

**ANNOTATED TEMPLATE**

**PERMIT**

BETWEEN:

**HIS MAJESTY THE KING IN RIGHT OF CANADA,**  
as represented by the Minister of Indigenous Services

AND:

**[FIRST NATION],**  
as represented by the Council

AND:

**[PERMITTEE'S NAME]**

For lands in [Reserve Name] Indian Reserve No. [#]

**DRAFTING NOTES:**

- 1. Not everything within square brackets needs to be filled in, just fields, which are highlighted in grey onscreen. To move between fields, press F11 and ensure that all fields are complete. F11 will also take you to each cross-reference but these do not need to be manually updated as they will be updated in step 3.**
- 2. Remove all bolded red drafting language before finalizing the permit.**
- 3. Update all cross-references and the Table of Contents before finalizing the permit by pressing CTR+A to highlight everything and then pressing F9.**

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SCHEDULE A – Band Council Resolution

**OPTIONAL – Include the following if assignments are allowed:**

SCHEDULE B – Assignment Consent Agreement

**End of Option.**

## PERMITTING – A BACKGROUND

**This permit template is based on the Lease of Designated Lands template to ensure consistency of language. Please refer to the annotation of that document for the majority of notes for this template; only the adaptations or concepts unique to this permit will be discussed in this annotation.**

The majority of permits are issued under section 28(2) of the *Indian Act*:

“The Minister may by permit in writing authorize any person for a period not exceeding one year, or with the consent of the council of the band for any longer period, to occupy or use a reserve or to reside or otherwise exercise rights on a reserve”

The important parts of the Minister’s authority are as follows:

1. **“authorize”** – the rights that the permittee obtains from the Minister are statutory in nature. Permits are referred to as being “issued” rather than “granted” as the latter term is usually reserved for the creation of certain common law interests. A permit is not bound by the strictures of common law interests that might grant similar rights, such as a requirement for dominant and servient tenements in an easement.
2. **“any person”** – the Minister may only issue a permit to a natural person or an entity that has been given the rights of a natural person for the purposes of the *Indian Act*. First Nations and Councils do not likely have the rights of a natural person (which is why the *First Nation Lands Management Act* specifically granted such rights for First Nations operating under that Act.) If a First Nation is developing designated lands, it will often ask for an access permit to be issued to its development corporation and then allow others to have similar, subordinate rights of access to and from the designated lands.
3. **“to occupy or use a reserve ... or otherwise exercise rights on a reserve”** – this is the authority under which most permits are issued.
4. **“or to reside ... on a reserve”** – although this contemplates residency on reserve, which implies exclusive possession like would normally be received under a lease, for policy reasons and in recognition of the review of section 28(2) by the Supreme Court of Canada in the *Opetchesaht* decision, residency rights on reserve for non-members under subsection 28(2) are usually only for a short duration (see note 3) or are otherwise addressed using section 53 following a designation for that purpose.

The template has two options to choose from regarding the nature of the Permittee’s rights authorized by the Permit – a license, or an interest in land (see note 4).

More recently, the introduction of the *Addition of Lands to Reserves and Reserve Creation Act* has allowed the Minister to issue permits in advance of reserve creation:

“**6 (1)** If the governing body of a First Nation has requested that the Minister set apart certain lands as a reserve, the Minister may authorize, by permit, a person or entity for a period not exceeding one year or, with the consent of the governing body of the First Nation, for any longer period, to occupy, use or reside on any of those lands or exercise any other right on them, including for the purpose of replacing an existing interest or right of that person or entity in or to those lands. The permit may be issued either

(a) before the title to the lands or the administration and control of the lands are transferred to Her Majesty in right of Canada; or

(b) before the lands are set apart as a reserve under section 4.

**(2)** Permits issued under subsection (1) and the rights granted by those permits take effect at the time the lands are set apart as a reserve under section 4.

**(3)** As of the time when the Minister sets apart any lands as a reserve under section 4, a permit issued under subsection (1) and any consent given under that subsection, are deemed to have been issued or given, as the case may be, under the *Indian Act*.”

As well, this permit template may be used to create permits issued under section 53(1)(b) on designated lands (because section 28(2) permits cannot be issued on designated lands due to the definition of “reserve” in the *Indian Act*.) For these permits, the only restriction on permittee and type of use would be within the applicable designation. Not all designations explicitly or implicitly allow for permits.

## PERMIT

This permit is **[OPTIONAL – If this is an ALRCA permit, then add:** dated for reference [Month Day, Year] and is]<sup>1</sup> made between:

**HIS MAJESTY THE KING IN RIGHT OF CANADA,**  
as represented by the Minister of Indigenous Services

(the “**Permitter**”)

and:

**[FIRST NATION],**  
a “band” within the meaning of the *Indian Act*, as represented by the Council

(the “**First Nation**”)

and:

**[PERMITTEE'S NAME][OPTIONAL – If the Permittee is a corporation, limited partnership, society, utility or municipality, then type a comma after the Permittee's Name and include the statute under which the entity received its authority and its incorporation number, if applicable. Corporate example: , incorporated under the *Business Corporations Act*, S.B.C. 2002, c. 57; Incorporation No. X12345 Limited Partnership example: , incorporated under the *Business Corporations Act*, S.B.C. 2002, c. 57; Incorporation No. X12345, as general partner of [NAME OF LIMITED PARTNERSHIP], registered under the *Partnership Act*, R.S.B.C. 1996, c. 348; Registration No. Y12345 End of option]**

(the “**Permittee**”).

### BACKGROUND:

**There are 3 options for the first recital. Choose one and delete the others.**

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<sup>1</sup> Because an ALRCA permit is issued before the lands are reserve and the reserve creation date (and thus the Commencement Date of the Permit) will be unknown when the Permit is signed, it would be useful to have a reference date to be able to refer to the Permit in other documents (such as possible future default notices). The Parties can choose whichever date they wish for this as it has no legal effect.

**OPTION 1 – If the lands are already reserve lands and are not designated, then use the following:**

- A. The Permit Area is part of the Reserve, which is held for the use and benefit of the First Nation.

**End of Option 1.**

**OPTION 2 – If the lands are already reserve lands and have been designated, then use the following:**

- B. The Permit Area is part of the Reserve, which is held for the use and benefit of the First Nation.
- C. The members of the First Nation designated the Lands on [Month Day, Year], which designation was accepted by **[Choose accepting entity and delete the other: the Governor in Council by PC [#] OR Order of the Minister of Indigenous Services]** on [Month Day, Year] and is registered in the Registry under No. [#].

**End of Option 2.**

**OPTION 3 – If the lands are not yet reserve lands but are to become so under ALRRCA, then use the following:**

- D. The Permit Area is on lands requested by the First Nation to be set apart as a reserve under section 4 of ALRRCA for the use and benefit of the First Nation.

**End of Option 3.**

- E. The First Nation negotiated with the Permittee the permitting arrangement set out in this Permit and the Parties negotiated the terms and conditions of this Permit.
- F. The Council consented to the issuance of this Permit and authorized its signatories to execute this Permit on behalf of the First Nation, as evidenced by the Band Council Resolution attached as Schedule A.

**There are 3 options for the next recital. Choose one and delete the others.**

**OPTION 1 – If the lands are already reserve lands and not designated, then use the following:**

- G. The Permitter is authorized to issue this Permit under subsection 28(2) of the *Indian Act*.

**End of Option 1.**

**OPTION 2 – If the lands are already reserve lands and have been designated, then use the following:**

- H. The Permitter is authorized to issue this Permit under subsection 53(1) of the *Indian Act*.

**End of Option 2.**

**OPTION 3 – If the lands are not yet reserve lands but are to become so under ALRRCA, then use the following:**

I. The Permitter is authorized to issue this Permit under section 6 of ALRRCA.

**End of Option 3.**

**NOW THEREFORE**, for mutual consideration, the Parties agree as follows:

## **1. INTERPRETATION**

1.1 **Definitions** – In this Permit, including the recitals, the following terms have the meanings ascribed to them in this section 1.1:

1.1.1 **“Additional Fees”** means the amounts payable to the Permitter referred to in section 3.6.

**OPTIONAL – If the lands are not yet reserve lands but are to become so under ALRRCA, then include the following definition of “ALRRCA”:**

1.1.2 **“ALRRCA”** means the *Addition of Lands to Reserves and Reserve Creation Act*, S.C. 2018, c. 27, s. 675.

**End of Optional language.**

**OPTIONAL – If option 1 (periodic fees) is chosen in the Fees section, then include the following definition of “Annual Fees”. Otherwise, delete it.**

1.1.3 **“Annual Fees”** means the amounts set out as such in section 3.3.

**End of Option.**

**OPTIONAL – If option 1 (periodic fees) is chosen in the Fees section, then include the following definitions of “Appraisal” and “Appraiser”. Otherwise, delete them.**

1.1.4 **“Appraisal”** means a written opinion of the Fair Market Fees prepared by an Appraiser in accordance with generally accepted appraisal practices.

1.1.5 **“Appraiser”** means a person who is accredited as an appraiser by the Appraisal Institute of Canada or its successor.

**End of Option.**

1.1.6 **“Architect”** means a person who is licensed as an architect in the province of [Name of Province].

1.1.7 **“Artifact”** means a burial site, human remains, or an item of archeological or cultural interest.

1.1.8 **“Authority”** means:

1.1.8.1 a federal, provincial, municipal, First Nation, or other governmental authority having jurisdiction in respect of the Permit Area or the Permittee’s activities on the Permit Area; or

1.1.8.2 a utility company lawfully acting under its statutory power.

1.1.9 **“Authorized Uses”** means the uses referred to in section 2.2.

1.1.10 **“Business Day”** means a day that is not a Saturday, a Sunday, a federal or [Name of Province] statutory holiday, National Indigenous Peoples Day, or, with respect to obligations owed by or owing to the First Nation, a day designated by the First Nation as an official holiday on which the First Nation’s administrative offices are closed.

1.1.11 **“Codes”** means **[Note: Insert applicable codes. For example, in BC:** the BC Building Code, the BC Fire Code, and all requirements of the *Building Act*, S.B.C. 2015, c. 2, that would be applicable to an Improvement if it were built on fee simple lands in the province of British Columbia (other than the City of Vancouver) owned by a Person other than the Crown.**]**

**There are 2 options for “Commencement Date”. Choose one and delete the other.**

**OPTION 1 – If the lands are already reserve lands, then use the following:**

1.1.12 **“Commencement Date”** means [Month Day, Year].

**End of Option 1.**

**OPTION 2 – If the lands are not yet reserve lands but are to become so under ALRRCA, then use the following:**

1.1.13 **“Commencement Date”** means the date upon which the Permit Area is set apart as a reserve under ALRRCA.

**End of Option 2.**

1.1.14 **“Construction and Environmental Management Plan”** means:

1.1.14.1 plans, design briefs, and construction specifications; and

1.1.14.2 all other documents reasonably required by the Decision Maker relating to the construction, operation or decommissioning, as the case may be,



of the subject Improvements, which comply with or are consistent with:

1.1.14.3 applicable Codes and Laws; and

1.1.14.4 all terms and conditions of a Decision Maker's determination, including all mitigation measures, timelines, and monitoring, required under an applicable Environmental Review,

and include plans to address how the impacts on the Environment during construction, operation, or decommissioning, as the case may be, of the subject Improvements will be managed, including the management of soil, water, waste, traffic, and fire safety.

1.1.15 "**Contaminant**" means a substance regulated under the Laws of Canada, the First Nation, or the province of [Name of Province] (whether or not the province has jurisdiction in respect of the protection of the Environment as it pertains to the Permit Area or the occupation or use of the Permit Area) relating to the protection of the Environment, including, for greater certainty, a toxic substance, deleterious substance, hazardous substance, hazardous waste, hazardous recyclable, ozone-depleting substance, halocarbon, pesticide, and waste.

1.1.16 "**Council**" means the First Nation's "council of the band" within the meaning of the *Indian Act*, and any successor.

