

***Gitanyow Forestry Agreement***  
(the “Agreement”)

**between**

***Gitanyow Huwilp***

As represented by the Gitanyow Hereditary Chiefs  
 (“Gitanyow”)

**and**

***Her Majesty the Queen in Right of the Province of British Columbia***

As represented by the Minister of Forests  
 (“British Columbia”)

(collectively the “Parties”)

**Whereas:**

- A. British Columbia and Gitanyow have interests in forestry and economic development within the Traditional Territory.
- B. British Columbia acknowledges that Justice Tysoe of British Columbia Supreme Court has held that British Columbia has a duty to consult with Gitanyow and to seek to accommodate their interests within the Traditional Territory.
- C. The Parties wish to address the outstanding obligations of British Columbia to consult and accommodate Gitanyow interests as required by Justice Tysoe in *Yal et al v. Minister of Forests, Skeena Cellulose Inc. and NWBC Timber and Pulp Ltd.* 2002BCSC 1701 and *Gitanyow First Nation v. British Columbia (Minister of Forests)* 2004 BCSC 1734 and Gitanyow acknowledges that British Columbia has done so.
- D. Gitanyow has a relationship to the land that is important to its culture and the maintenance of its community, governance and economy.
- E. Gitanyow has Aboriginal Interests within the Traditional Territory.
- F. British Columbia and the First Nations Leadership Council, representing the Assembly of First Nations – BC Region, First Nations Summit and the Union of BC Indian Chiefs (the “Leadership Council”) have entered into a New Relationship in which they are committed to reconciliation of Aboriginal and Crown titles and jurisdiction and have agreed to implement a government-to-government relationship based on respect, recognition and accommodation of Aboriginal title and rights.

- G. This Agreement is in the spirit and vision of the New Relationship.
- H. Work is underway regarding the implementation of the New Relationship and this Agreement may need to be amended in the future to reflect the outcomes of that work.
- I. References in this Agreement to Crown lands are without prejudice to Gitanyow's Aboriginal title and/or rights claims over those lands.
- J. British Columbia intends to consult and to seek an Interim Accommodation with Gitanyow on forest and/or range resource development activities proposed within the Traditional Territory that may lead to the infringement of Gitanyow's Aboriginal Interests.
- K. Gitanyow intend to participate in any consultation with British Columbia or a Licensee in relation to forest and/or range resource development activities proposed within the Traditional Territory that may lead to an infringement of Gitanyow's Aboriginal Interests.
- L. British Columbia and Gitanyow wish to resolve issues relating to forest resource development where possible through negotiation as opposed to litigation.

Therefore the Parties agree as follows:

**1. Recognition:**

- 1.1 British Columbia acknowledges that Justice Tysoe of British Columbia Supreme Court has found that Gitanyow have a good *prima facie* claim of aboriginal title and a strong *prima facie* claim of aboriginal rights to at least part of the Traditional Territory.
- 1.2 British Columbia recognizes that Gitanyow's Aboriginal Interests are linked to Gitanyow's good *prima facie* claim of aboriginal title and strong *prima facie* claim of aboriginal rights.
- 1.3 British Columbia recognizes that the historic and contemporary use and stewardship of land and resources by Gitanyow are integral to the maintenance of Gitanyow society, governance and economy within the Traditional Territory.
- 1.4 British Columbia recognizes that in the absence of a treaty that defines the responsibilities and rights of the Parties, its duty to consult and to seek workable accommodation of Gitanyow's Aboriginal Interests within the Traditional Territory is an ongoing duty.
- 1.5 British Columbia acknowledges that the Gitanyow Simgigyet represent the Huwilp.

## 2. Definitions:

2.1 For the purposes of this Agreement, the following definitions apply:

2.1.1 "Aboriginal Interests" means aboriginal rights and/or aboriginal title.

2.1.2 "Administrative Decision" means one or more of the following decisions made by a person under Forestry Legislation:

- (a) a decision setting or varying Allowable Annual Cut (AAC) for a Timber Supply Area or a Forest Tenure;
- (b) the issuance, consolidation, subdivision, amendment or boundary adjustment of a Forest Tenure or a Range Tenure;
- (c) the adjustment of Animal Unit Months in a Range Tenure;
- (d) the replacement, extension or adjustment of a Forest Tenure or Range Tenure;
- (e) the disposition of volumes of timber arising from undercut decisions on a Forest Tenure;
- (f) AAC apportionment and reallocation decisions;
- (g) the conversion of a Timber Sale Licence or Timber Licence to other forms of Forest Tenure;
- (h) Timber Licence term extensions;
- (i) the reallocation of harvesting rights as a result of the implementation of the Forestry Revitalization Act;
- (j) the issuance of a Special Use Permit;
- (k) a decision regarding a Tree Farm Licence Management Plan, Community Forest Management Plan and/or Woodlot Licence Management Plan;
- (l) the deletion of provincial forest; and
- (m) the transfer of AAC between Timber Supply Areas.

