

CHAPTER 29 DEFINITIONS

29.1.0 DEFINITIONS

29.1.1 In this Agreement:

“2005 FDDIPI 1st Quarter” means FDDIPI for the 1st quarter of 2005 published at the same time as the value used in Current FDDIPI;

“2005 FDDIPI 2nd Quarter” means FDDIPI for the 2nd quarter of 2005 published at the same time as the value used in Current FDDIPI;

“Adoption Agency” means “adoption agency” as defined in the *Adoption Act*;

“Agreed-Upon Programs and Services” means those programs and services to be made available by a Maa-nulth First Nation, and towards which Canada or British Columbia agrees to contribute funding, in accordance with a Fiscal Financing Agreement;

“Agreement” means this agreement among each Maa-nulth First Nation, Canada and British Columbia;

“Alberni-Clayoquot Regional District” means the Alberni-Clayoquot Regional District incorporated or continued under the *Local Government Act*, and its successors;

“Annual Fishing Plan” means an Annual Fishing Plan as described in 10.4.29;

“Appendix” means an appendix to this Agreement and, where applicable, includes the authoritative version of a map or plan as set out in the Atlas;

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

“Artlish Harvest Area” means those lands described as the “Artlish Harvest Area” in Plan 1 of Appendix Q-3;

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

“Atlas” means the Maa-nulth First Nations Final Agreement Atlas as signed by the Parties and as amended from time to time in accordance with this Agreement, which consists of the authoritative version of the maps and plans shown at reduced scale for ease of reference in Appendices A, B, C, F, G, H, I, M, N, O, P, Q, R, T, U, V, W and X of this Agreement;

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

- a. to ensure conservation of Fish and Stream habitats;
- b. to continue navigability; and
- c. under Water Licences issued before October 3, 2003 and Water Licences issued under applications made before October 3, 2003,

and taking into account any applicable requirement under Federal Law and Provincial Law;

“**BC Hydro**” means the British Columbia Hydro and Power Authority, a corporation continued under the *Hydro and Power Authority Act*, or its successor;

“**Band Vote**” means the vote of the members of a Maa-nulth Indian Band contemplated by 28.3.0;

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

“**British Columbia Building Code**” means the building code established for British Columbia in accordance with the *Local Government Act*;

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

“**Capital Transfer**” means an amount paid by Canada to a Maa-nulth First Nation under Chapter 16 Capital Transfer and Negotiation Loan Repayment;

“**Capital Transfer Payment Plan**” means the timetable for the payment of a Capital Transfer, described in Schedule 1 of Chapter 16 Capital Transfer and Negotiation Loan Repayment;

“**Chapter**” means a chapter of this Agreement;

“**Child**” means an individual under the age of majority in accordance with Provincial Law;

“**Child Care**” means the care, supervision, social or educational training including preschool education, or physical or mental rehabilitative therapy of children under the age of 13 years with or without charge, by caregivers other than the child’s parent or the individual with whom the child resides and who stands in the place of the child’s mother or father, but does not include an educational program provided under the *School Act* or the *Independent School Act* or a Maa-nulth First Nation Law under 13.20.1;

“**Child in Care**” means a child who is in the custody, care or guardianship of a Director or an individual designated with comparable authority under Maa-nulth First Nation Law;

“Child in Need of Protection” means a child in need of protection in accordance with the circumstances described in the *Child, Family and Community Services Act*;

“Child Protection Service” means a service that provides for:

- a. the protection of Children from abuse, neglect, and harm, or threat of abuse, neglect, or harm, and any need for intervention;
- b. the custody, care and guardianship responsibilities for Children in Care;
- c. the support of families and caregivers to provide a safe environment and prevent abuse, neglect, and harm, or threat of abuse, neglect or harm; and
- d. the support of kinship ties and a Child's attachment to the extended family;

“Community Correctional Services” means:

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

“Comox-Strathcona Regional District” means the Comox-Strathcona Regional District incorporated or continued under the *Local Government Act*, and its successors;

“Conflict” means actual conflict in operation or operational incompatibility;

“Consult” and **“Consultation”** mean provision to a party of:

- a. notice of a matter to be decided, in sufficient detail to permit the party to prepare its views on the matter;

- b. in consultation between or among Parties, if requested by a Party, sufficient information in respect of the matter to permit the Party to prepare its views on the matter;
- c. a reasonable period of time to permit the person to prepare its views on the matter;
- d. an opportunity for the person to present its views on the matter; and
- e. a full and fair consideration of any views on the matter so presented by the person;

