

TAX ADMINISTRATION AGREEMENT

BETWEEN:

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

AND

**The Tsawout First Nation (“TFN”)
acting through and represented by the
Chief, designated as the
authorized body of the TFN under the
Tsawout First Nation Goods and Services Tax Law,

(hereinafter collectively called the “Parties”)**

WHEREAS:

the *Tsawout First Nation Goods and Services Tax Law* imposes a value-added tax within the lands described opposite the name of the Tsawout First Nation in Schedule 1 to the *First Nations Goods and Services Tax Act* (Canada);

section 5 of the *Tsawout First Nation Goods and Services Tax Law* provides that the Chief of the TFN, with the approval and authorization of the Council of the TFN, may enter, on behalf of TFN, into an administration agreement with Canada in relation to that tax;

the Chief has the approval of the Council of the TFN 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:

Tsawout First Nation



Manager, Aboriginal Tax Policy (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 TFN and includes the Deputy Chief, if any, when acting as the Chief;

“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 *Tsawout First Nation Goods and Services Tax Law*;

“FNGST” means the tax imposed under the First Nation Law;

“Member” means a person whose name is listed in, or who is entitled to have his or her name listed in, the Tsawout First Nation membership list that is maintained by the Tsawout First Nation;

“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 Revenue Agency and includes, where circumstances require, the Commissioner of Revenue or any officer or class of officer authorized by the Minister of National Revenue;

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

“Non-Member” means a person who is not a Member;

“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 the first nation means tax attributable to the first nation within the meaning of subsection 5(1) 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 the TFN provided for in subsection 4(1) of the Federal Act applies 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 the TFN 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 the TFN by estimating the associated revenues and Canada shall make and account for remittances to the TFN 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 the TFN

8. The TFN 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 Member or a Non-Member.
9. The TFN agrees that the First Nation Law shall be made under the tax power in section 4 and consistent with section 11 of the Federal Act. The TFN 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. The TFN 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. The TFN 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. The TFN 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 the TFN in accordance with the provisions in Annex A.
15. The sharing, if any, between the TFN and Canada of the amount estimated as Tax Attributable to the TFN 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 the TFN 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 the TFN 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 the TFN 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 the TFN, 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 the TFN for that year, the TFN 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 the TFN 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 the TFN; or
 - (b) is included in Canada's share of the estimate of Tax Attributable to the TFN 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 the TFN 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 the TFN for that year, as determined under clause 14;
 - (b) Canada's share of the estimated Tax Attributable to the TFN 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;
 - (e) the Population of Relevance for that year as defined in and for the purposes of Annex B; and
 - (f) the remittances for that year.
24. The first remittance made to the TFN 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 the TFN 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 the TFN agrees that the advance shall be recovered against amounts of FNGST subsequently collected on behalf of the TFN.

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 the TFN 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 the TFN 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, the TFN 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 the TFN 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 the TFN 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 the TFN 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 the TFN 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 the TFN by Canada in respect of amounts collected in accordance with this agreement.
- 29. The Minister shall annually provide the TFN 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. The TFN 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 the TFN 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. The TFN 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 administer the FNGST Law free of charge for the TFN and 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, the TFN shall pay its own costs, charges and expenses incurred in relation to litigation to which the TFN 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 the TFN 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. The TFN, 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 the TFN 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, the TFN 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.
41. For the purposes of section 8 of the Federal Act, the Parties agree that the authorized body, as defined in subsection 2(1) of the First Nation Law, is authorized to certify the First Nation Law to be a true copy and evidence that the law was duly enacted by the TFN.

Uniformity of TFN Law

42. Canada shall notify the TFN 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.
43. Upon receipt of the notice referred to in clause 42 the Chief agrees to propose to the Council of the TFN an amendment to the First Nation Law forthwith.
44. The TFN agrees that if the First Nation Law is not amended to rectify the deficiencies identified in the notice referred to in clause 42, 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, not less than six months following receipt of the notice.

Repeal of First Nation Law

45. Unless the Minister agrees otherwise, the TFN 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

46. 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, 43 or 44 of this agreement, 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 British Columbia 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.
47. The Parties agree that a decision arising from the dispute resolution process under clause 46 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.
48. The Parties may mutually determine time periods other than those referred to in subclauses 46(a) through (d).

Amendment

49. Subject to any applicable approvals, authorizations or legislative requirements, the Parties may, in writing, amend or vary this agreement.

50. At either Party's request, Canada and the TFN 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.
51. At the request of the TFN, the terms and conditions in Annex B of this agreement shall be amended to be consistent with the terms and conditions of Annex B of any other bilateral administration agreement between a First Nation and Canada that has been entered into in accordance with the Federal Act after the effective date of this agreement and before 2009, with such modifications as are required in the circumstances.

Termination

52. The Parties may mutually agree to terminate this agreement at any time on such terms as may be agreed upon by the Parties.
53. The TFN 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.
54. Except where clause 44 applies, the Minister may terminate this agreement by giving the TFN 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

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

Saving

56. 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.
57. 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 the TFN has provided sufficient statutory or other authority for the imposition or collection of those amounts.

58. 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 the TFN made under this agreement may be recovered by Canada as a debt due to Canada by the TFN, notwithstanding that such payment was made to the TFN as if there were sufficient authority.

Term

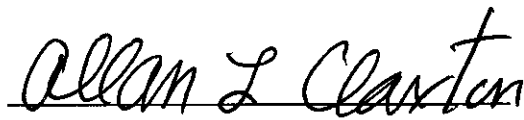
59. The effective date of this agreement is the date on which it is duly executed by both of the Parties.