2.1.3 "Forestry Legislation" means the *Range Act*, the *Forest and Range Practices Act*, the *Forest Practices Code of British Columbia Act*, all regulations made under those statutes and any amendments to or replacement of those statutes and their regulations.

- 2.1.4 “Forest Tenure” means an agreement granting rights to harvest Crown timber as defined in the *Forest Act*.
- 2.1.5 “Gitanyow” means the eight Gitanyow Houses collectively referred to as the Huwilp being Gitanyow houses of Gwass Hlaam, Gamlaxyeltxw, Malii, Gwinuu, Luux Hon, Haitsimsxw, Wataxhyetsxw and Wii Litsxw.
- 2.1.6 “Interim Accommodation” means an accommodation, including an Interim Economic Accommodation, provided in this Agreement intended to further the reconciliation of Gitanyow’s Aboriginal Interests with those of British Columbia in the interim prior to the reconciliation of these respective interests in a treaty. Any monetary payments made under this Agreement, including the accommodations provided in sections 4 through 8 reflect the present budget limitations of the Minister of the Forests and Range. It is acknowledged that other accommodations, including economic accommodations, may be jointly developed by the Parties during the term of this Agreement.
- 2.1.7 “Interim Economic Accommodation” means an Interim Accommodation of the economic component only of Gitanyow’s Aboriginal Interests.
- 2.1.8 “Licensee” means a holder of a Forest Tenure or a Range Tenure under the *Forest Act or Range Act*.
- 2.1.9 “Operational Decision” means a decision that is made by a person with respect to the statutory approval of an Operational Plan that has a potential effect in the Traditional Territory.
- 2.1.10 “Operational Plan” means a Forest Development Plan, Woodlot Licence Plan, Forest Stewardship Plan, Range Use Plan or a Range Stewardship Plan that has a potential effect in the Traditional Territory.
- 2.1.11 “Range Tenure” means an agreement granting rights over Crown range as defined in the *Range Act*.
- 2.1.12 “Tree Farm Licence” means an area-based licence as described in Division 6 of the *Forest Act*.
- 2.1.13 “Traditional Territory” means Gitanyow Traditional Territory as shown on the map attached to this Agreement as Appendix A.

### **3. Purpose:**

- 3.1 The purposes of this Agreement are to:

- (a) implement the order of the British Columbia Supreme Court as set out in the judgement of Tysoe, J. in Yal et al v. Minister of Forests, Skeena Cellulose Inc. and NWBC Timber and Pulp Ltd. 2002 BCSC 1701;
- (b) set out measures to address Gitanyow's Aboriginal Interests in the context of forestry decisions that are made during the term of this Agreement and the forest development that occurs as a result of those decisions within the Traditional Territory during the term of this Agreement;
- (c) create viable economic opportunities and to assist in the improvement of social conditions of Gitanyow through economic diversification;
- (d) address consultation and provide Interim Accommodations related to forest resources development; and
- (e) provide a period of stability to forest and range resource development on Crown lands within the Traditional Territory during the term of this Agreement, while longer term interests are addressed through other agreements or processes.

#### **4. Forest Planning:**

- 4.1 British Columbia and Gitanyow will continue to work collaboratively on implementing the Cranberry/Kispiox Timber Supply Area planning exercise nearing completion with the \$92,500 in funding already provided by British Columbia. The plan is expected to provide the basis for developing integrated management objectives for the area.
- 4.2 The Parties agree to work with the Integrated Land Management Bureau to merge the integrated management objectives jointly developed through the Cranberry-Kispiox landscape level plan with the South Nass Sustainable Resource Management Plan to encompass the whole of the Traditional Territory.
- 4.3 The appropriate government agency will consider enabling the Sustainable Resource Management Plan ["SRMP"] objectives through legislation once Gitanyow and the respective government agency have reached consensus on those objectives.
- 4.4 British Columbia and Gitanyow are undertaking a SRMP for the portion of the Nass Timber Supply Area within the Traditional Territory which will complete planning for the Traditional Territory. British Columbia has provided funding in the amount of \$145,000 to support the participation of Gitanyow in the SRMP in the 2006/07 fiscal year.

