

# **TAX ADMINISTRATION AGREEMENT**

## **BETWEEN:**

**The Government of Canada ("Canada")  
acting through and represented by the  
Minister of Finance**

**AND**

**The First Nation of Nacho Nyak Dun ("NND")  
acting through and represented by the  
Chief, designated as the  
authorized body of NND under section 8 of the  
*First Nation of Nacho Nyak Dun Goods and Services Tax Act, 2003***

**(hereinafter collectively called the "Parties")**

## **WHEREAS:**

the *First Nation of Nacho Nyak Dun Goods and Services Tax Act, 2003* imposes a value-added tax within the lands described opposite the name of the First Nation of Nacho Nyak Dun in the schedule to the *First Nations Goods and Services Tax Act (Canada)*;

section 8 of the *First Nation of Nacho Nyak Dun Goods and Services Tax Act, 2003* provides that the Chief of NND, with the approval and authorization of the NND Council may enter, on behalf of NND, into an administration agreement with Canada in relation to that tax;

the NND Council has approved and authorized the Chief to enter into this agreement;

subsection 5(2) of the *First Nations Goods and Services Tax Act (Canada)* provides that the Minister of Finance, with the approval of the Governor in Council, may enter into an administration agreement in respect of a value-added tax imposed under a first nation law; and

the Minister of Finance has the approval of the Governor in Council to enter into this agreement;

**NOW THEREFORE**, in consideration of the terms, exchange of promises, covenants and conditions contained in this agreement, the Parties agree as follows:

First Nation of Nacho Nyak Dun



Chief, First Nations Taxation (Canada)



## Interpretation

### 1. In this agreement:

"Auditor General" means the Auditor General of Canada and includes, where circumstances require, any officer or class of officer authorized by the Auditor General of Canada;

"Chief" means the Chief of NND under the NND Constitution, and includes the Deputy Chief, if any, when acting as the Chief;

"Citizen" means a Citizen of the First Nation of Nacho Nyak Dun, in accordance with the NND Constitution;

"Deferred Amount" means the deferred amount described in clause 21.

"Entitlement Year" means a calendar year throughout which this agreement is in effect or, if the agreement is in effect during only a portion of a calendar year, that portion of the calendar year;

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

"Federal Act" means the *First Nations Goods and Services Tax Act*, enacted by S.C. 2003, c. 15, s. 67;

"First Nation Law" means the *First Nation of Nacho Nyak Dun Goods and Services Tax Act*, 2003;

"FNGST" means the tax imposed under the First Nation Law;

"Minister" means the Minister of Finance of Canada and includes, where circumstances require, the Deputy Minister or any officer or class of officer authorized by the Minister of Finance;

"Minister of National Revenue" means the Minister responsible for the Canada Customs and Revenue Agency and includes, where circumstances require, the Commissioner of Customs and Revenue or any officer or class of officer authorized by the Minister of National Revenue;

"Net Tax Attributable", to NND for an Entitlement Year, means the amount by which the estimate of Tax Attributable to NND for that Entitlement Year exceeds Canada's share, if any, of that estimate of Tax Attributable to NND determined in accordance with Annex B;

"Non-Citizen" means a person who is not a Citizen of NND;

"Prior Estimate Adjustment" means the difference obtained by subtracting from a re-estimate of Net Tax Attributable for an Entitlement Year the immediately preceding estimate or re-estimate of the Net Tax Attributable for that Entitlement Year; and

"Tax Attributable" to NND has the same meaning as in section 5 of the Federal Act.

2. Unless a contrary intention appears in this agreement, words and expressions used in this agreement but not defined in clause 1 have the same meaning as in the Federal Act, or if the meaning does not exist in the Federal Act, have the meaning assigned by subsection 123(1) of the Excise Tax Act.
3. In this agreement, where a reference is made to an Act of Parliament, the First Nation Law, or any other first nation law that meets the description set out in subsection 11(1) or 12(1) of the Federal Act, or regulations made under the Act, the First Nation Law or that other law, the reference shall be read as a reference to that Act, the First Nation Law or that other law, or those regulations, as amended from time to time.