“Contaminated Site” means a “contaminated site” as defined in the *Environmental Management Act*;

“Contamination” means, for the purposes of Chapter 2 Lands, “contamination” as defined in the *Environmental Management Act*;

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

“Crown Corridor” means the lands identified as “Crown Corridors” in Appendix D;

“Cultural Purposes” means the use of Monumental Cedar and Cypress for a purpose that:

- a. was integral to the culture of a Maa-nulth First Nation before contact;
- b. is primarily for totem poles, dugout canoes, or long beams and poles to build longhouses, community halls or similar community structures; and
- c. is not carried out for profit, commercial purpose, Trade and Barter, individual or community gain, residential building construction, structures associated with a residential building, or for providing firewood for individual needs;

“Current FDDIPI” means FDDIPI for the most recent quarter published by Statistics Canada immediately before a statement is provided to each Maa-nulth First Nation in accordance with 17.1.1 or 17.1.2;

“Designated Migratory Bird Population” means a population of a species of Migratory Bird that has been designated by the Minister in accordance with 12.10.1;

“Designated Wildlife Species” means a species of Wildlife, or an identifiable population of a species of Wildlife, for which the Minister has determined that there should be a Total Allowable Wildlife Harvest in the Wildlife Harvest Area, or any portion thereof;

“Diana Island” means the provincial Crown land described as “Subject Lands” in Appendix W;

“**Direct**”, for the purposes of Chapter 19 Taxation, has the same meaning, for the purposes of distinguishing between a direct tax and an indirect tax, as in class 2 of section 92 of the *Constitution Act, 1867*;

“**Director**” means an individual designated as director by the Minister of Children and Family Development under the *Child, Family and Community Service Act* or the *Adoption Act*;

“**Disagreement**” means any matter to which Chapter 25 Dispute Resolution applies;

“**Dispose**” means, except in Chapter 19 Taxation, to transfer by any method including to assign, give, sell, grant, charge, convey, bequeath, devise, lease, divest, release, and to agree to do any of those things;

“**Domestic Fishing Area**” means:

- a. for all species of Fish and Aquatic Plants other than Inter-tidal Bivalves, the area described as the “Maa-nulth Domestic Fishing Area” in Appendix N, and
- b. for Inter-tidal Bivalves, each area described as “Inter-tidal Bivalve Harvest Area” in Part 1 of Appendix P;

“**Domestic Purposes**” means food, social and ceremonial purposes;

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

“**Electoral Area**” means “electoral area” as defined in the *Local Government Act*;

“**Electoral Area Director**” means “electoral area director” as defined in the *Local Government Act*;

“**Eligible Voter**” means an individual who:

- a. is eligible to vote in accordance with 28.2.7; or
- b. votes in accordance with 28.2.8 and whose vote is counted in accordance with 28.2.9;

“**Enhancement Initiative**” means an initiative that is intended to result in an increase in Fish stocks through:

- a. an artificial improvement to Fish habitat; or
- b. the application of Fish culture technology;

“**Enrolment Appeal Board**” means the appeal board established in accordance with 26.6.2 and 26.6.3;

“**Enrolment Committee**” means the committee established in accordance with 26.4.1;

“Enrolment Register” means the register of the Maa-nulth-aht of a Maa-nulth First Nation;

“Environment” means the components of the earth including:

- a. air, land and water;
- b. all layers of the atmosphere;
- c. all organic and inorganic matter and living organisms; and
- d. the interacting natural systems that include components referred to in a. to c.;

“Environmental Assessment” means an assessment of the environmental effects of a project;

“Environmental Emergency” means an uncontrolled, unplanned, or accidental release, or release in contravention of laws or regulations, of a substance into the Environment, or the reasonable likelihood of such a release into the Environment, that:

- a. has or may have an immediate or long term harmful effect on the Environment; or
- b. constitutes or may constitute a danger in Canada to human life or health;

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

“Federal Expropriating Authority” means Canada or any other entity authorized under federal legislation to expropriate land or an Interest in land;

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

“Federal Project” means a “project” as defined in the *Canadian Environmental Assessment Act*, that is subject to an Environmental Assessment under the *Canadian Environmental Assessment Act*;

“Federal Settlement Legislation” means the legislation of Parliament contemplated by 1.1.4;

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

“Fiscal Financing Agreement” means an agreement negotiated among a Maa-nulth First Nation, Canada and British Columbia in accordance with Chapter 18 Fiscal Relations;