4.5 As an interim step, British Columbia and Gitanyow agree to encourage Licensees to develop Operational Plans consistent with the joint landscape level plans.

**5. Forest Restoration:**

5.1 British Columbia acknowledges that it is important for Gitanyow to participate in reforestation and enhancement within the Traditional Territory.

5.2 British Columbia has established a Northwest Reforestation/Enhancement Program. The program will spend up to \$1 million over the period 2005-2009 on reforestation and general forest enhancement projects in the Traditional Territory.

5.3 British Columbia agrees to provide an additional \$1 million through the Northwest Reforestation/Enhancement Program over the period 2006-2010 for reforestation and silviculture projects in the Nass Timber Supply Area, including the former Orenda forest licence number A16883 operating areas.

5.4 British Columbia has provided a total of \$50,000 in the 2005/06 and 2006/07 fiscal years to assist Gitanyow to participate in a collaborative process with the Ministry of Forests and Range with respect to planning and implementation of the Northwest Reforestation/Enhancement Program activities and priorities including, as an initial priority, historic backlog of silviculture activities.

5.5 British Columbia shall provide \$25,000 in the 2006/07 or 2007/08 fiscal year to assist Gitanyow to participate in the collaborative process with the Ministry of Forests with respect to planning and implementation of the Northwest Reforestation/Enhancement Program activities and establishing priorities for reforestation and silviculture projects associated with the remaining silviculture backlog in the Nass Timber Supply Area.

5.6 British Columbia intends to provide direct opportunities for qualified Gitanyow contractors in planting, brushing and other “on the ground” enhancement activities under the Northwest Reforestation/Forest Enhancement Program.

5.7 British Columbia shall provide Gitanyow with updates and reports on Timber Baron’s progress in meeting their backlog of silviculture obligations within the former Orenda licence area and the Traditional Territory through the Joint Resources Council.

## **6. Joint Resources Council:**

- 6.1 British Columbia and Gitanyow agree to establish and operate a Joint Resources Council for the purpose of facilitating:
- (a) cooperative planning to address Gitanyow's Aboriginal Interests at the appropriate level of Crown land use planning;
  - (b) consultative processes and provision of a forum for identifying and resolving issues of strategic importance to Gitanyow and British Columbia early in the forest planning cycle; and
  - (c) completion and administration of the Gitanyow Kispiox-Cranberry Landscape Unit Plan and the Gitanyow Nass Strategic Resource Management Plan,

as per the Joint Resources Council terms of reference attached to this Agreement as Appendix C.

- 6.2 British Columbia has provided \$10,000 in the 2006/07 fiscal year to Gitanyow to support the establishment of the Joint Resources Council and to develop a workplan for the Joint Resources Council's activities over the coming year.

## **7. Economic Opportunities to Gitanyow:**

During the term of this Agreement, British Columbia will provide the following economic benefits to Gitanyow:

### **7.1 Forest Tenure**

- 7.1.1 For the purposes of section 7.1, "Licence" includes a non-replaceable Forest Licence or other forms of agreement as agreed to by the Parties.
- 7.1.2 After the execution of this Agreement, the Minister will invite Gitanyow, or such legal entity as Gitanyow has appointed as its representative to hold the Licence, to apply under the *Forest Act* for non-replaceable forest licences (the "Licence") on a non-competitive basis for up to 86,000 cubic meters annually (68,000 cubic meters in the Cranberry Timber Supply Area and 18,000 cubic meters in the Nass Timber Supply Area).
- 7.1.3 For greater certainty, the maximum volume that may be available under the Licence referred to in section 7.1.2 will be up to 430,000 cubic meters over five years.

- 7.1.4 The Parties will strive to ensure that the assigned operating area for the Licence in the Nass and Cranberry Timber Supply Areas has a representative timber profile and logging chance relative to other licensees and BC Timber Sales, taking into account the quality of timber, access and commercial viability. Prior to Gitanyow making an application for the Licence, the Parties will work together to identify the location of an operating area for the Licence, which to the extent that it is operationally feasible will be within the Traditional Territory.
- 7.1.5 A Licence entered into as a result of an invitation under section 7.1.2 will be for a term of five years.
- 7.1.6 If the Licence remains in effect beyond the term of this Agreement, the Licence will continue to be considered by the Parties to be Interim Accommodation until the Licence expires or is terminated.
- 7.1.7 The Minister may invite Gitanyow to apply for a subsequent Licence under the *Forest Act* for a term that would commence after the expiry of this Agreement.
- 7.1.8 British Columbia shall provide \$35,000 forthwith for the purpose of developing the capacity for Gitanyow to market the timber and to develop the forest tenure planning. These funds shall be provided upon completion of the execution of the Agreement by both Parties and shall be in addition to any other payments being made under this Agreement.