#### **Covenants by Canada**

4. Canada agrees that the tax power of NND provided for in clause 14.1.2 of the First Nation of Nacho Nyak Dun Self Government Agreement given effect by the *Yukon First Nations Self-Government Act*, S.C. 1994, c. 35 may be extended to apply to Non-Citizens in respect of the FNGST and other amounts imposed under the First Nation Law while this agreement is in effect and of amounts, other than the FNGST, imposed under that law after this agreement ceases to have effect that relate to amounts imposed while this agreement was in effect.
5. Canada shall act as the agent for NND in respect of the administration and enforcement of the First Nation Law, including the collection of FNGST and other amounts imposed under that law while this agreement is in effect and of amounts, other than the FNGST, imposed under that law after this agreement ceases to have effect that relate to amounts imposed while this agreement was in effect.
6. Canada shall account for the amounts collected under the First Nation Law on behalf of NND by estimating the associated revenues and Canada shall make and account for remittances to NND in accordance with this agreement.
7. Canada and its agents and subservient bodies shall comply with the obligations imposed on them under the First Nation Law, including the obligation to pay and account for the amounts imposed on them under the First Nation Law as if that law were applicable to Canada.

### **Covenants by NND**

8. NND agrees that the obligations, authorities, rights and privileges imposed upon or granted to a person under the First Nation Law shall not depend on whether that person is a Citizen or a Non-Citizen.
9. NND agrees that the First Nation Law shall be consistent with subsections 4(1) to (10), paragraphs 11(3)(a) and (b) and subparagraphs 11(3)(e)(i) to (iii) and (v) of the Federal Act. NND shall ensure that the First Nation Law provides the Minister of National Revenue with sufficient authority to administer and enforce that law in accordance with this agreement, including the authority to collect the FNGST and other amounts imposed under that law.
10. NND shall provide the Minister in a timely manner with a certified true copy of:
  - (a) the First Nation Law, following its enactment; and
  - (b) any amendment to the First Nation Law, following its enactment.
11. NND and its agents and subservient bodies shall comply with Part IX of the Excise Tax Act, the Federal Act, the First Nation Law and any other first nation law that meets the description set out in subsection 11(1) or 12(1) of the Federal Act.
12. NND and its agents and subservient bodies shall pay, and account for the payment of, amounts imposed under Part IX of the Excise Tax Act, the Federal Act, the First Nation Law or any other first nation law that meets the description set out in subsection 11(1) or 12(1) of the Federal Act, except if the amounts are not payable by reason of a separate agreement given effect under an Act of Parliament.

### **Revenue Estimation**

13. The Parties agree to use data outlined in Annex A and Annex B in order to prepare the estimates and re-estimates described below. The Parties recognize, however, that the data available may not, in all instances, be optimal.
14. Prior to the beginning of each particular Entitlement Year, the Minister shall make an estimate for that Entitlement Year of the Tax Attributable to NND in accordance with the provisions in Annex A.
15. The sharing, if any, between NND and Canada of the amount estimated as Tax Attributable to NND for each Entitlement Year will be calculated in accordance with the provisions in Annex B.

16. An estimate of Net Tax Attributable for each particular Entitlement Year shall be made by subtracting from the estimate of the Tax Attributable to NND determined under Annex A for the particular Entitlement Year the estimate of Canada's share, if any, determined under Annex B for that particular Entitlement Year.
17. Not later than December 31 of the calendar year that includes the particular Entitlement Year, and not later than December 31 of each of the four calendar years following the particular Entitlement Year, the Minister shall annually re-estimate, using the procedure set out in clause 16, the Net Tax Attributable to NND for that particular Entitlement Year for the purpose of calculating in each of those years the Prior Estimate Adjustment for that particular Entitlement Year.
18. The Net Tax Attributable for a particular Entitlement Year shall be final and no further adjustments shall be made following the commencement of remittances incorporating the Prior Estimate Adjustment in respect of the fifth re-estimate for that year, subject to the Minister incorporating any adjustments that may be required to the fifth re-estimate as set out in the report signed by the Auditor General that is referred to in clause 29.

