

**Maa-nulth First Nations
Tax Treatment Agreement**

MAA-NULTH FIRST NATIONS TAX TREATMENT AGREEMENT

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA, as represented by the Minister of Finance

(**"Canada"**)

AND:

HER MAJESTY THE QUEEN IN RIGHT OF BRITISH COLUMBIA, as represented by Minister of Finance

(**"the Province"**)

AND:

HUU-AY-AHT FIRST NATIONS

KA:'YU:'K'T'H'/CHE:K'TLES7ET'H' FIRST NATIONS

TOQUAHT NATION

UCHUCKLESAHT TRIBE

UCLUELET FIRST NATION

(**"Maa-nulth First Nations"**).

WHEREAS:

- A. 19.6.1 of Chapter 19 Taxation of the Maa-nulth First Nations Final Agreement provides that the Maa-nulth First Nations, Canada and British Columbia will enter into a tax treatment agreement; and
- B. This agreement is the tax treatment agreement referred to in recital A. and shall be called the "Maa-nulth First Nations Tax Treatment Agreement."

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

Maa-nulth _____ British Columbia (Finance) _____ Canada (Finance) _____

1 INTERPRETATION

1 (1) In this agreement:

“**claimant**” means:

(a) in the definition of “specified activity”, “permanent establishment” and section 4:

(i) a Maa-nulth First Nation; or

(ii) a person, other than a financial institution, that is:

(A) a trust, board, commission, tribunal or similar body, established by a Maa-nulth First Nation;

(B) an eligible corporation of a Maa-nulth First Nation; or

(C) a partnership each member of which is a person described in subparagraph (i) or clause (A) or (B); and

(b) in section 5, a person that would be referred to in paragraph (a) if subparagraph (a)(ii) were read without reference to the words “other than a financial institution”.

“**Cultural Property Export and Import Act**” means the *Cultural Property Export and Import Act*, R.S.C. 1985, c. C-51;

“**eligible corporation**” of a Maa-nulth First Nation means:

(a) a corporation incorporated under federal or provincial legislation, all of the shares of which, except directors’ qualifying shares, or capital of which, are owned by that Maa-nulth First Nation, a Maa-nulth First Nation Settlement Trust of which that Maa-nulth First Nation is a beneficiary, or any combination of those persons; or

(b) a corporation, all of the shares of which, except directors’ qualifying shares, or the capital of which, are owned by:

(i) that Maa-nulth First Nation or a Maa-nulth First Nation Settlement Trust of which that Maa-nulth First Nation is a beneficiary;

(ii) a corporation that itself is an eligible corporation of that Maa-nulth First Nation; or

(iii) any combination of the persons referred to in subparagraphs (i) and (ii);

“**Excise Tax Act**” means the *Excise Tax Act*, R.S.C. 1985, c. E-15;

“**Income Tax Act**” means the *Income Tax Act*, R.S.C. 1985, c.1 (5th supp);

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“**Interpretation Act**” means the *Interpretation Act*, R.S.C. 1985, c. I-21;

“**Maa-nulth First Nations Final Agreement**” means the Maa-nulth First Nations Final Agreement between and signed by Canada, the Province and the Maa-nulth First Nations, as amended from time to time.

“**Maa-nulth First Nations Final Agreement Act**” means the *Maa-nulth First Nations Final Agreement Act*, S.B.C. 2007, c. 43;

“**Maa-nulth First Nation Settlement Trust**” at any time means a trust that has been designated before that time by the Minister of National Revenue pursuant to subsection 9(1) as a Maa-nulth First Nation Settlement Trust and that is at that time designated as a Maa-nulth First Nation Settlement Trust.

“**Mineral Land Tax Act**” means the *Mineral Land Tax Act*, R.S.B.C. 1996, c. 290;

“**Mineral Tax Act**” means the *Mineral Tax Act*, R.S.B.C. 1996, c. 291;

“**Motor Fuel Tax Act**” means the *Motor Fuel Tax Act*, R.S.B.C. 1996, c. 317;

“**permanent establishment**” of a claimant means:

(a) a fixed place of business of the claimant and includes:

- (i) a place of management, a branch, an office, a factory, a workshop or other site; and
- (ii) a mine, an oil or gas well, a quarry, timberland or any other place of extraction of natural resources;

(b) a fixed place of business of another person (other than a broker, general commission agent or other independent agent acting in the ordinary course of business or any person established by the claimant) who is acting on behalf of the claimant;

