffic, transportation and parking in municipalities in British Columbia.
2. In the event of a Conflict between a Lheidli T'enneh Law made under paragraph 1 and a Federal or Provincial Law, the Federal or Provincial Law prevails to the extent of the Conflict.

#### **ENTRY ON LHEIDLI T'ENNEH LANDS OUTSIDE CROWN ROADS, MUNICIPAL ROADS AND RIGHTS OF WAY**

3. In addition to the provisions of the Access Chapter, British Columbia, a Public Utility, Railway or a municipality and the employees, agents, contractors or representatives of any of them may enter on, cross over and stay temporarily on, Lheidli T'enneh Lands, including Lheidli T'enneh Roads, at no cost for the purpose of undertaking works, including:
  - a. constructing drainage works;
  - b. maintaining slope stability;
  - c. removing dangerous trees or other hazards;
  - d. carrying out normal repairs; or
  - e. carrying out emergency repairs,where this is necessary for constructing, operating, maintaining, repairing, replacing, removing or protecting Crown Roads, Municipal Roads, Rights of Way or Railways, or works located on Crown Roads, Municipal Roads, Rights of Way or Railways that are on or adjacent to Lheidli T'enneh Lands.
4. A person undertaking works referred to in paragraph 3 will minimize the damage to and time spent on Lheidli T'enneh Lands and will pay fair compensation for any interference with or damage to Lheidli T'enneh Lands that results from the works undertaken.

5. Paragraph 4 is subject to the terms of any grant of a Public Utility Right of Way issued by Lheidli T'enneh.

## **CROWN ROADS**

6. Crown Roads identified in Appendix C-1 are not part of Lheidli T'enneh Lands.
7. The detailed location and dimensions of Crown Roads identified in Appendix C-1 are deemed to be described conclusively in survey plans approved by Lheidli T'enneh and British Columbia, following the survey procedure set out in Schedule A of the Lands Chapter.
8. British Columbia has the exclusive authority to make laws with respect to Crown Roads including, for greater certainty, Crown Roads on Lheidli T'enneh Lands.
9. Where British Columbia acquires or expropriates an interest or estate in a parcel of Lheidli T'enneh Lands for the purpose of a Crown Road, and that parcel of land retains its status as Lheidli T'enneh Lands, the land remains subject to Lheidli T'enneh Law, but only to the extent that such law does not duplicate or overlap with a matter directly or indirectly dealt with by a law passed by British Columbia.
10. If British Columbia realigns all or a portion of a Crown Road:
  - a. British Columbia will transfer to Lheidli T'enneh that portion of the Crown Road adjacent to Lheidli T'enneh Lands that is no longer required for road or highway purposes;
  - b. Lheidli T'enneh will transfer to British Columbia the same interest or estate in any land acquired or expropriated by British Columbia for the purpose of such realignment as the interest or estate held by British Columbia in the pre-existing Crown Road; and
  - c. Appendix A will be amended in accordance with the process set out in paragraph 64 of the General Provisions Chapter.
11. Where a Crown Road adjacent to Lheidli T'enneh Lands is closed and is no longer required for transportation or Public Utility purposes, Canada or British Columbia, as the case may be, will provide Lheidli T'enneh with a right of first refusal to acquire, on mutually acceptable terms, that portion of the land adjacent to Lheidli T'enneh Lands before otherwise disposing of the land.

## **MUNICIPAL ROADS**

12. Municipal Roads identified in Appendix C-2 are not part of Lheidli T'enneh Lands.

13. The detailed location and dimensions of Municipal Roads identified in Appendix C-2 is deemed to be described conclusively in survey plans approved by Lheidli T'enneh and British Columbia, following the survey procedure set out in Schedule A of the Lands Chapter.

#### **WIDTH AND ALIGNMENT OF CROWN ROADS AND MUNICIPAL ROADS**

14. The widths of Crown Roads and Municipal Roads are set out as Offsets on either side of the centreline as described in plans included in Appendices A, D and H except where required to be wider to include those:
- a. bridges, drainage and support works, and other road works; and
  - b. cuts and fills, plus an additional three metres, measured from the toe of fill, and the top of the cut,
- that are part of the roads as of the date of the survey.
15. For the purposes of paragraph 14, road centrelines may be generalized to eliminate minor bends and compound curves or to allow alignment with existing boundaries of surveyed road rights-of-way, provided that the generalized centreline is within 3 metres of the true centreline of the travelled surface.

#### **LHEIDLI T'ENNEH ROADS**

16. Lheidli T'enneh Roads are part of Lheidli T'enneh Lands.
17. Lheidli T'enneh Roads are owned by Lheidli T'enneh and are administered and controlled by Lheidli T'enneh.
18. Lheidli T'enneh is responsible for maintenance and repair of Lheidli T'enneh Roads.
19. Subject to the terms of this Agreement, Lheidli T'enneh Roads are open to the public unless designated otherwise by Lheidli T'enneh.

#### **PUBLIC UTILITIES**

20. Lheidli T'enneh will issue grants for any Public Utility Rights of Way identified in Appendix E-2 on Lheidli T'enneh Lands, as provided for in paragraphs 47 through 55 of the Lands Chapter.

21. With the prior written approval of Lheidli T'enneh, a Public Utility may extend or locate and install new works on Lheidli T'enneh Lands where it is necessary to meet demand for service.
22. Lheidli T'enneh will not unreasonably withhold approval for works referred to in paragraph 21.
23. Nothing in paragraph 21 requires a Public Utility to obtain the approval of Lheidli T'enneh for usual service extensions or connections to Public Utility works or to deliver and manage services to customers of a Public Utility.
24. A Public Utility, including its employees, agents, contractors or representatives, may enter on, cross over and stay temporarily on Lheidli T'enneh Lands, including Lheidli T'enneh Roads, at no cost for the purposes of and subject to the conditions set out in paragraphs 21 and 23.

## **RAILWAYS**

25. Railway Rights of Way identified in Appendix C-3 are not part of Lheidli T'enneh Lands.

## **GENERAL**

26. Notwithstanding any other provision of this Agreement, British Columbia or Canada has the right to regulate all matters with respect to:
  - a. the location and design of intersecting roads giving access to or from Crown Roads, including:
    - i. regulating or requiring signs, signals, or other traffic control devices on Crown 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 subparagraphs 26.a.i and 26.a.ii; and
  - b. the height and location of structures on Lheidli T'enneh Lands adjacent to Crown Roads,

to the extent reasonably required to protect the safety of the users of the Crown Road or the functional capacity of the Crown Road.

**FUTURE ACQUISITION**

27. Crown Roads and Rights of Way established in the future, on or adjacent to Lheidli T'enneh Lands, will be subject to the provisions of this Agreement.



## **CHAPTER 9**

### **FOREST RESOURCES**

1. On the Effective Date, Lheidli T'enneh owns all Forest Resources on Lheidli T'enneh Lands except as provided in paragraphs 28 to 32 of the Lands Chapter.
2. Lheidli T'enneh Lands will be treated as Private Lands for the purposes of Provincial Law with respect to Forest Resources, Forest Practices and Range Practices.
3. Subject to paragraphs 28 to 32 of the Lands Chapter, Lheidli T'enneh, as owner, has the exclusive authority to determine, collect and administer any fees, rents or charges other than taxes, relating to Forest Resources owned by Lheidli T'enneh on Lheidli T'enneh Lands.

### **LAW-MAKING**

4. The Lheidli T'enneh Government may make laws with respect to Forest Resources and Forest Practices and Range Practices on Lheidli T'enneh Lands.
5. Forest standards prescribed by Lheidli T'enneh Law under paragraph 4 will meet or exceed provincial forest standards applicable to Private Lands under Provincial Law.
6. If they are no more intrusive to the environment than the forest standards established under Provincial Law for Private Lands, forest standards prescribed by Lheidli T'enneh Law under paragraph 4 will be deemed to meet or exceed forest standards established under Provincial Law applicable to Private Lands.
7. Subject to paragraph 8, in the event of a Conflict between a Lheidli T'enneh Law under paragraph 4 and a Federal or Provincial Law, Lheidli T'enneh Law prevails to the extent of the Conflict.
8. Provincial Law relating to wildfire and forest health prevail to the extent of a Conflict with a Lheidli T'enneh Law.

### **TIMBER MARKING AND SCALING**

9. Nothing in this Agreement confers authority on the Lheidli T'enneh Government to make laws with respect to Timber marking and scaling and, for greater certainty, Provincial Law with respect to Timber marking and scaling apply to Timber that is harvested on and transported off Lheidli T'enneh Lands.

## **MANUFACTURE AND EXPORT OF TIMBER**

10. Timber Resources harvested from Lheidli T'enneh Lands will not be subject to any Provincial Law requiring use or manufacturing in British Columbia under Provincial Law.
11. Logs from Lheidli T'enneh Lands may be exported pursuant to Federal Law and policy as if the Logs had been harvested from an Indian Reserve in British Columbia.

## **FOREST AND RANGE HEALTH**

12. Lheidli T'enneh is responsible on Lheidli T'enneh Lands for the control of insects, diseases, invasive plants, animals or abiotic factors that may affect the health of Forest Resources on Lheidli T'enneh Lands.
13. If Canada, British Columbia or Lheidli T'enneh becomes aware of insects, diseases, invasive plants, animals or abiotic factors on Crown land or Lheidli T'enneh Lands that threaten the health of Forest Resources on Crown land or Lheidli T'enneh Lands, Canada, British Columbia or Lheidli T'enneh, as the case may be, will notify the other Parties.
14. Following notification under paragraph 13, Lheidli T'enneh and British Columbia will develop an appropriate and reasonable co-operative response to minimize the impacts of such insects, diseases, invasive plants, animals or abiotic factors on Forest Resources on Lheidli T'enneh Lands or provincial Crown lands.

## **WILDFIRE SUPPRESSION AND CONTROL**

15. Subject to paragraphs 16, 18 and 20, Provincial Law with respect to the protection of resources from wildfire and for wildfire prevention and control will apply to Lheidli T'enneh Lands as Private Lands.
16. On the Effective Date, and subject to paragraph 21, the Parties will enter into an agreement, which will be known as the Lheidli T'enneh Wildfire Suppression Agreement, which will set out how the Parties will share the costs incurred by British Columbia for wildfire control on Lheidli T'enneh Lands for wildfires that originate on Lheidli T'enneh Lands.
17. The Lheidli T'enneh Wildfire Suppression Agreement under paragraph 16:
  - a. is not part of this Agreement; and

- b. is not a treaty or land claims agreement and does not recognize or affirm any aboriginal or treaty rights within the meaning of sections 25 or 35 of the *Constitution Act, 1982*.
- 18. Subject to the limitations on the scope of Lheidli T'enneh's financial liability in the Lheidli T'enneh Wildfire Suppression Agreement, Lheidli T'enneh will be responsible for one third of the costs incurred by British Columbia for wildfire control on Lheidli T'enneh Lands for wildfires that originate on Lheidli T'enneh Lands.
- 19. For greater certainty, Lheidli T'enneh is not responsible for the costs incurred by British Columbia for wildfire control off Lheidli T'enneh Lands regardless of the origin of such wildfires.
- 20. British Columbia will respond to a wildfire originating on Lheidli T'enneh Lands on the same priority basis as Crown land and in accordance with any priorities as set by the Minister.
- 21. For the purposes of paragraph 16:
  - a. unless terminated at the written request of Lheidli T'enneh, the Lheidli T'enneh Wildfire Suppression Agreement will remain in effect between Lheidli T'enneh and British Columbia, subject to those terms which Lheidli T'enneh and British Columbia agree will be negotiated on a periodic basis; and
  - b. Canada's participation in the Lheidli T'enneh Wildfire Suppression Agreement will be 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 which may be in effect between Canada and British Columbia regarding wildfire suppression on lands provided pursuant to land claims agreements, Canada and British Columbia may, at the respective discretion of Canada and British Columbia, enter into new agreements from time to time with respect to Canada's continuing participation in the Lheidli T'enneh Wildfire Suppression Agreement following the 10-year period referred to in subparagraph 21.b.
- 23. Nothing under paragraphs 16 or 18 limits the Parties' ability to pursue legal action against third parties.
- 24. At the request of Lheidli T'enneh, or in accordance with Provincial Law, British Columbia may enter on Lheidli T'enneh Lands and assist in the provision of, or carry out, wildfire control.
- 25. Lheidli T'enneh will not be responsible for any costs associated with wildfire control incurred by British Columbia or Canada on Lheidli T'enneh Lands if the wildfires originate off Lheidli T'enneh Lands.

## **DISPOSITION OF THIRD PARTY RIGHTS**

26. British Columbia will ensure that on the Effective Date, any portion of:
- a. any agreement under the *Forest and Range Practices Act*; and
  - b. any plan, permit or authorization associated with any agreement under the *Forest and Range Practices Act*,
- that applies on Lheidli T'enneh Lands ceases to be valid.

## **FULFILLMENT OF THIRD PARTY OBLIGATIONS**

27. British Columbia will ensure that on the Effective Date or as soon as practicable after that date, any obligations on Lheidli T'enneh Lands with respect to Forest and Range Practices, including road deactivation and reforestation, will be fulfilled in accordance with Provincial Law.
28. Lheidli T'enneh will provide access to Lheidli T'enneh Lands at no cost to British Columbia and to any person whose rights referred to in paragraph 26 cease to be valid, and to their respective employees, agents, contractors, successors or assigns, so that they may fulfill the obligations referred to in paragraph 27.

## **INFORMATION SHARING**

29. British Columbia and Lheidli T'enneh agree to share information with respect to Forest Practices and Range Practices on Lheidli T'enneh Lands and on provincial Crown land immediately adjacent to Lheidli T'enneh Lands from time to time.

## CHAPTER 10

### WATER

#### GENERAL

1. This Agreement does not alter Federal or Provincial Law with respect to proprietary interests in water.
2. Lheidli T'enneh may only sell water in accordance with Federal and Provincial Law that permit the sale of water.
3. The *Water Utility Act* does not apply to Lheidli T'enneh, a Lheidli T'enneh Public Institution or a Lheidli T'enneh Corporation, for the provision of services on Lheidli T'enneh Lands.

#### LAW-MAKING

4. The Lheidli T'enneh Government may make laws with respect to:
  - a. the consent of Lheidli T'enneh under subparagraph 11.a for Water Licences to be applied against the water reservation; and
  - b. the supply to, and the use of water by, Lheidli T'enneh Citizens from a Water Licence issued to Lheidli T'enneh in accordance with paragraph 11.
5. In the event of a Conflict between a Lheidli T'enneh Law made under subparagraph 4.a and a Federal or Provincial Law, the Lheidli T'enneh Law prevails to the extent of the Conflict.
6. In the event of a Conflict between a Lheidli T'enneh Law made under subparagraph 4.b and a Federal or Provincial Law, the Federal or Provincial Law prevails to the extent of the Conflict.

#### WATER RESERVATION

7. On the Effective Date, British Columbia will establish a water reservation under the *Water Act* in favour of Lheidli T'enneh, of 13,400 cubic decametres of water per year from Streams set out in Schedule A of this Chapter for:
  - a. all purposes under the *Water Act* including domestic, agricultural, and industrial uses; but

- b. excluding those purposes set out in paragraphs 25 to 27 of this Chapter.
8. Any water reservation established in paragraph 7 will have priority over all Water Licences other than:
- a. Water Licences issued before June 19, 2006;
  - b. Water Licences issued pursuant to an application made before June 19, 2006; and
  - c. Water Licences issued pursuant to water reservations established before June 19, 2006.

## **WATER LICENCES**

9. Lheidli T'enneh, or a Lheidli T'enneh Citizen with the consent of Lheidli T'enneh, may apply to British Columbia for Water Licences for volumes of flow to be applied against the Lheidli T'enneh water reservation.
10. The total volume of flow under the Water Licences to be applied against the Lheidli T'enneh water reservation established in paragraph 7 may not exceed the amounts listed for the individual Streams set out in Schedule A of this Chapter.
11. If Lheidli T'enneh or a Lheidli T'enneh Citizen applies to British Columbia under paragraph 9 for a Water Licence for a volume of flow to be applied against the Lheidli T'enneh water reservation and:
- a. Lheidli T'enneh has consented to the application;
  - b. the application conforms to Provincial Law;
  - c. there is sufficient unrecorded volume of flow in the Lheidli T'enneh water reservation; and
  - d. the application is for a volume of flow that, together with the total volume of flow licenced for that Stream under this Agreement, does not exceed the amount of Available Flow for that Stream set out in Schedule A of this Chapter,

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

12. The volume of flow approved in a Water Licence issued under paragraph 11 will be deducted from the unrecorded volume of flow in the Lheidli T'enneh water reservation established under paragraph 7.

13. If a Water Licence issued under paragraph 11 is cancelled, expires, or otherwise terminates, the volume of flow in that Water Licence will be added to the unrecorded volume of flow in the Lheidli T'enneh water reservation established under paragraph 7.
14. A Water Licence issued under paragraph 11 to Lheidli T'enneh or a Lheidli T'enneh Citizen for use on Lheidli T'enneh Lands will not be subject to any provincial fees, rentals, or other charges.
15. For greater certainty, Lheidli T'enneh or a Lheidli T'enneh Citizen may apply for Water Licences under paragraph 9 for water that will be used off Lheidli T'enneh Lands.
16. This Agreement does not preclude Lheidli T'enneh or Lheidli T'enneh Citizens from applying under Provincial Law for additional Water Licences unrelated to the water reservation established under paragraph 7.
17. If a person other than Lheidli T'enneh has a Water Licence and requires access across, or an interest in Lheidli T'enneh Lands for the construction, maintenance, improvement or operation of works authorized under the Water Licence, Lheidli T'enneh may not unreasonably withhold consent to the granting of the access or the interest.
18. In addition to any consent required under paragraph 17, where Lheidli T'enneh has disposed of an interest or estate in Lheidli T'enneh Lands, Lheidli T'enneh will take reasonable steps to ensure the granting of the access across or the interest in Lheidli T'enneh Lands for the construction, maintenance, improvement or operation of works authorized under the Water Licence.
19. If Lheidli T'enneh, or a Lheidli T'enneh Citizen has a Water Licence approved under paragraph 11 or 16 and reasonably requires access across, or an interest in, provincial Crown land for the construction, maintenance, improvement or operation of works authorized under the Water Licence, British Columbia will grant the access or interest on reasonable terms.
20. British Columbia or Lheidli T'enneh may refer a dispute arising under paragraph 17 to be finally determined by arbitration in accordance with the Dispute Resolution Chapter.
21. For greater certainty, sections 27, 28, 29 and 30 of the *Water Act* respecting a licensee's right to expropriate land do not apply on Lheidli T'enneh Lands.

## **WATER MANAGEMENT**

22. Lheidli T'enneh may participate in water planning processes in the same manner as local governments and other First Nations for:
  - a. the Upper Fraser River Watershed; and

- b. any tributary of the Fraser River within the Upper Fraser River Watershed.
23. With respect to the management of water within the Upper Fraser River Watershed, Lheidli T'enneh and Canada or British Columbia may negotiate agreements to:
- a. define respective roles and responsibilities of the Parties;
  - b. coordinate activities related to:
    - i. flood response and public safety;
    - ii. protection of water quality;
    - iii. water conservation;
    - iv. ground water management and regulation;
    - v. resource inventory;
    - vi. monitoring of water quality and quantity;
    - vii. management of and access to information; and
    - viii. any other matters as agreed to by the Parties; and
  - c. identify watersheds that require water management planning.
24. If a watershed within the Upper Fraser River Watershed has been identified as requiring a water management plan under paragraph 23, Lheidli T'enneh and Canada or British Columbia may negotiate agreements with respect to:
- a. water management objectives;
  - b. a process for the timely and effective development of a plan, including establishing the respective roles of the Parties; and
  - c. the method for approval of the plan and its implementation.

#### **LHEIDLII T'ENNEH HYDRO POWER RESERVATION**

25. In addition to the Lheidli T'enneh water reservations established under paragraph 7, on the Effective Date, British Columbia will establish water reservations in favour of Lheidli T'enneh for those watersheds set out in Appendix J, for no more than 20 years, of the unrecorded water of specific Streams, to enable Lheidli T'enneh to investigate the suitability of those Streams for hydro power purposes, including related storage purposes.

26. If, after British Columbia establishes a water reservation for hydro power purposes under paragraph 25, Lheidli T'enneh applies for a Water Licence for hydro power purposes and any related storage purposes for a volume of flow from those named Streams, subject to that water reservation, British Columbia will grant the Water Licence if the proposed hydro power project conforms to Federal and Provincial Law, and there is sufficient Available Flow in the Stream.
27. If British Columbia issues a Water Licence under paragraph 26 with respect to a Stream, the water reservation established under paragraph 25 will terminate with respect to that Stream.

**SCHEDULE A: FIXED MAXIMUM LIMITS FOR INDIVIDUAL STREAMS FOR  
LHEIDLI T'ENNEH WATER RESERVATION**

Bowron River: 777,200 cubic metres

Fraser River: 9,674,800 cubic metres

Hutda Lake: 120,600 cubic metres

Nechako River: 375,200 cubic metres

Willow River: 2,438,800 cubic metres

Total = 13,400,000 cubic metres

## **CHAPTER 11**

### **FISHERIES**

#### **GENERAL**

1. Lheidli T'enneh has the right to harvest Fish and Aquatic Plants for food, social and ceremonial purposes in the Lheidli T'enneh Fish Area in accordance with this Agreement, hereinafter referred to as the Lheidli T'enneh Fishing Right.
2. The Lheidli T'enneh Fishing Right is limited by:
  - a. measures necessary for conservation; and
  - b. measures, authorized by legislation, necessary for public health or public safety.
3. The Lheidli T'enneh Fishing Right is held by Lheidli T'enneh and cannot be alienated.
4. Lheidli T'enneh Citizens may exercise the Lheidli T'enneh Fishing Right, except as otherwise provided under a Lheidli T'enneh Law.
5. Where a Harvest Level for a species or stock of Fish or Aquatic Plants is established in accordance with this Agreement, the Lheidli T'enneh Government may designate individuals who are not Lheidli T'enneh Citizens to harvest those Fish or Aquatic Plants under the Lheidli T'enneh Fishing Right.
6. The Minister retains authority to manage and conserve Fish, Aquatic Plants and Fish habitat and will exercise that authority in a manner consistent with this Agreement.
7. This Agreement does not alter Federal or Provincial Law with respect to proprietary interests in Fish and Aquatic Plants.
8. Nothing in this Agreement authorizes the sale of Fish or Aquatic Plants, but the Harvest Agreement contains provisions with respect to the sale of Fish.

#### **TRADE AND BARTER**

9. Lheidli T'enneh has the right to trade or barter Fish and Aquatic Plants harvested under the Lheidli T'enneh Fishing Right:
  - a. among themselves; and
  - b. with other aboriginal people of Canada resident in Canada.

10. Lheidli T'enneh Citizens may exercise the right to trade or barter under paragraph 9, except as otherwise provided under a Lheidli T'enneh Law.
11. For greater certainty:
  - a. trade or barter does not include sale; and
  - b. traded or bartered Fish and Aquatic Plants may not be sold.
12. This Agreement does not preclude Lheidli T'enneh Citizens from:
  - a. harvesting Fish and Aquatic Plants throughout Canada in accordance with Federal and Provincial Law; and
  - b. being designated by a First Nation to harvest Fish and Aquatic Plants under a land claims agreement or a federal or provincial arrangement with that First Nation.