#### Remittances

19. The Minister shall remit to NND on a monthly basis positive amounts in respect of a particular Entitlement Year determined by the formula

$$[(A - B) / D] + [C / D]$$

where

A is the amount estimated under clause 14 for that particular Entitlement Year;

B is the amount of Canada's share determined under clause 15 for that particular Entitlement Year;

C is the sum of the most recent Prior Estimate Adjustments in respect of the five Entitlement Years immediately preceding that particular Entitlement Year or, if there are fewer than five Entitlement Years preceding the particular Entitlement Year, in respect of all the Entitlement Years preceding the particular Entitlement Year; and

D is the number of months anticipated to be in that particular Entitlement Year.

20. If the result of the formula in clause 19 in respect of a particular Entitlement Year is negative, that amount multiplied by the number of months anticipated in the formula to be in that Entitlement Year is a debt due to Canada payable by NND, subject to clause 21, within that Entitlement Year.
21. If the sum of the Prior Estimate Adjustments in the formula in clause 19 results in a reduction to the remittances in respect of a particular Entitlement Year that is equal to or

greater than twenty percent of Net Tax Attributable to NND for that year, NND may defer the repayment of a portion, agreed to by the Parties, (hereinafter referred to as the "Deferred Amount") of the total of the Prior Estimate Adjustments and, unless otherwise agreed by the Parties, the Deferred Amount will be repaid to Canada by NND during the two Entitlement Years following the particular Entitlement Year.

22. Canada shall retain as its property an amount imposed under the First Nation Law if that amount:

- (a) is not Tax Attributable to NND; or
- (b) is included in Canada's share of the estimate of Tax Attributable to NND in accordance with clause 15.

23. Prior to each particular Entitlement Year, the Assistant Deputy Minister or any authorized officer or class of officer of the Tax Policy Branch of the federal Department of Finance shall provide NND with a written statement for review before payments commence in respect of that Entitlement Year that includes the following information:

- (a) the estimated Tax Attributable to NND for that year, as determined under clause 14;
- (b) Canada's share of the estimated Tax Attributable to NND for that year, as determined under clause 15;
- (c) the Prior Estimate Adjustments included in determining the remittances for that year;
- (d) Deferred Amounts, if any, included in determining the remittances for that year; and
- (e) the remittances for that year.

24. The first remittance made to NND in respect of a particular Entitlement Year shall be made on or before the last working day of the month following the first month of that particular Entitlement Year. Subsequent remittances in respect of the particular Entitlement Year shall be made on or before the last working day of each month thereafter for the number of months equal to one less than the number of months in that particular Entitlement Year.

25. The Parties agree that, in respect of FNGST that is imposed while this agreement is in effect, the Minister may pay to a person any refund, rebate or other amount that is payable in accordance with the First Nation Law.

26. If no amount is held on behalf of NND from which payment under clause 25 may be made in accordance with this administration agreement, or the amount of the payment

exceeds the amount so held, Canada agrees to make the payment as a recoverable advance and NND agrees that the advance shall be recovered against amounts of FNGST subsequently collected on behalf of NND.