60. This agreement shall end:

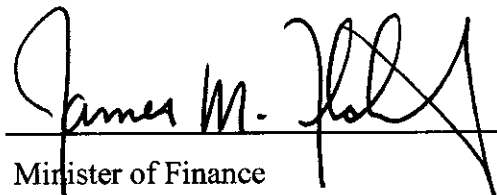
- (a) in the case of termination in accordance with clause 52, on the date agreed to by the Parties;
- (b) in the case of termination by the TFN in accordance with clause 53, on the date specified in the notice given by TFN;
- (c) in the case of termination by Canada in accordance with clause 54, on the date specified in the notice given by Canada; and
- (d) in the case of termination by Canada in accordance with clause 44, on the date specified by the Minister in the notice given thereunder.

61. 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 59. Facsimile signatures shall be accepted the same as original signatures.

Signed on this 18th day of September, 2006, for the Tsawout First Nation, the signatory being authorized to do so:


Chief Allan Claxton

Signed on this 18th day of October, 2006, for the Government of Canada, the signatory being authorized to do so:


Minister of Finance

ANNEX A

1. In this Annex:

“Census” means a Census of Population conducted by Statistics Canada;

“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;

“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 British Columbia within the meaning of that Act; 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 the TFN (“ETA_{TFN}”) for an Entitlement Year shall be determined as follows:

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

where

NetGST is the net amount of GST for British Columbia for that Entitlement Year less an amount equal to the GST Credit for British Columbia 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 and older living on lands as described opposite the name of the Tsawout First Nation in Schedule 1 to the Federal Act divided by the total population of individuals of age 15 years and older living in British Columbia, 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 Tsawout First Nation in Schedule 1 to the Federal Act divided by the average taxable consumption of the population living in British Columbia, 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 British Columbia 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 British Columbia 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 British Columbia 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 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 Revenue Agency for public use as, or as otherwise deemed by the Canada 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 the TFN 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 the TFN's average share of the population of individuals of age 15 years and older living in British Columbia 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_{TFN} for each of the first five Entitlement Years covered by this agreement shall not be subject to re-estimation or adjustment.

5. (a) Except as otherwise provided in this clause, interim and final estimates of the term ACP 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 ACP 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 ACP 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 the TFN 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 ACP determined on the basis of data obtained from a Census as described in subclause (c) is not a reasonable approximation of the TFN's average share of the income of individuals of age 15 years and older living in British Columbia 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 ACP for that Entitlement Year.

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

(f) In deciding whether the use of data other than census 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 this Annex, the following definitions apply:

“Average Net GST Per Canadian” for an Entitlement Year is the total amount of net GST for Canada for that Entitlement Year divided by the total population of Canada for that Entitlement Year, where:

- (a) the net GST for Canada for the Entitlement Year is determined in accordance with paragraphs 3(a) and (b) of Annex A, with such modifications that are required in the circumstances to reflect national rather than provincial or territorial circumstances; and
- (b) the total population for Canada for the Entitlement Year is the population for Canada published by Statistics Canada in respect of the calendar year that includes the Entitlement Year;

“DCY” is the number of days in the calendar year that includes the particular Entitlement Year;

“DEY” is the number of days in the particular Entitlement Year;

“Estimate of Tax Attributable to the TFN” for a particular Entitlement Year is an interim or final Estimate of Tax Attributable to the TFN for that particular Entitlement Year determined in accordance with Annex A;

“Population of Relevance” for an Entitlement Year is the sum of:

- (a) the number, as agreed by the Parties, of Members who at December 31 of the calendar year immediately prior to the particular Entitlement Year live on the lands described opposite the name of the Tsawout First Nation in Schedule 1 of the Federal Act, and
- (b) the number, as agreed by the Parties, of Indians, as defined in the *Indian Act*, R.S.C., c. I-16, who at December 31 of the calendar year immediately prior to the particular Entitlement Year live on the lands described opposite the name of the Tsawout First Nation in Schedule 1 of the Federal Act but are not Members;

“Threshold 1” for a particular Entitlement Year is an amount equal to two multiplied by the Average Net GST Per Canadian for that Entitlement Year multiplied by the Population of Relevance for that Entitlement Year multiplied by DEY and divided by DCY;

“Threshold 2” for a particular Entitlement Year is an amount equal to eight multiplied by the Average Net GST Per Canadian for that Entitlement Year, multiplied by the Population of Relevance for that Entitlement Year multiplied by DEY and divided by DCY.

2. In this Agreement, Canada’s share of a specific Estimate of Tax Attributable to the TFN for a particular Entitlement Year shall be determined as follows:

$$\text{Canada's share} = [(0.00 * A) + (0.50 * B) + (0.95 * C)]$$

where

A is the lesser of Threshold 1 and the specific Estimate of Tax Attributable to the TFN, for that particular Entitlement Year;

B is

(a) where the specific Estimate of Tax Attributable to the TFN is greater than Threshold 2, for that particular Entitlement Year, the result obtained by subtracting Threshold 1 from Threshold 2, for that particular Entitlement Year; and

(b) in any other case, the result obtained by subtracting the value of A from that specific Estimate of Tax Attributable to the TFN, for that particular Entitlement Year; and

C is

(a) where the specific Estimate of Tax Attributable to the TFN is greater than Threshold 2, for that particular Entitlement Year, the result obtained by subtracting Threshold 2 from the specific Estimate of Tax Attributable to the TFN, for that particular Entitlement Year; and

(b) in any other case, nil.