## **7.2 Interim Payment**

- 7.2.1 During the term of this Agreement, British Columbia will pay to Gitanyow \$357,000 annually.
- 7.2.2 Subject to the Parties entering into this Agreement by July 31, 2006, the effective date for calculating the first interim payment will be April 1, 2006. The first installment will be \$178,500 and will be immediately payable following the signing of this Agreement.
- 7.2.3 Following the first installment made under section 7.2.2, subsequent payments will be made at the end of each quarter.
- 7.2.4 The funding commitment in section 7.2.1 is subject to the availability of annual appropriations for that purpose by British Columbia.
- 7.2.5 British Columbia will not seek to direct or influence the expenditure of the funds provided to Gitanyow.

- 7.2.6 The revenue sharing set out in this Agreement reflects an amount that British Columbia is willing to pay and Gitanyow have agreed to accept as an interim payment. Subject to the results of a treaty related or other mutually acceptable eligibility and enrolment process, the revenue sharing benefit will be recalculated to reflect the results of that process and applied retroactively to the commencement date of this Agreement.
- 7.2.7 During the term of this Agreement, British Columbia, through the Ministry of Forests and Range and the Ministry of Aboriginal Relations and Reconciliation, will establish a working group to examine alternative benefit and revenue sharing options and Gitanyow, along with other First Nations, will have an opportunity to participate in this working group.

### **7.3 Specific Accommodation**

- 7.3.1 The Parties confirm that BC Timber Sales has deferred all road and block development in the Hanna-Tintina Watershed pending completion of the Nass South Sustainable Resource Management Plan or March 31, 2007, whichever date comes sooner.
- 7.3.2 A copy of BC Timber Sale's letter of July 5, 2006 is attached to this Agreement as Appendix D.
- 7.3.3 The Parties confirm that Timber Baron Forest Products Ltd. has deferred all road and block development in the Hanna-Tintina Watershed pending completion of the Nass South Sustainable Resource Management Plan or March 31, 2007, whichever date comes sooner, with the conditions referred to in their letter of July 25, 2006.

### **8. Capacity Funding**

- 8.1 Immediately upon execution of this Agreement, British Columbia will provide \$275,000 in the 2006/07 fiscal year to Gitanyow to support Gitanyow's capacity to engage in ongoing consultative efforts with the Joint Resources Council, to assist with participation in and implementation of joint planning initiatives and to engage with the Ministry of Forests and Range on resolving key forestry issues early in the planning cycle.
- 8.2 British Columbia (through the Joint Resources Council) shall work with Gitanyow to establish a budget for implementation of the consultation efforts referred to in section 8.1 for each of the years of this Agreement following March 31, 2007 for the purposes of assisting Gitanyow in an application to the New Relationship Trust Fund.

- 9. Consultation and Accommodation Respecting Administrative and Operational Decisions and Plans**
- 9.1 British Columbia recognizes the duty to consult and seek workable accommodations of Gitanyow's Aboriginal Interests occurring with respect to Administrative Decisions, Operational Decisions and Operational Plans.
- 9.2 The Parties agree to address consultation on Administrative Decisions, Operational Decisions and Operational Plans through participation of Gitanyow in strategic level planning and policy development processes.
- 9.3 Subject to section 9.4, Gitanyow is entitled to full consultation with respect to all potential infringements of their Aboriginal Interests arising from any Operational Decision, Administrative Decision or Operational Plan affecting Gitanyow's Aboriginal Interests, regardless of benefits provided under this Agreement
- 9.4 Gitanyow agree that in consideration of the Interim Accommodation provided by British Columbia as outlined in section 7 of this Agreement, British Columbia has fulfilled its duties to consult and seek workable Interim Accommodation with Gitanyow in respect to the following:
- (a) the Minister of Forests' consent to the transfer of shares of Skeena Cellulose Inc. to NWBC Timber and Pulp Ltd.;
  - (b) the Regional Manager's decision respecting cut control penalties (AAC reductions) for New Skeena's Forest Products' Forest Tenures (TFL 1, FL A16831, FL A16883);
  - (c) the Minister of Forests' decision respecting disposition of undercut volumes associated with New Skeena Forest Products' Forest Tenures (TFL 1, FL A16831, FL A16883);
  - (d) the Minister of Forests' consent to the transfer of shares of Buffalo Head Forest Products (holder of FL A16884) to KAOS Holdings Ltd.; and
  - (e) the Minister of Forests' consent to the replacement of TFL 1 as required under the *Forest Act*.
- 9.5 During the term of this Agreement, and subject to the terms and intent of this Agreement being met and adherence by British Columbia, Gitanyow agrees that British Columbia has provided an Interim Economic Accommodation of Gitanyow's Aboriginal Interests and other Interim Accommodations serving to further the reconciliation of Gitanyow's Aboriginal Interests with respect to forest activity within the Traditional Territory with those of British Columbia.