1.1.17 "**Decision Maker**" means the Minister, when the Minister is representing the Permitter under this Permit, and, if the First Nation takes over the position of the Permitter under this Permit by operation of law, the Council or a Person designated by the Council.

1.1.18 "**Engineer**" means a person who is licensed as an engineer in the province of [Name of Province].

1.1.19 "**Environment**" has the meaning given it in the *Canadian Environmental Protection Act, 1999*, S.C. 1999, c. 33.

1.1.20 "**Environmental Review**" means the environmental review process referred to in section 7.3, whether conducted before or after the Commencement Date.

1.1.21 "**Exempt Project**" means a Project:

1.1.21.1 that is in one of the classes of projects designated under section 88 of the IAA; or

1.1.21.2 for which a Decision Maker is not required to conduct an Environmental Review by section 91 of the IAA,

and includes any similar concepts in an amended, succeeding, or replacement Law.

**OPTIONAL – If option 1 (periodic fees) is chosen in the Fees section, then include the following definition of “Fair Market Fees”. Otherwise, delete it.**

1.1.22 **“Fair Market Fees”** means the most probable annual fee that the Permit Area should bring in a competitive and open market, reflecting all conditions of this Permit and assuming the following conditions:

- 1.1.22.1 The Permitter and the Permittee are typically motivated, well informed, well advised, and are acting prudently in an arm’s length transaction.
- 1.1.22.2 A reasonable time is allowed for exposure in the open market and the fees represent the normal consideration for the Permit Area unaffected by undue stimuli or special fees or concessions granted by anyone associated with the transaction.
- 1.1.22.3 The Permit Area is owned by the Permitter in fee simple, free of all charges and encumbrances other than those registered in the Registry, and the inalienability or Indian reserve status of the Permit Area must not be a discounting factor and must not be used as a basis to lower valuation in comparing the Permit Area to other properties, whether or not such properties are Indian reserve lands.
- 1.1.22.4 The Permit Area does not include the Improvements made after the Commencement Date and the contributory value of the Permittee’s Improvements must not be taken into account.

**End of Option.**

**There are 2 options for “Fees”. Choose one and delete the other.**

**OPTION 1 – If option 1 (periodic fees) is chosen in the Fees section, then use the following:**

1.1.23 **“Fees”** means Additional Fees, Annual Fees, and Fair Market Fees.

**End of Option 1.**

**OPTION 2 – If option 2 (prepaid fees) is chosen in the Fees section, then use the following:**

1.1.24 **“Fees”** means Additional Fees and Prepaid Fees.

**End of Option 2.**

1.1.25 **“First Nation Fees”** means the amounts payable to the First Nation referred to in section 3.7.

1.1.26 **“Gross Negligence or Wilful Misconduct”** means an act or failure to act (whether sole, joint, or concurrent) by a Party that was intended to cause or was in reckless disregard of, or wanton indifference to, the harmful consequences to

the safety or property of a Person which the Party knew, or should have known, would result from such act or omission, but does not include an act or failure to act that constitutes mere ordinary negligence or occurred in accordance with the express instructions or approval of the relevant other Party.

1.1.27 “**IAA**” means the *Impact Assessment Act*, S.C. 2019, c. 28, s. 1.

1.1.28 “**Improvements**” means the improvements to the freehold, as determined according to the common law, forming part of the Permit Area from time to time, including any:

1.1.28.1 buildings, structures, works, facilities, infrastructure, and utility services; and

1.1.28.2 equipment, machinery, apparatus, and other such fixtures forming part of an improvement,

made by the Permittee or any Person on the Permit Area due to the rights of the Permittee under this Permit **[OPTIONAL: and the following pre-existing improvements: (list)End of Option].<sup>2</sup>**

1.1.29 “**Indian Act**” means the *Indian Act*, R.S.C. 1985, c. I-5.

**OPTIONAL – If option 1 (periodic fees) is chosen in the Fees section, then include the following definition of “Initial Period”. Otherwise, delete it.**

1.1.30 “**Initial Period**” means the five-year period starting on the Commencement Date and ending on [Month Day, Year].

**End of Option.**

1.1.31 “**Laws**” means all applicable laws, statutes, regulations, codes, orders, and by-laws of an Authority, as amended or replaced from time to time.

1.1.32 “**Minister**” means the Minister with responsibility, from time to time, for administering this Permit.

1.1.33 “**Party**” means a party to this Permit.

**OPTIONAL – If option 1 (periodic fees) is chosen in the Fees section, then include the following definition of “Period”. Otherwise, delete it.**

1.1.34 “**Period**” means, as the case may be:

1.1.34.1 the Initial Period;

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<sup>2</sup> As the Permittee is only responsible for Improvements made by or on behalf of the Permittee, if there are any pre-existing Improvements for which the Permittee is to be responsible, then adding them here would accomplish that.

- 1.1.34.2 a five-year period starting on the day following the end of a preceding five-year period; or
- 1.1.34.3 the last period of the Term, which may be less than five years, starting on the day following the end of the last full five-year period.

**End of Option.**

1.1.35 **“Permit”** means this agreement, and all Schedules attached to it, as amended from time to time.

1.1.36 **“Permit Area”** means the area more particularly known and described as:

[Legal Description].

1.1.37 **“Person”** includes an individual, partnership, firm, company, corporation, incorporated or unincorporated association or society, co-tenancy, joint venture, syndicate, fiduciary, estate, trust, bank, government, governmental or quasi-governmental agency, board, commission or authority, organization, or any other form of entity however designated or constituted, and any combination of any of them.

**OPTIONAL – If option 2 (prepaid fees) is chosen in the Fees section, then include the following definition of “Prepaid Fees”. Otherwise, delete it.**

1.1.38 **“Prepaid Fees”** means the amount set out in section 3.5.

**End of Option.**

1.1.39 **“Project”**:

1.1.39.1 has the meaning given it in section 81 of the IAA;

1.1.39.2 includes any designated activities under section 87 of the IAA; and

1.1.39.3 includes any similar concepts in an amended, succeeding, or replacement Law.

1.1.40 **“Registry”** means the registry with registration jurisdiction over the Permit Area.

1.1.41 **“Reserve”** means [Reserve Name] Indian Reserve No. [#].

1.1.42 **“Schedule”** means an attachment to this Permit labeled as a Schedule, which forms part of and is integral to this Permit.

**OPTIONAL – Include the following if the use of Standards is chosen in the environmental sections offering this choice (see sections 7.6 and 9.3.2). Otherwise, delete it.**

1.1.43 **“Standard”** means the amount of a Contaminant, based on the more conservative standard set out in the:

1.1.43.1 *Canadian Environmental Quality Guidelines* established by the Canadian Council of Ministers of the Environment, as amended or replaced from time to time; or

1.1.43.2 laws and published guidelines of the province of [Name of Province],

below which is considered acceptable for the uses to which the particular part of the Permit Area is being put.

**End of Option.**

1.1.44 **“Substantial Completion”** means the date on which a written certificate by an Architect or Engineer is provided to each of the Permitter and the First Nation certifying to them that the Improvements are substantially complete in all material respects, in a proper and workmanlike manner, and in accordance with the applicable Construction and Environmental Management Plan and applicable Codes and Laws, except for minor deficiencies which, in the opinion of the Architect or Engineer, will not render the Improvements unfit for their Authorized Uses.

1.1.45 **“Taxes”** means a tax imposed by an Authority in relation to the granting of this Permit or the payment of Fees.

**There are 3 options for “Term” relating to various end dates. Choose one and delete the others.**

**OPTION 1 – If the exact end date is known, then use the following:**

1.1.46 **“Term”** means the period starting on the Commencement Date and expiring on [Month Day, Year], unless this Permit otherwise ends early.

**End of Option 1.**

**OPTION 2 – If the exact end date is relative to the ALRRCA reserve creation date, then use the following:**

1.1.47 **“Term”** means the period starting on the Commencement Date and expiring [#] years from the Commencement Date, unless this Permit otherwise ends early.

**End of Option 2.**

**OPTION 3 – If the end date is conditional upon an event, then use the following:**

1.1.48 **“Term”** means the period starting on the Commencement Date and continuing for so long as required for [Purpose] purposes, unless this Permit otherwise ends early.

### End of Option 3.

1.1.49 **“Trustee”** means a trust company appointed in writing by the First Nation.

1.1.50 **“Unavoidable Delay”** means a delay, stoppage, or interruption resulting from:

- 1.1.50.1 strike, lock-out, or other labour dispute;
- 1.1.50.2 material or labour shortage not within the control of the Party;
- 1.1.50.3 stop-work order issued by an Authority or a court or tribunal of competent jurisdiction, on the condition that such order is not issued as a result of an act or fault of the Party;
- 1.1.50.4 fire, explosion, or other casualty;
- 1.1.50.5 pandemic, epidemic, or other widespread illness or disease that results in mandated employee lockdowns or business closures;
- 1.1.50.6 flood, wind, earthquake, or act of God;
- 1.1.50.7 any Law, on the condition that the application of such Law is not as a result of an act or fault of the Party; or
- 1.1.50.8 other similar circumstances beyond the reasonable control of the Party and not avoidable by the exercise of reasonable effort or foresight by the Party,

but does not include the inability of the Party to meet its financial obligations under this Permit or otherwise.

1.2 **Form of Definition** – Defined words are capitalized for ease of reference. A defined word may be read as having an appropriate corresponding meaning when it is used in the plural or verb form.

1.3 **Headings** – All headings in this Permit have been inserted as a matter of convenience and for reference only and in no way define, limit, enlarge, modify, or explain the scope or meaning of this Permit or any of its provisions.

#### 1.4 **Extended Meaning**

1.4.1 A word in the singular form may be read in the plural form if the context allows it and a word in the plural form may be read in the singular form if the context allows it.

1.4.2 The words “include”, “includes”, and “including” are to be read as if they are followed by the phrase “without limitation”.

- 1.4.3 The phrase “this Permit ends” includes an ending by expiration of the Term and an earlier termination. The phrases “earlier termination” and “early termination” include a surrender.
- 1.4.4 The phrase “on the Permit Area” includes in, on, under, and above the Permit Area.
- 1.4.5 Unless stated otherwise, the construction of Improvements includes the making of alterations to an Improvement.
- 1.5 **Joint and Several** – If the Permittee is more than one Person, then all of the Permittee’s obligations are joint and several.
- 1.6 **Statutes** – A reference to a statute means that statute and all regulations made under it, all as amended or replaced from time to time.
- 1.7 **Governing Laws** – This Permit will be governed by and interpreted in accordance with the Laws of Canada and of the province of [Name of Province].
- 1.8 **Entire Agreement** – This Permit constitutes the entire agreement between the Parties with respect to the subject matter of this Permit and supersedes and revokes all previous discussions, negotiations, arrangements, letters of intent, offers, representations, and warranties. There are no obligations, covenants, agreements, representations, or warranties between the Parties with respect to the subject matter of this Permit other than those explicitly set out in this Permit.
- 1.9 **Modification** – A modification of this Permit must be in writing and executed in the same manner as this Permit.
- 1.10 **Consent and Approval** – Unless stated otherwise, when a Party is required to provide consent or approval under this Permit, that consent or approval will not be unreasonably withheld.
- 1.11 **Time is of the Essence** – Time is of the essence in this Permit and time will remain of the essence notwithstanding any extension of time granted to a Party.
- 1.12 **Severability** – If a part of this Permit is declared or held invalid for any reason, then the invalidity of that part will not affect the validity of the remainder of this Permit, which will continue in full force and effect and be construed as if this Permit had been executed without the invalid part.
- 1.13 **Survival of Obligations and Rights** – If a part of this Permit states that it survives when this Permit ends, then the survival of that part is only to the extent required for the performance of any continuing obligations and the exercise of any rights pertaining to them.
- 1.14 **Business Day** – If the date for the occurrence or performance of anything under this Permit falls on a day that is not a Business Day, then the date for its

occurrence or performance will be automatically extended to the next Business Day.