(c) a place at which the claimant uses substantial machinery or equipment; or

(d) any real property owned, or supplied on a regular or continuous basis, by the claimant;

“**Petroleum and Natural Gas Act**” means the *Petroleum and Natural Gas Act*, R.S.B.C. 1996, c. 361;

“**Property Transfer Tax Act**” means the *Property Transfer Tax Act*, R.S.B.C. 1996, c. 378;

“**Social Service Tax Act**” means the *Social Service Tax Act*, R.S.B.C. 1996, c. 431;

and

“**specified activity**” of a claimant means:

- (a) where the claimant is a Maa-nulth First Nation, a business or other activity that has the primary purpose of providing property or services to:
 - (i) a trust, board, commission, tribunal or similar body established by that Maa-nulth First Nation;
 - (ii) an eligible corporation of that Maa-nulth First Nation;
 - (iii) Maa-nulth First Nation Citizens of that Maa-nulth First Nation;
 - (iv) individuals resident on the Maa-nulth First Nation Lands of that Maa-nulth First Nation; or
 - (v) any combination of those persons;
 - (b) where the claimant is a trust, board, commission, tribunal or similar body established by a Maa-nulth First Nation or an eligible corporation of a Maa-nulth First Nation, a business or other activity that has the primary purpose of providing property or services to:
 - (i) that Maa-nulth First Nation;
 - (ii) any of the persons described in (a); or
 - (iii) any combination of those persons; or
 - (c) any other business or activity that Canada and a Maa-nulth First Nation agree is a specified activity.
- (2) The *Interpretation Act* applies to this agreement as if it were an enactment, except that the definition of “government “ in subsection 123(1) of the *Excise Tax Act* does not apply for the purposes of section 4.
- (3) Except as provided in subsections (1) and (4), the definitions in Chapter 29 Definitions of the Maa-nulth First Nations Final Agreement, other than the definitions “agreement”, “director”, “disagreement”, “dispose”, “mineral”, “municipality”, “natural gas”, “petroleum” and “schedule”, apply to this agreement.
- (4) The definition of “person” in Chapter 29 Definitions does not apply in the definition of “permanent establishment”.

2 GENERAL

- 2 (1) This agreement does not form part of the Maa-nulth First Nations Final Agreement.
- (2) This agreement 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 and 35 of

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the *Constitution Act, 1982*.

- (3) This agreement enures to the benefit of and is binding upon the parties and their respective successors.
- (4) Nothing in this agreement affects any entitlement of Maa-nulth First Nation Citizens, Maa-nulth First Nations, Maa-nulth First Nation Public Institutions or a Maa-nulth First Nation Settlement Trust to any benefit available under federal law or provincial law.
- (5) No provision of this agreement, or performance by a party of an obligation under this agreement, may be waived unless the waiver is in writing and signed by the party or parties giving the waiver.
- (6) No written waiver of a provision of this agreement, of performance by a party of an obligation under this agreement, or of default by a party of an obligation under this agreement, is deemed to be a waiver of any other obligation or provision or of any subsequent default.
- (7) This agreement may not be assigned, either in whole or in part, by any party.
- (8) This agreement may be executed at one or more times and in one or more places. Each counterpart is deemed an original instrument as against any party who has signed it and the aggregate of the counterparts are deemed to constitute a single executed document.
- (9) If any provision of this agreement is declared or held to be void, voidable, invalid, illegal or unenforceable for whatever reason, the provision will be severed from the remainder of this agreement but all other provisions of this agreement will remain in full force and effect and will be construed as if this agreement had been executed without the void, voidable, invalid, illegal or unenforceable portion.
- (10) Time is of the essence in this agreement.

3 INCOME TAX ACT STATUS OF MAA-NULTH FIRST NATIONS

- 3 (1) For the purpose of paragraph 149(1)(c) of the *Income Tax Act*, each Maa-nulth First Nation is deemed to be a public body performing a function of government in Canada.
- (2) For the purposes of paragraphs 149(1)(d) to 149(1)(d.6) and subsections 149(1.1) to 149(1.3) of the *Income Tax Act*, each Maa-nulth First Nation is deemed to be a municipality in Canada whose boundaries are those of its Maa-nulth First Nations Lands.
- (3) For the purposes of subsections 110.1(1), 118.1(1) and 149.1(1) of the *Income Tax Act*, each Maa-nulth First Nation is deemed to be a municipality.
- (4) A Maa-nulth First Nation will be treated as a public authority designated pursuant to subsection 32(2) of the *Cultural Property Export and Import Act* and any non-profit organization established by that Maa-nulth First Nation to receive, store and