“Fiscal Year” means a one-year period commencing on April 1 of one calendar year and ending on March 31 of the subsequent calendar year;

“Fish” means:

- a. fish;
- b. shellfish, crustaceans and marine animals;
- c. the parts of fish, shellfish, crustaceans and marine animals; and
- d. the eggs, sperm, spawn, larvae, spat, juvenile stages and adult stages of fish, shellfish, crustaceans and marine animals;

“Foreshore Agreement” means an agreement entered into between British Columbia and a Maa-nulth First Nation in accordance with 14.5.1;

“Foreshore Area” means, in relation to a Maa-nulth First Nation, those provincial Crown lands adjacent to its Maa-nulth First Nation Lands identified in a Foreshore Agreement in relation to which that Maa-nulth First Nation will exercise law-making authority in accordance with 14.5.2b;

“Forest District” means a “forest district” as established under the *Forest Act*;

“Forest Practices” means Timber harvesting, road construction, road maintenance, road use, road deactivation, botanical forest products collecting, fire use and silviculture treatments, including grazing for the purposes of brushing, but does not include Timber marking or scaling, manufacture of Timber or export of Timber;

“Forest Resources” means all Timber Resources and Non-Timber Resources, including all biota, but does not include Wildlife, Migratory Birds, water, Groundwater, Fish and Aquatic Plants;

“Former Federal Lands” means any lands which are transferred to a Maa-nulth First Nation on the Effective Date which were under the ownership, administration or control of Canada immediately before the Effective Date;

“Former Indian Reserves” means the lands described in Part 1(a) of Appendices B-1 to B-5;

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

“Gathering Plan” means a plan prepared by a Maa-nulth First Nation in accordance with 24.6.6 and 24.6.7;

“**Geothermal Resources**” means the natural heat of the earth and all substances that derive an added value from it, including steam, water and water vapour heated by the natural heat of the earth and all substances dissolved in the steam, water and water vapour, but not including:

- a. water that has a temperature less than 80°C at the point where it reaches the surface; or
- b. hydrocarbons;

“**Gravel**” means gravel, rock, random borrow materials and sand;

“**Gravel Pit Development Plan**” means a written description of the development, use, and closure of a Gravel pit that contains information such as its location, size and extent, access roads, soil and Gravel descriptions, topographical and geotechnical mapping, developmental plans, anticipated volumes of Gravel extracted per time period, reporting and reclamation;

“**Groundfish**” means groundfish but does not include Rockfish, halibut, sablefish, skates, tunas, pile perch and hake;

“**Groundwater**” means water below the surface of the ground;

“**Ha’wiih**” means hereditary chiefs who hold their positions in accordance with Nuu-chah-nulth custom;

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

“**Huu-ay-aht First Nations**” means that Maa-nulth First Nation referred to as the “Huu-ay-aht First Nations” established as a legal entity in accordance with this Agreement;

“**Implementation Plan**” means the implementation plan described in 27.2.1;

“**Indian**” means an “Indian” as defined in the *Indian Act*;

“**Indian Band**” means a “band” as defined in the *Indian Act*;

“**Indian Reserve**” means a “reserve” as defined in the *Indian Act*;

“**Initial Enrolment Period**” means:

- a. for the purposes of the Enrolment Committee, from April 1, 2005 to the day before the second anniversary of the Effective Date; and
- b. for the purposes of the Enrolment Appeal Board, from the Effective Date to the day before the second anniversary of the Effective Date;

“Intellectual Property” includes any intangible property right resulting from intellectual activity in the industrial, scientific, literary and artistic fields, including, but not limited to, any rights relating to patents, copyrights, trademarks, industrial designs or plant breeders’ rights;

“Interests” includes estates, interests, charges, mineral claims, encumbrances, licences and permits;

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

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

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

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

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

“Inter-tidal Bivalves” means manila clams, varnish clams, butter clams, native littleneck clams, razor clams and oysters;

“Invoiced Resource Amount” means an amount determined in accordance with the Resource Revenue Sharing Agreement;

“Joint Fisheries Committee” means the committee established in accordance with 10.4.3 and 10.4.4;

“Ka:’yu:’k’t’h’/Che:k’tles7et’h’ First Nations” means that Maa-nulth First Nation referred to as the “Ka:’yu:’k’t’h’/Che:k’tles7et’h’ First Nations” established as a legal entity in accordance with this Agreement;

“Land Surveyor” means a “practicing land surveyor” as defined in the *Land Surveyors Act*;