## **2. THE PERMIT AREA**

### **2.1 Permittee's Rights to the Permit Area**

2.1.1 The Minister, on behalf of the Permitter, hereby authorizes the Permittee to use the Permit Area non-exclusively during the Term, under the terms of this Permit.<sup>3</sup>

**There are 2 options for the following subsection. Choose one and delete the other.**<sup>4</sup>

**OPTION 1 – If the interest is a license, then use the following:**

2.1.2 This is a license. The rights provided under this Permit do not, and will not be deemed to, convey or confer on the Permittee any title, fee, estate, or other right “in rem” in the Permit Area.

**End of Option 1.**

**OPTION 2 – If the interest is to be an interest in land, then use the following:**

2.1.3 This Permit is considered to be a covenant running with the Permit Area. The Permit Area remains part of the Reserve and no part of the fee of the soil will pass to or be vested in the Permittee.

**End of Option 2.**

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<sup>3</sup> The rights given to the Permittee under this permit are intended to be non-exclusive. If exclusive possession is intended, then this would need to be modified. However, see **Permitting: A Background** for more.

<sup>4</sup> A license gives rights “*in personam*”, which means that they are contractual rights only against the person who issued the license, even if that person no longer owns the land. An interest in land gives rights “*in rem*”, which means that they apply to the land and thus against whichever person holds the fee at the time that the rights are being enforced rather than against the person who issued the permit.

If this permit creates an interest in land, then only the Permitter and the Permittee are the parties to such property law interest and the First Nation is a party to a contract with the other two Parties. As a result, the Permitter and the Permittee would have both property law and contract law rights, obligations, and remedies with respect to each other, while the Permittee and the First Nation have only contract law rights, obligations and remedies with respect to each other. The Permitter has some contractual obligations to the First Nation (e.g., provision of notice) under this permit but otherwise Canada and the First Nation will continue to be in a fiduciary relationship with respect to this permit and have certain fiduciary duties and remedies, respectively.

If this permit does not create an interest in land, then this permit is completely contractual in nature between the three Parties.



- 2.2 **Authorized Uses** – The Permittee will not use the Permit Area for any purposes except for the following purposes:
- [List the Uses] <sup>5</sup>
- 2.3 **Subject to Prior Rights** – This Permit is subject to all valid, existing interests in, and rights in relation to, the Permit Area, whether or not the Permittee has notice of them.
- 2.4 **Subsequent Rights** – The Permittee acknowledges that the Permitter and the First Nation may authorize, as to their respective jurisdictions and authorities, further use and occupation of the Permit Area, subject to the Permittee’s rights under this Permit.<sup>6</sup>
- 2.5 **Nuisance** – Except as required by the construction, repair, rebuilding, replacement, or removal of Improvements, the Permittee will not cause or permit any nuisance on the Permit Area.<sup>7</sup>
- 2.6 **Waste**
- 2.6.1 The Permittee will not cause or permit waste of the Permit Area.
- 2.6.2 The Permittee will not cause or permit the removal of sand, gravel, topsoil, or other constituent material of the Permit Area, except as required by the clearing and construction permitted in this Permit and any Law, in which case, such removal will not constitute waste.

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<sup>5</sup> See **Permitting: A Background** for discussion on types of uses.

<sup>6</sup> Although this clause is not legally required, it reinforces for Permittees the non-exclusive nature of their rights.

<sup>7</sup> The Parties should turn their minds to the use that the Permittee will make of the Permit Area to consider if any ongoing operations might be considered to be a nuisance to neighbouring lands and, if so, any conditions on the Permittee’s use of the Permit Area might be appropriate to lessen any potential nuisance. Even if a permit allows for activity that might be considered to be a nuisance, the Permittee will still have a common law duty not to commit a nuisance on the neighbours’ enjoyment of their properties and the Permittee can be sued in tort accordingly by such neighbours.

Also, you might note that the lease template states: “The Lessee will not cause, suffer, or permit...” and this provision only says: “not cause or permit”. The difference is that “suffer” means that one is not stopping something from happening. Unlike a lessee, the Permittee does not have exclusive possession of the Permit Area and thus is not in control of all the activities on the Permit Area. Another user of the Permit Area may be causing the nuisance and the Permittee would not have the authority to stop that person from creating the nuisance.

- 2.7 **Garbage** – The Permittee will not cause or permit garbage or debris to be placed or left at the Permit Area, except as is reasonably necessary in accordance with the Authorized Uses.<sup>8</sup>
- 2.8 **Inspection** – The Permittee will provide each of the Permitter and the First Nation with reasonable access to inspect the Improvements and the Permit Area, including conducting site assessments, audits, and other tests on, and investigations of, the Permit Area. Except in the case of an emergency, reasonable notice will be provided to exercise this right of access with respect to the Improvements. If the inspection is in response to a default of this Permit, or if, in the process of inspecting the Improvements or the Permit Area, a default is discovered or confirmed, then the Permitter’s reasonable expenses under this section 2.8 are Additional Fees and the First Nation’s reasonable expenses under this section 2.8 are First Nation Fees.
- 2.9 **Artifacts** – If an Artifact is unearthed or discovered on the Permit Area in the course of activities carried out under this Permit, then the Permittee will:
- 2.9.1 promptly notify the First Nation;
  - 2.9.2 cease further activity that could affect the Artifact;
  - 2.9.3 take reasonable measures to protect the Artifact;
  - 2.9.4 comply with the direction of an Authority and the reasonable requirements of the First Nation in relation to the handling of the Artifact; and
  - 2.9.5 if there are no First Nation or federal Laws relating to the handling of such an Artifact, at the written direction of the First Nation, comply with the requirements in the laws of the province of [Name of Province] relating to the protection of heritage objects or sites such as the Artifact, to the extent possible, even if such laws are not applicable on the Permit Area.
- 2.10 **Survey Monuments** – If a legal survey monument is disturbed, damaged, or destroyed in the course of activities carried out under this Permit, then the Permittee will ensure that it is replaced by a licensed surveyor to the satisfaction of the Surveyor General of Canada.

**There are two options relating to assignment. Choose one and delete the other.**

**OPTION 1 – Use the following if assignments are not allowed:**

- 2.11 **No Assignments** – The Permittee will not assign its interest in this Permit and any purported assignment is invalid.

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<sup>8</sup> See Nuisance note re: “suffer”.

## End of Option 1.

### OPTION 2 – Use the following if assignments are allowed:

- 2.12 **Assignments Require Consent** – The Permittee may not assign its interest in this Permit without the consent of each of the Permitter and the First Nation, in their discretion, and no assignment is valid until the proposed assignee has entered into an Assignment Consent Agreement, substantially in the form attached as Schedule B, with any changes as may be agreed to by the Parties and the assignee.<sup>9</sup>
- 2.13 **Registration** – The Permittee will ensure that all assignments of its interest in this Permit are submitted in a registerable form, promptly after execution, to the Registry.

## End of Option 2.

### 2.14 Representations about the Permit Area and its Use

2.14.1 The Permittee’s authorized use of the Permit Area is on an “as is – where is” basis.

2.14.2 Without limiting section 1.8, the Permitter, the Minister, the First Nation, the Council, and their respective officials, servants, employees, agents, contractors, subcontractors, and other legal representatives have not made any representations or warranties with respect to:

2.14.2.1 the condition of the Permit Area, including the Permit Area’s compliance with Laws and the presence of Contaminants on the Permit Area;

2.14.2.2 issues of title, encumbrances affecting title, and matters contained within the Registry;

2.14.2.3 access to and from the Permit Area; and

2.14.2.4 the suitability of the Permit Area for the Permittee.

2.14.3 The Permittee represents and warrants that:

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<sup>9</sup> An assignment consent agreement should always be obtained with permits. If the permit is an interest in land, then arguably only “negative covenants” (i.e., those that restrain the permittee from doing something) and not “positive covenants” (i.e., those that require the permittee to do something) run with the land so as to bind subsequent permittees; to obtain the benefit of positive covenants, the Permitter and the First Nation likely would need a contractual relationship with the subsequent users. If a permit is not an interest in land, then the covenants are purely contractual and do not run with the land; for subsequent users to be bound, arguably they would need to be in a contractual relationship with the Permitter and the First Nation. Alternatively, the Parties could make the Permit non-assignable and negotiate a new Permit with each subsequent Permittee.

2.14.3.1 prior to the Commencement Date, it inspected the Permit Area, including conducting all investigations that it deemed prudent regarding the matters referred to in sections 2.14.2.1 - 2.14.2.3; and

2.14.3.2 it is satisfied that the Permit Area is suitable for its intended uses and that those uses are within the Authorized Uses.

2.15 **Others Performing the Permittee's Obligations** – The Permittee may allow any Person to perform any of the Permittee's obligations in this Permit, but in doing so the Permittee will ensure performance of such obligations by such Person and it in no way affects the Permittee's obligation to perform.

### **3. FEES**

3.1 **Payments** – All payments made by the Permittee to the Permitter under this Permit will be:

3.1.1 paid in Canadian dollars;

3.1.2 made payable to the Receiver General for Canada;

3.1.3 paid without any prior demand, set-off, deduction, or abatement; and

3.1.4 accompanied by applicable Taxes.

3.2 **Outstanding Amounts** – The Permitter may apply payments received against outstanding amounts owed to it by the Permittee under this Permit in the Permitter's sole discretion.

**There are 2 options for the payment of fees. Choose one and delete the other.**

**OPTION 1 – If the fees are periodic, then use the following and choose either sub-option A (annual) or B (monthly):**

#### **3.3 Annual Fees**

##### **Sub-option A: Annual payments:**

3.3.1 The Permittee will pay Annual Fees to the Permitter in the following amounts, plus applicable Taxes, on or before [Month Day]:

3.3.1.1 in the Initial Period, an amount of \$[Amount] per year; and

3.3.1.2 in each subsequent Period, the greater of the Annual Fees paid in the previous Period or Fair Market Fees.

##### **Sub-option B: Monthly payments:**

3.3.2 The Permittee will pay Annual Fees to the Permitter in the following amounts, plus applicable Taxes, on or before the [Day (e.g. 1st)] day of each month:

- 3.3.2.1 in the Initial Period, an amount of \$[Amount] in 12 monthly installments of \$[Amount]; and
- 3.3.2.2 in each subsequent Period, the greater of 1/12<sup>th</sup> of the Annual Fees paid in the previous Period or 1/12<sup>th</sup> of Fair Market Fees.

### End of Sub-options

3.3.3 The Permittee has no right to a refund of Annual Fees from the Permitter or the First Nation if this Permit ends early.

3.4 **Fair Market Fees Determination** – The process to determine Fair Market Fees is as follows:<sup>10</sup>

3.4.1 No later than 90 days and no more than 120 days before the beginning of a Period, the Permittee will obtain an Appraisal (the “**Permittee’s Appraisal**”) to determine Fair Market Fees for that Period and provide a copy of it to each of the Permitter and the First Nation. The Permittee’s choice of Appraiser (the “**Permittee’s Appraiser**”) and terms of reference for the Appraisal must be approved of in advance by each of the Permitter and the First Nation. The Permittee’s Appraisal must state that it can be relied on by all Parties. The cost of the Permittee’s Appraisal will be borne by the Permittee.

3.4.2 Within 120 days of delivery of the Permittee’s Appraisal, the Permitter or the First Nation may obtain an Appraisal using the same terms of reference used for the Permittee’s Appraisal (the “**Second Appraisal**”), a copy of which such Party will promptly provide to each of the other Parties. The Second Appraisal must state that it can be relied on by all Parties. If a Second Appraisal is not obtained in such time, then Fair Market Rent will be the amount determined in the Permittee’s Appraisal.

3.4.3 If the Fair Market Fees determined in the Permittee’s Appraisal is:

3.4.3.1 equal to or higher than in the Second Appraisal, then Fair Market Fees will be the amount determined in the Permittee’s Appraisal and the cost of the Second Appraisal will be borne by the Party who obtained it;

3.4.3.2 no more than 15.0% lower than in the Second Appraisal, then Fair Market Fees will be the amount determined in the Second Appraisal and the cost of the Second Appraisal will be borne by the Party who obtained it; or

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<sup>10</sup> This is one method for determining Fair Market Fees. The Parties can consider others but some models, such as a CPI adjustment, do not usually approximate Fair Market Fees.