- 9.6 British Columbia acknowledges that any timber opportunities and funding provided through this Agreement are an Interim Accommodation and that broader processes are underway that will assist in determining the appropriate accommodation in respect of impacts on Gitanyow's Aboriginal Interests as a result of forestry activities occurring within the Traditional Territory.
- 9.7 Nothing in this Agreement restricts the ability of Gitanyow to seek additional accommodation for impacts on its Aboriginal Interests within the Traditional Territory from forest resource development during the term of this Agreement.
- 9.8 The Parties agree to consult in accordance with the Consultation Protocol attached to this Agreement as Appendix B.
- 9.9 British Columbia will advise other provincial agencies including the Ministry of Energy Mines and Petroleum Resources, the Ministry of Environment and the Integrated Land Management Bureau of the consultation and accommodation process adopted in this Agreement by the Parties and will encourage these agencies to adopt similar processes.
- 9.10 British Columbia will consult with Gitanyow in Timber Supply Review processes that will lead to AAC determinations made pursuant to section 8 of the *Forest Act* within the Traditional Territory.
- 9.11 The Chief Forester will consider the results of joint landscape level planning undertaken by the Parties for incorporation into the Timber Supply Review process.

## **10. Dispute Resolution**

- 10.1 If a dispute arises between British Columbia and Gitanyow regarding the interpretation of a provision of this Agreement, the Parties or their duly appointed representatives will meet as soon as is practicable and will attempt to resolve the dispute.
- 10.2 If the Parties are unable to resolve differences at the appropriate level, the interpretation issue will be raised to more senior levels of British Columbia and Gitanyow.
- 10.3 If the interpretation dispute cannot be resolved by the Parties directly, they may appoint an independent and mutually agreeable mediator to resolve that dispute with 60 days, or such period as agreed upon, or the Parties may choose other appropriate approaches to assist in reaching resolution of the interpretation issue.

## **11. Term**

- 11.1 The term of this Agreement is five (5) years.
- 11.2 This Agreement will take effect on the date on which the last Party has executed it.
- 11.3 This Agreement will terminate on the occurrence of the earliest of any of the following events:
- (a) five (5) years from the date this Agreement is executed;
  - (b) 90 days' notice; or
  - (c) the mutual agreement of the Parties.
- 11.4 Neither Party shall terminate this Agreement on the grounds that the other Party has challenged an Administrative Decision or an Operational Decision by way of legal proceedings.
- 11.5 Prior to the expiry of the 90 days when notice of termination has been given under section 11.3(b), the Parties agree to meet and endeavour to resolve the issue that has given rise to the notice of termination.

## **12. Renewal of Agreement**

- 12.1 Prior to the expiry of this Agreement, if the terms and conditions of this Agreement are being met, British Columbia and Gitanyow will seek the necessary authorities and approvals to enter into negotiations to renew the Agreement, or to conclude a new forestry agreement, consistent with the New Relationship.
- 12.2 Any subsequent forestry agreement between British Columbia and Gitanyow may provide for an opportunity for Gitanyow to acquire a Forest Tenure and/or may provide other economic opportunities as well as other terms and conditions that are agreed to by the Parties.

## **13. Amendment of Agreement**

- 13.1 Any alteration or amendment to the terms and conditions of this Agreement must be in writing and duly executed by the Parties.
- 13.2 Either Party may request the participation of the other Party to review the effectiveness of this Agreement annually and consider amendments to this Agreement.
- 13.3 The Parties agree that new approaches for consultation and accommodation, including benefit and revenue sharing, will be developed

under the New Relationship by British Columbia and the Leadership Council and that Gitanyow wishes to participate in the development of those new approaches. Gitanyow may choose to opt into such approaches as they become available, through amendment of this Agreement or other mutually agreeable methods.