Maa-nulth _____ British Columbia (Finance) _____ Canada (Finance) _____

display cultural objects will be treated as an institution designated under that subsection of that Act if that Maa-nulth First Nation or the non-profit organization, as the case may be:

(a) has

- (i) a facility that meets the environmental requirements of the Minister of Canadian Heritage in respect of long-term storage and display of cultural objects; or
- (ii) the use, by virtue of an agreement with a public authority or an institution, as the case may be, that is designated under subsection 32(2) of the *Cultural Property Export and Import Act*, of a facility that meets the environmental requirements of the Minister of Canadian Heritage, until such time as that Maa-nulth First Nation or the non-profit organization has a facility that meets those requirements; and

(b) uses either facility to store or display cultural objects, including any that are donated to it and that are included in "total cultural gifts" within the meaning of subsection 118.1(1) of the *Income Tax Act* for purposes of computing the income tax liability of the donor.

4 GST REFUND

4 (1) A claimant who acquires or imports property or a service in respect of which it pays tax under subsection 165(1) or section 212 or 218 of the *Excise Tax Act* is entitled to a refund of that portion of the tax that is not recoverable as an input tax credit under Part IX of that Act and is not otherwise recovered under any law, if:

- (a) the property or service was not acquired or imported for consumption, use or supply in the course of a business or other activity, other than a specified activity, engaged in by the claimant for profit or gain;
- (b) the property or service was acquired or imported for consumption, use or supply in the course of performing a function of government under the Maa-nulth First Nations Final Agreement or other agreement between Canada and the Province, together or separately, and a Maa-nulth First Nation; and
- (c) the property or service
 - (i) is a capital property of the claimant acquired or imported for consumption, use or supply, at any place, primarily in the course of engaging, on the Maa-nulth First Nation Lands of the applicable Maa-nulth First Nation associated with the claimant, in a business or other activity of the claimant;
 - (ii) is a service in respect of capital property referred to in (i) or is property supplied in conjunction with a service in respect of capital property referred to in (i);
 - (iii) in the case of property or a service referred to in neither (i) nor (ii), was acquired or imported for consumption, use or supply, at any place,

exclusively in the course of engaging, on the Maa-nulth First Nation Lands of the applicable Maa-nulth First Nation associated with the claimant, in a business or other activity of the claimant; or

- (iv) is land that has been added to the Maa-nulth First Nation Lands of the applicable Maa-nulth First Nation associated with the claimant pursuant to the Maa-nulth First Nations Final Agreement.
- (2) For the purposes of paragraph 4(1)(c), where a claimant is engaging in a business or other activity partly on the Maa-nulth First Nations Lands of the applicable Maa-nulth First Nation and partly at or through one or more permanent establishments of the claimant that are not located on the Maa-nulth First Nation Lands of that Maa-nulth First Nation, the claimant is deemed not to be engaging, on the Maa-nulth First Nations Lands of that Maa-nulth First Nation, in the business or activity
- (a) in the case of a business or activity that involves the making of supplies of real property on a regular or continuous basis by way of lease, licence or similar arrangement, if the property is not, and is not intended to be, located on the Maa-nulth First Nations Lands of that Maa-nulth First Nation; and
 - (b) in any other case, to the extent to which the claimant is engaging in the business or activity at or through one or more permanent establishments of the claimant that are not located on the Maa-nulth First Nations Lands of that Maa-nulth First Nation.
- (3) Despite paragraph 141.1(1)(b), subsection 200(3), section 1 of Part V.1 of Schedule V and sections 2 and 25 of Part VI of that Schedule, of the *Excise Tax Act*, and despite subsection 2(4) of this agreement, if a claimant makes a supply by way of sale of property that is capital property of the claimant and in respect of which the claimant is entitled to receive a refund under subsection 4(1), the supply is deemed, for the purposes of Part IX of that Act, to be made in the course of a commercial activity of the claimant.
- (4) A refund of tax under subsection 4(1) will not be paid unless an application for the refund is filed with the Minister of National Revenue within four years after the tax was paid.
- (5) The provisions of Part IX of the *Excise Tax Act* apply, with such modifications as the circumstances require, in respect of claims under subsection 4(1) and in respect of amounts paid or payable as a refund under that subsection, as though the refund provided for under that subsection were a rebate provided for under Division VI of Part IX of the *Excise Tax Act*.