The First Nation should consider if it wants to be involved in the fee determination process (as is set out in the template permit) or leave it solely to Canada.

3.4.3.3 more than 15.0% lower than in the Second Appraisal, then the Appraiser of the Second Appraisal (the “**Second Appraiser**”) and the Permittee’s Appraiser will promptly discuss the two appraisals so as to jointly determine Fair Market Fees within 60 days of delivery of the Second Appraisal to the Permittee and Fair Market Fees will be the jointly determined amount. If the jointly determined amount is closer to the amount determined in the Second Appraisal than to the amount determined in the Permittee’s Appraisal (or where the differences between them are equal), then the cost of the Second Appraisal and the costs for the work of both Appraisers under this section 3.4.3.3 will be borne by the Permittee (any amount of which already paid by the Party who obtained the Second Appraisal will become payable by the Permittee as Additional Fees or First Nation Fees, as the case may be). Otherwise, the cost of the Second Appraisal will be borne by the Party who obtained it and each Party will bear its costs for the work of its own Appraiser under this section 3.4.3.3.

When Fair Market Fees are determined under this section 3.4.3, the Permittee and the Party who obtained the Second Appraisal will promptly notify the other Party of such amount.

3.4.4 If the Appraisers are unable to jointly determine Fair Market Fees within the period set out in section 3.4.3.3, then the Permittee and the Party who retained the Second Appraiser will agree upon a third, independent Appraiser to promptly review the two Appraisals and determine Fair Market Fees, which determination is final and binding on the Parties. If such determination is closer to the amount determined in the Second Appraisal than to the amount determined in the Permittee’s Appraisal (or where the differences between them are equal), then the cost of the Second Appraisal, the costs for the work of both Appraisers under section 3.4.3.3, and the costs for the work of the third Appraiser under this section 3.4.4 will be borne by the Permittee (any amount of which already paid by the Party who obtained the Second Appraisal will become payable by the Permittee as Additional Fees or First Nation Fees, as the case may be). Otherwise, each Party will bear its costs for its own Appraisal, its costs for the work of its own Appraiser under section 3.4.3.3, and 50% of the costs for the work of the third Appraiser under this section 3.4.4. When Fair Market Rent is determined under this section 3.4.4, the Permittee and the Party who obtained the Second Appraiser will promptly notify the other Party of such amount.

3.4.5 If the Permittee fails to comply with section 3.4.1 in the time allowed, then the Permitter may at any later time obtain an Appraisal and determine Fair Market Fees based on the valuation in the Appraisal, which determination is final and binding on the Parties. When Fair Market Fees are determined under this section 3.4.5, the Permitter will promptly notify the Permittee and the First Nation of such amount and provide a copy of the Appraisal. The cost of the Appraisal will become payable by the Permittee as Additional Fees.

## End of Option 1.

### OPTION 2 – If fees are prepaid, then use the following:

#### 3.5 Prepaid Fees

- 3.5.1 The Permittee paid Prepaid Fees of \$[Amount] to the Permitter on the Commencement Date.
- 3.5.2 The Permittee has no right to a refund of any Prepaid Fees from the Permitter or the First Nation if this Permit ends early.

## End of Option 2.

- 3.6 **Additional Fees** – The Permittee will pay to the Permitter as Additional Fees, no later than 30 days after notice from the Permitter has been delivered, the amount of:

- 3.6.1 Additional Fees referred to in a provision of this Permit; or

- 3.6.2 any other expenses reasonably incurred by the Permitter, before or after this Permit ends, due to, in whole or in part, a failure of the Permittee to perform or observe its obligations in this Permit,

plus an administration fee of 15% of such amount.

- 3.7 **First Nation Fees** – The Permittee will pay to the First Nation as First Nation Fees, no later than 30 days after notice from the First Nation has been delivered, the amount of:

- 3.7.1 First Nation Fees referred to in a provision of this Permit; or

- 3.7.2 any other expenses reasonably incurred by the First Nation, before or after this Permit ends, due to, in whole or in part, a failure of the Permittee to perform or observe its obligations in this Permit,

plus an administration fee of 15% of such amount. First Nation Fees will be paid in Canadian dollars, accompanied by any applicable Taxes, and paid without any set-off, deduction, or abatement.

- 3.8 **Arrears to Bear Interest** – If Fees or First Nation Fees are not paid when due, or any other time interest is stipulated to be due, then the Permittee will pay the Permitter or the First Nation, as the case may be, interest on the unpaid amount at the prime lending rate established by the Bank of Canada plus 5% per annum, calculated quarterly and compounded semi-annually, from the date that such unpaid amount is due until the date that the payment is received. This interest provision does not relieve the Permittee from its obligation to pay Fees and First Nation Fees at the time and in the manner specified in this Permit and will not

prejudice or affect the remedies of the Permitter and the First Nation under this Permit or otherwise.

3.9 **Survival of Sections** – Sections 3.6 – 3.8 survive when this Permit ends.

#### 4. IMPROVEMENTS

##### 4.1 Requirements to Construct, Operate, or Remove

4.1.1 The Permittee will not construct, operate, or remove any Improvements, except for those related to an Exempt Project, or modify the Permit Area in anticipation of such construction, operation, or removal, without first having:

4.1.1.1 obtained all applicable building permits, approvals, and authorizations for such construction, operation, or removal under section 4.2;

4.1.1.2 obtained the Decision Maker's written determination under an Environmental Review that the applicable Project pertaining to such construction, operation, or removal may proceed; and

4.1.1.3 obtained the Decision Maker's written confirmation that an applicable Construction and Environmental Management Plan to implement such Project complies with the applicable Environmental Review.

4.1.2 The Permittee will not construct, operate, or remove any Improvements related to an Exempt Project, or modify the Permit Area in anticipation of such construction, operation, or removal, without first having obtained all applicable building permits, approvals, and authorizations for such construction, operation, or removal under section 4.2. For greater certainty:

4.1.2.1 the Permittee is still required to submit appropriate information under section 7.3.3 for the Decision Maker to determine if such construction, operation, or removal constitutes an Exempt Project; and

4.1.2.2 sections 5.2, 7.3.4 - 7.3.7, 7.4, and 7.5 do not apply to such construction, operation, or removal.

4.2 **Authority Authorization** – The Permittee will apply to all appropriate Authorities for all applicable building permits, approvals, and authorizations necessary for the Permittee to construct, operate, or remove any Improvements.

##### 4.3 Construction Compliance

4.3.1 Once the requirements of section 4.1 have been met in relation to proposed Improvements, the Permittee will ensure that such Improvements are **[OPTIONAL – the First Nation to determine if there should be a time element to completing construction, such as: promptly]** constructed in a proper and workmanlike manner in accordance with:



- 4.3.1.1 applicable Codes, Laws, building permits, approvals, and authorizations;
- 4.3.1.2 any applicable Construction and Environmental Management Plan; and
- 4.3.1.3 the terms and conditions, including all mitigation measures, timelines, and monitoring, required by an applicable determination made under an Environmental Review.

**OPTIONAL – Include the following section if a time element such as “promptly” is NOT used in section 4.3.1:**

4.3.2 Except as may be specifically set out in this Permit, the Permittee will not be required to commence construction of any Improvements within any period of time, even after the requirements of section 4.1 have been met with respect to such Improvements, on the condition that, once construction of the Improvements has commenced, such construction will be pursued to completion with commercially reasonable diligence in accordance with this Permit and, without limiting the generality of the foregoing, no Improvements under construction will be left unfinished in an unsafe, unsightly, or uneconomic condition.

**End of Option.**

4.4 **Security for Construction** – The Permittee will, prior to constructing any Improvements, provide to the First Nation, concurrently with the applicable certified Construction and Environmental Management Plan, written evidence that a performance bond, letter of credit, or other similar security has been obtained in an amount at least equal to 50% of the estimated cost of the work, including all labour and material in connection with the work. Such security must be in a form satisfactory to the First Nation with sureties, if required, approved of by the First Nation.

4.5 **Drawings and Plans**

4.5.1 The Permittee will promptly provide to each of the Permitter and the First Nation reproducible as-built or record drawings, certified by an Architect or Engineer that applicable Codes and Laws have been met, of all completed Improvements and any completed substantial alterations.

4.5.2 The Permittee will maintain an updated chronological record of all finalized Construction and Environmental Management Plans relating to the Permit Area. Within 30 days of a request by the Permitter or the First Nation, the Permittee will provide the requesting Party with a copy of the updated chronological record and copies of such plans for any year identified by the requesting Party.

4.6 **Repair & Maintenance** – The Permitter and the First Nation have no obligation to maintain or repair any Improvements. Subject to section 4.7, the Permittee will repair and maintain the Improvements as would a prudent owner, keeping the Improvements in good order and condition in all respects consistent with their age and nature.

4.7 **Damage to, or Destruction of, Improvements** – If any Improvements are damaged or destroyed during the Term, then:

4.7.1 the Permittee will promptly notify each of the Permitter and the First Nation;

4.7.2 this Permit will not end;

4.7.3 there will be no reduction or postponement of Fees; and

**There are two options for the remainder of this section 4.7. Choose one and delete the other.**<sup>11</sup>

**OPTION 1 – Use the following language if the Permittee will be required to rebuild with substantially similar Improvements after damage or destruction:**

4.7.4 within a reasonable time after such damage or destruction, the Permittee will repair, rebuild, or replace the Improvements with such other Improvements that are, to the extent possible, to a standard at least substantially equal in quality of material and workmanship to the original Improvements.

**End of Option 1.**

**OPTION 2 – Use the following language if the Permittee will have discretion (subject to Laws, zoning, and an Environmental Review) to determine what, if any, Improvements to construct after damage or destruction:**

4.7.5 within a reasonable time after such damage or destruction, the Permittee will repair, rebuild, or replace the Improvements with such other Improvements as the Permittee deems necessary or expedient, including:

4.7.5.1 Improvements that are substantially similar to those that were damaged or destroyed; or

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<sup>11</sup> The standard definition of Improvements only includes improvements built by or for the Permittee so ensure that the definition is modified if the Permittee is to be responsible for any pre-existing improvements (see note 2). The issue of what happens with Improvements is one for the First Nation to consider.

If fees are periodic, then payment will continue to be required, despite the Permittee's lack of earning capabilities on the Permit Area, until the Improvements are repaired or rebuilt. The Permittee should be able to obtain insurance to protect itself from this risk.

4.7.5.2 Improvements that differ in any of their size, use, form, and character from those that were damaged or destroyed,

on the condition that:

4.7.5.3 any damaged or destroyed Improvements will not be left in an unsafe or unsightly condition; and

4.7.5.4 rebuilt or replacement Improvements must be constructed to a standard that is at least substantially equal in quality of material and workmanship to the original Improvements.

## **End of Option 2.**

### **5. INSURANCE**

5.1 **Errors and Omissions Insurance** – The Permittee will provide evidence to the First Nation that errors and omissions insurance, with minimum limits of \$1,000,000 per occurrence and annual aggregate, is obtained with respect to the design work of the Architects or Engineers for proposed Improvements estimated to be valued at more than \$250,000.

5.2 **Construction Insurance** – From the earlier of the date upon which construction of an Improvement starts or the date upon which stockpiling construction materials on the Permit Area in anticipation of such construction starts through until Substantial Completion of the Improvement, the Permittee will ensure that the following insurance is obtained and maintained to the extent that coverage is not available under the insurance required in section 5.3:

5.2.1 “Wrap up” commercial general liability insurance against claims for bodily injury (including death), personal injury, and property damage arising in connection with the use of the Permit Area for construction, which must:

5.2.1.1 be written on a commercial general liability basis with liability limits of at least \$5,000,000 per occurrence (or any higher amount that the Permitter or the First Nation reasonably requires, by providing notice to the Permittee before construction begins); and

5.2.1.2 include each of the Permitter and the First Nation as additional insureds.