27. In the event that this agreement is terminated, unless the Parties agree otherwise:

- (a) the remittance in the month in which the agreement is terminated will remain the same as set out in the last written statement provided under clause 23 prior to termination;
- (b) if the sum of the Prior Estimate Adjustments for the purpose of determining the remittances for the particular Entitlement Year that ended upon the termination of the agreement is positive, the Minister, in making the remittance for the month following termination, shall prorate that portion of the remittance that relates to the Net Tax Attributable to NND for that Entitlement Year by multiplying that portion by the ratio of the number of days that this agreement was in effect during the month in which the agreement was terminated to the total number of days in that month;
- (c) if the sum of the Prior Estimate Adjustments for the purpose of determining the remittances for the particular Entitlement Year that ended upon the termination of the agreement is negative, the Minister, in making the remittance for the month following termination, shall prorate the remittance by multiplying it by the ratio of the number of days that this agreement was in effect during the month in which the agreement was terminated to the total number of days in that month;
- (d) in the second calendar month following termination, the parties agree to settle any accounts then outstanding in respect of the sum of Prior Estimate Adjustments considered in determining the remittances for the particular Entitlement Year that ended upon the termination of the agreement and to settle the total outstanding Deferred Amounts as follows:
  - (i) where the outstanding amount of the sum of the Prior Estimate Adjustments calculated in respect of the remittances for the Entitlement Year that ended upon the termination of this agreement, minus the total outstanding Deferred Amounts, is positive, the Minister shall remit that amount to NND forthwith; or
  - (ii) where the outstanding amount of the sum of the Prior Estimate Adjustments calculated in respect of the remittances for the Entitlement Year that ended upon the termination of this agreement, minus the total of any outstanding Deferred Amounts, is negative, NND shall repay that amount to Canada by making equal monthly payments for a period not exceeding thirty six months beginning in the second calendar month following termination;
- (e) no later than December 31 of the calendar year that includes the particular Entitlement Year in which the agreement is terminated and no later than

December 31 of each of the four calendar years following that calendar year, the Minister shall annually calculate and provide a written statement to NND identifying Prior Estimate Adjustments for the Entitlement Years that would have remained open for re-estimation in each of those calendar years if the agreement had continued in effect;

- (f) when calculating the first Prior Estimate Adjustment for the particular Entitlement Year that ended with the termination of the agreement, the Minister shall prorate the first estimate of Net Tax Attributable to NND by multiplying the amount of the estimate by the ratio of the actual number of days in that particular Entitlement Year to the number of days anticipated to be in that Entitlement Year at the time of the first estimate;
- (g) if the sum of the Prior Estimate Adjustments in a calendar year subsequent to the termination of this agreement is positive, the Minister shall remit forthwith to NND the amount of that sum; and
- (h) if the sum of the Prior Estimate Adjustments in a calendar year subsequent to the termination of this agreement is negative, the First Nation shall pay the amount of that sum to Canada by making equal monthly payments for a period not exceeding thirty six months beginning in the calendar month following the month when the statement was provided by the Minister to NND setting out the sum of those adjustments.

### **Reporting**

- 28. The statements provided under clause 23 and subclause 27(e), and the report provided under clause 29, shall be the only statements or reports required to be provided to NND by Canada in respect of amounts collected in accordance with this agreement.
- 29. The Minister shall annually provide NND with a report, signed by the Auditor General, concerning the determination of amounts as provided for in this agreement.
- 30. The procedures carried out to prepare the Auditor General's report will be determined by the Auditor General and will constitute the only procedures conducted by Canada with respect to the reporting obligations in connection with the determination of amounts as provided for in this agreement. NND agrees that it has no right to inspect the books and records of Canada in connection with this agreement.
- 31. Unless the Parties agree otherwise, if the Auditor General's report indicates that the estimate or the most recent re-estimate in respect of an Entitlement Year should be adjusted, that adjustment shall be incorporated into the next re-estimate in respect of that Entitlement Year.