“List of Eligible Voters” means the list of Eligible Voters maintained by the Ratification Committee in accordance with 28.2.5b.;

“Litigation” means the Supreme Court of British Columbia Action No. S033335, Vancouver Registry;

“Local Government” means “local government” as defined in the *Local Government Act*;

“Maa-nulth First Nation” means any of the collectivities of those individuals who are eligible to be enrolled under this Agreement and that become one of the legal entities that is a Party to this Agreement, namely:

- a. Huu-ay-aht First Nations;
- b. Ka:’yu:’k’t’h’/Che:k’tles7et’h’ First Nations;
- c. Toquaht Nation;
- d. Uchucklesaht Tribe; and
- e. Ucluelet First Nation;

“Maa-nulth First Nation Archaeological Human Remains” means human remains that are not the subject of a police or a coroner investigation, and are determined to be of aboriginal ancestry of the applicable Maa-nulth First Nation;

“Maa-nulth First Nation Area” means, in respect of a Maa-nulth First Nation, the area described as “Maa-nulth First Nation Area” for that Maa-nulth First Nation in Appendix A and **“Maa-nulth First Nation Areas”** means every Maa-nulth First Nation Area;

“Maa-nulth First Nation Artifact” means any object created by, traded to, commissioned by, or given as a gift to a Maa-nulth First Nation individual, a Maa-nulth First Nation, or a Maa-nulth First Nation Public Institution or that originated from a Maa-nulth First Nation, past or present, and that has past and ongoing importance to a Maa-nulth First Nation’s culture or spiritual practices, but does not include any object traded to, commissioned by, or given as a gift to another aboriginal group;

“Maa-nulth First Nation Capital” means all land, cash and other assets transferred to, or recognized as owned by, a Maa-nulth First Nation under this Agreement;

“Maa-nulth First Nation Certificate” means a certificate of a Maa-nulth First Nation Government described in 3.5.1b;

“Maa-nulth First Nation Child” means a Maa-nulth-aht under the age of majority in accordance with Provincial Law;

“Maa-nulth First Nation Citizen” means an individual who becomes a citizen of a Maa-nulth First Nation under a Maa-nulth First Nation Law;

“Maa-nulth First Nation Community Watershed Lands” means the Maa-nulth First Nation Lands described as “Subject Lands” in Appendix T;

“Maa-nulth First Nation Constitution” means the constitution of a Maa-nulth First Nation provided for in 13.3.0;

“Maa-nulth First Nation Corporation” means a corporation that is incorporated under Federal Law or Provincial Law, all of the shares of which are owned legally and beneficially by a Maa-nulth First Nation, a Maa-nulth First Nation settlement trust, a Maa-nulth First Nation Corporation Intermediary, or any combination of those entities;

“Maa-nulth First Nation Corporation Intermediary” means a corporation that is incorporated under Federal Law or Provincial Law, all of the shares of which are owned legally and beneficially by a Maa-nulth First Nation, a Maa-nulth First Nation settlement trust, another Maa-nulth First Nation Corporation Intermediary, or any combination of those entities;

“Maa-nulth First Nation Family” means one or both parents or guardians living together with one or more Children where:

- a. at least one of the parents or guardians is a Maa-nulth First Nation Citizen or a Maa-nulth-aht of the applicable Maa-nulth First Nation; or
- b. at least one of the Children is a Maa-nulth First Nation Child;

“Maa-nulth First Nation Fishing Right” means the right of a Maa-nulth First Nation to harvest Fish and Aquatic Plants, described in 10.1.1 and **“Maa-nulth First Nation Fishing Rights”** means every Maa-nulth First Nation Fishing Right;

“Maa-nulth First Nation Government” means the government of a Maa-nulth First Nation referred to in 13.1.2;

“Maa-nulth First Nation Lands” means the lands described in Part 1(a) and Part 2(a) of Appendices B-1 to B-5 and Part 3 of Appendix B-5;

“Maa-nulth First Nation Law” means:

- a. any law made by a Maa-nulth First Nation Government under a law-making authority provided for in this Agreement; and
- b. a Maa-nulth First Nation Constitution;

“Maa-nulth First Nation Private Lands” means Maa-nulth First Nation Lands that are designated as “Maa-nulth First Nation Private Lands” by the applicable Maa-nulth First Nation in accordance with 5.2.0;

“Maa-nulth First Nation Public Institution” means a body, board, commission or any other similar entity established under Maa-nulth First Nation Law, made under 13.11.1a., including a school board or health board;