5.2.2 Builders risk construction insurance to cover “all risks” of physical damage to, or loss of, the Improvements (including goods and materials to be incorporated in the Improvements while in storage at the site or in transit to it), which must:

5.2.2.1 be written in an amount at least equal to such Improvements’ full replacement value, plus no less than 25% of budgeted “soft costs”;

- 5.2.2.2 include the First Nation as a named insured;
  - 5.2.2.3 to prevent the First Nation from becoming a co-insurer, include either a stated amount co-insurance endorsement or confirm that no co-insurance applies; and
  - 5.2.2.4 include reasonable coverage for flood and for earthquake (for properties located in earthquake zones classified as high to extreme by the Institute for Catastrophic Loss Reduction or its successor).
- 5.3 **Liability & Property Insurance** – Subject to section 5.2, the Permittee will ensure that the following insurance is obtained and maintained during the Term and for any period the Permittee is on the Permit Area to remove Improvements under section 9.2:
- 5.3.1 Commercial general liability insurance against claims for bodily injury (including death), personal injury, and property damage arising in connection with the use of the Permit Area, which must:
    - 5.3.1.1 be written on a commercial general liability basis with liability limits of at least \$[Amount] per occurrence (or any higher amount that the Permitter or the First Nation reasonably requires, by providing notice to the Permittee); and
    - 5.3.1.2 include each of the Permitter and the First Nation as additional insureds.
  - 5.3.2 Property insurance to cover “all risks” of physical damage to, or loss of, the Improvements, which must:
    - 5.3.2.1 be written in an amount at least equal to the Improvements’ full replacement value;
    - 5.3.2.2 include the First Nation as a named insured;
    - 5.3.2.3 to prevent the First Nation from becoming a co-insurer, include either a stated amount co-insurance endorsement or confirm that no co-insurance applies; and
    - 5.3.2.4 include reasonable coverage for flood and for earthquake (for properties located in earthquake zones classified as high to extreme by the Institute for Catastrophic Loss Reduction or its successor).
  - 5.3.3 Other insurance reasonably required from time to time by the Permitter or the First Nation and that a prudent owner of the Permit Area or the Improvements might reasonably obtain.
- 5.4 **General Insurance Provisions**

- 5.4.1 Every insurance policy required under this Permit in which the Permitter or the First Nation is an additional or named insured must:
  - 5.4.1.1 contain an agreement by the insurer that it will not cancel the policy without first giving such Party at least 30 days prior notice;
  - 5.4.1.2 contain a clause to the effect that a release from liability entered into prior to any loss will not affect the right of such Party to recover;
  - 5.4.1.3 contain a waiver of subrogation by the insurers against such Party;
  - 5.4.1.4 contain a provision that the policies will not be invalidated by any act, omission, or negligence of any Person that is not within the knowledge or control of such Party;
  - 5.4.1.5 include features customarily included by prudent owners in the province of [Name of Province] in:
    - 5.4.1.5.1 property insurance for improvements similar to the Improvements; and
    - 5.4.1.5.2 liability insurance for the type of operations carried on by the Permittee on the Permit Area;
  - 5.4.1.6 include features reasonably required by such Party; and
  - 5.4.1.7 not include any non-standard, special, or unusual exclusions or restrictive endorsements without first getting the written consent of such Party.
- 5.4.2 The Permittee will not do anything, or permit or suffer anything to be done, on the Permit Area that might cause the insurance policies required by this Permit to be invalidated or cancelled.
- 5.4.3 The Permittee will:
  - 5.4.3.1 on the Commencement Date, provide certificates evidencing every insurance policy that is required at that time by this Permit to each Party who is required to be an insured under such policy;
  - 5.4.3.2 from time to time when an insurance policy is required under this Permit, provide certificates evidencing such policy to each Party who is required to be an insured under such policy; and
  - 5.4.3.3 prior to an insurance policy required under this Permit expiring, provide to each Party insured under such policy a certificate of renewal or other evidence satisfactory to such Party that the insurance has been renewed or replaced.

- 5.4.4 Upon request by the Permitter or the First Nation, the Permittee will provide to such Party whichever of the following is requested:
- 5.4.4.1 a written statement, prepared and signed by a qualified insurance professional, confirming that the insurance policies obtained for the benefit of such Party satisfy the requirements of this Permit; and
  - 5.4.4.2 a certified copy of each requested insurance policy.
- 5.5 **Release of Insured Claims** – The Permittee releases the Permitter, the Minister, the First Nation, the Council, and their respective officials, servants, employees, agents, contractors, subcontractors, and other legal representatives from all liability for loss (including economic loss), damage, and injury (including loss, damage, and injury arising out of the negligent acts or omissions of any of them) in any way caused by or resulting from any of the perils or injury against which it has covenanted in this Permit to insure.
- 5.6 **Payment of Loss under Insurance** – The insureds to whom money is payable under an insurance policy required to be obtained under sections 5.2.2 or 5.3.2 will ensure that:
- 5.6.1 notwithstanding the terms of such policy, such money is directed to be paid to the Trustee; and
  - 5.6.2 the Trustee uses such money first for the repair, replacement, or rebuilding of the Improvements for which such money was paid, against certificates of the Architect (or such other Person as the First Nation and the Permittee may agree upon) who is in charge of such repair, replacement, or rebuilding.
- 5.7 **Cancellation of Insurance** – The Permittee will promptly notify each of the Permitter and the First Nation if an insurance policy under which such Party is an insured is:
- 5.7.1 cancelled or threatened to be cancelled, and promptly provide evidence of a certificate of renewal or other evidence satisfactory to such Party that the insurance has been renewed or replaced before the cancellation of such policy; or
  - 5.7.2 suspended, and promptly provide evidence to such Party that the policy has been reinstated or replaced.
- 5.8 **Payment of Insurance Premiums** – If a policy's insurance premium is not paid when due, then the Permitter or the First Nation (if such Party is an insured under such policy) may pay the premium or obtain any insurance that such Party deems necessary, in such Party's sole discretion, the cost of which is payable by the Permittee as Additional Fees or First Nation Fees, as the case may be.

**OPTIONAL – If the permit is to a Permittee that self-insures, such as a public utility, then add the following section:**

**5.9 Release of Insurable Claims** – So long as the Permittee is an emanation of the Crown, a Crown agent, or another Person authorized to utilize this section by each of the Permitter and the First Nation, sections 5.1 - 5.8 do not apply and the Permittee releases the Permitter, the Minister, the First Nation, the Council, and their respective officials, servants, employees, agents, contractors, subcontractors, and other legal representatives from all liability for loss (including economic loss), damage, and injury in any way caused by or resulting from their respective actions or omissions (whether intentional or negligent) that results in bodily injury (including death), personal injury, or property damage.<sup>12</sup>

**End of Optional language.**

## **6. LAWS / TAXES / SERVICES**

### **6.1 Laws**

6.1.1 The Permittee will comply with all Laws regarding this Permit, the Permit Area, and activities on the Permit Area and will require all those for whom the Permittee is responsible in law to comply with all Laws regarding this Permit, the Permit Area, and activities on the Permit Area.

6.1.2 The Permittee will promptly provide to each of the Permitter and the First Nation copies of any notice that it receives from an Authority requiring something to be done, or stop being done, on the Permit Area. Once the matter under the notice has been resolved to the Authority's satisfaction, the Permittee will promptly provide reasonably satisfactory evidence to each of the Permitter and the First Nation.

6.1.3 On request from the Permitter or the First Nation, the Permittee will either promptly provide to such Party reasonably satisfactory information from an Authority about the Permittee's compliance with Laws, or promptly arrange for written authorization to allow such Party to receive information from an Authority about the Permittee's compliance with Laws.

### **6.2 Taxes**

6.2.1 Without limiting the generality of section 6.1, the Permittee will promptly pay all applicable taxes (including property taxes), trade licences, rates, levies, duties, and assessments of any kind, together with all applicable charges, penalties, and

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<sup>12</sup> Certain entities do not want to obtain insurance because they "self-insure" (i.e., bear the risk of loss themselves). This clause would be added to exempt them from such insurance obligations. It is an additional clause rather than a substitution for the insurance requirements because future Permittees (if the Permit is assigned) may not be in similar circumstances.

interest imposed by an Authority, regarding the Permittee's interest in this Permit, the use of the Permit Area under this Permit, or the payment of Fees or other amounts payable by the Permittee.

- 6.2.2 Without relieving or modifying the obligation of the Permittee to comply with section 6.2.1, the Permittee may, at its expense, contest or appeal the validity or amount of any tax, trade licence, rate, levy, duty, assessment, charge, penalty or interest referred to in section 6.2.1, on the condition that the Permittee promptly commences any proceedings to contest or appeal such validity or amount, continues the proceedings with all due diligence, and does not cause a charge, encumbrance, or claim to be made against the Permit Area.
- 6.2.3 On request by the Permitter or the First Nation, the Permittee will provide to such Party official receipts of an Authority, or other proof satisfactory to such Party, evidencing payment of applicable taxes, trade licences, rates, levies, duties, assessments, charges, penalties, and interest.

### 6.3 **Services**

- 6.3.1 The Permittee will provide, secure, and maintain all services, utilities, and facilities required from time to time for its use of the Permit Area.
- 6.3.2 The Permitter and the First Nation have no obligation to provide, secure, or maintain any services, utilities, and facilities to or on the Permit Area.
- 6.3.3 The interruption of a service, utility, or facility referred to in section 6.3.1 will not relieve the Parties from their respective obligations in this Permit.

## 7. **ENVIRONMENT**

**There are two options for the next section. Choose one and delete the other.**

**OPTION 1 – If the uses are likely to raise significant environmental issues (such as industrial uses), then use the following:**

### 7.1 **Compliance with Environmental Laws**

- 7.1.1 The Permittee will not use the Permit Area to generate, manufacture, refine, treat, transport, store, handle, transfer, produce, or process any Contaminants, except as may be reasonably required for the Authorized Uses and in compliance with Laws related to the protection of the Environment.
- 7.1.2 The Permittee will not carry out operations or activities, or construct, operate, or decommission any Improvements, that in the reasonable opinion of the Permitter or the First Nation materially increase the risk of liability to such Party (whether directly or indirectly) as a result of the application of Laws related to the protection of the Environment.



7.1.3 If the Permitter or the First Nation reasonably determines that the promulgation of, or the amendment to, a Law related to the protection of the Environment has materially increased the probability or extent of such Party's liability under such Law with respect to the Authorized Uses, then the Permittee is responsible to each of the Permitter and the First Nation for such potential liability and the Parties will, if a Party reasonably considers it necessary, negotiate an amendment to this Permit to better reflect this assumption of such potential liability by the Permittee.

### **End of Option 1.**

### **OPTION 2 – If the uses are unlikely to raise significant environmental issues (such as signage), then use the following:**

7.2 **Compliance with Environmental Laws** – The Permittee will not use the Permit Area to generate, manufacture, refine, treat, transport, store, handle, transfer, produce, or process any Contaminants, except as may be reasonably required for the Authorized Uses and in compliance with Laws related to the protection of the Environment.

### **End of Option 2.**

### **7.3 Environmental Review Process**

7.3.1 As a “designated project”, as defined in the IAA, has its own process under the auspices of a different federal authority than the Minister, sections 7.3.2 - 7.3.7, 7.4, and 7.5 do not apply to a designated project, and any similar concept in any amended, succeeding, or replacement Law.

7.3.2 Sections 7.3.3 - 7.3.7 only apply to the Decision Maker's environmental review process with respect to a Project and do not limit the processes or powers of any other federal authority with assessment responsibilities for such Project.

7.3.3 If the Permittee considers that a proposed Project is an Exempt Project, then it will provide the Decision Maker (and, if the Minister is the Decision Maker, then also the First Nation) sufficient information about the proposed Project for the Decision Maker to determine if the Project is an Exempt Project. If the Decision Maker determines that the proposed Project is an Exempt Project, then further review of such Project is not required and sections 7.3.4 - 7.3.7, 7.4, and 7.5 do not apply to such Project.