5 SOCIAL SERVICE TAX AND MOTOR FUEL TAX

- 5 (1) Subject to subsections 5(2) to 5(5), a claimant is entitled to a refund of:
- (a) tax, other than tax on the purchase of liquor, paid by the claimant under the *Social Service Tax Act*; or
 - (b) tax paid by the claimant under the *Motor Fuel Tax Act*
- in respect of property, service or fuel:
- (c) acquired or leased at any place; or
 - (d) consumed or used at any place.
- (2) A claimant is entitled to a refund under subsection 5(1), to the extent that the tax is not otherwise recoverable by the claimant under any law, if:
- (a) the property, service or fuel was not acquired or leased for consumption or use in the course of a business or other activity for profit or gain; and
 - (b) substantially all of the property, service or fuel is consumed or used in respect of performing:
 - (i) a function of government within the Maa-nulth First Nations Lands of the applicable Maa-nulth First Nation associated with the claimant,
 - (ii) fisheries management by Maa-nulth First Nations within the Maa-nulth Domestic Fishing Area, or
 - (iii) wildlife management by Maa-nulth First Nations within the Wildlife Harvest Area,under the Maa-nulth First Nations Final Agreement or other agreement between Canada and the Province, together or separately, and a Maa-nulth First Nation.
- (3) A claimant must pay a tax at the time of a change of use as required by the *Social Service Tax Act* if:
- (a) the claimant has received a refund under subsection 5(1); and
 - (b) the use of the property or services in respect of which the refund was made changes to a use for which the claimant would not be entitled to a refund under subsection 5(1).
- (4) The *Social Service Tax Act*, the *Motor Fuel Tax Act* and any other relevant law of the Province apply to subsections 5(1) to 5(3) to the extent that they are not inconsistent with those subsections.

- (5) For all purposes a refund made under subsection 5(1) is deemed to be made under the *Social Service Tax Act* or the *Motor Fuel Tax Act*, as the case may be.

6 PROPERTY TRANSFER TAX

- 6 (1) Neither a Maa-nulth First Nation nor its Maa-nulth First Nation Public Institutions are subject to tax under the *Property Transfer Tax Act* in respect of the Maa-nulth First Nation Lands of that Maa-nulth First Nation.
- (2) A Maa-nulth First Nation Citizen is not subject to tax under the *Property Transfer Tax Act* in respect of the registration of that citizen's interest in Maa-nulth First Nation Lands:
- (a) while the exemption under 19.5.2 of Chapter 19 Taxation applies for tax under the *Property Transfer Tax Act*, or
- (b) if it is the first registration after the Effective Date of an interest in those particular Maa-nulth First Nation Lands by a person other than the applicable Maa-nulth First Nation or its Maa-nulth First Nation Public Institutions.

7 REAL PROPERTY TAX

- 7 (1) No estate or interest of a Maa-nulth First Nation or an eligible corporation in Other Maa-nulth First Nation Lands as set out in 2.2.0 of Chapter 2 Lands and Appendix C is subject to real property taxation under provincial law, except for an estate or interest in a parcel of such lands when the parcel is used for a purpose other than:
- (a) government activities; or
- (b) not for profit activities.
- (2) Maa-nulth First Nation Lands held or occupied by a person for the purpose of harvesting timber on those lands under a licence or permit issued by, or an agreement entered into with, a Maa-nulth First Nation are exempt from real property taxes, except real property taxes imposed by the applicable Maa-nulth First Nation Government.
- (3) Maa-nulth First Nation Lands and improvements that are:
- (a) owned by a Maa-nulth First Nation or its Maa-nulth First Nation Public Institutions or an eligible corporation; and
- (b) rented by a Maa-nulth First Nation or its Maa-nulth First Nation Public Institutions or an eligible corporation as social housing to persons who, applying the test established for this purpose by the Canada Mortgage and Housing Corporation or a comparable objective test, are determined to be in core housing need,

are exempt from real property tax, other than real property taxes imposed by the applicable Maa-nulth First Nation Government.