“Maa-nulth First Nation Public Lands” means Maa-nulth First Nation Lands other than Maa-nulth First Nation Private Lands;

“Maa-nulth First Nation Renewable Resource Harvesting Right” means the right of a Maa-nulth First Nation to harvest renewable resources described in 23.1.1;

“Maa-nulth First Nation Right to Gather Plants” means the right of a Maa-nulth First Nation to gather Plants and the boughs, burls and roots of Timber described in 24.6.0;

“Maa-nulth First Nation Right to Harvest Migratory Birds” means the right of a Maa-nulth First Nation to harvest Migratory Birds described in 12.1.1;

“Maa-nulth First Nation Right to Harvest Wildlife” means the right of a Maa-nulth First Nation to harvest Wildlife described in 11.1.0;

“Maa-nulth First Nation Road” means any road, including the road allowance, that forms part of Maa-nulth First Nation Lands;

“Maa-nulth First Nation Section 35 Rights” means the rights, anywhere of a Maa-nulth First Nation, that are recognized and affirmed by section 35 of the *Constitution Act, 1982*;

“Maa-nulth First Nations” means every Maa-nulth First Nation;

“Maa-nulth Fish Allocation” means, in respect of the Maa-nulth First Nation Fishing Rights:

- a. a defined harvest quantity or quota, of a species of Fish or Aquatic Plant;
- b. a harvest quantity determined by the use of a formula, of a species of Fish or Aquatic Plant; or
- c. a defined harvest area, within the Domestic Fishing Area;

“Maa-nulth Fisheries Operational Guidelines” means the guidelines described in 10.4.39;

“Maa-nulth Harvest Agreement” means the agreement contemplated by 10.2.1;

“Maa-nulth Harvest Document” means any licence, permit or document, or amendment thereto, issued by the Minister under Federal Law or Provincial Law in respect of a Maa-nulth First Nation Fishing Right;

“Maa-nulth Indian Band” means any of Huu-ay-aht First Nations, Ka:’yu:’k’t’h’/Che:k:tles7et’h’ First Nations, Toquaht Band, Uchucklesaht Band and Ucluelet First Nation, each of which was, immediately before the Effective Date, a “band” as defined in the *Indian Act*, and **“Maa-nulth Indian Bands”** means every Maa-nulth Indian Band;

“Maa-nulth Permit” means any licence, permit or document, or amendment thereto, issued by the Minister under Federal Law in respect of a Maa-nulth First Nation Renewable Resource Harvesting Right;

“Maa-nulth Wildlife Allocation” means a defined harvest quantity or quota, or harvest quantity or quota determined by the use of a formula, of a Designated Wildlife Species for the Maa-nulth First Nations in the Wildlife Harvest Area, or any portion thereof;

“Maa-nulth-aht” means an individual who is on the Enrolment Register of a Maa-nulth First Nation;

“Migratory Bird Harvest Area” means that area described as the “Maa-nulth Migratory Birds Harvest Area” in Appendix R, but does not include land owned by Canada;

“Migratory Birds” means migratory birds as defined under Federal Law enacted further to international conventions that are binding on British Columbia, including the eggs of those birds;

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

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

“Monumental Cedar and Cypress” means a *Thuja plicata* (western red cedar) or a *Chamaecyparis nootkatensis* (yellow cedar) that is:

- a. 250 years or older; and
- b. at least 100 centimetres diameter at 1.3 meters above germination point;

“Municipality” means “municipality” as defined in the *Local Government Act*;

“Nahmint Harvest Area” means those lands described as the “Nahmint Harvest Area” in Plan 2 of Appendix Q-3;

“National Marine Conservation Area” includes a national marine conservation area reserve and means lands and water areas named and described in the schedules to the *Canada National Marine Conservation Areas Act* and administered under Federal Law;

“National Park” includes a national park reserve and means lands and waters named and described in the schedules to the *Canada National Parks Act* and administered under Federal Law;

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

“Negotiation Loan Repayment Plan” means the timetable, for the repayment of negotiation loan funding by a Maa-nulth First Nation, described in Schedule 2 of Chapter 16 Capital Transfer and Negotiation Loan Repayment;

“**Neutral**” means an individual appointed to assist the Parties to resolve a Disagreement and, except in 25.6.5 and Appendix Y-5, includes an arbitrator;

“**Neutral Appointing Authority**” means the British Columbia International Commercial Arbitration Centre, or if the centre is unavailable to make a required appointment, any other independent and impartial body or individual acceptable to the Parties;