7.3.4 The Permittee will provide the Decision Maker (and, if the Minister is the Decision Maker, then also the First Nation) all information about a proposed Project reasonably required by the Decision Maker, including:

7.3.4.1 an environmental site assessment of the environmental condition of the Permit Area affected by such Project, stating that it may be relied upon by all Parties; and

- 7.3.4.2 an environmental review report of such Project,  
to enable the Decision Maker to determine the environmental effects of such Project:
  - 7.3.4.3 as the Decision Maker may by Law be required to make; or
  - 7.3.4.4 in the reasonable discretion of the Decision Maker, if the First Nation takes over the position of the Permitter under this Permit by operation of law and no Law requires a determination.
- 7.3.5 If the Decision Maker is not reasonably satisfied with any information provided under section 7.3.4, then the Decision Maker will notify the Permittee of each inadequacy (and, if the Minister is the Decision Maker, provide a copy of such notification to the First Nation). The Permittee will ensure that the inadequacies are addressed to the reasonable satisfaction of the Decision Maker, which revised information the Permittee will provide to the Decision Maker (and, if the Minister is the Decision Maker, then also to the First Nation.)
- 7.3.6 If the Decision Maker determines that the Project may proceed, then the Permittee will:
- 7.3.6.1 ensure that implementation of the Project, including site preparation, construction, operation, and decommissioning, complies with all terms and conditions, including all mitigation measures, timelines, and monitoring, required by the Decision Maker's determination; and
  - 7.3.6.2 provide the Decision Maker (and, if the Minister is the Decision Maker, then also the First Nation) with evidence, to the reasonable satisfaction of the Decision Maker, of compliance with such terms, conditions, mitigation measures, timelines, and monitoring.
- 7.3.7 If the Decision Maker determines that the Project may not proceed, then:
- 7.3.7.1 the Decision Maker will provide reasons for such determination to the Permittee (and, if the Minister is the Decision Maker, provide a copy of such reasons to the First Nation); and
  - 7.3.7.2 subject to such appeals as may be permitted by law, the Permittee releases the Permitter, the Decision Maker, the First Nation, the Council, and their respective officials, servants, employees, agents, contractors, subcontractors, and other legal representatives for the Permittee's inability to use the Permit Area as anticipated.

## 7.4 Construction and Environmental Management Plan

- 7.4.1 The Permittee will provide the Decision Maker (and, if the Minister is the Decision Maker, then also the First Nation) with a Construction and Environmental Management Plan for the implementation of each Project.
- 7.4.2 The Decision Maker will review the Construction and Environmental Management Plan to confirm if it meets the requirements of the applicable Environmental Review. If further information is required, then the Decision Maker will notify the Permittee (and, if the Minister is the Decision Maker, provide a copy of such notification to the First Nation) and the Permittee will provide such additional information to the Decision Maker (and, if the Minister is the Decision Maker, then also to the First Nation). This process will continue until the Decision Maker confirms in writing that the Decision Maker is reasonably satisfied that the Construction and Environmental Management Plan meets the requirements of the applicable Environmental Review.
- 7.4.3 The Permitter, the Decision Maker, the First Nation, and the Council do not owe, individually or in any combination, a duty of care to the Permittee (and any other Person deriving from the Permittee, directly or indirectly, an interest in, or right in relation to, the Permit Area) because of their respective reviews of any Construction and Environmental Management Plan, as such reviews are solely for their respective benefits. The Permittee releases the Permitter, the Decision Maker, the First Nation, the Council, and their respective officials, servants, employees, agents, contractors, subcontractors, and other legal representatives from any liability associated with their reviews of, and the Permittee's implementation of, a Construction and Environmental Management Plan. This section 7.4.3 survives when this Permit ends.
- 7.5 **Environmental Bond** – The Permittee acknowledges that a Decision Maker may require security for the decommissioning of a Project as a mitigation measure in a determination under an Environmental Review of such Project. If such security is required, then the Permittee will provide the Permitter or the First Nation, as the case may be, with security (such as an environmental bond, letter of credit, or other security) reasonably acceptable to such Party, in terms and amount, for the decommissioning of such Project. The Permittee will provide the security to such Party promptly after notification and the security must remain a paid up, valid security until the completion of the decommissioning of the Project, whether that is before or after this Permit ends.

**There are 2 options for the next section. Choose one and delete the other.**

**OPTION 1 – If remediation is to be to the level set out in the Standards, then use the following:**

## 7.6 Contaminants

- 7.6.1 If the Permit Area is exposed to a Contaminant by the Permittee or any Person on the Permit Area due to the rights of the Permittee under this Permit in an amount that may cause levels of the Contaminant on the Permit Area to exceed its Standard, then the Permittee will:
- 7.6.1.1 promptly notify the Permitter, the First Nation, and any appropriate Authority of the exposure, ensuring that the notice includes details relating to the exposure, including the time and extent of the exposure, the remedial action taken prior to providing the notice, the remedial action that the Permittee intends to take in order to contain or rectify the exposure, and any Persons observed who appeared to have caused or who were in the vicinity of the exposure;
  - 7.6.1.2 promptly take all remedial action necessary to reduce the Contaminant on the Permit Area to a level that is at or below its Standard and to fully rectify the effects of the exposure off the Permit Area, both on and off Reserve, in compliance with all Laws and all reasonable requests of the Permitter and the First Nation;
  - 7.6.1.3 provide each of the Permitter and the First Nation with an environmental site assessment report (which is reasonably satisfactory to each of them and which states that it may be relied upon by all Parties) evidencing the results of the Permittee's activities under section 7.6.1.2; and
  - 7.6.1.4 undertake such further activities as each of the Permitter and the First Nation may reasonably require for the Permittee to reduce the Contaminant on the Permit Area to a level that is at or below its Standard and to fully rectify the effects of the exposure off the Permit Area, both on and off Reserve, based on the report referred to in section 7.6.1.3.
- 7.6.2 For greater certainty, the Permittee's obligations in this Permit in relation to Contaminants do not negate any other of the Permittee's obligations owed to any other Person in relation to such Contaminants under the common law or any other law.<sup>13</sup>

## **End of Option 1.**

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<sup>13</sup> This provision indicates that, although the Permitter and the First Nation may require the Permittee to clean the affected Permit Area only to a standard consistent with the underlying use (e.g., a lessee may be using the lands for industrial purposes), other Persons may have rights against the Permittee to clean the lands more fully and the Permit does not provide any defence of governmental sanction of the Permittee's activity to modify those rights (e.g., the same lessee may wish to sue the Permittee in tort to fully remove the Contaminant if the lessee is required by its lease to fully remediate the lands at the end of the lease to a condition that pre-existed its use, such as agricultural).

**OPTION 2 – If remediation is to be to the condition existing at the Commencement Date, then use the following:**

**7.7 Contaminants** – If the Permit Area is exposed to a Contaminant by the Permittee or any Person on the Permit Area due to the rights of the Permittee under this Permit, then the Permittee will:

7.7.1 promptly notify the Permitter, the First Nation, and any appropriate Authority of the exposure, ensuring that the notice includes details relating to the exposure, including the time and extent of the exposure, the remedial action taken prior to providing the notice, the remedial action that the Permittee intends to take in order to contain or rectify the exposure, and any Persons observed who appeared to have caused or who were in the vicinity of the exposure;

7.7.2 promptly remove all such Contaminant from the Permit Area and take all remedial action necessary to fully rectify the effects of the exposure off the Permit Area, both on and off the Reserve, in compliance with all Laws and all reasonable requests of each of the Permitter and the First Nation;

7.7.3 provide each of the Permitter and the First Nation with an environmental site assessment report (which is reasonably satisfactory to each of them and which states that it may be relied upon by all Parties) evidencing the results of the Permittee's activities under section 7.6.1.2; and

7.7.4 undertake such further activities as each of the Permitter and the First Nation may reasonably require for the Permittee to remove all such Contaminant from the Permit Area and to fully rectify the effects of the exposure off of the Permit Area, both on and off the Reserve, based on the report referred to in section 7.6.1.3.

**End of Option 2.**

**7.8 Environmental Representations and Warranties** – The Permittee represents and warrants to each of the Permitter and the First Nation that:

7.8.1 the Permittee's operations on the Permit Area do not involve the location, storage, incorporation, or manufacture of Contaminants, except in accordance with this Permit; and

7.8.2 the Permittee, its affiliates, and their respective directors and senior officers have not been prosecuted for any offences, or received any orders or administrative, monetary, or other similar penalties, under any law related to the protection of the Environment.

**7.9 Survival of Section 7** – This section 7 survives when this Permit ends.

## **8. REMEDIES**

### **8.1 Insolvency**

8.1.1 Each of the following is considered to be an event of insolvency:

8.1.1.1 The Permittee makes an assignment for the benefit of creditors or otherwise starts proceedings under any bankruptcy or insolvency laws.

8.1.1.2 A receiver (including a receiver-manager, interim receiver, trustee, liquidator, and other custodian) of the Permittee's interest in the Permit Area is appointed.

8.1.1.3 The Permittee is declared or becomes bankrupt or insolvent.

8.1.1.4 If the Permittee is a corporation or limited partnership, an application, petition, certificate, or order is made or granted to wind-up or dissolve the Permittee, voluntarily or not.

8.1.2 The Permittee will promptly provide notice to each of the Permitter and the First Nation of the happening of any of the events in section 8.1.1.

8.1.3 An event of insolvency is conclusively deemed to be an incurable default of this Permit and, upon such default, the Permitter may take advantage of any legal and equitable remedies available, including, without providing a default notice, declaring the Term ended, by providing a termination notice to the Permittee, with a copy to the First Nation.

### **8.2 Defaults on Obligations Owed to the Permitter**

8.2.1 If the Permittee defaults on an obligation owed to the Permitter in this Permit, then the Permitter may provide a default notice to the Permittee, with a copy to the First Nation.

8.2.2 If the default is of an outstanding Fees payment and the Permittee does not cure such default within 15 days after the default notice is delivered, then the Permitter may take advantage of any legal and equitable remedies available, including commencing an action for specific performance or by declaring the Term ended, by providing a termination notice to the Permittee, with a copy to the First Nation.

8.2.3 If the default is not of an outstanding Fees payment and if such default:

8.2.3.1 can reasonably be cured within 30 days after the default notice is delivered and the Permittee fails to cure such default within the 30 days; or

8.2.3.2 cannot reasonably be cured within 30 days after the default notice is delivered and the Permittee does not begin to cure such default within the 30 days to the reasonable satisfaction of the Permitter or continue to cure such default with due diligence after beginning to cure,

then the Permitter may take advantage of any legal and equitable remedies available, including by commencing an action for specific performance or by declaring the Term ended, by providing a termination notice to the Permittee, with a copy to the First Nation.

8.2.4 If a default is not cured within the time allowed in this Permit, or is not being diligently cured under section 8.2.3.2, then the Permitter may, with unrestricted access to the Permit Area, cure it in the Permitter's sole discretion, and the Permitter's expenses related to such curing are Additional Fees. If the Permitter begins to cure the default, then the Permitter will have no obligation to continue to cure it to completion and the Permitter is not liable for any losses or expenses suffered as a result by the Permittee or any Person on the Permit Area due to the rights of the Permittee under this Permit.

### **8.3 Defaults on Obligations Owed to the First Nation**

8.3.1 If the Permittee defaults on an obligation owed to the First Nation in this Permit, then the First Nation may provide a default notice to the Permittee, with a copy to the Permitter.

8.3.2 If such default:

8.3.2.1 can reasonably be cured within 30 days after the default notice is delivered and the Permittee fails to cure such default within the 30 days; or

8.3.2.2 cannot reasonably be cured within 30 days after the default notice is delivered and the Permittee does not begin to cure such default within the 30 days to the reasonable satisfaction of the First Nation or continue to cure such default with due diligence after beginning to cure,

then, as the First Nation may not terminate this Permit as a remedy, the First Nation may take advantage of any other legal and equitable remedies available, including commencing an action for specific performance.