- (4) If an improvement is not a designated improvement within the meaning of 19.3.2 (b) of Chapter 19 Taxation and a Maa-nulth First Nation uses a portion of the improvement for a public purpose or a purpose ancillary or incidental to a public purpose, 19.3.1 of Chapter 19 Taxation applies in respect of the portion, as if that portion were a designated improvement.
- (5) For the purpose of 19.3.1 of Chapter 19 Taxation, an improvement owned by a Maa-nulth First Nation and not in use is deemed to be a designated improvement.

8 RESOURCE TAXES

- 8 (1) Subject to subsections (2) and (4) to (6), no person is subject to tax under:

(a) the *Mineral Tax Act*,

(b) the *Petroleum and Natural Gas Act*,

in respect of, and only to the extent of, the fee simple interest of a Maa-nulth First Nation or an eligible corporation in a mineral resource on or under Maa-nulth First Nations Lands or in respect of minerals, petroleum and natural gas extracted from Maa-nulth First Nation Lands.

- (2) Subsection 8(1) applies to a person only to the extent that:

(a) the mine or quarry in respect of which the tax is imposed under the *Mineral Tax Act* is on or under Maa-nulth First Nation Lands; or

(b) the petroleum or natural gas in respect of which a tax is imposed under the *Petroleum and Natural Gas Act* is produced and disposed of from Maa-nulth First Nation Lands.

- (3) Neither a Maa-nulth First Nation nor an eligible corporation is subject to tax under the *Mineral Land Tax Act* on Maa-nulth First Nation Lands of the applicable Maa-nulth First Nation.

- (4) Subsection (1)(a) does not apply to Tenured Subsurface Resources listed in Appendices E-12, E-13 and E-15.

- (5) The Province will pay to the applicable Maa-nulth First Nation the amount equal to the tax that the Province collects, after the Effective Date, under the *Mineral Tax Act* in respect of the Tenured Subsurface Resources on that Maa-nulth First Nation's Maa-nulth First Nation Lands.

(6) Before March 31 in each year, the Province will pay to the applicable Maa-nulth First Nation:

(a) the amount referred to in subsection (5) in respect of the previous year,

less

(b) any amount equal to the tax in respect of Tenured Subsurface Resources that the Province was required to refund to the taxpayer in that previous year.

9 MAA-NULTH FIRST NATION SETTLEMENT TRUST

9 (1) On written application, the Minister of National Revenue will designate, as a Maa-nulth First Nation Settlement Trust, any trust whose terms provide the following:

(a) the trust is resident in Canada;

(b) the beneficiaries of the trust are limited to the following:

(i) one or more Maa-nulth First Nations;

(ii) another Maa-nulth First Nation Settlement Trust;

(iii) one or more Maa-nulth First Nation Citizens;

(iv) any registered charity or non-profit organization, within the meaning of the *Income Tax Act*, that in the reasonable opinion of the trustees directly or indirectly benefits one or more Maa-nulth First Nation Citizens; and

(v) any combination of the entities and persons referred to in subparagraphs (i) to (iv);

(c) investment of the trust's funds is restricted to:

(i) investment instruments that are described as "qualified investments for a trust governed by a registered retirement savings plan" within the meaning of section 146 of the *Income Tax Act* or in any other investments that may be agreed upon from time to time among Maa-nulth First Nations, Canada, as represented by the Minister of Finance, and the Province;

(ii) loans to Maa-nulth First Nation Citizens, Maa-nulth First Nations, Maa-nulth First Nation Public Institutions, or an eligible corporation, at a rate of interest equal to the rate prescribed under paragraph 4301(c) of the *Income Tax Regulations* in effect at the time the loan was made or last renewed;

(iii) investments in shares of an eligible corporation where the average annual rate of dividends on the shares over any five-year period cannot exceed the rate prescribed under paragraph 4301(c) of the *Income Tax Regulations* at the beginning of the five-year period and on condition that the amount

receivable on redemption of the shares or on liquidation of the eligible corporation is limited to the amount of the consideration for which the shares were originally issued;