### Administration

32. The Parties agree that the Minister of National Revenue shall have and may exercise all the powers of NND relating to the administration and enforcement of the First Nation Law, including the collection of the FNGST and other amounts imposed under that law while this agreement is in effect and the collection of amounts, other than the FNGST, imposed under that law after this agreement ceases to have effect that relate to amounts imposed while this agreement was in effect.
33. NND agrees that the Minister of National Revenue shall be the administrative authority in respect of the FNGST, including all interpretations, assessments, determinations, decisions, and any other matter related to administration, collection or enforcement.
34. Canada shall pay the costs, charges or expenses (including amounts in respect of prosecutions or other legal proceedings, other than amounts referred to in clause 36) that are incurred by Canada in the administration and enforcement of the First Nation Law and the collection of the FNGST and other amounts imposed under that law.
35. Canada shall retain interest and penalties that are imposed under the First Nation Law and collected by the Minister of National Revenue.
36. Unless otherwise agreed by the Parties, NND shall pay its own costs, charges and expenses incurred in relation to litigation to which NND becomes a party, either voluntarily or because a party other than Canada requires it, relating to the validity of this agreement, the Federal Act or the First Nation Law.
37. If this agreement ceases at any time to have effect, the Minister of National Revenue shall continue after that time to assess, collect or pay, as the case requires, amounts payable under the First Nation Law in respect of the period in which this agreement was in effect and amounts, other than the FNGST, imposed under that law after this agreement ceases to have effect that relate to amounts imposed while this agreement was in effect.
38. The Minister of National Revenue may provide to NND information acquired in the administration and enforcement of the First Nation Law or, subject to section 295 of the Excise Tax Act, Part IX of the Excise Tax Act. Such information shall be provided free of charge.
39. NND, subject to any applicable confidentiality or privacy obligations shall provide to Canada, free of charge, information that it acquires that could assist in the administration and enforcement of the First Nation Law, the collection of amounts payable under that law, or the estimation of payments to be made under this agreement. Canada agrees that any information made available by NND will not be used for any purpose other than the purpose for which it was provided.

40. Except in its capacity as a registrant or a person required to pay or entitled to receive amounts under the First Nation Law, NND shall accept as final and binding all interpretations, determinations, assessments, decisions, and other actions made or taken by the Minister of National Revenue for the purposes of the First Nation Law.

### **Uniformity of NND Legislation**

41. Canada shall notify NND in writing that the First Nation Law requires amendment, where, in the opinion of the Minister, the First Nation Law does not:
- (a) comply with this agreement;
  - (b) provide the Minister of National Revenue with authority sufficient to administer and enforce that law and to collect amounts imposed under that law;
  - (c) admit of sufficient uniformity as between the administration and enforcement of Part IX of the Excise Tax Act and the First Nation Law; or
  - (d) respect the covenants set out in clause 8 or clause 9.
42. Upon receipt of the notice referred to in clause 41 the Chief of NND agrees to propose to the governing body an amendment to the First Nation Law forthwith.
43. NND agrees that if the First Nation Law is not amended to rectify the deficiencies identified in the notice referred to in clause 41, the Minister may terminate this agreement:
- (a) forthwith, where that notice provides that the First Nation Law does not respect the covenants set out in clause 8 or 9; or
  - (b) in any other case, within six months following receipt of the notice.

### **Repeal of First Nation Law**

44. Unless the Minister agrees otherwise, NND shall provide the Minister with at least six months notice of the date on which it intends to repeal the First Nation Law, and shall provide the Minister with notice that the First Nation Law has been repealed within 10 days following the repeal.

### **Dispute Resolution**

45. In the event of a dispute between the Parties arising out of or in connection with this agreement, other than disputes in respect of clause 8, 9, 40, 42 or 43 of this agreement or clause 3 of Annex B, the Parties shall follow the procedure set out in subclauses (a) through (d) before pursuing other legal remedies.