#### **14. Entire Agreement**

- 14.1 This Agreement, including the appendices to this Agreement and any amendment to it, constitute the entire agreement between the Parties with respect to the subject matter of this Agreement.

#### **15. Notice**

- 15.1 Any notice or other communication that is required to be given or that a Party wishes to give to the other Party with respect to this Agreement will be in writing and will be effective if delivered, sent by registered mail, or transmitted by facsimile to the address of the other Party at the following addresses:

**British Columbia**

Deputy Minister  
Minister of Forests  
P.O. Box 9525 STN PROV GOVT  
Victoria B.C. V8W 9C3  
Telephone (250) 387-4809  
Facsimile (250) 387-7065

**Gitanyow**

Gitanyow Hereditary Chiefs  
PO Box 148  
Kitwanga, B.C. V0J 2A0  
Telephone (250) 849 5373  
Facsimile (250) 849 5375

- 15.2 Any notice or other communication will be deemed given on the date it is actually received if it is received before 4:00 p.m. If it is received after 4:00 p.m., it will be deemed given on the next business day.
- 15.3 The address of either Party may be changed by notice in the manner set out in this section of this Agreement.

#### **16. General Provisions**

- 16.1 This Agreement shall be interpreted in a manner consistent with provincial, federal and constitutional law.

- 16.2 This Agreement is not a treaty or a lands claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982* and does not define or amend aboriginal rights or limit any priorities afforded to aboriginal title.
- 16.3 This Agreement will not limit the positions that a Party may take in future negotiations or court actions.
- 16.4 British Columbia acknowledges and enters into this Agreement on the basis that Gitanyow has Aboriginal Interests within their Traditional Territory and further that the specific nature, scope or geographic extent of Gitanyow's Aboriginal Interests have not yet been determined. Broader processes engaged in to bring about reconciliation will result in a common understanding of the nature, scope and geographic extent of Gitanyow's Aboriginal Interests.
- 16.5 Nothing in this Agreement shall be interpreted to authorize any infringement that may occur following the termination of this Agreement, even if that infringement is caused by a decision that was made during the term of this Agreement.
- 16.6 This Agreement does not address or affect any claims by Gitanyow regarding infringement of its Aboriginal Interests arising from past Operational Decisions or Administrative Decisions made prior to the signing of this Agreement other than those listed in section 9.4.
- 16.7 This Agreement and any decisions made or licences issued during the term of this Agreement do not change or affect the positions either Party has, or may have, regarding jurisdiction and authorities.
- 16.8 Any reference to a statute in this Agreement includes all regulations made under that statute and any amendments or replacement of that statute and its regulations.
- 16.9 There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of either Party.
- 16.10 The applicable laws of British Columbia and Canada shall govern this Agreement.
- 16.11 British Columbia encourages Licensees to enter into mutually-beneficial arrangements with Gitanyow.
- 16.12 This Agreement is not intended to limit any obligation of Licensees or other third parties to Gitanyow.
- 16.13 This Agreement may be entered into by each Party signing a separate copy of this Agreement, including a photocopy or faxed copy, and

delivering it to the other Party by fax. Each facsimile will be deemed to be an original for all purposes and all counterparts taken together will be deemed to constitute one document.

- 16.14 This Agreement does not exclude Gitanyow from accessing forestry economic opportunities and benefits which may be available other than those expressly set out in this Agreement.

## **17. Giving Effect to the New Relationship**

- 17.1 Notwithstanding this Agreement, the Parties will, at the request of Gitanyow, enter in discussions, and may negotiate interim agreements in relation to forestry, range and related planning that give effect to the New Relationship and which may include but are not limited to the following components:

- (a) a process for shared decision making about the land and resources;
- (b) new mechanisms for land and resource protection;
- (c) a process for Gitanyow's land use planning at all spatial scales and for reconciliation of Crown and Gitanyow land use plans;
- (d) dispute resolution processes which are mutually determined for resolving conflicts rather than adversarial approaches to resolving conflicts;
- (e) financial capacity for Gitanyow and resourcing for British Columbia to develop and implement new frameworks for shared land and decision making and other components listed above; and
- (f) on priority basis, interim protection for landscapes, watersheds and sites identified by Gitanyow to be reserved from resource development pending the outcome of negotiation of agreements referred to in (a) to (e) above.