- (iv) loans, that are interest free or at a rate of interest less than that referred to in subparagraph (ii), to Maa-nulth First Nation Citizens or partnerships or trusts in which no persons other than Maa-nulth First Nation Citizens hold the interests as partners or beneficiaries where, at the time the loan was made, arrangements were made for repayment of the loan and where the purpose of the loan is to assist the borrower, or where the borrower is a partnership or a trust, to assist a partner or a beneficiary, to:
 - (A) acquire, construct or renovate a residential property in British Columbia for his or her own habitation;
 - (B) attend courses to further his or her education, technical or vocational skills or attend courses in native studies, culture or language programs;
 - (C) acquire funding for purposes of carrying on a business within Maa-nulth First Nation Lands where the borrower is unable to borrow from ordinary commercial lenders at normal commercial rates; or
 - (D) participate in a Maa-nulth First Nation Fishing Right or in a Maa-nulth First Nation Right to Harvest Wildlife; and
- (v) an investment described in paragraph 9(1)(h);
- (d) the trust is not permitted to:
 - (i) carry on a business; or
 - (ii) acquire any beneficial interest in a trust engaged in a business where one or more Maa-nulth First Nations, Maa-nulth First Nation Settlement Trusts or Maa-nulth First Nation Citizens, either alone or in combination, hold more than ten percent of all of the beneficial interests in the trust;
- (e) the trust is not permitted to borrow money except as required to finance the acquisition of its investments or to carry out its operations;
- (f) contributions to the trust are limited to:
 - (i) contributions by one or more Maa-nulth First Nations of amounts which reasonably can be considered to be:
 - (A) capital transfer payments received by a Maa-nulth First Nation;
 - (B) resource revenue sharing payments received by a Maa-nulth First Nation under Chapter 17 Resource Revenue Sharing; or
 - (ii) amounts received from another Maa-nulth First Nation Settlement Trust

where substantially all of the funds of that contributing trust reasonably can be considered to have been derived from a contribution to a Maa-nulth First Nation Settlement Trust by a Maa-nulth First Nation of amounts described in clauses (A) or (B) and income and gains derived therefrom;

- (g) the trust is not permitted to make any distributions other than to one or more beneficiaries under the trust, or to another Maa-nulth First Nation Settlement Trust; and
 - (h) the trust may not acquire an investment or property not described in paragraph 9(1)(c) except by way of realization of a security interest in the course of carrying on a permitted activity, in which case such investment or property will be disposed of within a reasonable period, not to exceed two years, of its acquisition.
- (2) Any refusal by the Minister of National Revenue to designate a trust as a Maa-nulth First Nation Settlement Trust under subsection 9(1) is subject to the same right of appeal as applies to a refusal to register an applicant for registration as a registered charity under the *Income Tax Act*, with such modifications as the circumstances require.
- (3) A Maa-nulth First Nation Settlement Trust, a beneficial interest in a Maa-nulth First Nation Settlement Trust, and any amount contributed to a Maa-nulth First Nation Settlement Trust or distributed as income or capital by a Maa-nulth First Nation Settlement Trust to a beneficiary is not taxable except that
- (a) any amount of income or capital distributed in a particular year to a beneficiary who is a Maa-nulth First Nation Citizen is deemed for purposes of subsection 104(13) of the *Income Tax Act* to be income of the trust that was payable to the beneficiary in the particular year;
 - (b) a Maa-nulth First Nation Settlement Trust is subject to tax under Part I of the *Income Tax Act* and for that purpose its taxable income for a taxation year will be calculated as the total of:
 - (i) the amount of taxable income that would be determined under the *Income Tax Act* for the taxation year in respect of its properties, or its dispositions of properties, that were not investments referred to in paragraph 9(1)(c) and that were not acquired in the course of carrying on a permitted activity of the Maa-nulth First Nation Settlement Trust; and
 - (ii) any amount contributed to the Maa-nulth First Nation Settlement Trust that is not permitted under the terms of the Maa-nulth First Nation Settlement Trust; and
 - (c) goods and services tax or similar taxes may be imposed on goods or services consumed by a Maa-nulth First Nation Settlement Trust or the trustee.
- (4) Where the Minister of National Revenue is of the opinion that a Maa-nulth First Nation Settlement Trust has failed to comply with the terms referred to in paragraphs 9(1)(a) to (h):

- (a) the Minister may notify the Maa-nulth First Nation Settlement Trust of the default and request a remedy to address the default;
- (b) if within 100 days after the registered mailing of the notice referred to in paragraph 9(4)(a) the Maa-nulth First Nation Settlement Trust does not address the default to the satisfaction of the Minister, then the Minister may, by registered mail, give notice that the Minister proposes to revoke the designation of the Maa-nulth First Nation Settlement Trust as a Maa-nulth First Nation Settlement Trust; and
- (c) the Minister may, after the later of:
 - (i) 30 days from the date of mailing of the notice; and
 - (ii) the expiration of such extended period as may apply pursuant to subsection 9(5),

revoke the designation of the Maa-nulth First Nation Settlement Trust as a Maa-nulth First Nation Settlement Trust.