#### **REASONABLE OPPORTUNITY**

13. British Columbia may authorize uses of or dispose of provincial Crown land and any authorized use or disposition may affect the methods, times and locations of harvesting Fish under this Agreement, provided that British Columbia ensures that those authorized uses or dispositions do not deny Lheidli T'enneh the reasonable opportunity to harvest Fish under the Lheidli T'enneh Fishing Right.
14. The Lheidli T'enneh 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 13.
15. For the purposes of paragraph 13, British Columbia and Lheidli T'enneh will negotiate and attempt to reach agreement on a process to evaluate the impact of uses and dispositions of provincial Crown land on Lheidli T'enneh's reasonable opportunity to harvest Fish.
16. Any agreement under paragraph 15:
  - a. will not be part of this Agreement; and
  - b. will not be a treaty or land claims agreement and will not recognize or affirm any aboriginal or treaty rights within the meaning of sections 25 or 35 of the *Constitution Act, 1982*.
17. Lheidli T'enneh will have reasonable access to and over federal Crown lands outside of Lheidli T'enneh Lands to allow for the exercise of the Lheidli T'enneh Fishing Right.

18. The Lheidli T'enneh right of access under paragraph 17 will be exercised in a manner that does not interfere with the use, grant, creation or disposition of an interest in federal Crown land from time to time.
19. If the use, grant, creation or disposition of an interest in federal Crown land would deny Lheidli T'enneh access under paragraph 17, the federal Crown will ensure that alternate reasonable access is provided.
20. Notwithstanding paragraph 17, access to and on Indian Reserves is subject to Lheidli T'enneh obtaining the consent of the Indian Band for whom the Indian Reserve is set aside.
21. In the Lheidli T'enneh Fish Area, the use of resources for purposes reasonably incidental to the exercise of the Lheidli T'enneh Fishing Right on Crown land is subject to Federal and Provincial Law.

#### **FISHERIES FUND**

22. On the Effective Date, Canada will provide a one-time payment of \$3,000,000 for the establishment of a fund to be known as the Lheidli T'enneh Fisheries Fund.
23. The Lheidli T'enneh Fisheries Fund will be used to support the funding of on-going fisheries management programs and activities, including:
  - a. conservation and protection of Fish in the Lheidli T'enneh Fish Area;
  - b. facilitation of assessment and sustainable management of Fish in the Lheidli T'enneh Fish Area; and
  - c. promotion of Lheidli T'enneh participation in stewardship of Fish in the Lheidli T'enneh Fish Area.

#### **LAW-MAKING**

24. The Lheidli T'enneh Government may make laws with respect to:
  - a. where a Harvest Level has been established for a species or stock of Fish or Aquatic Plants, individuals who may harvest that species or stock under the Lheidli T'enneh Fishing Right and the share of the Harvest Level that they may harvest;
  - b. where a Harvest Level has not been established for a species or stock of Fish or Aquatic Plants, Lheidli T'enneh Citizens who may harvest that species or stock under the Lheidli T'enneh Fishing Right;

- c. distribution of the Fish and Aquatic Plants harvested under the Lheidli T'enneh Fishing Right to Lheidli T'enneh Citizens; and
  - d. other fisheries matters as agreed to by the Parties.
- 25. In the event of a Conflict between a Lheidli T'enneh Law under paragraph 24 and a Federal or Provincial Law, the Lheidli T'enneh Law prevails to the extent of the Conflict.
- 26. The Lheidli T'enneh Government may make laws with respect to:
  - a. trade or barter of Fish and Aquatic Plants under paragraph 9;
  - b. distribution, at no charge, of Fish and Aquatic Plants harvested under the Lheidli T'enneh Fishing Right to non-Lheidli T'enneh Citizens;
  - c. prohibition of the distribution of Fish and Aquatic Plants harvested under the Lheidli T'enneh Fishing Right to non-Lheidli T'enneh Citizens; and
  - d. other fisheries matters as agreed to by the Parties.
- 27. The Lheidli T'enneh Government will issue documentation to every individual who harvests Fish and Aquatic Plants under the Lheidli T'enneh Fishing Right.
- 28. The Lheidli T'enneh Government may make laws with respect to documentation issued under paragraph 27.
- 29. Documentation issued under paragraph 27:
  - a. may identify locations where an individual is permitted to harvest and the gear and methods that an individual is permitted to use when that individual harvests under the Lheidli T'enneh Fishing Right;
  - b. will be in the English language, which will be the authoritative version, and, at the discretion of Lheidli T'enneh, also in the Carrier language; and
  - c. will meet any other requirements set out in the Lheidli T'enneh Fisheries Operational Guidelines.
- 30. In the event of a Conflict between a Lheidli T'enneh Law under paragraph 26 or 28 and a Federal or Provincial Law, the Federal or Provincial Law prevails to the extent of the Conflict.

## **SALMON HARVEST LEVELS**

### **Sockeye**

31. In any year, the Lheidli T'enneh Harvest Level for Sockeye Salmon is:
- a. when the Canadian Total Allowable Catch for Sockeye Salmon is 250,000 Sockeye Salmon or less, two percent of the Canadian Total Allowable Catch for Sockeye Salmon;
  - b. when the Canadian Total Allowable Catch for Sockeye Salmon is greater than 250,000, and less than or equal to 840,000, 5,000 Sockeye Salmon plus 1.246 percent of that portion of the Canadian Total Allowable Catch for Sockeye Salmon that is greater than 250,000 Sockeye Salmon; and
  - c. when the Canadian Total Allowable Catch for Sockeye Salmon is greater than 840,000, 12,350 Sockeye Salmon.
32. In any year, Lheidli T'enneh may propose in the Annual Fishing Plan that the Harvest Level for Sockeye Salmon be reduced by a specified number of Sockeye Salmon for that year.
33. A proposal under paragraph 32 will not reduce the Sockeye Salmon Harvest Level by more than 50 percent.
34. Where the Minister agrees to a proposal made by Lheidli T'enneh under paragraph 32, the Harvest Level for Sockeye Salmon will be reduced for that year by the amount in the proposal.

## **ESTABLISHING HARVEST LEVELS FOR NON-ALLOCATED SALMON**

### **General**

35. For the purposes of paragraphs 35 to 51 of this Chapter:
- a. "Non-Allocated Salmon" means a species of Salmon for which a Harvest Level has not been established under this Agreement;
  - b. "Basic Harvest Entitlement" for a species of Non-Allocated Salmon means the Lheidli T'enneh average annual harvest, expressed as a share of Canadian Total Allowable Catch or other relevant measure, for that species for food, social and ceremonial purposes over the Base Period for that species, as may be determined by arbitration under paragraphs 41 to 48; and

- c. "Base Period" for a species of Non-Allocated Salmon means a period of 10 calendar years immediately preceding the date of the proposal made under paragraph 36, or such other period as the Parties may agree.
36. Any Party may propose the establishment of a Harvest Level for a species of Non-Allocated Salmon.

**Negotiated Harvest Level**

37. Where, under paragraph 36, a Party proposes the establishment of a Harvest Level for a species of Non-Allocated Salmon, the Joint Fisheries Committee will consider the proposal and will attempt to reach agreement on a Harvest Level for the species to be recommended to the Parties, by taking into account:
- a. Base Period information on the harvests, by Lheidli T'enneh, of that species for food, social and ceremonial purposes;
  - b. contemporary Lheidli T'enneh needs for food, social and ceremonial purposes;
  - c. measures necessary for conservation;
  - d. harvests for management of that species;
  - e. harvests by other Aboriginal groups, of that species, for food, social and ceremonial purposes;
  - f. the impact of commercial and recreational fisheries on Lheidli T'enneh harvests of that species for food, social and ceremonial purposes; and
  - g. other relevant information.
38. Where all members of the Joint Fisheries Committee agree, the Joint Fisheries Committee may recommend to the Parties that studies, with respect to the information referred to in subparagraphs 37.a to 37.g, be conducted to assist the members in reaching agreement on a recommendation.
39. Where, under paragraph 37, all members of the Joint Fisheries Committee agree on the Harvest Level for a species of Non-Allocated Salmon to be recommended, the Joint Fisheries Committee will recommend the Harvest Level to the Parties.
40. Where a Party proposes the establishment of a Harvest Level for chinook Salmon, the Parties will negotiate and attempt to reach agreement on an abundance based formula that would provide for an average Harvest Level of 500 chinook Salmon based on data from 1984 to 1999.

### **Arbitrated Harvest Level**

41. Where a proposal is made under paragraph 36 to establish a Harvest Level for a species of Non-Allocated Salmon and the Parties have not agreed to a Harvest Level for the species within one year after the proposal, the Basic Harvest Entitlement for the species will be finally determined by arbitration, in accordance with the Dispute Resolution Chapter.
42. The Parties may agree to extend the time period under paragraph 41 to allow for the completion of studies referred to in paragraph 38.
43. The Parties may request that an arbitrator describe a Basic Harvest Entitlement for a species as a share of an abundance of the species.
44. In an arbitration under paragraph 41, the arbitrator will take into account the factors set out in subparagraphs 37.a to 37.g.
45. In an arbitration under paragraph 41, the arbitrator will determine the Basic Harvest Entitlement within a period of not more than one year.
46. Once the arbitrator determines the Basic Harvest Entitlement for a species, the Parties will negotiate and attempt to reach agreement on the Harvest Level for the species.
47. If, six months after a Basic Harvest Entitlement for a species has been determined by the arbitrator, the Parties have not agreed on the Harvest Level for the species, the Harvest Level for the species will be the Basic Harvest Entitlement times 1.25.
48. The arbitrator may extend the time period under paragraph 45 to allow for the completion of studies referred to in paragraph 38.
49. Where the Parties fail to reach agreement under paragraph 40, the matter will be finally determined by arbitration in accordance with the Dispute Resolution Chapter, and the arbitrator will establish an abundance based formula that would provide for an average Harvest Level of 500 chinook Salmon based on data from 1984 to 1999.
50. In an arbitration under paragraph 49, the arbitrator will determine the Harvest Level within a period of not more than one year.

### **Amendment to this Agreement**

51. Where the Parties agree on a Harvest Level for a species of Non-Allocated Salmon, or a Harvest Level for a species of Non-Allocated Salmon is determined in accordance with paragraph 47 or 49, this Agreement will be amended in accordance with paragraph 64 of the General Provisions Chapter to include the Harvest Level in this Agreement.

## **ADJUSTMENTS**

52. The Lheidli T'enneh Fisheries Operational Guidelines established under paragraph 106 will describe the circumstances in which and how subsequent adjustments with respect to overages and underages will be made to a Harvest Level for a species of Salmon to account for harvests of the species that exceed or fail to meet the Harvest Level in any year.
53. Any adjustment under paragraph 52 will be made by taking into account the following factors:
- a. the actions of the Minister in the conduct of the fishery;
  - b. the actions of Lheidli T'enneh in the conduct of the fishery;
  - c. the provisions of the Treaty Harvest Document;
  - d. environmental factors beyond those accounted for in Canadian Total Allowable Catch;
  - e. Fish behaviour; and
  - f. other factors beyond the control of the Parties.
54. Harvest Levels for Salmon will be adjusted in accordance with the Lheidli T'enneh Fisheries Operational Guidelines.
55. The Minister and Lheidli T'enneh will endeavour to minimize any overages and underages in each year and to minimize the accumulation of overages and underages in successive years.
56. The Minister and Lheidli T'enneh will endeavour to balance any adjustment that results under paragraph 54 within two life cycles of the species.

## **HARVEST OF SURPLUS SALMON**

57. The Minister may determine whether there is a surplus of a species of Salmon returning to the Lheidli T'enneh Fish Area, the size of the surplus and, when appropriate, who may harvest that surplus.
58. Where the Minister makes a determination under paragraph 57, the Minister will take into account any recommendations received from the Joint Fisheries Committee under subparagraphs 71.i and 71.j.

59. The Minister may permit Lheidli T'enneh to harvest some or all of the surplus Salmon returning to the Lheidli T'enneh Fish Area on reaching agreement with Lheidli T'enneh with respect to the terms and conditions for the harvest and disposition of the surplus.

## **SALMON HARVEST AGREEMENT**

60. On the Effective Date, the Parties will enter into a Harvest Agreement.
61. A Harvest Agreement:
- a. is not part of this Agreement; and
  - b. is not a treaty or land claims agreement and does not recognize or affirm any aboriginal or treaty rights within the meaning of sections 25 or 35 of the *Constitution Act, 1982*.

## **FRESHWATER FISH**

62. The Minister or Lheidli T'enneh may propose that a Harvest Level be established for a species or stock of Freshwater Fish.
63. Where the Minister or Lheidli T'enneh proposes the establishment of a Harvest Level under paragraph 62, the Minister and Lheidli T'enneh will negotiate and attempt to reach agreement on the Harvest Level.
64. Where the Minister and Lheidli T'enneh negotiate and attempt to reach agreement on a Harvest Level under paragraph 63 the Minister and Lheidli T'enneh will take into account:
- a. measures necessary for conservation;
  - b. any recommendations of the Joint Fisheries Committee; and
  - c. other matters that the Minister and Lheidli T'enneh agree are relevant.
65. Where the Minister and Lheidli T'enneh are unable to reach agreement on a Harvest Level, the matter will be finally determined by arbitration in accordance with the Dispute Resolution Chapter.
66. Where the Minister and Lheidli T'enneh agree on a Harvest Level under paragraph 63 or a Harvest Level is established under paragraph 65 this Agreement will be amended pursuant to paragraph 64 of the General Provisions Chapter to document the Harvest Level.

## **FISHERIES MANAGEMENT**

### **Joint Fisheries Committee**

67. On the Effective Date, the Parties will establish a Joint Fisheries Committee to undertake cooperative planning for:
- a. Lheidli T'enneh fisheries under the Lheidli T'enneh Fishing Right;
  - b. Lheidli T'enneh fisheries management activities;
  - c. Lheidli T'enneh monitoring and enforcement activities with respect to Lheidli T'enneh fisheries;
  - d. Lheidli T'enneh environmental protection activities associated with Fish, Aquatic Plants and Fish habitat; and
  - e. other matters as agreed to by the Parties.
68. The Joint Fisheries Committee may:
- a. undertake the cooperative planning of other Lheidli T'enneh fisheries; and
  - b. participate in the cooperative planning of other fisheries within the Lheidli T'enneh Fish Area.
69. The Joint Fisheries Committee will be comprised of one member from Canada, one member from British Columbia, and one member from Lheidli T'enneh, but additional representatives of a Party may participate to support or assist its member in carrying out that member's responsibilities.
70. The Parties will provide each other with access to such information as may be reasonably necessary, including catch data related to Fish and Aquatic Plants harvested under the Lheidli T'enneh Fishing Right, to enable the Joint Fisheries Committee to carry out its functions.
71. To undertake cooperative planning under paragraphs 67 and 68, the Joint Fisheries Committee may:
- a. consider information related to measures necessary for conservation, public health or public safety that could significantly affect harvesting under the Lheidli T'enneh Fishing Right;
  - b. consider fisheries management implications of shared fishing areas with other aboriginal groups within the Lheidli T'enneh Fish Area;

- c. consider proposals related to enhancement, fisheries management, harvesting techniques and environmental protection for the Lheidli T'enneh Fish Area;
- d. discuss provisions that may be included in Annual Fishing Plans and make recommendations with respect to those provisions to Lheidli T'enneh in a timely manner;
- e. review Annual Fishing Plans submitted to it by Lheidli T'enneh under paragraph 95;
- f. forward Annual Fishing Plans to the Minister in a timely manner together with written recommendations for provisions to be included in a Treaty Harvest Document;
- g. recommend to the Minister how the harvest will be distributed among stock groups, including recommendations respecting Lheidli T'enneh's preference for early timed stocks;
- h. recommend to the Minister the disposition of the Sockeye Salmon made available through a proposal made by Lheidli T'enneh under paragraph 32;
- i. recommend to the Minister procedures for the identification of a surplus of a species or stock of Salmon and terms and conditions for the harvest of that surplus;
- j. recommend to the Minister the size and disposition of a surplus of a species or stock of Salmon;
- k. discuss and make recommendations to Lheidli T'enneh and the Minister concerning the protection of Fish, fish habitat and Aquatic Plants in the Lheidli T'enneh Fish Area;
- l. recommend to the Minister that a Harvest Level be established for a species or stock of Fish or Aquatic Plant for which a Harvest Level has not yet been established;
- m. recommend to the Minister the Harvest Level for a species or stock of Fish or Aquatic Plant for which a Harvest Level has not yet been established;
- n. conduct a post-season analysis to provide recommendations to Lheidli T'enneh and the Minister regarding adjustments to Harvest Levels under paragraph 52;
- o. communicate with respect to matters of mutual interest with persons responsible for or engaged in advisory processes;
- p. carry out such other functions as may be agreed to by the Parties.

72. The Joint Fisheries Committee will seek to make decisions on a consensus basis.
73. If all members of the Joint Fisheries Committee do not agree on a recommendation, any Party may submit a written recommendation to the Minister, and the Minister will treat the written recommendation as if it were a recommendation from the Joint Fisheries Committee.
74. Except as stated in paragraph 75, where it is impractical to receive recommendations from the Joint Fisheries Committee under paragraph 71, the Minister:
- a. may make the decision or take the action that the Minister considers necessary, without receiving recommendations from the Joint Fisheries Committee; and
  - b. will give written notice to the Joint Fisheries Committee as soon as practical of the decision made or action taken and the reasons for the decision or action taken.
75. With respect to a decision made or action taken regarding matters contemplated in subparagraph 71.k, the Minister will provide notice under subparagraph 74.b on request by the Joint Fisheries Committee.
76. The Minister will consider all recommendations made by the Joint Fisheries Committee under paragraph 71, or by any Party under paragraph 73.

#### **MULTI-FIRST NATION FISHERIES MANAGEMENT**

77. Where Canada or British Columbia establishes a multi-First Nation fisheries management process within the Fraser River watershed area that includes any part of the Lheidli T'enneh Fish Area, Canada or British Columbia will Consult with Lheidli T'enneh in developing that multi-First Nation fisheries management process and, if appropriate, make provisions for Lheidli T'enneh participation or representation on the same basis as other First Nations.
78. If a multi-First Nation fisheries management process as referred to in paragraph 77 is established and that process has functions similar to those of the Joint Fisheries Committee, any Party may request that some of the functions of the Joint Fisheries Committee described in subparagraphs 71.a, 71.b, 71.c, 71.i, 71.j, 71.k, 71.o and 71.p may be performed, for the purpose of efficient coordination, by the multi-First Nation fisheries management process, and, where the other Parties consent, the functions will be performed by that process.
79. Where a Party makes a request under paragraph 78, the Party will Consult with the other Parties on the request.

80. No Party will unreasonably withhold consent to a request made by another Party under paragraph 78.
81. For greater certainty, the functions described in subparagraphs 71.d, 71.e, 71.f, 71.g, 71.h, 71.i, 71.m and 71.n will remain the responsibility of the Joint Fisheries Committee unless the Parties otherwise agree, and such agreement may set out time frames and the circumstances in which those functions may be resumed by the Joint Fisheries Committee.
82. If a multi-First Nations fisheries management process performs a function of the Joint Fisheries Committee pursuant to paragraph 78, any Party may request that that function be resumed by the Joint Fisheries Committee, and where the other Parties consent, the function will be resumed by the Joint Fisheries Committee.
83. Any Party making a request under paragraph 82 will Consult with the other Parties on the request.
84. No Party will unreasonably withhold consent to a request made by another Party under paragraph 82.
85. For greater certainty, disputes between the Parties on whether consent referred to in paragraphs 80 and 84, is being unreasonably withheld will be finally determined by arbitration in accordance with the Dispute Resolution Chapter.
86. Where a function of the Joint Fisheries Committee is performed by a multi-First Nation fisheries management process, a reference to the Joint Fisheries Committee in this Agreement will be read as a reference to the multi-First Nation fisheries management process for that function.
87. The Parties will amend the Lheidli T'enneh Fisheries Operational Guidelines from time to time to reflect any change in the functions of the Joint Fisheries Committee and a multi-First Nation fisheries management process.
88. Where a function of the Joint Fisheries Committee is performed by a multi-First Nation fisheries management process that is terminated and not replaced by another process, the Joint Fisheries Committee will resume that function.

## **MULTI-SECTORAL ADVISORY PROCESSES**

89. Where Canada or British Columbia establishes or terminates a multi-sectoral fisheries advisory process for the Fraser River watershed area that includes any part of the Lheidli T'enneh Fish Area, Canada or British Columbia will Consult with Lheidli T'enneh in developing or terminating that multi-sectoral fisheries advisory process.

90. Where Canada or British Columbia establishes a multi-sectoral fisheries advisory process for the Fraser River watershed area that includes any part of the Lheidli T'enneh Fish Area, the Minister will, if appropriate, make provisions for Lheidli T'enneh participation or representation on the same basis as other First Nations.
91. A multi-sectoral fisheries advisory process referred to in paragraph 89 does not include international fisheries management advisory bodies.
92. The design, establishment or termination of multi-sectoral fisheries advisory processes will be at the discretion of the Minister.

#### **ANNUAL FISHING PLANS**

93. Each year, Lheidli T'enneh will develop its Annual Fishing Plan for the harvest of Fish and Aquatic Plants under the Lheidli T'enneh Fishing Right.
94. An Annual Fishing Plan will include provisions, consistent with the Lheidli T'enneh Fishing Right, respecting:
  - a. the harvest of Salmon, including species, stocks and stock groups and, where appropriate, in what amount;
  - b. the harvest of Freshwater Fish including, where appropriate, species and stock;
  - c. the harvest of Aquatic Plants, where appropriate;
  - d. location and timing of harvest;
  - e. method of harvest, including the size, type, identification, marking and quantity of fishing gear and the manner in which it may be used and any other provisions on the method of harvest;
  - f. monitoring and reporting;
  - g. other matters as may be agreed to by the Parties.
95. Lheidli T'enneh will provide an Annual Fishing Plan to the Joint Fisheries Committee in a timely manner.

#### **TREATY HARVEST DOCUMENT**

96. The Minister will issue to the Lheidli T'enneh, in a timely manner, Treaty Harvest Documents for the harvesting of Fish and Aquatic Plants under the Lheidli T'enneh Fishing Right after taking into consideration:

- a. where received in a timely manner:
    - i. the Annual Fishing Plan developed by Lheidli T'enneh; and
    - ii. recommendations from the Joint Fisheries Committee;
  - b. measures necessary for conservation;
  - c. measures, authorized by legislation, necessary for public health or public safety; and
  - d. other fisheries related matters as considered necessary by the Minister.
97. If a Treaty Harvest Document has material differences from recommendations made by the Joint Fisheries Committee under subparagraphs 71.f and 71.g or recommendations made by Lheidli T'enneh under paragraph 73 with respect to provisions of the Treaty Harvest Document, the Minister will provide written reasons for the differences to the Joint Fisheries Committee or Lheidli T'enneh as the case may be.
98. For greater certainty, a Treaty Harvest Document issued for a year may establish limits on the amount of Non-Allocated Salmon that may be harvested in that year.
99. If Lheidli T'enneh is dissatisfied with limits established by a Treaty Harvest Document on the amount of a species of Non-Allocated Salmon under paragraph 98, Lheidli T'enneh may propose the negotiation of a Harvest Level for that species under the processes set out in paragraphs 37 to 40, and, if required, arbitration under the process set out in paragraphs 41 to 49.
100. The harvesting of Fish and Aquatic Plants under the Lheidli T'enneh Fishing Right will be conducted in accordance with the provisions of the Treaty Harvest Documents.
101. Where Lheidli T'enneh has a Fixed Harvest Level for a species or stock of Salmon and the Minister, in a year, reduces Fixed allocations for food, social or ceremonial purposes to other aboriginal groups for that species or stock, the Minister may reduce the Fixed Harvest Level for that year.

#### **IN-SEASON CHANGES TO TREATY HARVEST DOCUMENT**

102. Where the Minister makes any in-season changes to a Treaty Harvest Document, the Minister will take into account the factors set out in subparagraphs 96.a through 96.d.
103. The Minister will give notice to and seek recommendations from the Joint Fisheries Committee as far in advance as practical of any in-season change to the Treaty Harvest Document.