8.3.3 If a default is not cured within the time allowed in this Permit, or is not being diligently cured under section 8.3.2.2, then the First Nation may, with unrestricted access to the Permit Area, cure it in the First Nation's sole discretion, and the First Nation's expenses related to such curing are First Nation Fees. If the First Nation begins to cure the default, then the First Nation will have no obligation to continue to cure it to completion and the First Nation is not liable for any losses or expenses suffered as a result by the Permittee or any Person on the Permit Area due to the rights of the Permittee under this Permit.

8.4 **Additional Permitter and First Nation Remedy for Breaches of Sections 4.1 and 4.3 – Stop Work Orders and Injunctions**

8.4.1 If section 4.1 or 4.3 is breached, then, in addition to any other remedy available to the Permitter or the First Nation:

8.4.1.1 each such Party may issue a “stop work order”, which such Party is entitled to post in conspicuous locations on the Permit Area, and the Permittee will ensure that all unauthorized work on the Permit Area ceases;

8.4.1.2 the Permittee will promptly remediate any damage to the Permit Area arising from such breach that is not otherwise permitted, approved of, or authorized, as required by sections 4.1 and 4.3; and

8.4.1.3 each such Party is entitled to obtain an injunction from a court of competent jurisdiction against the continuation of such breach, the Party’s costs of which (including legal costs on a solicitor and own client basis) are, contingent upon success of the injunction application, Additional Fees or First Nation Fees, as the case may be.

8.4.2 The Permitter and the First Nation will notify each other of their actions under this section 8.4.

8.5 **Remedies are Cumulative** – Notwithstanding any part of this Permit that provides a specific remedy, all remedies under this Permit or at law may be exercised at the same time and the exercise of one remedy does not preclude the exercise of any other remedy.

8.6 **Unavoidable Delay** – A default of this Permit will not be a default if it was due to, caused by, or materially contributed to by Unavoidable Delay, on the condition that the Party claiming the benefit of Unavoidable Delay promptly:

8.6.1 provides the other Parties with notice of the Unavoidable Delay;

8.6.2 in good faith and in a commercially reasonable manner puts itself in a position to carry out the terms of this Permit notwithstanding the Unavoidable Delay; and

8.6.3 carries out the terms of this Permit once the Unavoidable Delay has ceased.

8.7 **Curing of Defaults by Others** – The curing of a default of this Permit by or on behalf of a Person other than the Permittee will be construed as a curing of that default by the Permittee.

9. **END OF PERMIT**

9.1 **Surrender of the Permit** – Subject to section 9.2:



- 9.1.1 when this Permit ends, the Permittee will peaceably surrender and yield up its use of the Permit Area to the Permitter and the First Nation, as to their respective interests, in the condition required by the terms of this Permit; and
- 9.1.2 all Improvements not already removed at that time will be the property of the Permitter and the First Nation, as to their respective interests, absolutely, free of all encumbrances and for no compensation.

## 9.2 Removal of Improvements

- 9.2.1 If, within 90 days:

- 9.2.1.1 of the end of the Term; or

- 9.2.1.2 after the report referred to in section 9.3.1 is issued if this Permit ends early,

the First Nation notifies the Permittee that the Improvements described in such notice are to be removed from the Permit Area, then the Permittee will promptly remove them and will leave the remainder of the Permit Area in good and substantial repair and condition and free from all debris to the reasonable satisfaction of the First Nation.

- 9.2.2 If the Permittee does not promptly remove the Improvements as required under section 9.2.1, then the First Nation may remove and dispose of them in the First Nation's sole discretion and return the Permit Area to a good and substantial repair and condition and free from all debris, and the First Nation's expenses related to such work are First Nation Fees. The First Nation is not liable for any losses or expenses suffered as a result by the Permittee or any Person on the Permit Area due to the rights of the Permittee under this Permit.

## 9.3 Environmental Assessment and Contaminant Removal

- 9.3.1 Within 8 months before the expiration of the Term, or within 90 days after the earlier termination of this Permit, the Permittee will complete a sufficient environmental site assessment to establish the environmental condition of the Permit Area at that time and will provide each of the Permitter and the First Nation with a report (which is reasonably satisfactory to each of them and which must state that it may be relied upon by all Parties).

**There are 2 options for the next section. Choose one and delete the other.**

**OPTION 1 – If remediation is to be to the level set out in the Standards, then use the following:**

- 9.3.2 By the end of the Term, or within 90 days after the report referred to in section 9.3.1 is issued if this Permit ends early, the Permittee will remove from the Permit Area, to the reasonable satisfaction of each of the Permitter, the First Nation and

any Authority, all Contaminants in excess of their applicable Standard on the Permit Area because of the Permittee or any Person on the Permit Area due to the rights of the Permittee under this Permit.

### **End of Option 1.**

### **OPTION 2 – If remediation is to be to the condition existing at the Commencement Date, then use the following:**

9.3.3 By the end of the Term, or within 90 days after the report referred to in section 9.3.1 is issued if this Permit ends early, the Permittee will, subject to its obligations relating to the Improvements under this section 9, remove from the Permit Area, to the reasonable satisfaction of each of the Permitter, the First Nation, and any Authority, all Contaminants on the Permit Area because of the Permittee or any Person on the Permit Area due to the rights of the Permittee under this Permit.

### **End of Option 2.**

9.4 **Access after Permit Ends** – The Permittee is entitled to access the Permit Area when this Permit ends only at the reasonable times and on the reasonable conditions set by the First Nation and only to be able to perform any of the Permittee’s obligations that survive after this Permit ends.

9.5 **Survival of Section 9** – This section 9 survives when this Permit ends.

## **10. INDEMNITIES**

10.1 **Permittee’s Indemnities** – The Permittee will indemnify and hold harmless the Permitter, the Minister, the First Nation, the Council, and their respective officials, servants, employees, agents, contractors, subcontractors, and other legal representatives (each being an “**Indemnified**”) from and for any claims, demands, actions, suits, and other proceedings, judgments, damages, penalties, fines, costs (including reasonable legal fees, on a solicitor and own client basis, and reasonable consultant and expert fees), liabilities, losses, and sums paid in settlement of any claims that arise during or after the Term and are in any way based upon, arise out of, or are connected with:

10.1.1 a breach of any of the Permittee’s obligations in this Permit;

10.1.2 an injury to, or death of, a Person on the Permit Area during the Term in any way due to the actions or omissions of the Permittee or any Person on the Permit Area due to the rights of the Permittee under this Permit;

10.1.3 damage to, or loss of, property by a Person during the Term in any way due to the actions or omissions of the Permittee or any Person on the Permit Area due to the rights of the Permittee under this Permit;

10.1.4 the Decision Maker reviewing a Construction and Environmental Management Plan;

10.1.5 the Decision Maker determining under an Environmental Review that a Project may not proceed; or

10.1.6 the Indemnified curing or attempting to cure a default of this Permit,  
but not if due to the Gross Negligence or Wilful Misconduct of such Indemnified, unless such negligence or misconduct involves a peril against which the Permittee is obligated to obtain and maintain insurance.

10.2 **Survival of Section 10** – This section 10 survives when this Permit ends.

**11. DELIVERY**

**11.1 General Requirement**

11.1.1 All notices, requests, demands, consents, and approvals to be provided under this Permit, which must be in writing, all other documents to be provided under this Permit, and all Fees and First Nation Fees to be paid will be delivered in accordance with this section 11 to the following addresses:

To the Permitter:

Director, Lands and Economic Development  
Indigenous Services Canada  
[Regional Office]  
[Regional Office's Address]

Fax: [#]

Email: [Email]

To the First Nation:

[First Nation]  
[First Nation's Address]

Fax: [#]

Email: [Email]

To the Permittee:

[Permittee's Name]  
[Permittee's Address]

Fax: [#]

Email: [Email]

11.1.2 If the postal service is interrupted or threatened to be interrupted, then any notice, request, demand, consent, or approval will only be sent by means other than mail.

## 11.2 **Date of Delivery**

11.2.1 Fees and First Nation Fees will not be considered to be delivered until actually received by the Permitter or the First Nation, respectively.

11.2.2 If a question arises as to the date on which a notice, request, demand, consent, approval, or document provided under this Permit is delivered, then it will be conclusively deemed to have been delivered:

11.2.2.1 if sent by fax or email, the day of transmission if transmitted before 3:00 p.m. [Time zone] time, otherwise, the next day;

11.2.2.2 if sent by mail, on the sixth day after the notice was mailed; or

11.2.2.3 if sent by means other than fax, email, or mail, the day it was received.

11.3 **Change of Contact Information** – A Party may change its contact information by informing the other Parties of the new contact information and the change will take effect on the effective date set out in the notice or 30 days after the notice is delivered, whichever is later.

## 12. **DISPUTE RESOLUTION**

12.1 **Disputes Involving the Permitter** – A dispute arising under this Permit involving the Permitter that is not resolved by negotiation will be resolved by referral, in the first instance, to the Federal Court or any replacement or successor court having jurisdiction. If the Federal Court refuses jurisdiction or does not determine the dispute, then a Party to the dispute may refer it to any other court that has jurisdiction and the Parties may exercise any other right or remedy that they have under this Permit or otherwise.

12.2 **Disputes Not Involving the Permitter** – A dispute arising under this Permit solely between the Permittee and the First Nation, including when the First Nation takes over the position of the Permitter under this Permit by operation of law, will be resolved as follows:

12.2.1 Negotiation: The Party that wishes a dispute to be resolved will provide a dispute notice to the other Party to the dispute. Each such Party will promptly designate

a senior representative to attempt in good faith to resolve the dispute by negotiation.

12.2.2 **Mediation:** If negotiation does not resolve the dispute within 15 days of delivery of the dispute notice, then either Party may provide a mediation notice to the other Party. The Parties will then promptly appoint a qualified, impartial and experienced mediator, the cost of which will be paid equally by both Parties. If the Parties cannot agree on a mediator within 15 days of delivery of the mediation notice, then the mediator will be appointed by the [Name of Provincial Arbitration Centre] (or its successor, or a similar body if neither is available). Within 10 days of appointment of a mediator, each Party will provide the mediator and each other with a written statement of its position about the dispute and summary of the arguments supporting its position. The mediator will meet with the Parties in the mediator's sole discretion in an attempt to resolve the dispute. The Parties will provide any additional information requested by the mediator. The mediator may hire experts, the cost of which will be paid equally by both Parties unless the mediator orders a different division.

12.2.3 **Arbitration:** If the dispute is not resolved within 30 days of the appointment of a mediator, then, on application by a Party to the dispute, the dispute may be referred to a single arbitrator and determined by arbitration administered by the [Name of Provincial Arbitration Centre] (or its successor, or a similar body if neither is available). The decision of the arbitrator is final and binding on both Parties. The cost of the arbitrator will be paid equally by both Parties unless the arbitrator orders a different division.

### 13. MISCELLANEOUS

- 13.1 **Deemed Conditions and Covenants** – All agreements, terms, conditions, covenants, provisions, duties, and obligations to be performed or observed by the Permittee under this Permit for the benefit of the Permitter are conclusively deemed to be conditions as well as covenants.
- 13.2 **No Presumption** – There will be no presumption that an ambiguity in a term of this Permit is to be interpreted in favour of any particular Party.
- 13.3 **No Cost to the Permitter or the First Nation** – Except as otherwise explicitly set out in this Permit, the Permitter and the First Nation will not be responsible during the Term for any costs, charges, and expenses arising from or relating to the Permit Area, the use or occupancy of the Permit Area, or any of the Permittee's obligations in this Permit.
- 13.4 **Binding on Successors** – This Permit will be for the benefit of and be binding upon each Party's respective heirs, successors, executors, administrators, assigns, and other legal representatives.

- 13.5 **No Waiver** – No condoning, excusing, or overlooking of a default of this Permit will operate as a waiver by, or otherwise affect the respective rights of, the other Parties in respect of a continuing or subsequent default. A waiver must be in writing and no waiver will be inferred from anything done or omitted to be done by a Party.
- 13.6 **No Assumption of Responsibility** – No consent or approval, or absence of consent or approval, by the Permitter or the First Nation will in any way be an assumption of responsibility or liability by such Party for any matter subject to or requiring such Party’s consent or approval.
- 13.7 **Not a Joint Venture** – Nothing in this Permit will be construed as creating a relationship of agency, partnership, joint venture, or other such association between any of the Parties.