- (5) Any notice or revocation under subsection 9(4) is subject to the same rights of appeal and is subject to the same procedural rules, including applications for extended time periods, as may be available under Canadian law in respect of a revocation of, or a notice of a proposal to revoke, the registration of a charity that is registered under the *Income Tax Act*, as applicable, with such modifications as the circumstances require.
- (6) If the Minister of National Revenue revokes the designation of a Maa-nulth First Nation Settlement Trust, the taxation year of the trust that would otherwise have included the time of revocation is deemed to end immediately before the time of the revocation, and the Maa-nulth First Nation Settlement Trust is deemed to have disposed of each of its assets immediately before that time for proceeds equal to its fair market value, and to have re-acquired the asset at the time of revocation at a cost equal to its fair market value at that time, and for the purposes of calculating the taxable income of the Maa-nulth First Nation Settlement Trust under paragraph 9(3)(b), the amount by which the fair market value of the asset exceeds (or is less than) the cost amount of the asset is deemed to be a capital gain (or capital loss) from the disposition of property that was not an investment referred to in paragraph 9(1)(c) and that was not acquired in the course of carrying on a permitted activity of the Maa-nulth First Nation Settlement Trust.
- (7) For purposes of subsection 9(4), the distribution by a Maa-nulth First Nation Settlement Trust of any amount to a beneficiary of the Maa-nulth First Nation Settlement Trust in respect of the beneficiary's interest in the Trust is not considered to be cause for the revocation of the designation of the Maa-nulth First Nation Settlement Trust.
- (8) The rule against perpetuities does not apply to a Maa-nulth First Nation Settlement Trust.

10 MAA-NULTH FIRST NATION CAPITAL

- 10 Any transfer of Maa-nulth First Nation Capital of a Maa-nulth First Nation, other than cash, between that Maa-nulth First Nation and its Maa-nulth First Nation Public Institutions or an eligible corporation, or registration of an interest in such property, is not taxable.

11 ELECTION FOR DEEMED DISPOSITION OF CAPITAL PROPERTY

- 11 (1) In this section,

“eligible individual” means an individual who, at the valuation time, is an Indian and who, at that time, holds an eligible interest;

“eligible interest” means any estate or interest in:

- (a) specified lands, Surrendered Lands or Maa-nulth First Nation Lands that were, on the day before the Effective Date, Surrendered Lands, or
- (b) capital property or eligible capital property situated on specified lands;

“specified lands” means:

- (a) in the case of an eligible individual who is a Maa-nulth-aht, an Indian reserve or Maa-nulth First Nation Lands that were, on the day before the Effective Date, an Indian reserve, and
- (b) in the case of an eligible individual who is not a Maa-nulth-aht, Maa-nulth First Nation Lands that were, on the day before the Effective Date, an Indian reserve; and

“valuation time” means, in respect of an eligible interest, the beginning of January 1 of the first calendar year that starts after the twelfth anniversary of the Effective Date, except that if a Maa-nulth First Nation Government exercises its power to impose an income tax in respect of the eligible interest before that date pursuant to Chapter 19 Taxation and such tax applies to the eligible individual who holds the eligible interest, the valuation time is the effective application date of the Maa-nulth First Nation income tax.

- (2) Subject to subsections 11(3) and 11(4), an eligible individual may elect for the purposes of the *Income Tax Act* to be deemed to have disposed, at the time that is immediately before the time that is immediately before the valuation time, of an eligible interest owned at that time for an amount equal to its fair market value and to have reacquired it at the valuation time at a cost equal to that same amount.
- (3) An election in respect of an eligible interest shall be made in writing to the Minister of National Revenue and may only be made
 - (a) once in respect of each eligible interest, and

(b) in the eligible individual's return of income under Part I of the *Income Tax Act* for the taxation year that starts at the valuation time or in a separate election filed with the Minister on or before the day that is two years after the eligible individual's filing-due date for that taxation year.

- (4) For the purposes of applying sections 37, 65 to 66.4, 111, subsections 127(5) to 127(26) and section 127.3 of the *Income Tax Act*, an eligible individual who makes an election will be deemed not to have owned the eligible interest at any time before the time it was deemed to have been reacquired by the eligible individual under subsection 11(2).