104. Where special circumstances make it impracticable to receive recommendations from the Joint Fisheries Committee under paragraph 103, the Minister:
- a. may make in-season changes to the Treaty Harvest Document without receiving recommendations from the Joint Fisheries Committee; and
  - b. will advise the Joint Fisheries Committee as soon as practicable of the change made and the reasons for the change.
105. The Minister will notify Lheidli T'enneh of any in-season change to the Treaty Harvest Document as soon as practicable.

#### **FISHERIES OPERATIONAL GUIDELINES**

106. On the Effective Date, the Parties will establish and maintain a document known as the Lheidli T'enneh Fisheries Operational Guidelines, that sets out the operational principles, procedures and guidelines to assist each of them and the Joint Fisheries Committee in implementing the provisions of this Chapter.
107. The Lheidli T'enneh Fisheries Operational Guidelines:
- a. is not part of this Agreement;
  - b. is not a treaty or land claims agreement and does not recognize or affirm any aboriginal or treaty rights within the meaning of section 25 or 35 of the *Constitution Act, 1982*; and
  - c. does not create legal obligations.

## **CHAPTER 12**

### **WILDLIFE**

#### **GENERAL**

1. Lheidli T'enneh has the right to harvest Wildlife for food, social and ceremonial purposes in the Lheidli T'enneh Area in accordance with this Agreement, hereinafter referred to as the Lheidli T'enneh Right to Harvest Wildlife.
2. The Lheidli T'enneh Right to Harvest Wildlife is limited by:
  - a. measures necessary for conservation; and
  - b. measures, authorized by legislation, necessary for public health or public safety.
3. The Lheidli T'enneh Right to Harvest Wildlife is held by Lheidli T'enneh and cannot be alienated.
4. The Lheidli T'enneh Right to Harvest Wildlife will be exercised in a manner that is consistent with the communal nature of the Lheidli T'enneh harvest for food, social and ceremonial purposes.
5. Except as otherwise provided under a Lheidli T'enneh Law, all Lheidli T'enneh Citizens may exercise the Lheidli T'enneh Right to Harvest Wildlife throughout the year.
6. Subject to paragraph 7, Lheidli T'enneh Citizens are not required to have federal or provincial licences or to pay any fees or royalties to Canada or British Columbia relating to the Lheidli T'enneh Right to Harvest Wildlife.
7. Nothing in this Agreement affects the application of Federal or Provincial Law with respect to the possession, use and regulation of firearms.
8. This Agreement does not alter Federal or Provincial Law with respect to proprietary interests in Wildlife.
9. The Minister retains authority to manage and conserve Wildlife and Wildlife habitat and will exercise that authority in a manner consistent with this Agreement.

#### **TRADE AND BARTER**

10. Lheidli T'enneh has the right to trade or barter Wildlife or Wildlife parts, including meat, harvested under the Lheidli T'enneh Right to Harvest Wildlife:

- a. among themselves; and
  - b. with other aboriginal people of Canada resident in British Columbia.
- 11. Except as otherwise provided under Lheidli T'enneh Law, Lheidli T'enneh Citizens may exercise the right to trade or barter Wildlife or Wildlife parts, including meat, under paragraph 10.
- 12. For greater certainty:
  - a. trade or barter does not include sale; and
  - b. traded or bartered Wildlife or Wildlife parts, including meat, may not be sold.

### **TRANSPORT AND EXPORT**

- 13. Lheidli T'enneh Citizens may, in accordance with:
  - a. Federal and Provincial Law; and
  - b. Lheidli T'enneh Law under paragraphs 75 and 76,transport Wildlife or Wildlife parts, including meat, harvested under the Lheidli T'enneh Right to Harvest Wildlife.
- 14. Any export of Wildlife or Wildlife parts, including meat or fur harvested under the Lheidli T'enneh Right to Harvest Wildlife will be in accordance with Federal and Provincial Law.

### **SALE**

- 15. Any sale of Wildlife or Wildlife parts, including meat or fur harvested under the Lheidli T'enneh Right to Harvest Wildlife will be in accordance with Federal and Provincial Law that permits sale.

### **REASONABLE OPPORTUNITY**

- 16. British Columbia may authorize uses of or dispose of provincial Crown land and any such authorized use or disposition may affect the methods, times and locations of harvesting Wildlife under the Lheidli T'enneh Right to Harvest Wildlife, provided that British Columbia ensures that those authorized uses or dispositions do not deny Lheidli T'enneh the reasonable opportunity to harvest Wildlife under the Lheidli T'enneh Right to Harvest Wildlife.

17. For the purposes of paragraph 16, British Columbia and Lheidli T'enneh will negotiate and attempt to reach agreement on a process to evaluate the impact of authorized uses or dispositions of provincial Crown land on Lheidli T'enneh's reasonable opportunity to harvest Wildlife.
18. Any agreement under paragraph 17:
  - a. is not part of this Agreement; and
  - b. is not a treaty or land claims agreement and does not recognize or affirm any aboriginal or treaty rights within the meaning of sections 25 or 35 of the *Constitution Act, 1982*.
19. The Lheidli T'enneh Right to Harvest Wildlife will be exercised in a manner that does not interfere with authorized uses or dispositions of provincial Crown land existing as of the Effective Date or authorized in accordance with paragraph 16.
20. Canada may use, authorize uses of, grant, create or dispose of an interest in federal Crown land, and any use, authorized use, grant, creation or disposition may affect the methods, times and locations of the Lheidli T'enneh Right to Harvest Wildlife, but Canada will not use, authorize uses of, grant, create or dispose of an interest in federal Crown land to an extent that would result in Lheidli T'enneh being denied a reasonable opportunity to harvest Wildlife under the Lheidli T'enneh Right to Harvest Wildlife.
21. The Lheidli T'enneh Right to Harvest Wildlife will be exercised in a manner that does not interfere with the uses, authorized uses, grants, creations or dispositions of an interest in federal Crown land existing as of the Effective Date or authorized in accordance with paragraph 20.
22. Canada will provide written notice to Lheidli T'enneh before making any decision with respect to a change in use, authorized use, grant, creation or disposition of an interest in federal Crown land that is in the Lheidli T'enneh Area if the decision might adversely affect the Lheidli T'enneh Right to Harvest Wildlife, with the notice to include information about the proposed decision and such information as Canada may have in its possession about the potential adverse effect of the proposed decision on the Lheidli T'enneh Right to Harvest Wildlife.
23. Where Lheidli T'enneh has concerns about the proposed decision referred to in the notice provided under paragraph 22 on the basis that it might adversely affect the Lheidli T'enneh Right to Harvest Wildlife, Lheidli T'enneh may, within 45 days of receiving the written notice from Canada referred to in paragraph 22, provide written notice to Canada setting out a concise summary of its concerns, and the facts on which those concerns are based.
24. Upon receiving notice from Lheidli T'enneh under paragraph 23, Canada and Lheidli T'enneh will meet within 14 days, or such other period of time as may be agreed to by

the Parties in writing, to discuss the proposed decision referred to paragraph 22 and the potential adverse effect of that proposed decision on the Lheidli T'enneh Right to Harvest Wildlife, and where appropriate, will negotiate and attempt to reach agreement with respect to the nature and extent of potential limitations on the Lheidli T'enneh Right to Harvest Wildlife in relation to that parcel of federal Crown land.

25. If no agreement is reached within 60 days of the first meeting of the Parties referred to in paragraph 24, or such other period of time as may be agreed to by the Parties in writing, Canada may give Lheidli T'enneh 30 days written notice of its intent to change the use of the land, authorize the use of, grant or create interests in, or dispose of the parcel of federal Crown land.
26. Within 30 days of delivery of the written notice referred to in paragraph 25, Lheidli T'enneh or Canada may refer a dispute relating to the nature and extent of proposed measures to mitigate any potential adverse effect on the Lheidli T'enneh Right to Harvest Wildlife arising out of the proposed change in use, grant, creation or disposition of a parcel of federal Crown land to the process set out in the Dispute Resolution Chapter.
27. Canada agrees not to change the use of land, authorize the use of, grant or create an interest in, or dispose of a parcel of federal land until the expiration of the 30 day notice period referred to in paragraph 25, or, where a dispute has been referred to dispute resolution in accordance with paragraph 26, until the completion of that process.
28. This Agreement does not preclude Lheidli T'enneh from entering into an agreement with the Minister of National Defence on a case-by-case basis, which agreement will provide for access and harvesting in accordance with that agreement and Federal and Provincial Law.
29. The Lheidli T'enneh Right to Harvest Wildlife may be carried out on lands within the Lheidli T'enneh Area that are owned in fee simple off Lheidli T'enneh Lands, but that harvesting is subject to Federal and Provincial Law with respect to access to lands that are owned in fee simple.
30. In the Lheidli T'enneh Area, the use of resources on Crown land for purposes reasonably incidental to the exercise of the Lheidli T'enneh Right to Harvest Wildlife is subject to Federal and Provincial Law.

## **HARVESTING UNDER OTHER AGREEMENTS**

31. This Agreement does not preclude Lheidli T'enneh Citizens from harvesting Wildlife outside of the Lheidli T'enneh Area throughout Canada in accordance with:
  - a. Federal and Provincial Law;

- b. any agreements, that are in accordance with Federal and Provincial Law, between Lheidli T'enneh and other aboriginal people; or
- c. any arrangements between other aboriginal people and Canada or British Columbia.

## **HARVESTING BY OTHER INDIVIDUALS**

32. The Lheidli T'enneh Government may authorize individuals other than Lheidli T'enneh Citizens to exercise the Lheidli T'enneh Right to Harvest Wildlife on behalf of a Lheidli T'enneh Citizen who is unable to exercise the Lheidli T'enneh Right to Harvest Wildlife personally due to disability if:
- a. the individual:
    - i. possesses a hunting licence that under Provincial Law may only be issued to a "resident" as defined in the *Wildlife Act*; or
    - ii. is a British Columbia "resident" as defined in the *Wildlife Act* and is exempt from the requirement to possess a British Columbia resident hunting licence while hunting in British Columbia;
  - b. the individual has not been prohibited from hunting or carrying a firearm;
  - c. the individual has provided to the Lheidli T'enneh Government, a signed agreement to provide harvested Wildlife to Lheidli T'enneh Citizens for food, social or ceremonial purposes; and
  - d. the individual pays no remuneration to Lheidli T'enneh, the Lheidli T'enneh Government or a Lheidli T'enneh Citizen.
33. Each year, the Lheidli T'enneh Government will provide to British Columbia a list of all individuals who are authorized under paragraph 32.
34. For greater certainty, Provincial Law requiring individuals to hold, carry and produce provincial hunting licences applies to individuals authorized under paragraph 32.

## **DOCUMENTATION**

35. The Lheidli T'enneh Government will issue documentation to every individual who harvests Wildlife under the Lheidli T'enneh Right to Harvest Wildlife.
36. Documentation issued under paragraph 35 will:

- a. be in the English language, which will be the authoritative version, and, at the discretion of Lheidli T'enneh, also in the Carrier language;
- b. include the name and address of the individual; and
- c. meet any other requirements set out in a Wildlife Harvest Plan.

#### **DESIGNATED WILDLIFE SPECIES**

- 37. The Minister may establish a Designated Wildlife Species if the Minister determines that this is necessary to address a conservation risk to that Wildlife species within the Lheidli T'enneh Area.
- 38. Lheidli T'enneh may recommend to the Minister whether a Wildlife species should be, or continue to be, a Designated Wildlife Species.
- 39. The Minister may determine that a Wildlife species is no longer a Designated Wildlife Species if the Minister determines the conservation risk to that Wildlife species within the Lheidli T'enneh Area no longer exists.

#### **TOTAL ALLOWABLE WILDLIFE HARVEST**

- 40. If the Minister establishes a Designated Wildlife Species, the Minister will determine the Total Allowable Wildlife Harvest for that species.
- 41. The Minister will request and consider recommendations from Lheidli T'enneh before determining the Total Allowable Wildlife Harvest for a Designated Wildlife Species.
- 42. In determining the Total Allowable Wildlife Harvest for a Designated Wildlife Species, the Minister will take into account the following factors:
  - a. the population of the Designated Wildlife Species within the Lheidli T'enneh Area; and
  - b. the population of the Designated Wildlife Species within its normal range or area of movement outside the Lheidli T'enneh Area.

#### **WILDLIFE HARVEST LEVEL**

- 43. If the Minister determines a Total Allowable Wildlife Harvest for a Designated Wildlife Species, British Columbia and Lheidli T'enneh will negotiate and attempt to reach agreement on the Wildlife Harvest Level of that Designated Wildlife Species.

44. A negotiation of a Wildlife Harvest Level, or a determination by an arbitrator under paragraph 48, will take into account all relevant information presented by British Columbia and Lheidli T'enneh and in particular information with respect to:
- a. the Total Allowable Wildlife Harvest for the Designated Wildlife Species;
  - b. change in Lheidli T'enneh harvesting effort;
  - c. current and past harvest by Lheidli T'enneh Citizens for food, social and ceremonial purposes; and
  - d. harvest by individuals who are not Lheidli T'enneh Citizens.
45. British Columbia or Lheidli T'enneh may, at any time, request a review to vary a Wildlife Harvest Level.
46. The Party requesting a review of a Wildlife Harvest Level under paragraph 45 has the onus of establishing that the Wildlife Harvest Level should be varied.
47. A negotiation to vary a Wildlife Harvest Level, or a determination by an arbitrator under paragraph 48, will take into account all relevant information presented by British Columbia and Lheidli T'enneh and in particular information with respect to:
- a. the Total Allowable Wildlife Harvest for the Designated Wildlife Species;
  - b. changes in the status of the Designated Wildlife Species;
  - c. changes in conservation requirements;
  - d. change in Lheidli T'enneh harvesting effort;
  - e. current and past harvest by Lheidli T'enneh Citizens for food, social and ceremonial purposes; and
  - f. harvest by individuals who are not Lheidli T'enneh Citizens.
48. If Lheidli T'enneh and British Columbia fail to agree on a Wildlife Harvest Level or a variation of a Wildlife Harvest Level for a Designated Wildlife Species under paragraphs 43, 44 or 47, the Wildlife Harvest Level or a variation of a Wildlife Harvest Level will be finally determined by arbitration in accordance with the Dispute Resolution Chapter.
49. The harvest of a Designated Wildlife Species by hunters other than Lheidli T'enneh, may occur before, or concurrent with, the Lheidli T'enneh harvest of its Wildlife Harvest Level for that species in a given year.

## **WILDLIFE HARVEST PLAN**

50. Lheidli T'enneh will develop a Wildlife Harvest Plan for the harvest of:
- a. Wildlife species for which there is a Wildlife Harvest Level; or
  - b. other Wildlife species agreed to by Lheidli T'enneh and British Columbia.
51. A Wildlife Harvest Plan will include, with respect to species to be harvested under the Wildlife Harvest Plan, provisions, as necessary with respect to:
- a. documentation of Lheidli T'enneh harvesters;
  - b. the methods, timing and locations of the Wildlife harvest;
  - c. the number, sex and age composition of the Wildlife harvest;
  - d. method of identifying harvested Wildlife;
  - e. method of reporting harvested Wildlife;
  - f. monitoring the Wildlife harvest and data collection;
  - g. possession and transportation of Wildlife or Wildlife parts;
  - h. process for approval of in-season adjustments or modifications to the Wildlife Harvest Plan;
  - i. the term of the Wildlife Harvest Plan; and
  - j. other matters agreed to by the Lheidli T'enneh and British Columbia.
52. A Wildlife Harvest Plan will be consistent with this Agreement.
53. In preparing the Wildlife Harvest Plan, Lheidli T'enneh will take into account management concerns that may be identified by the Minister.
54. The Wildlife Harvest Plan will be submitted by Lheidli T'enneh to the Minister for approval.
55. In considering the proposed Wildlife Harvest Plan submitted under paragraph 54 the Minister will take into account the following factors:
- a. conservation requirements and availability of Wildlife resources;

- b. Lheidli T'enneh's preference with respect to harvest methods, timing and locations as set out in the proposed Wildlife Harvest Plan;
  - c. use of Wildlife resources by persons who are not Lheidli T'enneh Citizens;
  - d. requirements for the integration and efficient management of Wildlife resources;
  - e. scientific and local information with respect to Wildlife populations, numbers, health, distribution and methods for managing Wildlife;
  - f. public health and public safety; and
  - g. other relevant considerations.
56. After reviewing the Wildlife Harvest Plan, the Minister may, in a timely manner:
- a. advise Lheidli T'enneh of any questions the Minister has regarding the Wildlife Harvest Plan;
  - b. give Lheidli T'enneh an opportunity to respond to the questions;
  - c. consider Lheidli T'enneh's response; and
  - d. modify, adjust and make additions or deletions to the Wildlife Harvest Plan.
57. The Minister may approve a method of harvest that differs from those methods permitted under Federal or Provincial Law provided that the Minister is satisfied that the method is consistent with public safety.
58. The Minister will, in a timely manner, subject to the factors referred to in paragraph 55, approve, or vary and approve, the Wildlife Harvest Plan.
59. The Minister will provide written reasons to Lheidli T'enneh for variations between the proposed Wildlife Harvest Plan and the approved Wildlife Harvest Plan.
60. A Wildlife Harvest Plan will come into effect when it is approved by the Minister.
61. Lheidli T'enneh harvesting under a Wildlife Harvest Plan may take place only after approval of the Wildlife Harvest Plan by the Minister.
62. The Wildlife Harvest Plan will be reviewed at such times as proposed by either Lheidli T'enneh or British Columbia.
63. In the event of a Conflict between a provision of the approved Wildlife Harvest Plan and a Provincial Law, the approved Wildlife Harvest Plan prevails to the extent of the Conflict.

## **INITIAL DESIGNATED WILDLIFE SPECIES, HARVEST LEVELS AND HARVEST PLAN**

- 64. On the Effective Date, the Minister will designate mountain caribou and grizzly bear as the initial Designated Wildlife Species.
- 65. Lheidli T'enneh and British Columbia will negotiate the initial Harvest Level of mountain caribou and grizzly bear before the Effective Date.
- 66. Lheidli T'enneh and British Columbia will develop the initial Wildlife Harvest Plan for mountain caribou and grizzly bear before the Effective Date, to take effect on the Effective Date.

## **REGIONAL WILDLIFE MANAGEMENT PROCESS**

- 67. If British Columbia establishes a public regional Wildlife management process for an area that includes any portion of the Lheidli T'enneh Area, Lheidli T'enneh will be invited to and has the right to participate in that process.
- 68. If there is a public regional Wildlife management process established by British Columbia for an area that includes any portion of the Lheidli T'enneh Area, the Minister may request recommendations from the public regional Wildlife management process before determining:
  - a. whether a Wildlife species will be, or continue to be, a Designated Wildlife Species; and
  - b. the Total Allowable Wildlife Harvest and the Wildlife Harvest Level for any Designated Wildlife Species.

## **MANAGEMENT**

- 69. Lheidli T'enneh and British Columbia may enter into an agreement with respect to information sharing regarding wildlife management.
- 70. In the absence of an agreement under paragraph 69, the Minister may request information concerning the activities of Lheidli T'enneh, Lheidli T'enneh Citizens, and individuals authorized under paragraph 32 with respect to Wildlife harvested under the Lheidli T'enneh Right to Harvest Wildlife.
- 71. When making a request for information under paragraph 70, the Minister will provide Lheidli T'enneh with sufficient information to enable it to be adequately informed of the purpose for the request.

72. If Lheidli T'enneh declines to provide information requested under paragraph 70:
- a. Lheidli T'enneh will provide the Minister with reasons for so declining; and
  - b. the Minister may refer the matter of whether Lheidli T'enneh must provide the requested information for resolution in accordance with the Dispute Resolution Chapter.

## **LAW-MAKING**

73. The Lheidli T'enneh Government may make laws to regulate the Lheidli T'enneh Right to Harvest Wildlife and the Wildlife Harvest Level that are consistent with the Wildlife Harvest Plan with respect to:
- a. the distribution to Lheidli T'enneh Citizens of Wildlife harvested under this Agreement;
  - b. the methods, timing and location of the harvest of Wildlife included in the Wildlife Harvest Plan;
  - c. the conditions for designation of Lheidli T'enneh Citizens who may exercise the Lheidli T'enneh Right to Harvest Wildlife;
  - d. trade or barter of Wildlife under paragraph 10;
  - e. identification of Wildlife and Wildlife parts that may be transported by an undocumented Lheidli T'enneh Citizen or by an aboriginal trading partner who is not a Lheidli T'enneh Citizen; and
  - f. other matters agreed to by the Parties.
74. In the event of a Conflict between a Lheidli T'enneh Law under paragraph 73 and a Federal or Provincial Law, the Lheidli T'enneh Law prevails to the extent of the Conflict.
75. The Lheidli T'enneh Government will make laws to require Lheidli T'enneh harvesters to comply with an approved Wildlife Harvest Plan.
76. The Lheidli T'enneh Government will make laws to require all individuals who harvest Wildlife under this Agreement or transport Wildlife harvested under this Agreement to carry documentation issued by the Lheidli T'enneh Government and produce that documentation on request by an authorized individual.
77. The Lheidli T'enneh Government may make laws respecting the methods, timing and location of harvesting, under the Lheidli T'enneh Right to Harvest Wildlife, of those Wildlife species not included in the Wildlife Harvest Plan.

78. In the event of a Conflict between a Lheidli T'enneh Law made under paragraphs 75, 76 or 77 and a Federal or Provincial Law, the Federal or Provincial Law prevails to the extent of the Conflict.

## **TRAPPING**

79. Traplines wholly or partially on Lheidli T'enneh Lands that exist as of the Effective Date and are set out in Part 3 of Appendix E-1 to this Agreement, are retained by the persons who hold those interests and may be transferred or renewed in accordance with Provincial Law.
80. Lheidli T'enneh will not unreasonably restrict access to Lheidli T'enneh Lands by any person who is the registered holder of a trapline as set out in Part 3 of Appendix E-1, or any renewal or replacement thereof, or any person who has written permission from a registered trapline holder to trap within the registered trapline area for the purpose of carrying out trapping activities.
81. If a trapline that is wholly or partially located on Lheidli T'enneh Lands becomes vacant by reason of abandonment or operation of law, British Columbia will not grant registration of that portion of the trapline located on Lheidli T'enneh Lands without the consent of Lheidli T'enneh.
82. If the holder of a registered trapline that is located on Lheidli T'enneh Lands agrees to transfer the trapline to Lheidli T'enneh, British Columbia will consent to and register the transfer.
83. On the Effective Date, trapline TR0706T006 is registered to Lheidli T'enneh.

## **GUIDING**

84. Guide outfitter licences and guide outfitter certificates that exist as of the Effective Date and are set out in Part 3 of Appendix E-1 to this Agreement are retained by the persons who hold those interests and may be transferred or renewed in accordance with Provincial Law.
85. Angling guide licences that exist as of the Effective Date are retained by the persons who hold those interests and may be transferred or renewed in accordance with Provincial Law.
86. Lheidli T'enneh will not unreasonably restrict access to Lheidli T'enneh Lands by any person who holds a guide outfitter licence and guide outfitter certificate as is set out in Part 3 of Appendix E-1, or any angling guide licence that exists as of the Effective Date, or any renewal or replacement thereof, and their respective employees, agents and other representatives for the purpose of carrying out guiding activities.

87. If a guide outfitter area that is wholly or partially located on Lheidli T'enneh Lands becomes vacant by reason of abandonment or operation of law, British Columbia will not issue a new guide outfitter licence or guide outfitter certificate for that portion of the guide outfitter area located on Lheidli T'enneh Lands without the consent of Lheidli T'enneh.
88. If an angling guide licence that is wholly or partially located on any portion of a watercourse within Lheidli T'enneh Lands becomes vacant by reason of abandonment or operation of law, British Columbia will not issue a new angling guide licence for that portion of the watercourse wholly within Lheidli T'enneh lands without the consent of Lheidli T'enneh.