- 17.2 The Parties acknowledge that there are broader processes underway with respect to the New Relationship which will benefit and, at times, assist the Parties in negotiating with respect to the issues set out in section 17.1.

**Signed on behalf of:  
Gitanyow**

**Date:** \_\_\_\_\_

\_\_\_\_\_  
Gwass Hlaam (George P. Daniels)

\_\_\_\_\_  
Gamlaxyeltxw (Edgar Good)

\_\_\_\_\_  
Wii Litxw (Morris Derrick)

\_\_\_\_\_  
Luux Hon (Don Russell)

\_\_\_\_\_  
Malii (Glen Williams)

\_\_\_\_\_  
Gwinuu (Godfrey Good)

\_\_\_\_\_  
Haizimsque (Ken Russell)

\_\_\_\_\_  
Wahtaxhayetxw (Aggie Bright)

**Signed on behalf of:  
British Columbia**

**Date:** \_\_\_\_\_

\_\_\_\_\_  
Rich Coleman  
Minister of Forests

\_\_\_\_\_  
Witness

**APPENDIX A**  
**The Traditional Territory**

## **APPENDIX B**

### **Gitanyow Consultation Protocol**

#### **Purpose:**

To establish an agreed upon interim consultation process between the Ministry of Forests and Range (MoFR) and Gitanyow Huwilp with respect to current forestry related activities/decisions in the Traditional Territory.

#### **Operating Principle:**

The ruling of Justice Tysoe that, *Gitanyow have a good prima facie claim of Aboriginal title and a strong prima facie claim of Aboriginal rights to at least part of the areas of the Traditional Territory* will in all cases be used as the starting point for determining the level of consultation required.

#### **Gitanyow Joint Resources Council (GJRC):**

One key individual from each district will sit with two Gitanyow individuals on the Joint Resources Council to coordinate the communication, information sharing and consultation steps outlined below. Council Membership will initially consist of the following individuals:

|                                 |  |
|---------------------------------|--|
| Gitanyow:                       | Glen Williams, Chief Negotiator<br><i>[Gitanyow to provide name]</i>             |
| Skeena Stikine Forest District: | Jane Lloyd-Smith, Operations Manager<br>(Alternate: Bill Camenzind)              |
| Kalum Forest District:          | Lisa Hanna, Operations Manager<br>(Alternate: Scott Hicks, Stewardship Forester) |

The Joint Resources Council will meet on a monthly basis or as necessary to facilitate the consultation process and identify means for improvement (including development of meeting schedule, consultation priorities and any updates to the list of activities and decisions requiring consultation).

#### **Consultation Process:**

##### **Step 1: Information Sharing**

MoFR will:

- (a) provide a notification letter to Gitanyow Hereditary Chiefs Office advising of the decision required and the response period (copied to GJRC members);

- (b) provide all relevant and reasonably available information explaining the location, nature and extent of the proposed activity in formats that will enable Gitanyow to assess the impacts of the proposed activity on Gitanyow's Aboriginal Interests including maps and other data;
- (c) offer meeting(s) with the appropriate personnel to explain information; and
- (d) provide all relevant information requested by Gitanyow which is reasonably required to provide for adequate consultation and accommodation.

The Joint Resources Council may develop suggested information sharing practices to be adopted by Licensees when reviewing Forest Stewardship Plans with Gitanyow.

### **Step 2: Identification of Gitanyow Interests**

The Gitanyow Hereditary Chiefs will provide all reasonably available information, or the location of such information if it is in the public realm, that identifies the potential impact on Gitanyow's Aboriginal Interests that may result from the proposed plan, activity or decision (generally within 60 days of notification).

### **Step 3: Further Consultation**

Either Party may request further consultations to address Gitanyow's Aboriginal Interests identified in Step 2 and potential measures for accommodating those interests.