“**Non-Member**” means an individual, who has reached the age of majority under Provincial Law, who is ordinarily resident on Maa-nulth First Nation Lands and who is not a Maa-nulth-aht;

“**Non-Timber Resources**” means all Forest Resources, other than Timber Resources, including medicinal plants, fungi, branches, bark, cones, bushes, roots, moss, mushrooms, ferns, floral greens, herbs, berries, seeds and plants associated with grazing;

“**Nuu-chah-nulth Artifact**” means those objects held at the Effective Date in the permanent collections of the Canadian Museum of Civilization, Parks Canada Agency or the Royal British Columbia Museum that are identified as “Nuu-chah-nulth” or “Nootka” in their documentation;

“**Nuu-chah-nulth First Nation**” means Ahousaht First Nation, Ditidaht First Nation, Ehattesaht First Nation, Hesquiaht First Nation, Huu-ay-aht First Nations, Hupacasath First Nation, Ka:’yu:’k’t’h’/Che:k’les7et’h’ First Nations, Mowachaht/Muchalaht First Nation, Nuchatlaht First Nation, Pacheedaht First Nation, Tla-o-qui-aht First Nations, Toquaht Nation, Tseshaht First Nation, Uchucklesaht Tribe or Ucluelet First Nation;

“**Office Holder**” means an elected or appointed member of a Maa-nulth First Nation Government and does not include a Public Officer;

“**Other Maa-nulth First Nation Lands**” means lands owned by a Maa-nulth First Nation that are not Maa-nulth First Nation Lands;

“**Pacific Rim National Park**” means federal Crown lands and waters named and described as “Pacific Rim National Park” in the schedules to the *Canada National Parks Act*;

“**Pacific Rim National Park Reserve**” means the federal Crown lands and waters named and described as “Pacific Rim National Park Reserve” in the schedules to the *Canada National Parks Act*;

“**Participating Party**” means a Party that:

- a. is required or agrees to participate in; or
- b. initiates,

a process described in Chapter 25 Dispute Resolution to resolve a Disagreement;

“**Parties**” means each Maa-nulth First Nation, Canada and British Columbia and “**Party**” means any one of them;

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

“**Person**” for the purposes of Chapter 19 Taxation, includes an individual, a partnership, a corporation, a trust, an unincorporated association or other entity or government or any agency or political subdivision thereof, and their heirs, executors, administrators and other legal representatives;

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

“**Placer Mineral**” means ore of metal and every natural substance that can be mined and that is either loose, or found in fragmentary or broken rock that is not talus rock and occurs in loose earth, gravel and sand, including rock or other materials from placer mine tailings, dumps and previously mined deposits of placer minerals;

“**Plants**” means all flora and fungi but does not include Aquatic Plants or Timber Resources except for the bark of Timber Resources;

“**Power Harvest Area**” means those lands described as the “Power Harvest Area” in Plan 3 of Appendix Q-3;

“**Power River Watershed Protected Area**” means the area described as “Subject Lands” in Appendix V;

“**Preliminary Enrolment Register**” means the register maintained by the Enrolment Committee before the Effective Date in accordance with 26.4.4b.;

“**Private Land**” means land that is not Crown land;

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

“**Provincial Law**” includes provincial statutes, regulations, ordinances, Orders-in-Council, by-laws and the common law;

“**Provincial Project**” means a “reviewable project” as defined in the British Columbia *Environmental Assessment Act*, that is subject to an Environmental Assessment under the British Columbia *Environmental Assessment Act*;

“**Provincial Protected Area**” means provincial Crown land established or designated as provincial park, ecological reserve, conservancy or protected area under Provincial Law;

“**Provincial Road**” means a road under the administration and control of British Columbia;

“Provincial Settlement Legislation” means the legislation of the Legislature of British Columbia contemplated by 1.1.5;

“Provincial Timber Resources” means trees, whether living, standing, dead, fallen, limbed, bucked or peeled, other than Christmas trees, harvested on provincial Crown land;

“Public Officer” means:

- a. a member, commissioner, director or trustee of a Maa-nulth First Nation Public Institution;
- b. a director of a Maa-nulth First Nation Corporation whose principal function is to provide public programs or services reasonably similar to those provided by federal, provincial or Municipal governments, rather than to engage in commercial activities;
- c. an officer or employee of a Maa-nulth First Nation, a Maa-nulth First Nation Public Institution, Maa-nulth First Nation Government or a Maa-nulth First Nation Corporation, whose principal function is to provide public programs or services reasonably similar to those provided by federal, provincial or Municipal governments, rather than to engage in commercial activities;
- d. an election official within the meaning of a Maa-nulth First Nation Law; or
- e. a volunteer who participates in the delivery of services by a Maa-nulth First Nation, a Maa-nulth First Nation Public Institution, Maa-nulth First Nation Government or a body referred to in subparagraph b or c, under the supervision of an officer or employee of a Maa-nulth First Nation, a Maa-nulth First Nation Public Institution, Maa-nulth First Nation Government or a body referred to in subparagraph b or c;