## **TRAINING**

89. Lheidli T'enneh may establish programs, consistent with provincial programs, for mandatory training for Lheidli T'enneh hunters with respect to:
- a. conservation and safety; and
  - b. methods of harvesting and handling of Wildlife.
90. In the absence of any Lheidli T'enneh program under paragraph 89, the provincial training system will apply to Lheidli T'enneh hunters.



## **CHAPTER 13**

### **MIGRATORY BIRDS**

#### **GENERAL**

1. Lheidli T'enneh has the right to harvest Migratory Birds for food, social and ceremonial purposes in the Lheidli T'enneh Area in accordance with this Agreement, hereinafter referred to as the Lheidli T'enneh Right to Harvest Migratory Birds.
2. The Lheidli T'enneh Right to Harvest Migratory Birds is limited by:
  - a. measures necessary for conservation; and
  - b. measures, authorized by legislation, necessary for public health or public safety.
3. The Lheidli T'enneh Right to Harvest Migratory Birds is held by Lheidli T'enneh and cannot be alienated.
4. The Lheidli T'enneh Right to Harvest Migratory Birds will be exercised in a manner that is consistent with the communal nature of the Lheidli T'enneh harvest for food, social and ceremonial purposes.
5. Except as otherwise provided under a Lheidli T'enneh Law, all Lheidli T'enneh Citizens may exercise the Lheidli T'enneh Right to Harvest Migratory Birds throughout the year.
6. Subject to paragraph 7, Lheidli T'enneh Citizens are not required to have federal or provincial licences or to pay any fees or royalties to Canada or British Columbia relating to the Lheidli T'enneh Right to Harvest Migratory Birds.
7. Nothing in this Agreement affects the application of Federal or Provincial Law with respect to the possession, use and regulation of firearms.
8. This Agreement does not alter Federal or Provincial Law with respect to proprietary interests in Migratory Birds.
9. The Minister retains authority to manage and conserve Migratory Birds and Migratory Bird habitat and will exercise that authority in a manner consistent with this Agreement.

#### **TRADE AND BARTER**

10. Lheidli T'enneh has the right to trade or barter Migratory Birds harvested under the Lheidli T'enneh Right to Harvest Migratory Birds:

- a. among themselves; and
  - b. with other aboriginal people of Canada resident in British Columbia.
11. Except as otherwise provided under Lheidli T'enneh Law, Lheidli T'enneh Citizens may exercise the right to trade or barter Migratory Birds under paragraph 10.

#### **SALE**

12. Lheidli T'enneh and Lheidli T'enneh Citizens may, in accordance with:
- a. Federal and Provincial Law; and
  - b. Lheidli T'enneh Law under subparagraph 44.b,
- sell Migratory Birds harvested under the Lheidli T'enneh Right to Harvest Migratory Birds.
13. Lheidli T'enneh and Lheidli T'enneh Citizens may, in accordance with:
- a. Federal or Provincial Law; and
  - b. Lheidli T'enneh Law under subparagraph 42.d,
- sell inedible by-products, including down, of Migratory Birds harvested under the Lheidli T'enneh Right to Harvest Migratory Birds.

#### **TRANSPORT AND EXPORT**

14. Lheidli T'enneh and Lheidli T'enneh Citizens may, in accordance with:
- a. Federal and Provincial Law; and
  - b. Lheidli T'enneh Law under paragraph 45,
- transport Migratory Birds, and their inedible by-products, including down, harvested under the Lheidli T'enneh Right to Harvest Migratory Birds.
15. Lheidli T'enneh and Lheidli T'enneh Citizens may, in accordance with Federal and Provincial Law, export Migratory Birds, and their inedible by-products, including down, harvested under the Lheidli T'enneh Right to Harvest Migratory Birds.

## REASONABLE OPPORTUNITY

16. British Columbia may authorize uses of or dispose of provincial Crown land and any such authorized use or disposition may affect the methods, times and locations of harvesting Migratory Birds under the Lheidli T'enneh Right to Harvest Migratory Birds, provided that British Columbia ensures that those authorized uses or dispositions do not deny Lheidli T'enneh the reasonable opportunity to harvest Migratory Birds under the Lheidli T'enneh Right to Harvest Migratory Birds.
17. For the purposes of paragraph 16, British Columbia and Lheidli T'enneh will negotiate and attempt to reach agreement on a process to evaluate the impact of authorized uses and dispositions of provincial Crown land on Lheidli T'enneh's reasonable opportunity to harvest Migratory Birds.
18. Any agreement under paragraph 17:
  - a. is not part of this Agreement; and
  - b. is not a treaty or land claims agreement and does not recognize or affirm any aboriginal or treaty rights within the meaning of sections 25 or 35 of the *Constitution Act, 1982*.
19. The Lheidli T'enneh Right to Harvest Migratory Birds will be exercised in a manner that does not interfere with authorized uses or dispositions of provincial Crown land existing as of the Effective Date or authorized in accordance with paragraph 16.
20. Canada may use, authorize uses of, grant, create or dispose of an interest in federal Crown land, and any use, authorized use, grant, creation or disposition may affect the methods, times and locations of the Lheidli T'enneh Right to Harvest Migratory Birds, but Canada will not use, authorize uses of, grant, create or dispose of an interest in federal Crown land to an extent that would result in Lheidli T'enneh being denied a reasonable opportunity to harvest Migratory Birds under the Lheidli T'enneh Right to Harvest Migratory Birds.
21. The Lheidli T'enneh Right to Harvest Migratory Birds will be exercised in a manner that does not interfere with the uses, authorized uses, grants, creations or dispositions of an interest in federal Crown land existing as of the Effective Date or authorized in accordance with paragraph 20.
22. Canada will provide written notice to Lheidli T'enneh before making any decision with respect to a change in use, authorized use, grant, creation or disposal of an interest in federal Crown land that is in the Lheidli T'enneh Area if the decision might adversely affect the Lheidli T'enneh Right to Harvest Migratory Birds, with the notice to include information about the proposed decision and such information as Canada may have in its

possession about the potential adverse effect of the proposed decision on the Lheidli T'enneh Right to Harvest Migratory Birds.

23. Where Lheidli T'enneh has concerns about the proposed decision referred to in the notice provided under paragraph 22 on the basis that it might adversely affect the Lheidli T'enneh Right to Harvest Migratory Birds, Lheidli T'enneh may, within 45 days of receiving the written notice from Canada referred to in paragraph 22, provide written notice to Canada setting out a concise summary of its concerns and the facts on which those concerns are based.
24. Upon receiving notice from Lheidli T'enneh under paragraph 23, Canada and Lheidli T'enneh will meet within 14 days, or such other period of time as may be agreed to by the Parties in writing, to discuss the proposed decision referred to paragraph 22 and the potential adverse effect of that proposed decision on the Lheidli T'enneh Right to Harvest Migratory Birds, and where appropriate, negotiate and attempt to reach agreement with respect to the nature and extent of potential limitations on the Lheidli T'enneh Right to Harvest Migratory Birds in relation to that parcel of federal Crown land.
25. If no agreement is reached within 60 days of the first meeting of the Parties referred to in paragraph 24, or such other period of time as may be agreed to by the Parties in writing, Canada may give Lheidli T'enneh 30 days written notice of its intent to change the use of the land, authorize the use of, grant or create interests in, or dispose of the parcel of federal Crown land.
26. Within 30 days of delivery of the written notice referred to in paragraph 25, Lheidli T'enneh or Canada may refer a dispute relating to the nature and extent of proposed measures to mitigate any potential adverse effect on the Lheidli T'enneh Right to Harvest Migratory Birds arising out of the proposed change in use, grant, creation or disposition of a parcel of federal Crown land to the process set out in the Dispute Resolution Chapter.
27. Canada will not change the use of land, authorize the use of, grant or create an interest in, or dispose of a parcel of federal Crown land until the expiration of the 30 day notice period referred to in paragraph 25, or, where a dispute has been referred to dispute resolution in accordance with paragraph 26, until the completion of that process.
28. This Agreement does not preclude Lheidli T'enneh from entering into an agreement with the Minister of National Defence on a case-by-case basis, which agreement will provide for access and harvesting in accordance with that agreement and Federal and Provincial Law.
29. The Lheidli T'enneh Right to Harvest Migratory Birds may be carried out on lands within the Lheidli T'enneh Area that are owned in fee simple, but that harvesting is subject to Federal and Provincial Law with respect to access to lands that are owned in fee simple.

30. In the Lheidli T'enneh Area, the use of resources on Crown land for purposes reasonably incidental to the exercise of the Lheidli T'enneh Right to Harvest Migratory Birds is subject to Federal and Provincial Law.

#### **HARVESTING UNDER OTHER AGREEMENTS**

31. This Agreement does not preclude Lheidli T'enneh Citizens from harvesting Migratory Birds outside of the Lheidli T'enneh Area throughout Canada in accordance with:
- a. Federal and Provincial Law;
  - b. any agreements, that are in accordance with Federal and Provincial Law, between Lheidli T'enneh and other aboriginal people; or
  - c. any arrangements between other aboriginal people and Canada or British Columbia.

#### **DOCUMENTATION**

32. The Lheidli T'enneh Government will issue documentation to every individual who harvests Migratory Birds under the Lheidli T'enneh Right to Harvest Migratory Birds.
33. Documentation issued under paragraph 32 will:
- a. be in the English language, which will be the authoritative version, and, at the discretion of Lheidli T'enneh, also in the Carrier language;
  - b. include the name and address of the individual; and
  - c. meet any other requirements set out in this Agreement.

#### **DESIGNATED POPULATIONS**

34. If, in the opinion of any Party, there is a conservation risk to a population of a species of Migratory Bird, that Party may make recommendations to the Minister for the designation of that population as a Designated Migratory Bird Population.
35. If the Minister, after Consulting with the Parties, determines that there is a conservation risk to a population of a species of Migratory Bird that requires the allocation of the harvest of that population, the Minister may designate that population as a Designated Migratory Bird Population.

36. If the Minister designates a population as a Designated Migratory Bird Population, the Minister will, after Consulting with the Parties, determine the Total Allowable Migratory Bird Harvest for that population.
37. The Minister, in determining the Total Allowable Migratory Bird Harvest, will take into account factors including:
  - a. the status of the Designated Migratory Bird Population;
  - b. continental and local conservation requirements; and
  - c. Canada's national and international commitments with respect to Migratory Birds.
38. The Minister, after Consulting with Lheidli T'enneh, will determine the Harvest Level, which will be a percentage of the Total Allowable Harvest for the Designated Migratory Bird Population.
39. In determining the Harvest Level under paragraph 38, the Minister will take into account:
  - a. the Total Allowable Migratory Bird Harvest for the Designated Migratory Bird Population;
  - b. the current and past food, social and ceremonial needs and harvesting practices of Lheidli T'enneh for the Designated Migratory Bird Population;
  - c. the extent and nature of the Lheidli T'enneh Right to Harvest Migratory Birds; and
  - d. the interests of other First Nations and user groups.
40. If, in the opinion of any Party, there is no longer a conservation risk to a Designated Migratory Bird Population, that Party may recommend to the Minister the removal of the designation.
41. If the Minister, after Consulting with the Parties, determines there is no longer a conservation risk to a Designated Migratory Bird Population, the Minister may remove the designation.

## **LAW-MAKING**

42. The Lheidli T'enneh Government may make laws to regulate the Lheidli T'enneh Right to Harvest Migratory Birds with respect to:
  - a. the designation of Lheidli T'enneh Citizens who may harvest Migratory Birds under this Agreement;

- b. the distribution of harvested Migratory Birds to Lheidli T'enneh Citizens;
  - c. trade or barter of harvested Migratory Birds under paragraph 10;
  - d. sale of inedible by-products, including down, of harvested Migratory Birds; and
  - e. other matters as may be agreed upon by the Parties.
43. In the event of a Conflict between Lheidli T'enneh Law under paragraph 42 and a Federal or Provincial Law, the Lheidli T'enneh Law prevails to the extent of the Conflict.
44. The Lheidli T'enneh Government may make laws to regulate the Lheidli T'enneh Right to Harvest Migratory Birds with respect to:
- a. the methods, timing and location of harvest of Migratory Birds;
  - b. the sale of Migratory Birds, other than their inedible by-products including down, if permitted by Federal and Provincial Law;
  - c. the management of Migratory Birds and Migratory Bird habitat on Lheidli T'enneh Lands; and
  - d. other matter as agreed to by the Parties.
45. The Lheidli T'enneh Government will make laws to require all individuals who harvest or transport Migratory Birds under the Lheidli T'enneh Right to Harvest Migratory Birds to carry documentation issued by the Lheidli T'enneh Government and produce that documentation on request by an authorized individual.
46. In the event of a Conflict between a Lheidli T'enneh Law under paragraphs 44 and 45 and a Federal or Provincial Law, the Federal or Provincial Law prevails to the extent of the Conflict.

## CONSERVATION

47. The Parties may negotiate and attempt to reach agreement with respect to conservation issues including:
- a. information sharing;
  - b. actions to be taken by the Parties to jointly address conservation issues;
  - c. local management of Migratory Birds and their habitats;

- d. population, harvest and habitat monitoring;
  - e. enforcement; and
  - f. licence or permit requirements.
48. If British Columbia establishes a public regional wildlife management process, for an area that includes any portion of the Lheidli T'enneh Area, that addresses matters regarding Migratory Birds, Lheidli T'enneh will be invited and have the right to participate in that public regional wildlife management process.
49. For conservation purposes, the Minister may request information concerning the activities of Lheidli T'enneh and Lheidli T'enneh Citizens with respect to Migratory Birds harvested under the Lheidli T'enneh Right to Harvest Migratory Birds.
50. Before making a request for information under paragraph 49, the Minister will:
- a. attempt to obtain the information under any agreement under subparagraph 47.a; and
  - b. provide Lheidli T'enneh with sufficient information to enable it to be adequately informed of the conservation purpose for the request.
51. If Lheidli T'enneh declines to provide information requested under paragraph 49:
- a. Lheidli T'enneh will provide the Minister with reasons for so declining; and
  - b. the Minister may refer the matter of whether Lheidli T'enneh must provide the requested information for resolution in accordance with the Dispute Resolution Chapter.

## **CHAPTER 14**

### **ENVIRONMENTAL PROTECTION**

#### **GENERAL**

1. Canada and Lheidli T'enneh may enter into an agreement concerning the performance of specified federal environmental protection functions by Lheidli T'enneh within an area defined in that agreement.
2. British Columbia and Lheidli T'enneh may enter into an agreement concerning the performance of specified provincial environmental protection functions by Lheidli T'enneh within an area defined in that agreement.
3. Any agreement under paragraphs 1 and 2 will be in accordance with the technical and administrative capacity and resources of Lheidli T'enneh to carry out the environmental protection functions in accordance with relevant federal and provincial standards.

#### **LAW-MAKING**

4. The Lheidli T'enneh Government may make laws, applicable on Lheidli T'enneh Lands, for the purposes of protecting, preserving and conserving the Environment with respect to:
  - a. prevention, mitigation and remediation of pollution and degradation of the Environment;
  - b. waste management, including solid and liquid waste;
  - c. protection of local air quality; and
  - d. Environmental Emergency response.
5. In the event of a Conflict between a Lheidli T'enneh Law under paragraph 4 and a Federal or Provincial Law, the Federal or Provincial Law prevails to the extent of the Conflict.

#### **ENVIRONMENTAL EMERGENCIES**

6. Lheidli T'enneh may enter into agreements with Canada, British Columbia, Local Government or other First Nation governments for the prevention of, preparedness for, response to and recovery from Environmental Emergencies occurring on Lheidli T'enneh Lands or on land or waters adjacent to Lheidli T'enneh Lands.



## **CHAPTER 15**

### **LHEIDLI T'ENNEH RIGHTS AND ROLES OUTSIDE LHEIDLI T'ENNEH LANDS**

#### **PUBLIC PLANNING PROCESSES**

1. Lheidli T'enneh has the right to participate in any Public Planning Process that may be developed by British Columbia within the Lheidli T'enneh Area in accordance with procedures established by British Columbia for that Public Planning Process.
2. Lheidli T'enneh may make proposals to British Columbia to establish a Public Planning Process within the Lheidli T'enneh Area.
3. Nothing in this Agreement obligates British Columbia to undertake a Public Planning Process within the Lheidli T'enneh Area.
4. Lheidli T'enneh has the right to participate in the development of the terms of reference of any Public Planning Process intended to apply within the Lheidli T'enneh Area.
5. In participating in any Public Planning Process referred to in paragraph 1, Lheidli T'enneh may bring forward any matters it considers relevant, including any rights set out in this Agreement.
6. British Columbia will review any Lheidli T'enneh proposals brought forward under paragraph 5 and take them into consideration when undertaking a Public Planning Process within the Lheidli T'enneh Area.
7. British Columbia will provide Lheidli T'enneh with the draft plan resulting from any Public Planning Process intended to apply within the Lheidli T'enneh Area, and Lheidli T'enneh may provide written recommendations to the Minister which recommendations may be made public by British Columbia.
8. After considering any written recommendations from Lheidli T'enneh and any matters the Minister considers appropriate, the Minister will provide written reasons for any Lheidli T'enneh recommendations that are not accepted.
9. Where Lheidli T'enneh recommendations are not accepted under paragraph 8, and at the request of the Lheidli T'enneh, the Minister will meet with Lheidli T'enneh to discuss concerns that Lheidli T'enneh has with the Minister's response.
10. British Columbia may proceed with any Public Planning Process even if Lheidli T'enneh does not participate in the process.

## **NEW RELATIONSHIP**

11. Nothing in this Agreement precludes Lheidli T'enneh from participating in a provincial process or institution including a process or institution that may address matters of shared decision making, or 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.
12. If British Columbia develops a process or institution under paragraph 11, at the request of either Party, Lheidli T'enneh and British Columbia will negotiate and attempt to reach agreement respecting the establishment of a process or institution with respect to the applicable areas within the Willow River and Bowron River Watersheds, as set out in Appendices L and M.
13. Nothing in this Agreement precludes Lheidli T'enneh from participating in, or benefiting from, provincial benefits-sharing programs of general application in accordance with the general criteria established for those programs from time to time.
14. Nothing in this Agreement precludes Lheidli T'enneh from entering into arrangements for economic opportunities with third parties, provided that these arrangements are consistent with this Agreement.

## **GATHERING**

15. Lheidli T'enneh has the right to gather Plants for food, social and ceremonial purposes on provincial Crown lands within the Lheidli T'enneh Area in accordance with this Agreement, hereinafter referred to as the Lheidli T'enneh Right to Gather Plants.
16. The Lheidli T'enneh Right to Gather Plants is limited by:
  - a. measures necessary for conservation; and
  - b. measures, authorized by legislation, necessary for the purposes of public health or public safety.
17. The Lheidli T'enneh Right to Gather Plants is held by Lheidli T'enneh and cannot be alienated.
18. Lheidli T'enneh Citizens are not required to have federal or provincial licences or to pay any fees or royalties to Canada or British Columbia relating to the Lheidli T'enneh Right to Gather Plants.
19. British Columbia may authorize uses of or dispose of provincial Crown land and any authorized use or disposition may affect the methods, times and locations of gathering Plants under the Lheidli T'enneh Right to Gather Plants, provided that British Columbia

ensures that those authorized uses or dispositions do not deny the Lheidli T'enneh the reasonable opportunity to gather Plants under the Lheidli T'enneh Right to Gather Plants.

20. For the purposes of paragraph 19, British Columbia and Lheidli T'enneh will negotiate and attempt to reach agreement on a process to evaluate the impact of authorized uses or dispositions of provincial Crown land on Lheidli T'enneh's reasonable opportunity to gather Plants.
21. Any agreement under paragraph 20:
  - a. is not part of this Agreement; and
  - b. is not a treaty or land claims agreement and does not recognize or affirm any aboriginal or treaty rights within the meaning of sections 25 or 35 of the *Constitution Act, 1982*.
22. The Lheidli T'enneh Right to Gather Plants will be exercised in a manner that does not interfere with authorized uses or dispositions of provincial Crown land existing as of the Effective Date or authorized in accordance with paragraph 19.
23. Before the Effective Date, Lheidli T'enneh will provide British Columbia with general information regarding where and when Lheidli T'enneh exercises the Lheidli T'enneh Right to Gather Plants, and what Plants are harvested.
24. Lheidli T'enneh and British Columbia may enter into an agreement with respect to information sharing regarding gathering.
25. In the absence of agreement under paragraph 24, the Minister may request the following information with respect to the Lheidli T'enneh Right to Gather Plants:
  - a. harvest location;
  - b. time of harvest; and
  - c. Plant species harvested.
26. When making a request for information under paragraph 25, the Minister will provide Lheidli T'enneh with sufficient information to enable it to be adequately informed of the purpose for the request.
27. Lheidli T'enneh will make reasonable efforts to provide the information requested under paragraph 25.
28. If Lheidli T'enneh declines to provide the information requested under paragraph 25:

- a. Lheidli T'enneh will provide the Minister with reasons for choosing not to provide the information; and
  - b. the Minister may refer the matter of whether Lheidli T'enneh must provide the requested information for resolution in accordance with the Dispute Resolution Chapter.
29. In the Lheidli T'enneh Area, the use of resources for purposes reasonably incidental to the exercise of the Lheidli T'enneh Right to Gather Plants on Crown land is subject to Federal and Provincial Law.

## **PARKS AND PROTECTED AREAS**

30. Lheidli T'enneh may make proposals to British Columbia to establish a Protected Area within the Lheidli T'enneh Area.
31. Nothing in this Agreement obligates British Columbia to establish a Protected Area within the Lheidli T'enneh Area.
32. Any Park, Protected Area, Ecological Reserve or National Historic Site established after the Effective Date will not include Lheidli T'enneh Lands without the consent of Lheidli T'enneh.
33. Before the Effective Date, British Columbia and Lheidli T'enneh will negotiate an agreement, consistent with this Agreement and legislation establishing Provincial Parks, that addresses:
- a. park planning;
  - b. management and operations;
  - c. economic opportunities; and
  - d. other matters agreed to by British Columbia and Lheidli T'enneh.
34. The agreement under paragraph 33 will include Bowron Lake Park, Fort George Canyon Park, Kakwa Park, Purden Lake Park, West Lake Park, and West Twin Park and West Twin Protected Area.
35. The agreement under paragraph 33:
- a. is not part of this Agreement; and

- b. is not be a treaty or land claims agreement and does not recognize or affirm any aboriginal or treaty rights within the meaning of sections 25 or 35 of the *Constitution Act, 1982*.

## **COMMERCIAL RECREATION TENURE**

- 36. Within two years after the Effective Date, Lheidli T'enneh may:
  - a. develop a commercial recreation management plan for a portion of the area set out in Appendix L; and
  - b. based on the commercial recreation management plan, apply for a commercial recreation tenure.
- 37. Provided that application by Lheidli T'enneh is made in the period specified under paragraph 36, and is in accordance with provincial policy in relation to commercial recreation, British Columbia will issue a commercial recreation tenure to Lheidli T'enneh for the operating area described in the commercial recreation management plan.
- 38. The term of the Lheidli T'enneh commercial recreation tenure will be 30 years.
- 39. During the first five years of the term of the Lheidli T'enneh commercial recreation tenure:
  - a. Lheidli T'enneh may, but is not required to, carry out the activities set out in the commercial recreation management plan; and
  - b. British Columbia will not issue another commercial recreation tenure within the operating area of the Lheidli T'enneh commercial recreation tenure which would directly conflict with the Lheidli T'enneh commercial recreation management plan.
- 40. Any commercial recreation tenure issued to Lheidli T'enneh under paragraph 37:
  - a. is not part of this Agreement; and
  - b. is not a treaty or land claims agreement and does not recognize or affirm any aboriginal or treaty rights within the meaning of sections 25 or 35 of the *Constitution Act, 1982*.