- (a) Within thirty days of either the Minister or the Chief receiving written notice from the other of a dispute under this agreement, a first meeting will be held between the Parties to attempt in good faith to settle the dispute.
  - (b) If, within sixty days after the first meeting, the Parties have failed to resolve the dispute, they will submit the dispute to a jointly selected mediator and share equally the costs of that mediation.
  - (c) If, after ninety days of the first meeting, the Parties are unable to agree on the choice of a mediator, the matter will be referred to a judge of the Supreme Court of the Yukon Territory who will select a mediator.
  - (d) Once a mediator is selected, the Parties agree to participate in good faith in the mediation process and mediation will continue until the matter is resolved or the mediator provides in writing to the Parties the opinion that the matter cannot be resolved through mediation.
46. The Parties agree that a decision arising from the dispute resolution process under clause 45 concerning a dispute in respect of the amount of money due to either Party for an Entitlement Year shall be implemented, notwithstanding clause 18, if written notice of the dispute is provided at any time during the period that begins at the beginning of the Entitlement Year and ends at the end of the sixth month in the fifth calendar year following the Entitlement Year.
47. The Parties may mutually determine time periods other than those referred to in subclauses 45(a) through (d).

#### **Amendment**

48. Subject to any applicable approvals, authorizations or legislative requirements, the Parties may, in writing, amend or vary this agreement.
49. At either Party's request, Canada and NND shall consider amending this agreement by amending the terms and conditions in Annex A or Annex B of this agreement to be consistent with the terms and conditions of Annex A or Annex B, respectively, of any other administration agreement between a First Nation and Canada that has been entered into in accordance with the Federal Act, with such modifications as are required in the circumstances.

#### **Termination**

50. The Parties may mutually agree to terminate this agreement at any time on such terms as may be agreed upon by the Parties.

51. NND may terminate this agreement by giving the Minister not less than six months written notice of its intention to terminate the agreement, including the date upon which this agreement shall end.
52. Except where clause 43 applies, the Minister may terminate this agreement by giving NND not less than six months written notice of the Minister's intention to terminate the agreement, including the date upon which this agreement shall end.

#### **No Assignment**

53. This agreement may not be assigned, either in whole or in part, by either Party.

#### **Saving**

54. Nothing in this agreement shall limit or restrict, or be construed as limiting or restricting, the right to alter or vary the Federal Act or Part IX of the Excise Tax Act.
55. Nothing in this agreement shall constitute or be construed as constituting an undertaking by Canada to collect the FNGST or any other amount payable under the First Nation Law, or to take any action with respect to the collection of those amounts, where, in the opinion of the Minister, a doubt exists that NND has provided sufficient statutory or other authority for the imposition or collection of those amounts.
56. Where Canada cannot collect the FNGST or any other amount payable under the First Nation Law by reason of there being, in the opinion of the Minister, doubtful authority to do so, the amount that, in the opinion of the Minister, Canada has thereby failed to collect but that has been taken into account in determining a payment to NND made under this agreement may be recovered by Canada as a debt due to Canada by NND, notwithstanding that such payment was made to NND as if there were sufficient authority.

#### **Term**

57. The effective date of this agreement, if duly executed in advance, is July 1, 2004.
58. This agreement shall end:
- (a) in the case of termination in accordance with clause 50, on the date agreed to by the Parties;
  - (b) in the case of termination by NND in accordance with clause 51, on the date specified in the notice given by NND;
  - (c) in the case of termination by Canada in accordance with clause 52, on the date specified in the notice given by Canada; and

(d) in the case of termination by Canada in accordance with clause 43, on the date specified by the Minister in the notice given thereunder.

59. This agreement may be executed in counterparts each of which so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument and this agreement shall be effective on the date set out in clause 57. Facsimile signatures shall be accepted the same as original signatures.

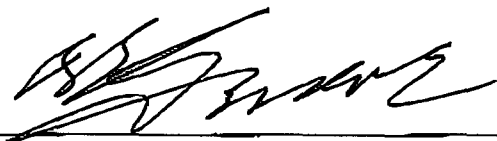
Signed on, this the 25 day of June, 2004, the signatory being authorized to do so:


For the First Nation of Nacho Nyak Dun


  
Chief

Signed on, this the 15<sup>th</sup> day of June, 2004, the signatory being authorized to do so:

For the Government of Canada

  
Minister of Finance

First Nation of Nacho Nyak Dun 

Chief, First Nations Taxation (Canada) 