**There are 3 options for the Permittee’s authority. Choose one and delete the others.**

**OPTION 1 – If the Permittee is an individual, then delete both of options 2 and 3 and ensure that an affidavit of execution (see end of Permit) accompanies the Permit. End of Option 1.**

**OPTION 2 – If the Permittee is a corporation, then use the following:**

- 13.8 **Corporate Authority** – The Permittee represents and warrants that the Permittee:
- 13.8.1 has all necessary authority to enter into this Permit and to perform all of the obligations contained in this Permit;
- 13.8.2 is a corporation duly incorporated under the laws of the province of [Name of Province], is not a reporting company, and is a valid and subsisting company in good standing with the [Name of Province] corporate registry; and
- 13.8.3 will remain in good standing with the [Name of Province] corporate registry.

**End of Option 2.**

**OPTION 3 – If the Permittee is a limited partnership, then use the following:**

- 13.9 **Authority** – The Permittee represents and warrants that the Permittee:
- 13.9.1 has all necessary authority to enter into this Permit and to perform all of the obligations contained in this Permit;
- 13.9.2 is the general partner of a limited partnership formed under the laws of the province of [Name of Province];
- 13.9.3 is a corporation duly incorporated under the laws of the province of [Name of Province], is not a reporting company, and is a valid and subsisting company in good standing with the [Name of Province] corporate registry; and

13.9.4 will remain in good standing with the [Name of Province] corporate registry.

**End of Option 3.**

13.10 **Counterpart Execution** – This Permit may be executed in one or more counterparts, each of which is considered to be an original but all of which together constitute one and the same document. Upon execution by a Party, such Party will promptly provide a copy of its originally executed Permit to the other Parties.

**The Parties** have executed this Permit on the dates indicated below.

**HIS MAJESTY THE KING IN RIGHT OF CANADA**, as represented by the Minister of Indigenous Services

\_\_\_\_\_  
[Name]  
Date signed by the Permitter: \_\_\_\_\_

EXECUTED in the presence of: )  
) **[FIRST NATION]**, as represented by the  
) Council  
)  
)  
)  
) \_\_\_\_\_  
) [Name]  
)  
)

\_\_\_\_\_  
Witness as to the First Nation’s authorized signatories )  
) [Name]  
)  
) Date signed by the First Nation: \_\_\_\_\_  
)  
) I / We have authority to bind the First  
) Nation

EXECUTED in the presence of: )  
) **[PERMITTEE'S NAME]**  
)  
) **If the Permittee is a limited partnership,**  
) **they sign as:**  
)  
) **[PERMITTEE'S NAME]**, general partner of  
) **[NAME OF LIMITED PARTNERSHIP]**  
\_\_\_\_\_ ) \_\_\_\_\_

\_\_\_\_\_) ) \_\_\_\_\_  
Witness as to the Permittee's ) [Name]  
authorized signatory ) [Title]  
) )  
) ) Date signed by the  
) ) Permittee: \_\_\_\_\_  
) )  
) ) I have authority to bind the Permittee



**SCHEDULE A**

**BAND COUNCIL RESOLUTION**

WHEREAS:

- A. We have negotiated a “Permit” to be entered into between His Majesty the King in right of Canada, [First Nation], and [Permittee's Name], to which this resolution is to be attached as a schedule; and
- B. The terms used in this resolution that are defined in the Permit have the same meaning as in the Permit.

BE IT RESOLVED that the Council, on behalf of [First Nation]:

- A. has read and understood the Permit terms;
- B. has been advised by the Permitter to receive independent legal and financial advice about the Permit before executing it and to continue to obtain such advice about the First Nation’s rights and obligations throughout the Term of the Permit;
- C. consents to the execution of the Permit on its terms; and
- D. authorizes any two members of the Council to execute the Permit on behalf of the First Nation.

**CARRIED** at a duly convened and conducted meeting on \_\_\_\_\_, 20\_\_\_\_.

Quorum for the Council is \_\_\_\_\_ members.

\_\_\_\_\_  
Chief

\_\_\_\_\_  
Councillor

\_\_\_\_\_  
Councillor

\_\_\_\_\_  
Councillor

\_\_\_\_\_  
Councillor

**OPTIONAL – Include the following Schedule if assignments are allowed. Otherwise, delete it.**

## **SCHEDULE B**

### **ASSIGNMENT CONSENT AGREEMENT**

This agreement commences on [Month Day, Year] and is made between:

**HIS MAJESTY THE KING IN RIGHT OF CANADA,**  
as represented by the Minister of Indigenous Services

(the “**Permitter**”)

and:

**[FIRST NATION],**  
a band within the meaning of the *Indian Act* as represented by the Council

(the “**First Nation**”)

and:

**[PERMITTEE’S NAME] [OPTIONAL: If the Permittee is a corporation, limited partnership, society, utility or municipality, then type a comma after the Permittee’s Name and include the statute under which the entity received its authority and its incorporation number, if applicable. Corporate example: , incorporated under the *Business Corporations Act*, S.B.C. 2002, c. 57; Incorporation No. X12345 Limited Partnership example: , incorporated under the *Business Corporations Act*, S.B.C. 2002, c. 57; Incorporation No. X12345, as general partner of [NAME OF LIMITED PARTNERSHIP], registered under the *Partnership Act*, R.S.B.C. 1996, c. 348; Registration No. Y12345 End of option]**

(the “**Permittee**”)

and:

**[ASSIGNEE’S NAME] [OPTIONAL: If the Assignee is a corporation, limited partnership, society, utility or municipality, then type a comma after the Assignee’s Name and include the statute under which the entity received its authority and its incorporation number, if applicable. Corporate example: , incorporated under the *Business Corporations Act*, S.B.C. 2002, c. 57; Incorporation**

No. X12345 **Limited Partnership example:** , incorporated under the *Business Corporations Act*, S.B.C. 2002, c. 57; Incorporation No. X12345, as general partner of **[NAME OF LIMITED PARTNERSHIP]**, registered under the *Partnership Act*, R.S.B.C. 1996, c. 348; Registration No. Y12345 **End of option]**

(the “**Assignee**”)

(collectively the “**Parties**”).

## **BACKGROUND**

- A. The Permitter authorized the Permittee to use the Permit Area, by way of a permit to which the First Nation is a Party and which is dated [Month Day, Year] and registered in the Registry under No. [#] (the “**Permit**”).
- B. The Permittee wants to assign its right and interest in the Permit to the Assignee by entering into an assignment agreement (the “**Assignment**”), **[OPTIONAL: a copy of]** which is attached as Schedule “A” to this agreement.
- C. Under the Permit, the Assignment is not valid without the consent of each of the Permitter and the First Nation and without the Parties entering into this agreement.

**NOW THEREFORE**, in consideration of the representations, warranties, obligations, covenants, and agreements in this agreement, the Parties agree as follows:

### **1. CONSENT, COVENANTS & REPRESENTATIONS**

#### **1.1 Consent**

- 1.1.1 Each of the Permitter and the First Nation hereby consent to the Assignment.
- 1.1.2 The assignment of the Permittee’s interest in the Permit under the Assignment will not relieve or discharge the Permittee from any of its obligations or liabilities under the Permit.

#### **1.2 Covenants and Representations of Assignee**

- 1.2.1 The Assignee covenants with each of the Permitter and the First Nation to observe and perform all of the obligations in the Permit to be observed or performed by the Permittee from and after the date of the assignment of the Permit.
- 1.2.2 Except as explicitly set out in this agreement, the Permitter, the Minister, the First Nation, the Council, and their respective officials, servants, employees, agents, contractors, subcontractors, and other legal representatives have not made any representations or warranties with respect to:

- 1.2.2.1 the terms of the Permit;
  - 1.2.2.2 the condition of the Permit Area, including the Permit Area's compliance with Laws and the presence of Contaminants on the Permit Area;
  - 1.2.2.3 issues of title, encumbrances affecting title, and matters contained within the Registry;
  - 1.2.2.4 access to and from the Permit Area; and
  - 1.2.2.5 the suitability of the Permit Area for the Assignee.
- 1.2.3 The Assignee makes the same representations and warranties to each of the Permitter and the First Nation that the Permittee made in the Permit, with the Commencement Date meaning the effective date of the Assignment.
- 1.2.4 The Assignee represents and warrants to each of the Permitter and the First Nation that the person or persons signing this agreement on the Assignee's behalf have the authority to bind the Assignee to this agreement.
- 1.2.5 The Assignee's delivery information is as follows:

[Assignee's Name]  
[Assignee's Address]

Fax: [#]

Email: [Email]

## 2. GENERAL

- 2.1 **No Merger** – The Permit will survive the execution of this agreement and will not merge in this agreement.
- 2.2 **Definitions** – A term not defined in this agreement but defined in the Permit has the same meaning as in the Permit.
- 2.3 **Headings** – All headings are for convenience and reference only. They are not to be used to define, limit, enlarge, modify, or explain the scope or meaning of a provision.
- 2.4 **Binding on Successors** – This agreement will enure to the benefit of and be binding upon the Parties and their respective heirs, executors, administrators, successors, assigns, and other legal representatives.
- 2.5 **Counterpart Execution** – This agreement may be executed in one or more counterparts, each of which is considered to be an original but all of which

together constitute one and the same document. Upon execution by a Party, such Party will promptly provide a copy of its originally executed Permit to the other Parties.

The Parties have executed this agreement as of the date first written above.

**HIS MAJESTY THE KING IN RIGHT OF CANADA**, as represented by the Minister of Indigenous Services

\_\_\_\_\_  
[Name]

EXECUTED in the presence of:

) **[FIRST NATION]**, as represented by the  
) Council  
)  
)  
)  
)

\_\_\_\_\_  
[Name]

\_\_\_\_\_  
Witness as to the First Nation's  
authorized signatories

) [Name]

) I / We have authority to bind the First  
) Nation

EXECUTED in the presence of:

) **[PERMITTEE'S NAME]**  
)

) **If the Permittee is a limited partnership,**  
) **they sign as:**

**[PERMITTEE'S NAME]**, general partner of  
**[NAME OF LIMITED PARTNERSHIP]**

\_\_\_\_\_  
As to the Permittee's authorized  
signatory

) [Name]

) I have authority to bind the Permittee

EXECUTED in the presence of:

) **[ASSIGNEE'S NAME]**

)

**If the Assignee is a limited partnership,  
they sign as:**

**[ASSIGNEE'S NAME], general partner of  
[NAME OF LIMITED PARTNERSHIP]**

\_\_\_\_\_  
As to the Assignee's authorized  
signatory

)

[Name]

)

)

I have authority to bind the Assignee

**SCHEDULE “A” TO AN ASSIGNMENT CONSENT AGREEMENT**

*(attach [a copy of] the Assignment)*

**End of Optional language.**

**OPTIONAL: When an individual executes the Permit or any of the Schedules on that individual's own behalf, then include the following right after the signatures:**

**AFFIDAVIT OF WITNESS**

I, \_\_\_\_\_ (*name*), of  
\_\_\_\_\_ (*name of city, town, village, etc. where you live*),  
\_\_\_\_\_ (*name of province where you live*), make oath and  
say:

1. I saw \_\_\_\_\_ sign the permit.
2. I know the person referred to in paragraph 1 and I believe that that person is at least [age of majority in Province] years old.
3. I am the person who signed my name as witness on the permit and I am at least [age of majority in Province] years old.

**SWORN** before me in the \_\_\_\_\_ )  
of \_\_\_\_\_, in the )  
Province of \_\_\_\_\_ )  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ )

\_\_\_\_\_)  
A Notary Public in and for the Province )  
of \_\_\_\_\_ )  
or a Commissioner for taking Oaths. )

\_\_\_\_\_  
Witness

\_\_\_\_\_)  
Address )  
\_\_\_\_\_)  
Telephone # / Fax # )  
\_\_\_\_\_)  
Notary's Authority )  
\_\_\_\_\_)

\*\* Must be signed by a person who is not a party to the permit.