## CHAPTER 16

### CULTURE AND HERITAGE

#### LAW-MAKING

1. The Lheidli T'enneh Government may make laws applicable on Lheidli T'enneh Lands with respect to:
  - a. the conservation, protection and management of Cultural Heritage Resources;
  - b. public access to Heritage Sites;
  - c. the preservation, promotion and development and teaching of the Carrier language and Carrier culture; and
  - d. the certification and accreditation of teachers of the Carrier language and Carrier culture.
2. Notwithstanding paragraph 1, Lheidli T'enneh Law under subparagraphs 1.c and 1.d do not apply to schools governed by the *School Act*.
3. For the purposes of subparagraph 1.c, Carrier culture includes Lheidli T'enneh history, feasts, ceremonies, traditional naming practices, symbols, songs, dances and stories, but, for greater certainty, and as provided in paragraph 26 of the General Provisions Chapter, Lheidli T'enneh does not have the authority to make laws respecting Intellectual Property or the official languages of Canada.
4. Lheidli T'enneh Law with respect to the conservation, protection and management of Cultural Heritage Resources on Lheidli T'enneh Lands will establish standards equivalent to or exceeding the standards established by Federal and Provincial Law for the conservation, protection and management of Cultural Heritage Resources.
5. A Lheidli T'enneh Law under subparagraph 1.b will not unreasonably deny public access to Heritage Sites on Lheidli T'enneh Lands.
6. In the event of a Conflict between a Lheidli T'enneh Law under paragraph 1 and a Federal or Provincial Law, the Lheidli T'enneh Law prevails to the extent of the Conflict.
7. The Lheidli T'enneh Government may make laws applicable on Lheidli T'enneh Lands with respect to the cremation or reinterment of ancient human remains not of contemporary forensic concern and reasonably considered to be of Lheidli T'enneh ancestry.

8. In the event of a Conflict between a Lheidli T'enneh Law under paragraph 7 and a Federal or Provincial Law, the Lheidli T'enneh Law prevails to the extent of the Conflict.
9. Nothing in this Agreement limits the authority of Canada and British Columbia to conserve and manage:
  - a. Records;
  - b. records of federal or provincial government institutions; or
  - c. ministerial records.

#### **CANADIAN MUSEUM OF CIVILIZATION**

10. If an artifact held by the Canadian Museum of Civilization as of the Effective Date is established to the satisfaction of Lheidli T'enneh and the Canadian Museum of Civilization to be a Lheidli T'enneh Artifact, Lheidli T'enneh and the Canadian Museum of Civilization may negotiate and attempt to reach agreement with respect to the disposition of, including repatriation, or custodial arrangements for, that Lheidli T'enneh Artifact.
11. An agreement with respect to custodial arrangements under paragraph 10 will respect Lheidli T'enneh Law with respect to Lheidli T'enneh Artifacts and will comply with Federal and Provincial Law, including the statutory mandate of the Canadian Museum of Civilization.
12. An agreement with respect to repatriation arrangements under paragraph 10 will require that any repatriated Lheidli T'enneh Artifact will become the sole legal responsibility of Lheidli T'enneh.

#### **ROYAL BRITISH COLUMBIA MUSEUM**

13. Appendix N-1 and Appendix N-2 set out all artifacts in the permanent collection of the Royal British Columbia Museum on the Effective Date that have been identified as Lheidli T'enneh Artifacts.
14. British Columbia will transfer to Lheidli T'enneh without condition all its legal interests in, and possession of, the Lheidli T'enneh Artifacts set out in Appendix N-1:
  - a. as soon as practicable following a request by Lheidli T'enneh;
  - b. if there is no request by Lheidli T'enneh, five years after the Effective Date; or
  - c. by any other date agreed to by British Columbia and Lheidli T'enneh.

15. The transfer of the legal interests in, and possession of, the Lheidli T'enneh Artifacts under paragraph 14 is deemed to occur:
  - a. when those artifacts arrive at a location for delivery designated in writing by Lheidli T'enneh; or
  - b. if Lheidli T'enneh does not designate a location for delivery, when those artifacts are delivered to the address for Lheidli T'enneh set out in the General Provisions Chapter.
16. The Royal British Columbia Museum:
  - a. will continue to hold the Lheidli T'enneh Artifacts set out in Appendix N-1 under the same terms and conditions as they are held on the Effective Date, until they are transported to Lheidli T'enneh;
  - b. will not be liable for any loss or damage to those Lheidli T'enneh Artifacts unless the loss or damage results from dishonesty gross negligence, or malicious or wilful misconduct of its employees or agents; and
  - c. will determine the transportation arrangements for, and will transport, those Lheidli T'enneh Artifacts in accordance with the prevailing practices of the Royal British Columbia Museum for transportation of artifacts to museums.
17. British Columbia will not be liable for any loss or damage to Lheidli T'enneh Artifacts set out in Appendix N-1 unless the loss or damage results from dishonesty, gross negligence, or malicious or wilful misconduct of its employees or agents.
18. From time to time, at the request of Lheidli T'enneh or British Columbia, Lheidli T'enneh and the Royal British Columbia Museum will negotiate and attempt to reach an agreement on custodial arrangements with respect to the Lheidli T'enneh Artifacts listed in Appendix N-2.
19. An agreement under paragraph 18 concerning custodial arrangements will respect Lheidli T'enneh Law with respect to Lheidli T'enneh Artifacts and will comply with Federal and Provincial Law, including the statutory mandate of the Royal British Columbia Museum.

## **ACCESS TO OTHER COLLECTIONS**

20. At the request of Lheidli T'enneh, Canada and British Columbia will use reasonable efforts, in accordance with Federal and Provincial Law, to facilitate Lheidli T'enneh access to other collections that are known to hold Lheidli T'enneh Artifacts and Records.

## **OTHER LHEIDLI T'ENNEH ARTIFACTS**

21. Lheidli T'enneh will own any Lheidli T'enneh Artifact discovered within Lheidli T'enneh Lands after the Effective Date unless another person establishes ownership of that Lheidli T'enneh Artifact.
22. After the Effective Date, if any Lheidli T'enneh Artifact discovered in British Columbia outside Lheidli T'enneh Lands comes into the permanent possession or under the control of British Columbia, British Columbia may lend, or transfer its interest in, that Lheidli T'enneh Artifact to Lheidli T'enneh in accordance with an agreement negotiated between British Columbia and Lheidli T'enneh.
23. After the Effective Date, if any Lheidli T'enneh Artifact discovered outside Lheidli T'enneh Lands comes into the permanent possession or under the control of Canada, Canada may lend, or transfer its interest in, that Lheidli T'enneh Artifact to the Lheidli T'enneh in accordance with an agreement negotiated between Canada and Lheidli T'enneh.

## **ANCIENT HUMAN REMAINS**

24. Canada or British Columbia will negotiate and attempt to reach agreement with Lheidli T'enneh with respect to the delivery to the Lheidli T'enneh of ancient human remains that are not of contemporary forensic concern and are reasonably considered to be of Lheidli T'enneh ancestry, found off Lheidli T'enneh Lands that come into the possession of Canada or British Columbia after the Effective Date.

## **HERITAGE SITES**

25. On the Effective Date, British Columbia will commence the provincial designation process under the *Heritage Conservation Act* for sites of cultural or historic significance set out in Appendix O-1.
26. In recognition that a site designated in accordance with paragraph 25 may also have cultural or historic significance to persons other than Lheidli T'enneh, British Columbia may amend such designation to additionally reflect that cultural or historic significance.

## **KEY GEOGRAPHIC FEATURES**

27. On the Effective Date, British Columbia will name or rename with Carrier names the geographic features set out in Appendix O-2 that meet provincial policy requirements for naming or renaming.

**CULTURE AND HERITAGE AGREEMENTS**

28. Any agreement under paragraphs 10, 18, 22, 23 and 24:
- a. will not be part of this Agreement; and
  - b. will not be a treaty or land claims agreement and will not recognize or affirm any aboriginal or treaty rights within the meaning of sections 25 or 35 of the *Constitution Act, 1982*.



## **CHAPTER 17**

### **GOVERNANCE**

#### **LHEIDLI T'ENNEH SELF-GOVERNMENT**

1. Lheidli T'enneh has the right to self-government, and the authority to make laws, as set out in this Agreement.
2. The Lheidli T'enneh Government, as provided for under the Lheidli T'enneh Constitution and this Agreement, is the government of Lheidli T'enneh.
3. The exercise of the Lheidli T'enneh Government jurisdiction and authority set out in this Agreement will evolve over time.

#### **LEGAL STATUS AND CAPACITY**

4. Lheidli T'enneh 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.
5. The rights, powers, privileges and authorities of Lheidli T'enneh will be exercised in accordance with:
  - a. this Agreement; and
  - b. Lheidli T'enneh Law, including the Lheidli T'enneh Constitution.
6. Lheidli T'enneh will act through the Lheidli T'enneh Government in exercising its rights, powers, privileges and authorities and in carrying out its duties, functions and obligations.

## **LHEIDLI T'ENNEH CONSTITUTION**

7. Lheidli T'enneh will have a Lheidli T'enneh Constitution, consistent with this Agreement, which will provide:
- a. Lheidli T'enneh Government will be democratic, including its duties, composition, and membership;
  - b. that Lheidli T'enneh Government will be democratically accountable and hold elections at least every five years;
  - c. for a system of financial administration with standards comparable to those generally accepted for governments in Canada, through which the Lheidli T'enneh Government will be financially accountable to Lheidli T'enneh Citizens;
  - d. for conflict of interest rules comparable to those generally accepted for governments of similar size in Canada;
  - e. for recognition and protection of rights and freedoms of Lheidli T'enneh Citizens;
  - f. that every individual who is enrolled under this Agreement is entitled to be a Lheidli T'enneh Citizen;
  - g. that this Agreement sets out the authority of the Lheidli T'enneh Government to make laws;
  - h. the process for the enactment of laws by the Lheidli T'enneh Government;
  - i. the process for challenging the validity of Lheidli T'enneh Law enacted by the Lheidli T'enneh Government, which could include notice requirements or mechanisms for reviewing the nature of a dispute before a court challenge;
  - j. that any Lheidli T'enneh Law which is inconsistent with the Lheidli T'enneh Constitution is, to the extent of the inconsistency, of no force and effect;
  - k. for the establishment of Lheidli T'enneh Public Institutions;
  - l. for conditions under which Lheidli T'enneh may dispose of land or interests in land;
  - m. for a transitional Lheidli T'enneh Government from the Effective Date until the first elected Lheidli T'enneh Government takes office;
  - n. for amendment of the Lheidli T'enneh Constitution; and
  - o. for other provisions.

8. The Lheidli T'enneh Constitution, once ratified in accordance with this Agreement, will come into force on the Effective Date.

#### **LHEIDLI T'ENNEH LEGISLATURE**

9. A majority of the representatives of the executive and legislative branches of the Lheidli T'enneh Government will be elected, as provided for in the Lheidli T'enneh Constitution.
10. The legislative branch of the Lheidli T'enneh Government will include at least one elected representative from Non-Members ordinarily resident on Lheidli T'enneh Lands.

#### **LHEIDLI T'ENNEH ELECTIONS**

11. Elections for the Lheidli T'enneh Government will be held in accordance with the Lheidli T'enneh Constitution and other Lheidli T'enneh Law.

#### **APPEAL AND REVIEW OF ADMINISTRATIVE DECISIONS**

12. The Lheidli T'enneh Government will establish processes for appeal or review of administrative decisions of Lheidli T'enneh Institutions and if those processes provide for a right of appeal to a court, the Supreme Court of British Columbia has jurisdiction to hear those appeals.
13. The Supreme Court of British Columbia has jurisdiction to hear applications for judicial review of administrative decisions taken by Lheidli T'enneh Institutions but no application for judicial review of those decisions may be brought until all procedures for appeal or review provided by the Lheidli T'enneh Government and applicable to that decision have been exhausted.
14. The *Judicial Review Procedure Act* applies to an application for judicial review of administrative decisions taken by Lheidli T'enneh Institutions and, for the purpose of applying that Act, "enactment" will include "Lheidli T'enneh Law."

#### **REGISTRY OF LAWS**

15. The Lheidli T'enneh Government will:
  - a. maintain a public registry of Lheidli T'enneh Law in the English language which will be the authoritative version, and, at the discretion of the Lheidli T'enneh Government, in the Carrier language;

- b. provide Canada and British Columbia with copies of Lheidli T'enneh Law as soon as practical after they are enacted, unless otherwise agreed to by the Parties; and
- c. establish procedures for the coming into force and publication of Lheidli T'enneh Law.

#### **LHEIDLI T'ENNEH NON-MEMBER REPRESENTATION**

- 16. The Lheidli T'enneh Government will provide Non-Members with the opportunity to participate in the decision-making processes of a Lheidli T'enneh Public Institution if the activities of the Lheidli T'enneh Public Institution directly and significantly affect Non-Members.
- 17. The Lheidli T'enneh Government will provide that Non-Members may avail themselves of the appeal or review procedures referred to in paragraph 12.
- 18. The Lheidli T'enneh Government may appoint individuals who are not Lheidli T'enneh Citizens as members of Lheidli T'enneh Public Institutions.

#### **TRANSITIONAL PROVISIONS**

- 19. The Chief and Councillors of the Lheidli T'enneh Band under the *Indian Act* on the day immediately before the Effective Date, are the elected members of the Lheidli T'enneh Government from the Effective Date until the office holders elected in the first election for the Lheidli T'enneh Government take office.
- 20. The first election for Lheidli T'enneh Government will be held no later than six months after the Effective Date.

##### **Law-Making Transition**

- 21. Before a Lheidli T'enneh Law is made with respect to adoption, Child Protection Services, health services, family and social services, Child Care services or kindergarten to grade 12 education, the Lheidli T'enneh Government will give at least six months written notice of the proposed Lheidli T'enneh Law to Canada and British Columbia.
- 22. After notice is given under paragraph 21, if Canada and British Columbia agree, the Lheidli T'enneh Government may make the Lheidli T'enneh Law before the expiration of the six month period.
- 23. At the written request of Canada or British Columbia made within three months of receiving notice under paragraph 21, the Lheidli T'enneh Government will Consult with Canada or British Columbia, as the case may be, with respect to:

- a. options to address the interests of the Lheidli T'enneh Government through methods other than the exercise of law-making authority;
  - b. the comparability of standards to be established under Lheidli T'enneh Law to standards set out in Provincial Law;
  - c. immunity of individuals providing services or exercising authority under Lheidli T'enneh Law;
  - d. readiness;
  - e. quality assurance; and
  - f. other matters agreed to by the Parties.
24. At the written request of any Party made within three months of giving or receiving notice under paragraph 21, the relevant Parties will discuss:
- a. the transfer of any cases and related documentation from federal or provincial institutions to Lheidli T'enneh Institutions, including any confidentiality and privacy considerations;
  - b. the transfer of any assets from federal or provincial institutions to Lheidli T'enneh Institutions;
  - c. appropriate amendments to Federal or Provincial Law, including amendments to address duplicate licencing requirements; and
  - d. other matters agreed to by the Parties.
25. The Parties may negotiate agreements regarding any of the matters set out in paragraph 23 or 24, but any such agreement is not a condition precedent to the exercise of law-making authority by the Lheidli T'enneh Government, and that law-making authority may be exercised immediately following the six-month notice period referred to in paragraph 21.

#### **NOTIFICATION OF CHANGES TO PROVINCIAL LEGISLATION**

26. Subject to paragraph 32, or an agreement under paragraph 29, before legislation is introduced in the Legislative Assembly, or before a regulation is approved by the Lieutenant Governor in Council, British Columbia will give notice to the Lheidli T'enneh Government if:

- a. this Agreement provides the Lheidli T'enneh Government with law-making authority with respect to the subject matter of the legislation or regulation;
  - b. the legislation or regulation may affect the protections, immunities, limitations with respect to liability, remedies over, and rights referred to in paragraphs 167, 170 and 174; or
  - c. the legislation or regulation may affect:
    - i. the rights, powers, duties, obligations; or
    - ii. the protections, immunities, and or limitations with respect to liability, referred to in paragraph 111,
- except where this cannot be done for reasons of emergency or confidentiality.
27. If British Columbia does not give notice to the Lheidli T'enneh Government under paragraph 26 for reasons of emergency or confidentiality, British Columbia will give notice to the Lheidli T'enneh Government, as soon as practicable, that the legislation has been introduced in the Legislative Assembly, or the regulation has been deposited with the Registrar of Regulations, as the case may be.
28. A notice under paragraphs 26 and 27 will include:
- a. the nature and purpose of the proposed legislation or regulation; and
  - b. the date the proposed legislation or regulation is anticipated to take effect, if it has not already done so.
29. The Lheidli T'enneh Government and British Columbia may enter into an agreement establishing alternatives to the obligations which would otherwise apply under paragraphs 26 to 28 and 30.
30. Subject to paragraphs 31 and 32, or an agreement under paragraph 29, if, within 30 days after notice is given under paragraph 26 or 27 or by agreement under paragraph 29, the Lheidli T'enneh Government makes a written request to British Columbia, then British Columbia and the Lheidli T'enneh Government will discuss the effect of the legislation or regulation, if any, on:
- a. a Lheidli T'enneh Law which has been enacted under this Agreement; or
  - b. a matter referred to in subparagraphs 26.b or 26.c.
31. If British Columbia establishes a process providing for collective discussion with British Columbia First Nation Governments in relation to matters referred to in paragraph 30:

- a. the Lheidli T'enneh Government will participate in that process; and
  - b. the process will be deemed to satisfy British Columbia's obligation for discussion with respect to a particular matter under paragraph 30.
32. If the Lheidli T'enneh Government is a member of a representative body and British Columbia and that body have entered into an agreement providing for consultation with respect to matters under paragraphs 26, 27 and 30, then consultations with respect to a particular matter will be deemed to satisfy British Columbia's obligations for notification under paragraphs 26 and 27 and discussion under paragraph 30.
33. Unless British Columbia agrees otherwise, the Lheidli T'enneh Government will retain the information provided under paragraphs 26 to 32 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.
34. The Parties acknowledge that nothing in paragraphs 26 to 32 is intended to interfere with British Columbia's legislative process.
35. Notwithstanding any other provision of this Agreement, to the extent that provincial legislation or a regulation referred to in paragraph 26 affects the validity of a Lheidli T'enneh Law, the Lheidli T'enneh Law will be deemed to be valid for a period of six months or until amended, whichever is the shorter period, after the coming into force of the provincial legislation or regulation.

#### **DELEGATION**

36. Any law-making authority of the Lheidli T'enneh Government under this Agreement may be delegated by a Lheidli T'enneh Law to:
- a. a Lheidli T'enneh Public Institution;
  - b. another British Columbia First Nation Government;
  - c. a public institution established by one or more British Columbia First Nation Governments;
  - d. British Columbia;
  - e. Canada;
  - f. a Local Government; or
  - g. a legal entity as agreed by the Parties,

if the delegation and the exercise of any law-making authority is in accordance with this Agreement and the Lheidli T'enneh Constitution.

37. Any authority of the Lheidli T'enneh Government under this Agreement other than law-making authority may be delegated by a Lheidli T'enneh Law to:

- a. any body set out in paragraph 36; or
- b. a legal entity in Canada,

if the delegation and the exercise of the delegated authority is in accordance with this Agreement and the Lheidli T'enneh Constitution.

38. Any delegation under subparagraphs 36.b to 36.g, or 37, requires the written consent of the delegate.
39. The Lheidli T'enneh Government may receive authorities, including law-making authority, by delegation under an agreement.

## **LHEIDLI T'ENNEH LAW-MAKING AUTHORITIES**

### **Lheidli T'enneh Government**

40. The Lheidli T'enneh Government may make laws with respect to the election, administration, management and operation of the Lheidli T'enneh Government, including:
- a. the establishment of Lheidli T'enneh Public Institutions, and their respective powers, duties, composition and membership, but any registration or incorporation of the Lheidli T'enneh Public Institutions must be under Federal or Provincial Law;
  - b. the powers, duties, responsibilities, remuneration and indemnification of members, officials, employees and appointees of Lheidli T'enneh Institutions;
  - c. the establishment of Lheidli T'enneh Corporations, but the registration or incorporation of the Lheidli T'enneh Corporations must be under Federal or Provincial Law;
  - d. financial administration of Lheidli T'enneh and Lheidli T'enneh Institutions; and
  - e. elections, by-elections and referenda.

41. In accordance with paragraph 26 of the General Provisions Chapter, nothing in paragraph 40 confers authority on the Lheidli T'enneh Government to make laws with respect to labour relations and working conditions.
42. The Lheidli T'enneh Government will make laws to provide Lheidli T'enneh Citizens with reasonable access to information in the custody or control of a Lheidli T'enneh Institution.
43. The Lheidli T'enneh Government will make laws to provide persons other than Lheidli T'enneh Citizens with reasonable access to information in the custody or control of a Lheidli T'enneh Institution regarding matters that directly and significantly affect those persons.
44. A Lheidli T'enneh Law under paragraphs 42 or 43 may exempt access to information that is generally unavailable under Federal or Provincial Law.
45. In the event of a Conflict between a Lheidli T'enneh Law under paragraph 40 to 43 and a Federal or Provincial Law, the Lheidli T'enneh Law prevails to the extent of the Conflict unless the Conflict is with respect to the protection of personal information, in which case the Federal or Provincial Law prevails to the extent of the Conflict.

#### **Lheidli T'enneh Citizenship**

46. The Lheidli T'enneh Government may make laws with respect to Lheidli T'enneh citizenship.
47. The conferring of Lheidli T'enneh citizenship does not:
  - a. confer or deny rights of entry into Canada, Canadian citizenship, the right to be registered as an Indian under the *Indian Act* or any of the rights or benefits under the *Indian Act*; or
  - b. except as set out in this Agreement or in any Federal or Provincial Law, impose any obligation on Canada or British Columbia to provide rights or benefits.
48. In the event of a Conflict between a Lheidli T'enneh Law under paragraph 46 and a Federal or Provincial Law, the Lheidli T'enneh Law prevails to the extent of the Conflict.

#### **Lheidli T'enneh Assets**

49. The Lheidli T'enneh Government may make laws with respect to the use, possession, management and disposition of assets of Lheidli T'enneh, a Lheidli T'enneh Public Institution or a Lheidli T'enneh Corporation:
  - a. located off Lheidli T'enneh Lands; and

- b. assets located on Lheidli T'enneh Lands.
- 50. For greater certainty, the law-making authority under paragraph 49 does not include law-making authority regarding creditor's rights and remedies.
- 51. In the event of a Conflict between a Lheidli T'enneh Law under subparagraph 49.a and a Federal or Provincial Law, the Federal or Provincial Law will prevail to the extent of the Conflict.
- 52. In the event of a Conflict between a Lheidli T'enneh Law under subparagraph 49.b and a Federal or Provincial Law, the Lheidli T'enneh Law will prevail to the extent of the Conflict.