## ANNEX A

1. In this Annex:

"Census" means a Census of Population conducted by Statistics Canada;

"GST Credit" means an amount equivalent to the aggregate of all amounts that are deemed, under subsection 122.5(3) of the *Income Tax Act*, to have been paid in respect of a calendar year by individuals resident in Yukon within the meaning of that Act;

"Final Estimate" means an estimate that is not subject to re-estimation or adjustment and that is based on data that are published as final data or otherwise deemed to be final by the agency that provides the data; and

"Interim Estimate" means an estimate that is subject to re-estimation or adjustment and that incorporates data other than data that are deemed to be final.

2. In this Agreement, interim and final estimates of Tax Attributable to NND ("ETA<sub>NND</sub>") for an Entitlement Year shall be determined as follows:

$$ETA_{NND} = \text{NetGST} * \text{POP} * \text{ACP} * (\text{DEY}/\text{DCY})$$

where

NetGST is the net amount of GST for Yukon for that Entitlement Year less an amount equal to the GST Credit for Yukon for that Entitlement Year, both of which amounts are as determined in accordance with clause 3;

POP is the total population of individuals of age 15 years or over living on lands as described opposite the name of the First Nation of Nacho Nyak Dun in the schedule to the Federal Act divided by the total population of individuals of age 15 years or over living in Yukon, as determined in accordance with clause 4;

ACP is the average taxable consumption of the population living on lands as described opposite the name of the First Nation of Nacho Nyak Dun in the schedule to the Federal Act divided by the average taxable consumption of the population living in Yukon, as determined in accordance with clause 5;

DEY is the number of days in the Entitlement Year; and

DCY is the number of days in the calendar year that includes the Entitlement Year.

3. a) For the purpose of making an Interim Estimate of the term NetGST for an Entitlement Year, the Parties agree that the net amount of GST for Yukon for that Entitlement Year shall be based on preliminary Provincial Input-Output Tables ("PIOTs") prepared by Statistics Canada for the calendar year that includes that Entitlement Year or, where preliminary PIOTs are not available for the calendar year that includes the Entitlement Year, on preliminary or final PIOTs for other years together with any adjustments that the Minister believes will yield a more accurate estimate of the net amount of GST for Yukon for that Entitlement Year.
- (b) For the purpose of making the Final Estimate of the term NetGST for an Entitlement Year, the net amount of GST for Yukon for that Entitlement Year shall be based on the final PIOTs prepared by Statistics Canada for the calendar year that includes that Entitlement Year.
- (c) For the purpose of making an Interim Estimate of the term NetGST for an Entitlement Year, the Parties agree that an Interim Estimate of the GST Credit for that Entitlement Year shall be based on the Canada Customs and Revenue Agency's interim or final estimate in respect of the calendar year that includes that Entitlement Year or, where interim or final estimates in respect of the calendar year that includes the Entitlement Year are not available, on the interim or final estimates for other years together with any adjustments that the Minister believes will yield a more accurate estimate of the GST Credit for that Entitlement Year.
- (d) For the purpose of making the Final Estimate of the term NetGST for an Entitlement Year, the Parties agree that the Final Estimate of the GST Credit for that Entitlement Year shall be based on the tax administration data applicable to the calendar year that includes that Entitlement Year as provided by the Canada Customs and Revenue Agency for public use as, or as otherwise deemed by the Canada Customs and Revenue Agency to be, the final GST Credit statistics in respect of the calendar year that includes that Entitlement Year.
4. (a) Except as otherwise provided in this clause, interim and final estimates of the term POP for an Entitlement Year shall be based on data obtained from a Census.
- (b) For the purpose of making an Interim Estimate of the term POP for an Entitlement Year, the Parties may agree to use data from one or more data sources in addition to or as a substitute for data obtained from a Census.
- (c) The data obtained from a Census shall, subject to subclause (d), be used for determining the Final Estimate of the term POP for all Entitlement Years in the period that begins two years before and ends two years after the year in which that Census is conducted.