### **Step 4: Decision**

The statutory decision maker, in making the decision, shall consider all relevant information provided by Gitanyow under this process and, in the context of its decision shall:

- (a) identify the nature and scope of Gitanyow's Aboriginal Interests in issue in relation to the contemplated decision;
- (b) based on Gitanyow's strength of claim as confirmed by the British Columbia Supreme Court, determine whether the contemplated action potentially adversely affects Gitanyow's Aboriginal Interests;
- (c) if the contemplated action potentially adversely affects Gitanyow's Aboriginal Interests, determine how serious the potentially adverse effects are;

- (d) if the contemplated action potentially adversely affects Gitanyow's Aboriginal Interests, determine what accommodation, if any, is appropriate;
- (e) set out the recommendations, if any, provided by the Joint Resources Council or Gitanyow for mitigation of the potentially adverse impacts, that the statutory decision maker took into consideration and the reasons why any recommendations have been rejected; and
- (f) inform Gitanyow in writing of the decision and how Gitanyow's Aboriginal Interests were addressed. More particularly, if the statutory decision maker has determined that the contemplated action potentially adversely affects Gitanyow's Aboriginal Interests, the statutory decision maker shall set out any accommodation, including mitigation measures taken and the reasons for either not accommodating or only partly accommodating Gitanyow's Aboriginal Interests.

**Dispute Resolution:**

The dispute resolution process outlined in section 10 of the Gitanyow Forestry Agreement applies to this Protocol. Gitanyow may also apply for judicial review of any decision.

Where the parties agree, voluntary mediation and/or expert opinion, including traditional Gitanyow experts, may also be explored as a means to resolve a dispute that arises between them prior to the statutory decision maker making his/her decision.

**APPENDIX C**  
**Gitanyow Joint Resources Council Terms of Reference**

**Purpose:**

To implement a joint process that ensures the meaningful, effective and efficient consultation and accommodation of Gitanyow's Aboriginal Interests that are impacted, or have the potential to be impacted, by forest and/or range resource development activities within the Traditional Territory.

The Gitanyow Joint Resources Council (GJRC) will achieve this by:

- (a) facilitating cooperative planning to address Gitanyow's Aboriginal Interests at the appropriate level of Crown land use planning; and
- (b) facilitating consultation processes and providing a forum for identifying issues of strategic importance to Gitanyow early in the forest planning cycle.

**Structure:**

Gitanyow and British Columbia shall each appoint two members:

Gitanyow: One Lax Gibuu Huwilp Representative and one Geneda Huwilp Representative.

MoFR: One Kalum Forest District Representative and one Skeena Stikine Forest District Representative.

Gitanyow and MoFR Staff members may serve in an ex officio capacity to provide support to the GJRC and serve on sub-committees as required.

The GJRC will establish the following sub-committees to review and make recommendations on the following values referenced in the plan developed with the Skeena Stikine Forest District, and potentially with respect to any plan developed with the Kalum Forest District:

- (a) Cultural-Traditional Use;
- (b) Fish and Water;
- (c) Wildlife—Access Management; and
- (d) Cedar.

**Meetings:**

The whole of the GJRC shall meet monthly until the backlog of consultation and accommodation is complete.

Sub-committees shall meet as often as required to fulfil work plan requirements.

**Responsibilities:**

- Oversee implementation of strategic landscape level plans developed jointly by Gitanyow and the MoFR;
- Coordinate the communication, information sharing and consultation processes with respect to MoFR proposed Administrative Decisions and activities that have potential to impact Gitanyow's Aboriginal Interests;
- Provide a forum for identifying issues of strategic importance to Gitanyow prior to the initiation of the formal consultation process;
- Ensure that British Columbia's and Gitanyow's consultation approaches are common within and between internal organizations of the Parties;
- Monitor, analyse and assess the implementation of the consultation provisions of the agreement and identify means for improvement for recommendation to the Parties;
- Ensure Gitanyow participation in planning and processes that establish the Annual Allowable Cut in the Traditional Territory and the setting of terms and conditions for Forest Tenures and licences;
- Provide a forum for identifying Gitanyow's Aboriginal Interests with respect to silviculture activities and reforestation obligations; and
- Recommend which decisions will not require full consultation.

**Dispute Resolution:**

Where the Parties agree, voluntary mediation and/or expert opinion may be explored as a means to resolve a dispute that arises between them.

**Accountability:**

Orderly preparation of minutes, undertakings and work plans.

Prepare a five year plan, updated annually, that details objectives and strategies required to reconcile Gitanyow's Aboriginal Interests with British Columbia's

forest management objectives, including:

- (a) implementation of strategic landscape level plans;
- (b) development of legal objectives at the landscape level to protect Gitanyow interests and provide direction for forest management;
- (c) review of existing and proposed forest and/or range resource development activities and decisions; and
- (d) prepare an annual report that provides information on activities, challenges and accomplishments.

**APPENDIX D**  
**BC Timber Sale's letter of July 5, 2006**