12 DISPUTE RESOLUTION

- 12 (1) The parties desire and expect that most disagreements will be resolved by informal discussion between or among the parties without the necessity of invoking a dispute resolution mechanism.
- (2) Except for a dispute under sections 3 to 11, in the event of a dispute between any of the parties arising under this agreement, the parties involved in the dispute will use the mediation process referred to in Stage 2 of Chapter 25 Dispute Resolution before pursuing any other legal remedy.

13 TERM OF THIS AGREEMENT

- 13 (1) Subject to subsection 13(2), this agreement comes into effect on the Effective Date and, unless the parties agree otherwise, terminates at the end of March 31st of the second calendar year following the calendar year in which a party notifies the others that it wants the agreement to terminate.
- (2) With respect to provincial enactments, any provision of this agreement not contained in the tax treatment agreement as defined in the *Maa-nulth First Nations Final Agreement Act*, including the amendments to the definitions of claimant and eligible interest, subsection 6(2)(b), 7(3) or section 10, will come into effect on the date the Legislature gives effect and force of law to these provisions.
- (3) A party may not, before the end of the calendar year in which the 15th anniversary of the Effective Date occurs, give notice that it wants this agreement to terminate.
- (4) At least one year before this agreement is expected to terminate, the parties will use best efforts to negotiate a new tax treatment agreement.

14 AMENDMENT AND REVIEW

- 14 (1) Any amendment to this agreement must be in writing and executed by all parties.
- (2) Any party may at any time request the other parties to review this agreement and to consider amendments to this agreement and the other parties will not unreasonably withhold consent to the review.

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- (3) For greater certainty, nothing in subsection 14(2) requires any party to agree to amend this agreement.

15 NOTICES

- 15 (1) Unless otherwise provided, a notice, document, request, approval, authorization, consent or other communication (each a "communication") required or permitted to be given or made under this agreement must be in writing and may be given or made in one or more of the following ways:

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

- (2) A communication will be considered to have been given or made and received:

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

- (3) A communication must be delivered, transmitted to the facsimile number or mailed to the address of the intended recipient set out below:

For Canada:

Attention: Minister of Finance
House of Commons
Confederation Building
Ottawa (Ontario) K1A 0A6
Fax number: 613-995-1534

For British Columbia:

Attention: Minister of Finance
Parliament Buildings
Victoria (British Columbia) V8V 1X4
Fax number: 250-387-5594

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For the Huu-ay-aht First Nations:

Attention: Chief Councillor
Box 70
Bamfield, British Columbia
V0R 1B0
Fax Number: 250-726-1222

For the Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations:

Attention: Chief Councillor
General Delivery
Kyoquot, British Columbia
V0P 1J0
Fax Number: 250-332-5210

For the Toquaht Nation:

Attention: Chief Councillor
Box 759
1316 Pine Street
Ucluelet, British Columbia
V0R 3A0
Fax Number: 250-726-4403

For the Uchucklesaht Tribe:

Attention: Chief Councillor
Box 1118
Port Alberni, British Columbia
V9Y 7L9
Fax Number: 250-724-1806

For the Ucluelet First Nation:

Attention: Chief Councillor
Box 699
Ucluelet, British Columbia
V0R 3A0
Fax Number: 250-726-7552

A party may change its address or facsimile number by giving a notice of the change to the other Parties in the manner set out above in 15(1).

Maa-nulth _____ British Columbia (Finance) _____ Canada (Finance) _____

Maa-nulth First Nations

For the Huu-ay-aht First Nations:

Signed at _____,
_____,
this ___ day of _____, 200_.

Witness

For the Government of Canada:

Signed at _____,
_____,
this ___ day of _____, 200_.

The Hon.
Minister of Finance

Witness

For the Government of British Columbia:

Signed at _____,
_____,
this ___ day of _____, 200_.

The Hon.
Minister of Finance

Witness

For the Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations:

Signed at _____,
this ___ day of _____, 200_.

Witness

Maa-nulth _____ British Columbia (Finance) _____ Canada (Finance) _____

For the Toquaht Nation:

Signed at _____, _____,
this ___ day of _____, 200_.

Witness

For the Uchucklesaht Tribe:

Signed at _____, _____,
this ___ day of _____, 200_.

Witness

For the Ucluelet First Nation:

Signed at _____, _____,
this ___ day of _____, 200_.

Witness

Maa-nulth _____ British Columbia (Finance) _____ Canada (Finance) _____