### **Adoption**

- 53. The Lheidli T'enneh Government may make laws with respect to adoption of Lheidli T'enneh Children in British Columbia.
- 54. Lheidli T'enneh Law under paragraph 53 will:
  - a. provide that the best interests of the Child are the paramount consideration in determining whether an adoption will take place;
  - b. establish standards comparable to standards set out in Provincial Law; and
  - c. require the Lheidli T'enneh Government to provide British Columbia and Canada with notice of all adoptions occurring under Lheidli T'enneh Law.
- 55. The Parties will negotiate and attempt to reach agreement on the information that will be included in the notice provided under subparagraph 54.c.
- 56. A Lheidli T'enneh Law under paragraph 53 applies to the adoption of a Lheidli T'enneh Child residing off Lheidli T'enneh Lands in British Columbia if:
  - a. the Child has not been placed for adoption under the *Adoption Act* and all of the following consent to the application of the Lheidli T'enneh Law to the adoption:
    - i. the parents of the Child;
    - ii. if the Child has reached the age where consent to adoption is required under the *Adoption Act*, the Child; and
    - iii. if the Child is not under the guardianship of a Director, the guardian of the Child;

- b. a Director designated under the *Child, Family and Community Service Act* is guardian of the Child, and the Director consents in accordance with subparagraph 57.d; or
  - c. a court dispenses with the requirement for the consent referred to in subparagraph 56.a in accordance with the criteria that would be used by that court in an application to dispense with the requirement for consent to an adoption under Provincial Law.
57. If a Director designated under the *Child, Family and Community Service Act*, becomes guardian of a Lheidli T'enneh Child, the Director will:
- a. provide notice to the Lheidli T'enneh Government that the Director is the guardian of the Lheidli T'enneh Child;
  - b. provide notice to the Lheidli T'enneh Government when the Director applies for a continuing custody order; and
  - c. provide the Lheidli T'enneh Government with a copy of the continuing custody order once the order is made and make reasonable efforts to involve the Lheidli T'enneh Government in planning; and
  - d. if requested by the Lheidli T'enneh Government, consent to the application of Lheidli T'enneh Law to the adoption of the Lheidli T'enneh Child, provided that it is in the best interests of the Lheidli T'enneh Child within the meaning of that term under Provincial Law.
58. In the event of a Conflict between a Lheidli T'enneh Law under paragraph 53 and a Federal or Provincial Law, the Lheidli T'enneh Law prevails to the extent of a Conflict.
59. Before placing a Lheidli T'enneh Child for adoption, an adoption agency must make reasonable efforts to discuss the Child's placement with a representative designated by the Lheidli T'enneh Government.
60. Paragraph 59 does not apply if the Child has reached the age at which consent to adoption is required under the *Adoption Act* and objects to the discussion taking place or if the birth parent or other guardian of the Child who requested that the Child be placed for adoption objects to the discussion taking place.

### **Child Custody**

61. Lheidli T'enneh has standing in any judicial proceedings in which custody of a Lheidli T'enneh Child is in dispute and, if the Lheidli T'enneh intervenes, in addition to any other matters the court is required to consider, the court will consider any evidence and representations of the Lheidli T'enneh with respect to Lheidli T'enneh Law and custom.

62. The participation of Lheidli T'enneh in proceedings referred to in paragraph 61 will be in accordance with the applicable rules of court and will not affect the court's ability to control its process.

**Child Protection Services**

63. The Lheidli T'enneh Government may make laws with respect to Child Protection Services on Lheidli T'enneh Lands with respect to:
- a. Lheidli T'enneh Children; and
  - b. subject to an agreement under subparagraph 69.b between the Lheidli T'enneh Government and British Columbia, Children who are not Lheidli T'enneh Children.
64. A Lheidli T'enneh Law under paragraph 63 will:
- a. expressly provide that the Lheidli T'enneh Law will be interpreted and administered such that the safety and well-being of Children are the paramount considerations;
  - b. establish standards comparable to standards set out under Provincial Law; and
  - c. not preclude the reporting of a Child in Need of Protection in accordance with Provincial Law.
65. If the Lheidli T'enneh Government makes a law under paragraph 63, the Lheidli T'enneh Government will:
- a. participate in British Columbia's information management systems, or establish an information management system that is compatible with British Columbia's systems concerning Children in Need of Protection and Children in Care; and
  - b. establish and maintain a system for the management, storage and disposal of Child Protection Services records and the safeguarding of personal Child Protection Services information.
66. The Lheidli T'enneh Government and British Columbia will share information concerning Children in Need of Protection and Children in Care.
67. Notwithstanding any Lheidli T'enneh Law under paragraph 63, if there is an emergency in which a Child on Lheidli T'enneh Lands is in need of protection, British Columbia may act to protect the Child and, in those circumstances, unless British Columbia and the Lheidli T'enneh Government otherwise agree in writing, British Columbia, as appropriate, will refer the matter to the Lheidli T'enneh Government after the emergency.

68. In the event of a Conflict between a Lheidli T'enneh Law under paragraph 63 and a Federal or Provincial Law, the Lheidli T'enneh Law prevails to the extent of a Conflict.
69. At the request of the Lheidli T'enneh Government or British Columbia, the Lheidli T'enneh Government and British Columbia will negotiate and attempt to reach agreement with respect to Child Protection Services for:
- a. Lheidli T'enneh Children who reside on or off Lheidli T'enneh Lands; or
  - b. Children who reside on Lheidli T'enneh Lands who are not Lheidli T'enneh Children.
70. Where a Director becomes the guardian of a Lheidli T'enneh Child, the Director will make reasonable efforts to include the Lheidli T'enneh Government in planning for the Lheidli T'enneh Child, including adoption planning.

#### **Aboriginal Healers**

71. The Lheidli T'enneh Government may make laws with respect to the authorization of individuals to practice as aboriginal healers on Lheidli T'enneh Lands.
72. The Lheidli T'enneh Government law-making authority under paragraph 71 does not include the authority to regulate:
- a. medical or health practices that, or practitioners who, require licensing or certification under Federal or Provincial Law; or
  - b. products or substances that are regulated under Federal or Provincial Law.
73. A Lheidli T'enneh Law under paragraph 71 must establish standards:
- a. with respect 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.
74. In the event of a Conflict between a Lheidli T'enneh Law under paragraph 71 and a Federal or Provincial Law, the Lheidli T'enneh Law prevails to the extent of the Conflict.

#### **Health**

75. The Lheidli T'enneh Government may make laws with respect to health services:
- a. for Lheidli T'enneh Citizens; or

- b. provided by a Lheidli T'enneh Institution,  
on Lheidli T'enneh Lands.
- 76. A Lheidli T'enneh Law under paragraph 75 will take into account the protection, improvement and promotion of public and individual health and safety.
- 77. A Lheidli T'enneh Law under paragraph 75 does not apply to health services provided by a provincially-funded health institution, agency or body, other than an institution, agency or body established by the Lheidli T'enneh Government.
- 78. At the request of any Party, the Parties will negotiate and attempt to reach agreement for the delivery and administration by a Lheidli T'enneh Institution of federal and provincial health services for individuals residing on Lheidli T'enneh Lands.
- 79. In the event of a Conflict between a Lheidli T'enneh Law under paragraph 75 and a Federal or Provincial Law, the Federal or Provincial Law prevails to the extent of the Conflict.
- 80. Notwithstanding paragraph 79, in the event of a Conflict between a Lheidli T'enneh Law under paragraph 75 with respect to the organization and structure of Lheidli T'enneh Institutions used to deliver health services on Lheidli T'enneh Lands and a Federal or Provincial Law, the Lheidli T'enneh Law prevails to the extent of the Conflict.

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

- 81. The Lheidli T'enneh Government may make laws with respect to social services provided by a Lheidli T'enneh Institution, including income assistance and services promoting well-functioning families and community life.
- 82. A Lheidli T'enneh Law under paragraph 81 may require individuals collecting income assistance from the Lheidli T'enneh Government to participate in back-to-work programs or other similar programs.
- 83. In the event of a Conflict between a Lheidli T'enneh Law under paragraph 81 and a Federal or Provincial Law, the Federal or Provincial Law prevails to the extent of the Conflict.
- 84. Lheidli T'enneh law-making authority under paragraph 81 does not include law-making authority with respect to licensing and regulation of facility-based services provided off Lheidli T'enneh Lands.
- 85. If the Lheidli T'enneh Government makes a law under paragraph 81, at the request of any Party, the Parties will negotiate and attempt to reach agreement with respect to the

exchange of information for the purposes of avoiding double payments and related matters.

86. At the request of any Party, the Parties will negotiate and attempt to reach agreement for administration and delivery by a Lheidli T'enneh Institution of federal or provincial social services for individuals residing on Lheidli T'enneh Lands.

### **Liquor Control**

87. The Lheidli T'enneh Government may make laws with respect to the prohibition of, or the terms and conditions for, the sale, exchange, possession, manufacture or consumption of liquor on Lheidli T'enneh Lands.
88. In the event of a Conflict between a Lheidli T'enneh Law under paragraph 87 and a Federal or Provincial Law, the Federal or Provincial Law prevails to the extent of the Conflict.
89. Lheidli T'enneh, its agents and assignees have:
- a. the exclusive right to sell liquor on Lheidli T'enneh Lands in accordance with Federal and Provincial Law; and
  - b. the right to purchase liquor from the British Columbia Liquor Distribution Branch, or its successors, in accordance with Federal and Provincial Law.
90. British Columbia will approve an application made by the Lheidli T'enneh Government, its agents or assignees, for a licence, permit or other authority to sell liquor on Lheidli T'enneh Lands, if the application meets provincial regulatory requirements.
91. Notwithstanding subparagraph 89.a, British Columbia may issue to a person other than Lheidli T'enneh, its agents or assignees, a licence, permit, or other authority to sell liquor on Lheidli T'enneh Land with the consent of the Lheidli T'enneh Government.
92. British Columbia will, in accordance with Provincial Law, authorize persons designated by the Lheidli T'enneh Government to approve or deny applications for special occasion or temporary permits to sell liquor on Lheidli T'enneh Lands.

### **Solemnization of Marriages**

93. The Lheidli T'enneh Government may make laws with respect to solemnization of marriages within British Columbia by individuals designated by the Lheidli T'enneh Government.
94. Individuals designated by the Lheidli T'enneh Government to solemnize marriages:

- a. will be appointed by British Columbia as individuals authorized to solemnize marriages; and
  - b. have the authority to solemnize marriages under Provincial Law and Lheidli T'enneh Law, and have all the associated rights, duties and responsibilities of a marriage commissioner under the provincial *Marriage Act*.
95. In the event of a Conflict between a Lheidli T'enneh Law under paragraph 93 and a Federal or Provincial Law, the Federal or Provincial Law prevails to the extent of the Conflict.

#### **Child Care**

96. The Lheidli T'enneh Government may make laws with respect to Child Care services on Lheidli T'enneh Lands.
97. In the event of a Conflict between a Lheidli T'enneh Law under paragraph 96 and a Federal or Provincial Law, the Federal or Provincial Law prevails to the extent of the Conflict.

#### **Kindergarten to Grade 12 Education**

98. The Lheidli T'enneh Government may make laws with respect to kindergarten to grade 12 education:
- a. for Lheidli T'enneh Citizens; or
  - b. provided by a Lheidli T'enneh Institution,
- on Lheidli T'enneh Lands.
99. A Lheidli T'enneh Law under paragraph 98 will:
- a. establish curriculum, examination, and other standards that permit students to transfer between school systems in British Columbia at a similar level of achievement and permit students to gain admission to the provincial post-secondary education systems; and
  - b. provide for certification and discipline of teachers by a Lheidli T'enneh Institution, or by 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.
100. In accordance with paragraph 26 of the General Provisions Chapter, nothing in paragraph 98 or 99 confers authority on the Lheidli T'enneh Government to make laws with respect to labour relations and working conditions.

101. A Lheidli T'enneh Law under paragraph 98 does not apply to schools under the *School Act* or the *Independent School Act*, unless the school is established by Lheidli T'enneh.
102. Subparagraph 99.b does not apply to the certification of teachers of the Carrier language and Carrier culture.
103. The Lheidli T'enneh Government may make laws with respect to kindergarten to grade 12 home education of Lheidli T'enneh Citizens on Lheidli T'enneh Lands.
104. A Lheidli T'enneh Law under paragraphs 98 and 103 may not interfere with the ability of a parent to decide where to enrol their Child to receive kindergarten to grade 12 education.
105. In the event of a Conflict between a Lheidli T'enneh Law under paragraph 98 or 103 and a Federal or Provincial Law, the Lheidli T'enneh Law prevails to the extent of the Conflict.
106. At the request of the Lheidli T'enneh Government or British Columbia, Lheidli T'enneh Government and British Columbia will negotiate and attempt to reach agreement concerning the provision of kindergarten to grade 12 education by a Lheidli T'enneh Institution to:
  - a. individuals other than Lheidli T'enneh Citizens; or
  - b. Lheidli T'enneh Citizens residing off Lheidli T'enneh Lands.

**Post-Secondary Education**

107. The Lheidli T'enneh Government may make laws with respect to post-secondary education provided by a Lheidli T'enneh Institution on Lheidli T'enneh 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 the Lheidli T'enneh; and
  - c. the provision for and coordination of all adult education programs.
108. In the event of a Conflict between a Lheidli T'enneh Law under paragraph 107 and a Federal or Provincial Law, the Federal or Provincial Law prevails to the extent of the Conflict.
109. The Lheidli T'enneh Government may operate and provide post-secondary education services outside Lheidli T'enneh Lands in accordance with Federal and Provincial Law.

110. The Lheidli T'enneh Government may prescribe the terms and conditions under which Lheidli T'enneh Institutions may enter into arrangements with other institutions or British Columbia to provide post-secondary education off Lheidli T'enneh Lands.

**Emergency Preparedness**

111. The Lheidli T'enneh Government has:
- a. the rights, powers, duties and obligations; and
  - b. the protections, immunities and limitations with respect to liability,
- of a local authority under Federal and Provincial Law with respect to emergency preparedness and emergency measures on Lheidli T'enneh Lands.
112. The Lheidli T'enneh Government may make laws with respect to its rights, powers, duties and obligations under paragraph 111.
113. In the event of a Conflict between a Lheidli T'enneh Law under paragraph 112 and a Federal or Provincial Law, the Federal or Provincial Law prevails to the extent of the Conflict.
114. For greater certainty, the Lheidli T'enneh Government may declare a state of local emergency and exercise the powers of a local authority with respect to local emergencies in accordance with Federal and Provincial Laws with respect to emergency measures, but any declaration and any exercise of those powers is subject to the authority of Canada and British Columbia set out in those Federal and Provincial Laws.
115. Nothing in this Agreement affects the authority of:
- a. Canada to declare a national emergency; or
  - b. British Columbia to declare a provincial emergency,
- under Federal and Provincial Law.

**Regulation of Business**

116. The Lheidli T'enneh Government may make laws with respect to the regulation, licensing, and prohibition of businesses on Lheidli T'enneh Lands, including the imposition of licence fees or other fees.
117. The Lheidli T'enneh Government law-making authority under paragraph 116 does not include the authority to make laws with respect to the accreditation, certification or professional conduct of individuals engaged in professions and trades.

118. In the event of a Conflict between a Lheidli T'enneh Law under paragraph 116 and a Federal or Provincial Law, the Federal or Provincial Law prevails to the extent of the Conflict.
119. For greater certainty, paragraph 117 does not apply to the certification and accreditation of teachers of the Carrier language and Carrier culture referred to in subparagraph 1.d of the Culture and Heritage Chapter or to the certification of kindergarten to grade 12 teachers under this Chapter.

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

120. The Lheidli T'enneh Government may make laws with respect to the regulation, control or prohibition of any actions, activities or undertakings on Lheidli T'enneh Lands that constitute, or may constitute a danger to public health or a threat to public order, peace or safety.
121. In the event of a Conflict between a Lheidli T'enneh Law under paragraph 120 and a Federal or Provincial Law, the Federal or Provincial Law prevails to the extent of the Conflict.

#### **Buildings and Structures**

122. The *British Columbia Building Code* applies on Lheidli T'enneh Lands.
123. The Lheidli T'enneh Government may make Law with respect to the design, construction, maintenance, repair and demolition of buildings and structures on Lheidli T'enneh Lands to the same extent as municipal governments in British Columbia.
124. In the event of a Conflict between a Lheidli T'enneh Law made under paragraph 123 and a Federal or Provincial Law, the Federal or Provincial Law prevails to the extent of the Conflict.

#### **Public Works**

125. The Lheidli T'enneh Government may make laws with respect to public works and related services on Lheidli T'enneh Lands.
126. In the event of a Conflict between a Lheidli T'enneh Law made under paragraph 125 and a Federal or Provincial Law, the Federal or Provincial Law prevails to the extent of the Conflict.

### **INDUSTRIAL RELATIONS**

127. If an issue arises with respect to this Agreement or Carrier culture in any industrial relations matter or industrial relations proceeding involving individuals employed on

Lheidli T'enneh Lands, other than a matter or proceeding arising from a collective agreement, the matter or proceeding will not be concluded until notice has been served on the Lheidli T'enneh Government in accordance with the rules for giving notice that govern that matter or proceeding.

128. In any industrial relations matter or industrial relations proceeding to which paragraph 127 applies, the Lheidli T'enneh Government may make representations concerning this Agreement or the effect of the matter or proceeding on Carrier culture.
129. Any representations of the Lheidli T'enneh Government in an industrial relations matter or industrial relations proceeding before a board, commission, or other tribunal under paragraph 128 will be in accordance with the rules with respect to the industrial relations matter or proceeding and will not affect the ability of the board, commission or other tribunal to control its process.
130. For greater certainty, paragraphs 127 to 129 do not affect federal or provincial jurisdiction with respect to labour relations and working conditions.

## **PENALTIES**

131. Subject to paragraphs 132 to 135, the Lheidli T'enneh Government may provide for the imposition of penalties, including fines, restitution and imprisonment, for the violation of a Lheidli T'enneh Law.
132. Except as provided in paragraph 133 and 135, fines for violation of a Lheidli T'enneh Law may be up to \$10,000 or the general limit for summary conviction offences under the *Criminal Code*, whichever is greater.
133. A Lheidli T'enneh Law with respect to protection of the Environment may provide for a fine that is not greater than fines that may be imposed for comparable offences punishable upon summary conviction under the *Canadian Environmental Protection Act*.
134. Except as provided in paragraph 135, a Lheidli T'enneh Law may provide for a term of imprisonment for the violation of a Lheidli T'enneh Law not greater than the general limit for summary conviction offences under the *Criminal Code*.
135. A Lheidli T'enneh Law with respect to taxation may provide for:
  - a. a fine that is greater than the limits set out in paragraph 132; or
  - b. a term of imprisonment that is greater than the limit set out in paragraph 134,where there is an agreement to that effect as contemplated in paragraph 4 of the Taxation Chapter.

## ADMINISTRATION OF JUSTICE

### Enforcement of Lheidli T'enneh Law

136. The Lheidli T'enneh Government is responsible for the enforcement of Lheidli T'enneh Law.
137. At the request of the Lheidli T'enneh Government, the Parties will, to the extent of their respective jurisdictions, negotiate and attempt to reach agreement for the enforcement of Lheidli T'enneh Law by a police force or federal or provincial enforcement officials.
138. The Lheidli T'enneh Government may make laws for the enforcement of Lheidli T'enneh Law, including:
- a. the appointment of officers to enforce Lheidli T'enneh Law; and
  - b. powers of enforcement, provided such powers will not exceed those provided by Law of Canada or British Columbia for enforcing similar Law in British Columbia.
139. The Lheidli T'enneh Government law-making authority under paragraph 138 does not include the authority to:
- a. establish a police force; or
  - b. authorize the carriage or use of a firearm by Lheidli T'enneh enforcement officials,
- but nothing in this Agreement prevents the Lheidli T'enneh Government from establishing a police force under Provincial Law.
140. If the Lheidli T'enneh Government appoints officials to enforce Lheidli T'enneh Law, the Lheidli T'enneh Government will:
- a. ensure that Lheidli T'enneh enforcement officials are adequately trained to carry out their duties having regard to recruitment, selection and training standards for other enforcement officers carrying out similar duties in British Columbia; and
  - b. establish procedures for responding to complaints against Lheidli T'enneh enforcement officials.
141. A Lheidli T'enneh Law made in accordance with the Fisheries, Wildlife or Migratory Birds Chapters may be enforced by individuals authorized to enforce Federal or Provincial Law or Lheidli T'enneh Law with respect to Fish and Aquatic Plants, Wildlife and Migratory Birds in British Columbia, respectively.

142. In the event of a Conflict between a Lheidli T'enneh Law made under paragraph 138 and a Federal or Provincial Law, the Federal or Provincial Law prevails to the extent of the Conflict.
143. The Lheidli T'enneh Government may, by a proceeding brought in the Supreme Court of British Columbia, enforce or prevent or restrain the contravention of a Lheidli T'enneh Law.

**Adjudication of Lheidli T'enneh Law**

144. The Provincial Court of British Columbia has jurisdiction to hear prosecutions of offences under Lheidli T'enneh Law.
145. The Lheidli T'enneh Government may propose to the Judicial Council of British Columbia, individuals to be recommended by the Judicial Council of British Columbia for appointment and designation as judicial justices of the peace.
146. For the purposes of paragraph 145, the Lheidli T'enneh Government will:
- a. develop and implement a process, including eligibility criteria, for identifying candidates; and
  - b. on submitting the name of a proposed candidate, disclose to the Judicial Council of British Columbia the nature and result of the processes referred to in subparagraph 146.a.
147. The *Provincial Court Act* will apply in all respects to:
- a. the appointment and designation by the Lieutenant Governor in Council of individuals recommended by the Judicial Council of British Columbia under paragraph 145; and
  - b. judicial justices of the peace appointed and designated by the Lieutenant Governor under subparagraph 147.a.
148. Judicial justices of the peace appointed under paragraph 147 will have jurisdiction to adjudicate offences established under Lheidli T'enneh Law and such other offences as may be determined by the Chief Judge of the Provincial Court of British Columbia.
149. The summary conviction proceedings of the British Columbia *Offence Act* apply to prosecutions of offences under Lheidli T'enneh Law.
150. With respect to legal disputes arising between persons under Lheidli T'enneh Law:

- a. the Provincial Court of British Columbia has jurisdiction in relation to those disputes if those matters are within the jurisdiction of the Provincial Court of British Columbia under Federal or Provincial Law; and
  - b. the Supreme Court of British Columbia has jurisdiction in relation to those disputes if those matters are within the jurisdiction of the Supreme Court of British Columbia under Federal or Provincial Law.
151. The Lheidli T'enneh Government is responsible for the prosecution of all matters arising from Lheidli T'enneh Law, including appeals, and may carry out this responsibility by:
- a. appointing or retaining individuals to conduct prosecutions and appeals in a manner consistent with the principle of prosecutorial independence and consistent with the overall authority and role of the Attorney General in the administration of justice in British Columbia;
  - b. entering into agreements with Canada or British Columbia with respect to the conduct of prosecutions and appeals; or
  - c. a. and b.
152. Unless the Parties agree otherwise, British Columbia will pay any fines collected, with respect to a penalty imposed on a person by the Provincial Court of British Columbia or the Supreme Court of British Columbia as the case may be, for a violation of a Lheidli T'enneh Law, to the Lheidli T'enneh Government on a similar basis as British Columbia makes payments to Canada for fines that may be collected by British Columbia for a violation of a Federal Law.
153. The Lheidli T'enneh Government law-making authority does not include the authority to establish a court.
154. After receiving a written request from the Lheidli T'enneh Government, the Parties will discuss and explore options for the establishment of a court, other than a court with inherent jurisdiction or a federal court, to adjudicate offences and other matters arising under Lheidli T'enneh Law or laws of other British Columbia First Nation Governments.

#### **Community Correctional Services**

155. The Lheidli T'enneh Government may provide Community Correctional Services for individuals charged with, or found guilty of, an offence under Lheidli T'enneh Law and to carry out such other responsibilities as may be set out in an agreement under paragraphs 156, 157 or 158.
156. At the request of the Lheidli T'enneh Government, the Lheidli T'enneh Government and British Columbia may negotiate and attempt to reach agreement to provide Community Correctional Services in relation to individuals who fall under the jurisdiction of British

Columbia on Lheidli T'enneh Lands charged with, or found guilty of, an offence under a Federal or Provincial Law.