(d) If NND demonstrates to the satisfaction of the Minister or the Minister deems that there are exceptional circumstances in respect of an Entitlement Year whereby the term POP determined on the basis of data obtained from a Census as described in subclause (c) is not a reasonable approximation of NND's average share of the population of individuals of age 15 years or over living in Yukon for the five-year period that begins two years before and ends two years after the year in which that Census is conducted, the Parties may agree to use other reliable and verifiable data to determine the Final Estimate of the term POP for that Entitlement Year.

(e) As a transitional measure, the Parties agree that the estimate of the term POP used in making the first Interim Estimate of  $ETA_{NND}$  for each of the first five Entitlement Years covered by this agreement shall not be subject to re-estimation or adjustment.

5. (a) An Interim Estimate of the term ACP for an Entitlement Year shall be based on average total incomes derived from interim tax filer data provided by the Canada Customs and Revenue Agency in respect of the calendar year that includes that Entitlement Year, or on average total incomes derived from tax filer data for other years, together with any adjustments that the Minister believes will yield a more accurate estimate of the term ACP for that Entitlement Year.

(b) The Final Estimate of the term ACP for an Entitlement Year shall be based on average total incomes derived from the personal income tax data that apply in respect of the calendar year that includes that Entitlement Year as provided by the Canada Customs and Revenue Agency for public use as, or as otherwise deemed by the Canada Customs and Revenue Agency to be, the final personal income tax statistics in respect of the calendar year that includes that Entitlement Year.

(c) Where the Parties agree that the use of data other than tax filer data would be more appropriate for estimating average taxable consumption, they may, despite subclauses (a) and (b), agree to use those other data for making interim and final estimates of the term ACP for an Entitlement Year;

(d) In deciding whether the use of data other than tax filer data would be more appropriate for estimating average taxable consumption, consideration shall be given to:

- (i) response bias and measurement errors affecting data quality;
- (ii) frequency of the collection of the data;
- (iii) sample representativeness of the population;
- (iv) verifiability by third parties;
- (v) availability at reasonable cost;



(vi) consistency of data sources with those used in agreements with other First Nations that are similar to this agreement; and

(vii) the extent to which the populations used in producing the data correspond to or reflect the populations on which the term POP is based.

## ANNEX B

1. In respect of the 2004 and 2005 Entitlement Years, the Parties agree that Canada's share of each estimate of the Tax Attributable to NND shall be nil.
2. The Parties shall discuss, prior to August 2005, a method for determining Canada's share of each estimate of Tax Attributable to NND in respect of the 2006 and subsequent Entitlement Years, with a view to amending this annex before December 2005 to reflect that method.
3. Unless the Parties agree otherwise, if this annex is not amended before December 2005 to include another method for determining Canada's share of each estimate of Tax Attributable to NND for each particular Entitlement Year, as referred to in clause 2, Canada's share of each such estimate for each Entitlement Year after 2005 shall be:
  - (a) 0% of that amount of each estimate of Tax Attributable to NND for the particular Entitlement Year that is less than or equal to
$$\$ 304,000 * INDEX * (DEY/DCY);$$
 and
  - (b) determined by the Minister for that amount, if any, of the estimate of Tax Attributable to NND for the particular Entitlement Year that exceeds
$$\$ 304,000 * INDEX * (DEY/DCY)$$

where

"INDEX", for an Entitlement Year, is that amount used in Annex A to represent NetGST for the purpose of estimating or re-estimating, as the case may be, Tax Attributable to NND for that particular Entitlement Year, divided by NetGST for the calendar year 2004, as determined using the provisions in Annex A or as would be determined using those provisions if that annex applied in respect of the calendar year 2004;

"DEY" is the number of days in the particular Entitlement Year; and

"DCY" is the number of days in the calendar year that includes the particular Entitlement Year.