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

- a. production, gathering, generating, processing, storage, transmission, sale, supply, distribution or delivery of petroleum (including petroleum products or by-products), gas (including natural gas, natural gas liquids, propane and coalbed gas), electricity, steam, water, sewage, or any other agent for the production of light, heat, cold or power; or
- b. emission, conveyance, transmission or reception of information, messages or communications by guided or unguided electromagnetic waves, including systems of cable, microwave, optical fibre or radio communications, if that service is offered to the public for compensation,

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

“Quin-E-Ex Lands” means those lands identified as the former Quin-E-Ex Indian Reserve, District Lot 708, Rupert District, Plan 63175, in Appendix B-2, Part 1(a);

“Range Practices” means:

- a. grazing of livestock;
- b. cutting of hay;
- c. activities related to grazing of livestock or cutting of hay; or
- d. activities related to constructing, modifying, or maintaining a structure, an excavation, a livestock trail, or an improvement to forage quality or quantity for purposes of range development;

“Range Resources” means those plant communities that are associated with grazing;

“Ratification Committee” means the committee established in accordance with 28.2.3;

“Regional District” means “regional district” as defined in the *Local Government Act*;

“Regional District Board” means “board” as defined in the *Local Government Act*;

“Regional District Board Director” means “director” as defined in the *Local Government Act*, and in relation to a Maa-nulth First Nation, a member of its Maa-nulth First Nation Government appointed to the Board of the applicable Regional District in accordance with Chapter 14 Regional Government;

“Registrar” means the “registrar” as defined in the *Land Title Act*;

“Registrar of Regulations” means the “registrar” as defined in the *British Columbia Regulations Act*;

“Renewable Resource Harvesting Activities” means:

- a. gathering of traditional foods for Domestic Purposes other than Fish and Aquatic Plants for Domestic Purposes, which are provided for in Chapter 10 Fisheries;
- b. gathering of Plants and Timber Resources for medicinal, ceremonial or artistic purposes;
- c. trapping of fur-bearing land mammals; and
- d. hunting of birds and land mammals for Domestic Purposes,

in accordance with Chapter 23 Federal Parks and Protected Areas;

“Renewable Resource Harvesting Area” means, in respect of a Maa-nulth First Nation, the land and non-tidal waters of a National Park or National Marine Conservation Area within its Maa-nulth First Nation Area;

“Resource Revenue Sharing Agreement” means the agreement setting out the procedures for arriving at the Invoiced Resource Amount that is signed by the Parties and in effect on Effective Date, as amended from time to time;

“Responsible Person” means a “responsible person” as defined in the *Environmental Management Act*;

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

“Rockfish” has the same meaning as in the *Pacific Fisheries Regulations, 1993*;

“Safety and Well-Being of Children” includes those guiding principles under section 2 of the *Child, Family and Community Service Act*;

“Schedule” means a schedule to a Chapter;

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

“Site Profile” means “site profile” as defined in the *Environmental Management Act*;

“Specific Claim Settlement” means any sum paid by Canada to a Maa-nulth First Nation in settlement of that Maa-nulth First Nation’s claim brought under the Specific Claims Policy;

“Specific Claims Policy” means the policy described in Canada’s “Outstanding Business – A Native Claim Policy: Specific Claims (1982)”;

“Stewardship Activity” means an activity conducted for the assessment, monitoring, protection and management of Fish and Fish habitat;

“Stopper Islands” means the provincial Crown land described as “Subject Lands” in Appendix X;

“Stream” means a natural watercourse or source of water supply, whether usually containing water or not, and a lake, river, creek, spring, ravine, swamp and gulch, but does not include Groundwater;

“Submerged Lands” means lands below the “natural boundary” as defined in the *Land Act*;

“Subsurface Resources” mean:

- a. earth, including diatomaceous earth, soil, peat, marl, sand and gravel;
- b. slate, shale, argillite, limestone, marble, clay, gypsum, volcanic ash, rock, riprap and stone products;
- c. Minerals, including Placer Minerals;
- d. coal, Petroleum and Natural Gas;
- e. Fossils; and
- f. Geothermal Resources;