157. The Lheidli T'enneh Government and British Columbia may enter into an agreement to enable the Lheidli T'enneh Government to provide rehabilitative community-based programs and interventions off Lheidli T'enneh Lands for Lheidli T'enneh Citizens charged with, or found guilty of, an offence under a Federal or Provincial Law.
158. The Lheidli T'enneh Government and Canada may enter into an agreement to enable a person appointed by the Lheidli T'enneh Government to deliver Community Correctional Services to adult Lheidli T'enneh offenders who have been released from a federal penitentiary, or are subject to a long-term supervision order, including parole, temporary absence supervision, or other similar services as may be delivered by Canada.
159. This Agreement does not authorize the Lheidli T'enneh Government to establish or maintain places of confinement, except for police jails or lockups operated by a police service established under Provincial Law, or as provided for under an agreement referred to in paragraph 160.
160. Canada and the Lheidli T'enneh Government may enter into an agreement to allow the Lheidli T'enneh Government to establish facilities or processes for the care and custody of federally sentenced offenders.
161. Where an agreement under paragraph 160 has been reached, federal standards with respect to the following areas will apply, except as may be modified by such agreement:
  - a. the exercise of due process;
  - b. the proper and fair administration of the sentence of the Court;
  - c. the protection of the public;
  - d. the safety and welfare of those individuals deprived of their freedom through the judicial process;
  - e. the provision of opportunities for rehabilitation;
  - f. the audit and review of Lheidli T'enneh Community Correctional Services; and
  - g. management, storage and disposal of records and the safeguard of confidential information.
162. Where the Minister is of the opinion that correctional services to federal offenders are not being delivered in accordance with standards and procedures negotiated as part of an agreement under paragraph 160, the Minister may resume care and custody of federal offenders under the care of the Lheidli T'enneh Government.

163. Where practicable to do so, the Minister will provide the Lheidli T'enneh Government with:
- a. notice of the reasons or circumstances that form the basis of the Minister's decision to reassume care and custody of offenders;
  - b. a reasonable opportunity to explain why no action should be taken; and
  - c. a reasonable opportunity to correct or modify the Lheidli T'enneh Government acts or omissions which form the basis for the Minister's decision.
164. Where the Minister has acted under paragraph 162 without providing notice to Lheidli T'enneh, the Minister will, as soon as practicable, advise Lheidli T'enneh of the reasons or circumstances which form the basis of the Minister's decision to reassume care and custody of offenders.

## **OTHER MATTERS**

165. For greater certainty, the authority of the Lheidli T'enneh Government to make laws with respect to a subject matter as set out in this Agreement includes the authority to make laws and to do other things as may be necessarily incidental to exercising its authority.
166. The Lheidli T'enneh Government may adopt Federal or Provincial Law with respect to matters within the Lheidli T'enneh Government law-making authority as set out in this Agreement.

## **LHEIDLI T'ENNEH GOVERNMENT LIABILITY**

### **Members of the Lheidli T'enneh Government**

167. No action for damages lies or may be instituted against a member or former member of the legislative or executive branch of the Lheidli T'enneh Government for:
- a. anything said or done, or omitted to be said or done, by or on behalf of Lheidli T'enneh or the Lheidli T'enneh Government by somebody other than that member or former member while he or she is, or was, an member;
  - b. any alleged neglect or default in the performance, or intended performance, of a duty, or the exercise of a power, of Lheidli T'enneh or the Lheidli T'enneh 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 the individual's duty or the exercise of the individual's power; or

- d. any alleged neglect or default in the performance, or intended performance, of that individual's duty or exercise of that individual's power.
168. Subparagraphs 167.c and 167.d do not provide a defence if:
- a. in relation to the conduct that is the subject matter of the action, the individual has been guilty of dishonesty, gross negligence or malicious or wilful misconduct; or
  - b. the cause of action is libel or slander.
169. Subparagraphs 167.c and 167.d do not absolve the Lheidli T'enneh Government from vicarious liability arising out of a tort committed by a member or former member of the Lheidli T'enneh Government for which Lheidli T'enneh would have been liable had that paragraph not been in effect.

**Lheidli T'enneh Public Officers**

170. No action for damages lies or may be instituted against a Lheidli T'enneh Public Officer or former Lheidli T'enneh 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 the individual's duty or the exercise of the individual's power; or
  - b. for any alleged neglect or default in the performance, or intended performance, of that individual's duty or exercise of that individual's power.
171. Paragraph 170 does not provide a defence if:
- a. the Lheidli T'enneh Public Officer has, in relation to the conduct that is the subject matter of the action, been guilty of dishonesty, gross negligence or malicious or wilful misconduct; or
  - b. the cause of action is libel or slander.
172. Paragraph 170 does not absolve any of the corporations or bodies referred to in the definition of Lheidli T'enneh Public Officer from vicarious liability arising out of a tort committed by a Lheidli T'enneh Public Officer for which the corporation or body would have been liable had that paragraph not been in effect.
173. Notwithstanding paragraph 170, except as may be otherwise provided under Federal or Provincial Law, a Lheidli T'enneh Public Officer does not have protections, immunities or limitations with respect to liability, in relation to the provision of a service if no individuals delivering reasonably similar programs or services under Federal or Provincial Law have protections, immunities or limitations with respect to liability and rights under Federal or Provincial Law.

### **Lheidli T'enneh and the Lheidli T'enneh Government**

174. Lheidli T'enneh and the Lheidli T'enneh Government have the protections, immunities, limitations with respect to liability, remedies over, and rights provided to a municipality and its municipal council under Part 7 of the *Local Government Act*.
175. Subject to subparagraph 1.b of the Access Chapter, Lheidli T'enneh has the protections, immunities and limitations with respect to liability, remedies over and rights provided to a municipality under the *Occupiers Liability Act*, and, for greater certainty, has those protections, immunities and limitations with respect to liability, remedies over, and rights, with respect to a road on Lheidli T'enneh Lands that is used by the public or by industrial or resource users, if Lheidli T'enneh is the occupier of that road.

### **Writ of Execution Against Lheidli T'enneh**

176. Notwithstanding paragraph 174, a writ of execution against Lheidli T'enneh must not be issued without leave of the Supreme Court of British Columbia, which, on application, may:
- a. permit its issue at a time and on conditions the court considers proper; or
  - b. refuse to permit it to be issued or suspend action under it on terms and conditions the court thinks proper or expedient.
177. In determining how it will proceed under paragraph 176 the court must have regard to:
- a. any reputed insolvency of Lheidli T'enneh;
  - b. any security afforded to the person entitled to the judgment by the registration of the judgment;
  - c. the delivery of programs or services by Lheidli T'enneh that are not provided by municipalities in British Columbia, and the funding of those programs or services; and
  - d. the immunities from seizure of assets of Lheidli T'enneh as set out in this Agreement.

### **OTHER PROVINCES AND TERRITORIES**

178. Notwithstanding paragraph 2 of the General Provisions Chapter, this Agreement is not intended to bind provinces, other than British Columbia, or territories, on matters within their jurisdiction without their consent.



## **CHAPTER 18**

### **LOCAL GOVERNMENT RELATIONS**

1. Lheidli T'enneh Lands are located within the geographic boundaries of the Regional District of Fraser-Fort George and the Cariboo Regional District.
2. By-laws of the City of Prince George, the Regional District of Fraser-Fort George, and the Cariboo Regional District do not apply to or on Lheidli T'enneh Lands.
3. Residents on Lheidli T'enneh Lands may vote in elections and referenda of Local Government in accordance with Provincial Law.
4. Lheidli T'enneh may participate on the board of the Regional District of Fraser-Fort George in the same capacity as a municipality participates on that board.
5. The Lheidli T'enneh Government may enter into agreements with Local Government with respect to the provision of and payment for the delivery of:
  - a. Local Government services on or to Lheidli T'enneh Lands; and
  - b. Lheidli T'enneh services on or to lands under jurisdiction of Local Government.
6. For greater certainty, Lheidli T'enneh may enter into service agreements with the Regional District of Fraser-Fort George under paragraph 5 where Lheidli T'enneh does not participate on the board of the Regional District of Fraser-Fort George.
7. Where services are delivered on or to Lheidli T'enneh Lands by the City of Prince George or the Regional District of Fraser-Fort George, the costs charged to Lheidli T'enneh will be equivalent to the costs charged to provide services on or to fee simple lands within the City of Prince George or the Regional District of Fraser-Fort George, and will include all services currently offered by the City of Prince George and Regional District of Fraser-Fort George unless otherwise agreed.
8. As of the Effective Date, the City of Prince George, the Regional District of Fraser-Fort George and Lheidli T'enneh will establish and maintain a comprehensive master agreement that sets out principles, procedures and guidelines to assist in implementing the provisions of this Chapter, including:
  - a. coordination of planning and land use;
  - b. harmonization of the tax structure on Lheidli T'enneh Lands such that Lheidli T'enneh and Local Government do not compete with the tax structure on adjacent lands;

- c. a land use strategy for Lheidli T'enneh Lands that promotes the harmonization of land use with adjacent lands;
  - d. harmonization of Lheidli T'enneh Law regulating land use and development on Lheidli T'enneh Lands, and their enforcement, with the relevant City of Prince George and Regional District of Fraser-Fort George bylaws;
  - e. payment for services provided on or to Lheidli T'enneh Lands by the City of Prince George, the Regional District of Fraser-Fort George and other Local Governments, including the Fraser-Fort George Regional Hospital District;
  - f. environmental protection; and
  - g. such other matters as may be agreed.
- 9. The City of Prince George, the Regional District of Fraser-Fort George and Lheidli T'enneh will develop a process to consult each other with respect to any proposed significant amendments to land use, land development, environmental, financial and regulatory laws and bylaws.
- 10. The City of Prince George, Regional District of Fraser-Fort George and Lheidli T'enneh will agree on a dispute resolution process to address disagreements that may arise as a result of the application of this Chapter or agreements arising from this Chapter.
- 11. Any agreement under paragraphs 5, 8, 9 or 10:
  - a. will not be part of this Agreement; and
  - b. will not be a treaty or land claims agreement and will not recognize or affirm any aboriginal or treaty rights within the meaning of sections 25 or 35 of the *Constitution Act, 1982*.

## CHAPTER 19

### TRANSITION

#### GENERAL

1. The *Indian Act* applies, with any modifications that the circumstances require, to the estate of an individual who died testate or intestate before the Effective Date and who, at the time of death, was a member of the Lheidli T'enneh Band.
2. Before the Effective Date, Canada will take reasonable steps to:
  - a. notify in writing all members of the Lheidli T'enneh Band who have deposited wills with the Minister; and
  - b. provide information to all members of the Lheidli T'enneh Band who have not deposited wills with the Minister and to all other 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 and estate of a Lheidli T'enneh Citizen:
  - a. who was “a mentally incompetent Indian” as defined in the *Indian Act* immediately before the Effective Date; and
  - b. whose property and estate was under the authority of the Minister under section 51 of the *Indian Act* immediately before the Effective Date,until the Lheidli T'enneh Citizen is no longer a “mentally incompetent Indian”.
4. 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 Lheidli T'enneh Citizen who is an infant 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.

#### CONTINUATION OF INDIAN ACT BYLAWS AND LHEIDLI T'ENNEH FIRST NATION LAND CODE

5. The bylaws of the Lheidli T'enneh Band, the *Lheidli T'enneh First Nation Land Code* and any law made under the *Lheidli T'enneh First Nation Land Code*, in effect

immediately before the Effective Date, have effect for 30 days after the Effective Date on Lheidli T'enneh Lands that were Indian Reserves on the day before the Effective Date.

6. As of the Effective Date, the relationship between a bylaw of the Lheidli T'enneh Band, a provision of the *Lheidli T'enneh First Nation Land Code* or any law made under the *Lheidli T'enneh First Nation Land Code*, and a Federal or Provincial Law, will be governed by the provisions of this Agreement governing the relationship between Lheidli T'enneh Law and Federal and Provincial Law with respect to the subject matter of the bylaw, the provision of the *Lheidli T'enneh First Nation Land Code* or the law made under the *Lheidli T'enneh First Nation Land Code*.
7. The Lheidli T'enneh Government may repeal, but not amend, a bylaw of the Lheidli T'enneh Band, a provision of the *Lheidli T'enneh First Nation Land Code* or any law made under the *Lheidli T'enneh First Nation Land Code*.
8. Nothing in this Agreement precludes a person from challenging the validity of a bylaw of the Lheidli T'enneh Band, a provision of the *Lheidli T'enneh First Nation Land Code* or any law made under the *Lheidli T'enneh First Nation Land Code*.

#### **TRANSFER OF BAND ASSETS**

9. On the Effective Date, all of the rights, titles, interests, assets, obligations and liabilities of the Lheidli T'enneh Band vest in Lheidli T'enneh and the Lheidli T'enneh Band ceases to exist.

**CHAPTER 20**  
**FISCAL RELATIONS**

1. The Parties acknowledge they each have a role in supporting the Lheidli T'enneh Government, through direct or indirect financial support or through access to public programs and services, as provided for in the Fiscal Financing Agreement or through other arrangements.
2. Every five years, or other periods as may be agreed, the Parties will negotiate and attempt to reach agreement on a Fiscal Financing Agreement that will:
  - a. set out the Agreed-Upon Programs and Services, including recipients of those programs and services;
  - b. set out the responsibilities of each of the Parties with respect to the Agreed-Upon Programs and Services;
  - c. set out the funding for Agreed-Upon Programs and Services;
  - d. set out Lheidli T'enneh's contribution to the funding of Agreed-Upon Programs and Services from its own source revenues as determined in accordance with paragraph 4 of this Chapter;
  - e. set out mechanisms for the transfer of funds to Lheidli T'enneh by Canada or British Columbia;
  - f. set out procedures for:
    - i. the collection and exchange of information, including statistical and financial information, required for the administration of the Fiscal Financing Agreement;
    - ii. dispute resolution in relation to the Fiscal Financing Agreement;
    - iii. accountability requirements, including those respecting reporting and audit, of Lheidli T'enneh;
    - iv. negotiating the inclusion of additional programs and services to the list of Agreed-Upon Programs and Services within the term of the Fiscal Financing Agreement;
    - v. addressing exceptional circumstances and emergencies; and
    - vi. negotiation of subsequent Fiscal Financing Agreements; and

- g. address other matters as agreed to by the Parties.
- 3. In negotiating a Fiscal Financing Agreement, the Parties will take into account:
  - a. the cost of providing, either directly or indirectly, Agreed-Upon Programs and Services that are reasonably comparable to similar programs and services available in other communities of similar size and circumstance in the Prince George area of British Columbia;
  - b. efficiency and effectiveness, including opportunities for economies of scale in the provision of Agreed-Upon Programs and Services, which may include, where appropriate, cooperative arrangements with other governments, First Nations or existing service providers;
  - c. the costs of operating the Lheidli T'enneh Government;
  - d. existing levels of funding provided by Canada or British Columbia;
  - e. prevailing fiscal policies of Canada or British Columbia;
  - f. location and accessibility of communities on Lheidli T'enneh Lands;
  - g. jurisdictions, authorities, programs and services assumed by the Lheidli T'enneh Government under this Agreement;
  - h. the desirability of reasonably stable, predictable and flexible fiscal arrangements;
  - i. changes in price and volume, which may include the number of individuals eligible to receive Agreed-Upon Programs and Services; and
  - j. other matters as agreed to by the Parties.
- 4. From time to time, the Parties will negotiate and attempt to reach agreement on Lheidli T'enneh's own source revenue contribution to the funding of Agreed-Upon Programs and Services under subparagraph 2.d, taking into account the following:
  - a. the capacity of Lheidli T'enneh to generate revenues;
  - b. existing Lheidli T'enneh own source revenue arrangements negotiated under this Agreement;
  - c. prevailing fiscal policies with respect to the treatment of First Nation own source revenue in self government fiscal arrangements;
  - d. that own source revenue arrangements should not unreasonably reduce incentives for Lheidli T'enneh to generate revenues;

- e. that Lheidli T'enneh's reliance on fiscal transfers should decrease over time as it becomes more self-sufficient; and
  - f. other matters as agreed to by the Parties.
5. In negotiating Lheidli T'enneh's own source revenue contribution to the funding of Agreed-Upon Programs and Services under paragraph 4, unless otherwise agreed:
- a. own source revenue arrangements will not include:
    - i. the Capital Transfer, in the manner provided for in the initial agreement with respect to own source revenues;
    - ii. resource revenue sharing under this Agreement, in the manner provided for in the initial agreement with respect to own source revenues;
    - iii. proceeds from the sale of Lheidli T'enneh Lands;
    - iv. any federal or provincial payments under Fiscal Financing Agreements or other agreements for programs and services with Lheidli T'enneh;
    - v. interest or income on funds received by Lheidli T'enneh from Canada or British Columbia for a purpose related to the implementation of this Agreement and held in a special purpose fund as provided for in the initial agreement with respect to own source revenues, or as agreed to by the Parties from time to time, provided that the interest or income derived from the investment of funds held in the special purpose fund is used for a purpose or activity that is intended by the Parties to be funded from that special purpose fund;
    - vi. gifts or charitable donations;
    - vii. amounts received as compensation for specific losses or damages to property or assets;
    - viii. a Specific Claim Settlement; and
    - ix. other sources agreed to by the Parties; and
  - b. own source revenue arrangements will not permit:
    - i. Canada to benefit from the decision of British Columbia to vacate tax room or to transfer revenues or tax authorities to Lheidli T'enneh; or

- ii. British Columbia to benefit from the decision of Canada to vacate tax room or to transfer revenues or tax authorities to Lheidli T'enneh.
- 6. If the Parties do not reach agreement on a subsequent Fiscal Financing Agreement by the expiry date of an existing Fiscal Financing Agreement, that Fiscal Financing Agreement:
  - a. will continue in effect for up to two years from its original expiry date, or for such other period of time as the Parties may agree to in writing; and
  - b. will terminate the earlier of:
    - i. the expiry of the extended term determined in accordance with subparagraph 6.a; or
    - ii. the date of commencement of a subsequent Fiscal Financing Agreement.
- 7. Neither the creation of the Lheidli T'enneh Government, the inclusion of Lheidli T'enneh Government law-making authority in this Agreement, nor the exercise of Lheidli T'enneh Government law-making authority creates or implies any financial obligation or service responsibility on the part of any Party, other than as set out in a Fiscal Financing Agreement.
- 8. For greater certainty, if the Parties agree in the initial Fiscal Financing Agreement that Canada will provide Time Limited Federal Funding for any Lheidli T'enneh responsibilities specified in that agreement and Canada duly provides the Time Limited Federal Funding, Canada has no obligation to negotiate and attempt to reach agreement on the provision of further funding for any of the responsibilities specified.
- 9. For greater certainty, if the Parties agree in the initial Fiscal Financing Agreement that British Columbia will provide Time Limited Provincial Funding for any Lheidli T'enneh responsibilities specified in that agreement and British Columbia duly provides the Time Limited Provincial Funding, British Columbia has no obligation to negotiate and attempt to reach agreement on the provision of further funding for any of the responsibilities specified.
- 10. Any funding required for the purposes of the Fiscal Financing Agreement, or any other agreement that is reached as a result of negotiations that are 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; or
  - c. in the case of Lheidli T'enneh, by the Lheidli T'enneh Government.

11. A Fiscal Financing Agreement or an own source revenue agreement:
  - a. is not part of this Agreement; and
  - b. is not a treaty or a land claims agreement and does not recognize or affirm any aboriginal or treaty rights within the meaning of sections 25 or 35 of the *Constitution Act, 1982*.



## **CHAPTER 21**

### **CAPITAL TRANSFER AND NEGOTIATION LOAN REPAYMENT**

#### **CAPITAL TRANSFER**

1. Subject to paragraph 3, the Capital Transfer from Canada to Lheidli T'enneh will be paid in accordance with Schedule A of this Chapter.

#### **NEGOTIATION LOAN REPAYMENT**

2. Subject to paragraph 4, Lheidli T'enneh will make negotiation loan repayments to Canada in accordance with Schedule B of this Chapter.
3. Canada may set off and deduct from a payment made under paragraph 1, the amount of a repayment to be made under paragraph 2 on the same date, except to the extent that the loan repayment amount has been prepaid in accordance with paragraph 4.

#### **PREPAYMENTS**

4. In addition to any required loan repayment amount, Lheidli T'enneh may make loan prepayments to Canada. All prepayments will be applied to the outstanding scheduled loan repayment amount(s) in consecutive order from the Effective Date.
5. The "n" anniversary for which a prepayment is to be applied will be the earliest anniversary for which a scheduled loan repayment amount, or a portion thereof, remains outstanding. Any loan prepayment applied to an outstanding loan repayment amount, or to a portion thereof, will be credited at its future value, as of the "n" anniversary, determined in accordance with the following formula:

$$\text{Future Value} = \text{Prepayment} * (1+C)^K * (1+C*H/365)$$

where:

"/" means divided by;

"\*" means multiplied by;

"K" is the number of complete years between the date of the prepayment and the "n" anniversary;

"H" is one plus the number of days remaining in the period between the date of the prepayment and the "n" anniversary, once the number of complete years referred to in "K" above has been deducted, and

“C” is 4.545 per cent.

6. If the future value of the prepayment exceeds the outstanding amount of the loan repayment amount scheduled for the “n” anniversary, the excess will be deemed to be a prepayment made on the “n” anniversary so that the future value of the excess will be applied as of the next anniversary in a manner analogous to that described in this paragraph.
7. On receipt of a loan prepayment, Canada will issue a letter to Lheidli T'enneh setting out the amount of the prepayment received and the manner in which it will be applied.

**SCHEDULE A: CAPITAL TRANSFER PAYMENT SCHEDULE**

<b>PAYMENT DATES</b>	<b>PROVISIONAL PAYMENT AMOUNTS</b>
Effective Date	\$ 5,000,000
First anniversary of Effective Date	\$ 1,045,041
Second anniversary of Effective Date	\$ 1,045,041
Third anniversary of Effective Date	\$ 1,045,041
Fourth anniversary of Effective Date	\$ 1,045,041
Fifth anniversary of Effective Date	\$ 1,045,041
Sixth anniversary of Effective Date	\$ 1,045,041
Seventh anniversary of Effective Date	\$ 1,045,041
Eighth anniversary of Effective Date	\$ 1,045,041
Ninth anniversary of Effective Date	\$ 1,045,041

**Notes for Finalizing Schedule A**

These notes will not form part of the Agreement. The purpose of these notes is to enable the Parties to calculate on the revision date the amounts to be shown in the final version of this schedule.

1. In these notes:

“signing of this Agreement” means signing by the Parties after the ratification by Lheidli T'enneh in accordance with paragraph 13 of the Ratification Chapter;

“FDDIPI” means the Final Domestic Demand Implicit Price Index for Canada, series D100466, published regularly by Statistics Canada in Matrix 10512: Implicit Price Indexes, Gross Domestic Product or its replacement series as specified by Statistics Canada;

“revision date” is that date which is 90 days before the Effective Date, or as otherwise agreed to by the Parties, and is the same “revision date” as that referred to in Schedule B of this Chapter; and

“transition date” is the date that is 15 months after the date of the signing of this Agreement.

2. If the period between the date of the signing of this Agreement and the Effective Date is less than 15 months, on the revision date each provisional amount in the Capital Transfer Payment Schedule will be adjusted as follows:

Provisional Amount \* M/L

where:

“/” means divided by;

“\*” means multiplied by;

“L” is the value of FDDIPI for the second quarter of 2003 published by Statistics Canada at the same time that the values used in M are published;

“M” is the first published value of FDDIPI for the latest calendar quarter for which Statistics Canada has published a FDDIPI before the revision date.