“Subsurface Tenures” means those subsurface tenures:

- a. listed in Appendices E-12, E-13 and E-15; and
- b. that exist on any lands added to Maa-nulth First Nation Lands immediately before the parcel of land becomes Maa-nulth First Nation Lands;

“Surrendered Lands” means “surrendered lands” as defined in the *Indian Act*;

“Survey Protocol” means the priority to be given to, the timing of, and the order in which, the surveys will be completed in accordance with 2.5.1, having regard to the following:

- a. the priorities of the applicable Maa-nulth First Nation;
- b. efficiency and economy, including the availability of qualified, reasonably priced Land Surveyors; and
- c. the necessity to clarify the boundaries because of imminent public or private development on adjacent lands;

“Tahsish Harvest Area” means those lands described as the “Tahsish Harvest Area” in Plan 4 of Appendix Q-3;

“Telus” means TELUS Communications Inc., a corporation incorporated under Federal Law, or its successor;

“Tenured Subsurface Resources” means those Subsurface Resources subject to Subsurface Tenures;

“Thunderbird’s Nest (*T’iitsk’in Paawats*) Protected Area” means the area described as “Subject Lands” in Appendix U;

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

“Time Limited Federal Funding” means “Time Limited Federal Funding” as defined in the initial Fiscal Financing Agreement of a Maa-nulth First Nation;

“Time Limited Provincial Funding” means “Time Limited Provincial Funding” as defined in the initial Fiscal Financing Agreement of a Maa-nulth First Nation;

“Toquaht Nation” means that Maa-nulth First Nation referred to as the “Toquaht Nation” established as a legal entity in accordance with this Agreement;

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

“Total Allowable Wildlife Harvest” means the maximum number of a Designated Wildlife Species that may be harvested by all harvesters each year in the Wildlife Harvest Area, or any portion thereof;

“Trade and Barter” does not include sale;

“Transaction Tax” includes a tax imposed under:

- a. the *Motor Fuel Tax Act*;
- b. the *Social Service Tax Act*, (except those sections pertaining to alcohol);
- c. the *Tobacco Tax Act*;
- d. the *Property Transfer Tax Act*;
- e. the *Hotel Room Tax Act*;
- f. section 4 of the *Insurance Premium Tax Act*; and
- g. Part IX of the *Excise Tax Act*;

“Transition Date” means, in respect of each Maa-nulth First Nation, that date which is the earlier of:

- a. the tenth anniversary of the Effective Date; or
- b. the date upon which that Maa-nulth First Nation becomes a member of the applicable Regional District and appoints a Regional District Board Director to the Regional District Board of that Regional District in accordance with 14.3.1;

“Transition Period” means, in respect of each Maa-nulth First Nation, the period of time from the Effective Date to the Transition Date of that Maa-nulth First Nation;

“Treaty Vote” means the ratification vote by the Eligible Voters on the List of Eligible Voters of a Maa-nulth First Nation on this Agreement in accordance with Chapter 28 Ratification;

“Uchucklesaht Tribe” means that Maa-nulth First Nation referred to as the “Uchucklesaht Tribe” established as a legal entity in accordance with this Agreement;

“Ucluelet First Nation” means that Maa-nulth First Nation referred to as the “Ucluelet First Nation” established as a legal entity in accordance with this Agreement;

“Water Licence” means a licence, approval or other authorization under Provincial Law for the storage, diversion, extraction or use of water and for the construction, maintenance and operation of works;

“Wildfire Suppression Agreement” means an agreement entered into by British Columbia, Canada and a Maa-nulth First Nation in accordance with 9.6.2;

“Wildlife” means:

- a. all vertebrate and invertebrate animals, including all mammals, birds, reptiles, and amphibians; and
- b. the eggs, juvenile stages and adult stages of all vertebrate and invertebrate animals,

but does not include Fish or Migratory Birds;

“Wildlife Council” means the wildlife council established by the Maa-nulth First Nations in accordance with 11.4.1;

“Wildlife Harvest Area” means the area identified as the “Maa-nulth Wildlife Harvest Area” in Appendix Q, but does not include lands owned by Canada;

“Wildlife Harvest Plan” means a harvest plan developed in accordance with 11.8.3 or 11.9.0; and

“Wildlife Sharing Agreement” means an agreement between a Maa-nulth First Nation and another First Nation entered into in accordance with 11.1.14.