3. If the period between the date of signing of this Agreement and the Effective Date is greater than 15 months, on the revision date each provisional amount in the Capital Transfer Payment Schedule will be adjusted as follows:

$$\text{Provisional Amount} * [(P/Q) * (1 + CR)^Y * (1 + CR * D/365)]$$

where:

“Q” is the value of FDDIPI for the second quarter of 2003 published by Statistics Canada at the same time that the values used in P are published;

“P” is the first published value of FDDIPI for the latest calendar quarter for which Statistics Canada has published a FDDIPI before the transition date;

“Y” means the number of complete years between the transition date and the Effective Date;

“D” is the number of days remaining in the period between the transition date and the Effective Date, after deducting the complete years in that period that have been taken into account in the determination of Y; and

“CR” is 4.545 per cent.

The purpose of this paragraph is to limit the period for which the Capital Transfer is adjusted by FDDIPI to the period that ends on the date that is 15 months after the signing of this Agreement, and to lengthen the period of which the Capital Transfer is adjusted by the calculation rate to the period between the date that is 15 months after the signing of this Agreement and the Effective Date.

4. On the revision date, following the adjustment performed in accordance with either paragraph 2 or 3 of these notes, as applicable, the Capital Transfer Payment Schedule will be amended to incorporate the adjusted amounts and the headings in this schedule will be replaced by the following headings:

	PAYMENT AMOUNTS
PAYMENT DATE	CANADA WILL PAY

**SCHEDULE B: NEGOTIATION LOAN REPAYMENT SCHEDULE**

<b>REPAYMENT DATES</b>	<b>PROVISIONAL LOAN REPAYMENT AMOUNTS</b>
Effective Date	\$ 2,226,027
First anniversary of Effective Date	\$ 465,258
Second anniversary of Effective Date	\$ 465,258
Third anniversary of Effective Date	\$ 465,258
Fourth anniversary of Effective Date	\$ 465,258
Fifth anniversary of Effective Date	\$ 465,258
Sixth anniversary of Effective Date	\$ 465,258
Seventh anniversary of Effective Date	\$ 465,258
Eighth anniversary of Effective Date	\$ 465,258
Ninth anniversary of Effective Date	\$ 465,258

**Notes for Finalizing Schedule B**

These notes will not form part of this Agreement. The purpose of these notes is to enable the Parties to calculate on the revision date the amounts to be shown in the final version of this schedule.

The provisional loan repayment amounts are based on total outstanding loans up to April 10, 2006. Final loan repayment amounts, including any further loans made for 2006/07, will be calculated and included in the final loan repayment schedule in accordance with the following notes.

1. In these notes:
  - “revision date” has the same meaning as in Schedule A of this Chapter.
2. Prior to the revision date, Canada and Lheidli T'enneh will jointly produce a document capturing the final loan and interest amounts as at Effective Date and setting out the amounts of all loans from Canada to Lheidli T'enneh, all interest accrued to date, and the relevant terms and conditions of those loans.
3. On the revision date, the provisional repayment amounts in this schedule will be adjusted to final repayment amounts by:
  - a. determining the amount of the additional negotiation loans made by Canada to Lheidli T'enneh which were not included in the calculation of the provisional repayment amounts and any additional interest since the provisional loan and interest amounts were calculated; and

- b. prorating the additional amounts determined under subparagraph 3.a. over the provisional repayment schedule such that the final repayment amounts are proportional to the Capital Transfer Payment Schedule, using as an interest rate 4.545% per year, which is the same rate of interest used to establish the provisional loan repayment schedule.
4. On the revision date, following the adjustment performed in accordance with paragraph 2 of these instructions, the Negotiation Loans Repayment Schedule will be amended to incorporate the adjusted amounts and the headings in this schedule will be replaced by the following headings:

REPAYMENT DATES	LOAN REPAYMENT AMOUNTS
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## CHAPTER 22

### RESOURCE REVENUE SHARING

1. Commencing on the first Payment Date and on each subsequent Payment Date, Canada will make one Resource Revenue Payment to Lheidli T'enneh.
2. Commencing on the first Payment Date and on each subsequent Payment Date, British Columbia will make one Resource Revenue Payment to Lheidli T'enneh.
3. Each Resource Revenue Payment will be calculated 30 days before the corresponding Payment Date, using the following formula:

$$\text{Resource Revenue Payment} = 50\% * \left[ \$400,000 * \left( \frac{\text{Payment Date FDDIPI}}{\text{1st Quarter 2005 FDDIPI}} \right) \right]$$

Where:

“\*” means multiplied by.

“/” means divided by.

“FDDIPI” means the Final Domestic Demand Implicit Price Index for Canada, series D100466, published regularly by Statistics Canada in Matrix 10512: Implicit Price Indexes, Gross Domestic Product or its replacement series as specified by Statistics Canada

For each Payment Date:

“Payment Date FDDIPI” is the first published FDDIPI for the latest calendar quarter for which Statistics Canada has published a FDDIPI before that Payment Date

“1<sup>st</sup> Quarter 2005 FDDIPI” is the value of FDDIPI for the first quarter of 2005 published by Statistics Canada at the same time that the values used in Payment Date FDDIPI are published.



## **CHAPTER 23**

### **TAXATION**

#### **DIRECT TAXATION**

1. The Lheidli T'enneh Government may make laws with respect to:
  - a. Direct taxation of Lheidli T'enneh Citizens within Lheidli T'enneh Lands in order to raise revenue for Lheidli T'enneh Government purposes; and
  - b. the implementation of any taxation agreement entered into between Lheidli T'enneh and Canada or British Columbia.
2. The Lheidli T'enneh Government law-making authority under subparagraph 1.a will not limit the taxation powers of Canada or British Columbia.
3. Notwithstanding paragraph 88 of the General Provisions Chapter, any Lheidli T'enneh Law made under this Chapter or any exercise of power by the Lheidli T'enneh Government, is subject to and will conform with International Legal Obligations respecting taxation, and paragraphs 11 to 16 of the General Provisions Chapter do not apply with respect to International Legal Obligations respecting taxation.

#### **TAX AGREEMENTS**

4. From time to time, at the request of Lheidli T'enneh, Canada and British Columbia, together or separately, may negotiate and attempt to reach agreement with Lheidli T'enneh with respect to:
  - a. the extent to which the Direct taxation law-making authority of the Lheidli T'enneh Government under subparagraph 1.a may be extended to apply to Persons, other than Lheidli T'enneh Citizens, within Lheidli T'enneh Lands; and
  - b. the coordination of Lheidli T'enneh Government taxation of any Person with federal or provincial tax systems.
5. Notwithstanding the provisions of the Governance Chapter, parties to an agreement under paragraph 4 may provide for an alternative approach to the appeal, enforcement or adjudication of a Lheidli T'enneh Law with respect to taxation.

## **LHEIDLI T'ENNEH LANDS**

6. Lheidli T'enneh is not subject to capital taxation, including real property taxes and taxes on capital or wealth, with respect to the estate or interest of Lheidli T'enneh in Lheidli T'enneh Lands on which there are no improvements or on which there is a designated improvement.
7. In paragraph 6, “designated improvement” means:
  - a. a residence of a Lheidli T'enneh Citizen;
  - b. an improvement, all or substantially all of which is used for a public purpose or a purpose ancillary or incidental to the public purpose, including:
    - i. a public governance or administration building, public meeting building, public hall, public school or other public educational institution, teacherage, public library, public health facility, public care facility, public seniors home, public museum, place of public worship, manse, fire hall, police facility, court, correction facility, public recreation facility, public park, or an improvement used for Lheidli T'enneh cultural or spiritual purposes;
    - ii. works of public convenience constructed or operated for the benefit of Lheidli T'enneh Citizens, occupiers of Lheidli T'enneh Lands or persons visiting or in transit through Lheidli T'enneh 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. similar improvements;
  - c. an improvement that is used primarily for the management, protection or enhancement of a natural resource, including a forestry, 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.
8. In subparagraph 7.b, “public purpose” does not include the provision of property or services primarily for the purpose of profit.
9. For the purposes of paragraphs 6 and 7:
  - a. for greater certainty, Lheidli T'enneh 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.
- 10. For greater certainty, the exemption from taxation in paragraph 6 does not apply to a taxpayer other than Lheidli T'enneh nor does it apply with respect to a disposition of Lheidli T'enneh Lands or interests in those lands by Lheidli T'enneh.
- 11. For federal and British Columbia income tax purposes, proceeds of disposition received by Lheidli T'enneh on expropriation of Lheidli T'enneh Lands in accordance with the Lands Chapter will not be taxable.

#### **TRANSFER OF LHEIDLI T'ENNEH CAPITAL**

- 12. A transfer under this Agreement of Lheidli T'enneh Capital and a recognition of ownership of Lheidli T'enneh Capital under this Agreement is not taxable.
- 13. For purposes of paragraph 12, an amount paid to a Participant is deemed to be a transfer of Lheidli T'enneh Capital under this Agreement if the payment:
  - a. reasonably can be considered to be a distribution of Capital Transfer received by Lheidli T'enneh; and
  - b. becomes payable to the Participant within 90 days and is paid to the Participant within 270 days from the date that the Lheidli T'enneh receives the Capital Transfer.
- 14. For federal and British Columbia income tax purposes, Lheidli T'enneh Capital is deemed to have been acquired by Lheidli T'enneh at a cost equal to its fair market value on the later of:
  - a. the Effective Date; or
  - b. the date of transfer of ownership or the date of recognition of ownership, as the case may be.

#### **INDIAN ACT TAX EXEMPTION AND TRANSITIONAL EXEMPTION**

- 15. Section 87 of the *Indian Act* will have no application to a Lheidli T'enneh Citizen:
  - a. with respect to transaction taxes, as of the first day of the first month following the eighth anniversary of the Effective Date; and
  - b. with respect to all other taxes, as of the first day of the first calendar year starting after the twelfth anniversary of the Effective Date.

16. Subject to subparagraphs 1.a and 4.a and paragraphs 17 to 20, as of the Effective Date, the following is exempt from taxation:
  - a. the interest of an Indian in Lheidli T'enneh Land that was an Indian Reserve or Surrendered Land on the day before the Effective Date;
  - b. the personal property of an Indian situated on Lheidli T'enneh Land that was an Indian Reserve on the day before the Effective Date; and
  - c. an Indian with respect to the ownership, occupation, possession or use of any property mentioned in subparagraphs 16.a or 16.b.
17. Paragraph 16 will cease to be effective:
  - a. with respect to transaction taxes, as of the first day of the first month that starts after the eighth anniversary of the Effective Date; and
  - b. with respect to all other taxes, as of the first day of the first calendar year that starts after the twelfth anniversary of the Effective Date.
18. Paragraph 16 will be interpreted to exempt an Indian with respect to a property or interest, or with respect to the ownership, occupation, possession or use thereof, in the same manner and under the same conditions in which section 87 of the *Indian Act* would have applied, but for this Agreement, if the property were situated on, or the interest were in, an Indian Reserve.
19. Paragraph 16 only applies to an Indian during the period that section 87 of the *Indian Act* applies to the Indian.
20. If Lheidli T'enneh imposes a tax within Lheidli T'enneh Lands and concludes a tax agreement for that purpose with Canada or British Columbia as contemplated in paragraph 4, paragraph 16 does not apply to the extent that Lheidli T'enneh, Canada or British Columbia, as the case may be, imposes a tax that the particular taxation agreement specifies is applicable to Lheidli T'enneh Citizens and other Indians within Lheidli T'enneh Lands.

#### **TAX TREATMENT AGREEMENT**

21. The Parties will enter into a Tax Treatment Agreement, which will come into effect on the Effective Date.
22. The Tax Treatment Agreement, and any taxation agreement under paragraph 4:
  - a. is not part of this Agreement; and

- b. is not a treaty or land claims agreement and does not recognize or affirm any aboriginal or treaty rights within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.
- 23. Canada and British Columbia will recommend to Parliament and the Legislature of British Columbia, respectively, that the Tax Treatment Agreement be given effect and force of law under federal and provincial legislation.



## **CHAPTER 24**

### **IMPLEMENTATION**

#### **GENERAL**

1. The implementation plan for this Agreement takes effect on the Effective Date and has a term of ten years.

#### **IMPLEMENTATION PLAN**

2. The implementation plan for this Agreement:
  - a. identifies the obligations in this Agreement, the activities to be undertaken to fulfill these obligations, the responsible Party or Parties and the timelines, including when the activities will be completed;
  - b. specifies how the implementation plan may be amended;
  - c. specifies how the implementation plan may be renewed or extended; and
  - d. addresses other matters agreed to by the Parties.
3. The implementation plan for this Agreement:
  - a. is not part of this Agreement;
  - b. is not a treaty or land claims agreement and does not recognize or affirm any aboriginal or treaty rights within the meaning of sections 25 or 35 of the *Constitution Act, 1982*;
  - c. does not create legal obligations;
  - d. does not alter any rights or obligations set out in this Agreement;
  - e. does not preclude any Party from asserting that rights or obligations exist under this Agreement even though it is not referred to in the implementation plan; and
  - f. is not to be used to interpret this Agreement.

## **IMPLEMENTATION COMMITTEE**

4. The Implementation Committee is established on the Effective Date for a term of ten years which may be renewed or extended upon agreement by the Parties.
5. Lheidli T'enneh, Canada and British Columbia will each appoint one member as their representative on the Implementation Committee.
6. The Implementation Committee will:
  - a. establish its own procedures and operating guidelines;
  - b. develop a communications strategy with respect to the implementation and content of this Agreement;
  - c. act as a forum for the Parties to discuss the implementation of this Agreement;
  - d. monitor and oversee the implementation of this Agreement;
  - e. monitor the operation of the implementation plan;
  - f. attempt to resolve implementation disputes between the Parties;
  - g. provide for the preparation of an annual report on the implementation of this Agreement;
  - h. carry out a review of the implementation plan of this Agreement; and
  - i. before the expiry of the implementation plan, advise the Parties on the further implementation of this Agreement, including a recommendation as to whether the implementation plan should be renewed, extended or amended.

## **CHAPTER 25**

### **DISPUTE RESOLUTION**

#### **DEFINITIONS**

1. In this Chapter and in Appendix P-1 to P-6, "Appendix" means Appendix P-1, P-2, P-3, P-4, P-5, or P-6 to this Agreement.

#### **GENERAL**

2. In this Chapter, and in each Appendix, a Party is deemed to be directly engaged in a Disagreement if another Party, acting reasonably, gives the first Party a written notice requiring it to participate in a process described in this Chapter to resolve the Disagreement.
3. The Parties share the following objectives:
  - a. to cooperate with each other to develop harmonious working relationships;
  - b. to prevent or 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.
4. Except as otherwise provided, participating Parties may agree to vary a procedural requirement contained in this Chapter, or in an Appendix, as it applies to a particular Disagreement.
5. Participating Parties may agree to, or the Supreme Court of British Columbia on application may order:
  - a. the abridgement of a time limit; or
  - b. the extension of a time limit, despite the expiration of that time limit,in this Chapter or in an Appendix.

## **SCOPE: WHEN THIS CHAPTER APPLIES TO A DISAGREEMENT**

6. This Chapter does not apply to all conflicts or disputes between or among the Parties, but is limited to the conflicts or disputes described in paragraph 7.
7. This Chapter only applies to:
  - a. a conflict or dispute with respect to:
    - i. the interpretation, application or implementation of this Agreement, or
    - ii. a breach or anticipated breach of this Agreement;
  - b. a conflict or dispute, where provided for in this Agreement; or
  - c. negotiations required to be conducted under any provision of this Agreement that provides that the Parties, or any of them, “will negotiate and attempt to reach agreement”.
8. This Chapter does not apply to:
  - a. an agreement between or among the Parties that is ancillary, subsequent or supplemental to this Agreement unless the Parties have agreed that this Chapter applies to that agreement;
  - b. the implementation plan; or
  - c. conflicts or disputes where excluded from this Chapter.
9. Nothing in this Chapter limits the application of a dispute resolution process, under any law, to a conflict or dispute involving a person if that conflict or dispute is not a Disagreement.

## **DISAGREEMENTS TO GO THROUGH STAGES**

10. The Parties desire and expect that most Disagreements will be resolved by informal discussions between or among the Parties, without the necessity of invoking this Chapter.
11. Except as otherwise provided, Disagreements not resolved informally will progress, until resolved, through the following stages:
  - a. Stage One: formal, unassisted efforts to reach agreement between or among the Parties, in collaborative negotiations under Appendix P-1;

- b. Stage Two: structured efforts to reach agreement between or among the Parties with the assistance of a Neutral, who has no authority to resolve the dispute, in a facilitated process under Appendix P-2, P-3, P-4, or P-5 as applicable; and
  - c. Stage Three: final adjudication in arbitral proceedings under Appendix P-6 or in judicial proceedings.
- 12. Except as otherwise provided, no Party may refer a Disagreement to final adjudication in Stage Three without first proceeding through Stage One and a facilitated process in Stage Two as required in this Chapter.
- 13. Nothing in this Chapter prevents a Party from commencing arbitral or judicial proceedings at any time:
  - a. to prevent the loss of 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 directly engaged in the Disagreement wishes to invoke this Chapter, that Party will deliver a written notice, as required under Appendix P-1, as soon as practicable to the other Parties, requiring the commencement of collaborative negotiations.
- 15. Upon receiving the notice under paragraph 14, a Party directly engaged in the Disagreement will participate in the collaborative negotiations.
- 16. A Party not directly engaged in the Disagreement may participate in the collaborative negotiations by giving written notice to the other Parties, preferably before the collaborative negotiations commence.
- 17. If the Parties have commenced negotiations in the circumstances described in subparagraph 7.c, those negotiations will be deemed collaborative negotiations and the 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 termination of collaborative negotiations that have not resolved the Disagreement, a Party directly engaged in a Disagreement, by delivering a notice to the other Parties, may require the commencement of a facilitated process.
20. A notice under paragraph 19:
  - a. will include the name of the Party or Parties directly engaged in the Disagreement and a summary of the particulars of the Disagreement; and
  - b. may propose the use of a facilitated process described in paragraph 23.
21. Upon receiving a notice under paragraph 19, a Party directly engaged in the Disagreement will participate in a facilitated process described in paragraph 23.
22. A Party not directly engaged in the Disagreement may participate in the facilitated process by giving written notice to the other Parties within 15 days of delivery of a notice under paragraph 19.
23. Within 30 days after delivery of a notice under paragraph 19, the Parties directly engaged in the Disagreement 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,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 Appendix; or
  - b. as agreed by the participating Parties, if an Appendix does not apply.

## **NEGOTIATING CONDITIONS**

25. In order to enhance the prospect of reaching agreement, the Parties participating in collaborative negotiations or a negotiation component of a facilitated process will:
- a. at the request of a participating Party, provide timely disclosure of sufficient information and documents to enable a full examination of the subject matter being negotiated;
  - b. make every reasonable effort to appoint negotiating representatives with sufficient authority to reach an agreement, or with ready access to such authority; and
  - c. negotiate in good faith.

## **SETTLEMENT AGREEMENT**

26. Any agreement reached in a process under this Chapter:
- a. will be:
    - i. recorded in writing;
    - ii. signed by authorized representatives of the Parties to the agreement; and
    - iii. delivered to all Parties; and
  - b. is binding only on the Parties who have signed the agreement.

## **STAGE THREE: ADJUDICATION – ARBITRATION**

27. After the later of termination of collaborative negotiations or of a required facilitated process with respect to a Disagreement arising out of any provision of this Agreement that provides that a matter will be “finally determined by arbitration”, the Disagreement will, on the delivery of a notice by a Party directly engaged in the Disagreement to all Parties as required under Appendix P-6, be referred to and finally resolved by arbitration in accordance with that Appendix.
28. After the later of termination of collaborative negotiations, or a required facilitated process with respect to any Disagreement, other than a Disagreement referred to in paragraph 27, and with the written agreement of all Parties directly engaged in the Disagreement, the Disagreement will be referred to and finally resolved by arbitration in accordance with Appendix P-6.

29. If two Parties make a written agreement under paragraph 28, they will deliver a copy of the agreement as soon as practicable to the other Party.
30. Upon delivering a written notice to the participating Parties to the arbitration within 15 days after receiving a notice under paragraph 27 or copy of a written agreement under paragraph 28, a Party not directly engaged in the Disagreement is entitled to be, and will be added as, a party to the arbitration of that Disagreement whether or not that Party has participated in collaborative negotiations or a required facilitated process.
31. Notwithstanding paragraph 30, an arbitral tribunal may make an order adding a Party as a participating Party at any time, if the arbitral tribunal considers that:
- a. the participating Parties will not be unduly prejudiced; or
  - b. the issues stated in the pleadings are materially different from those identified in the notice to arbitrate under paragraph 27 or the written agreement to arbitrate in paragraph 28,
- and, in that event, the arbitral tribunal may make any order it considers appropriate or necessary in the circumstances with respect to conditions, including the payment of costs, upon which the Party may be added.

#### **EFFECT OF ARBITRAL AWARD**

32. An arbitral award is final and binding on all Parties whether or not a Party has participated in the arbitration.
33. Notwithstanding paragraph 32, an arbitral award is not binding on a Party that has not participated in the arbitration if:
- a. the Party did not receive copies of:
    - i. the notice of arbitration or agreement to arbitrate, or
    - ii. the pleadings and any amendments or supplements to the pleadings; or
  - b. the arbitral tribunal refused to add the Party as a participating Party to the arbitration under paragraph 31.

#### **APPLICATION OF LEGISLATION**

34. No legislation of any Party with respect to arbitration, except the Settlement Legislation, applies to an arbitration conducted under this Chapter.

35. 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**

36. Nothing in this Chapter creates a cause of action where none otherwise exists.
37. Subject to paragraph 38, at any time a Party may commence proceedings in the Supreme Court of British Columbia with respect to a Disagreement.
38. A Party may not commence judicial proceedings with respect to a Disagreement if the Disagreement:
- a. is required to be referred to arbitration under paragraph 27 or has been agreed to be referred to arbitration under paragraph 28;
  - b. has not been referred to collaborative negotiations or a facilitated process as required under this Chapter; or
  - c. has been referred to collaborative negotiations or a facilitated process that has not yet been terminated.
39. Nothing in paragraph 38 prevents an arbitral tribunal or the participating Parties from requesting the Supreme Court of British Columbia to make a ruling with respect to a question of law as permitted in Appendix P-6.

### **NOTICE TO PARTIES**

40. If, in any judicial or administrative proceeding, an issue arises with respect to:
- a. the interpretation or validity of this Agreement; or
  - b. the validity or applicability of:
    - i. any Settlement Legislation; or
    - ii. any Lheidli T'enneh 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 the Lheidli T'enneh Government.
41. In any judicial or administrative proceeding to which paragraph 40 applies, the Attorney General of British Columbia, the Attorney General of Canada, and the Lheidli T'enneh

Government may appear and participate in the proceedings as parties with the same rights as any other party.

## **COSTS**

42. Except as provided otherwise in Appendices P-1 to P-6, each participating Party will bear the costs of its own participation, representation and appointments in collaborative negotiations, a facilitated process, or an arbitration, conducted under this Chapter.
43. Subject to paragraph 42 and except as provided otherwise in Appendices P-1 to P-6, the participating Parties will share equally all costs of collaborative negotiations, a facilitated process, or an arbitration, conducted under this Chapter.
44. For purposes of paragraph 43, costs include:
  - a. fees of the Neutrals;
  - b. costs of hearing and meeting rooms;
  - c. actual and reasonable costs of communications, accommodation, meals and travel of the Neutrals;
  - d. costs of required secretarial and administrative support for the Neutrals, as permitted in Appendices P-1 to P-6; and

administration fees of a Neutral Appointing Authority.