

BC/ALCAN 1997 AGREEMENT

This Agreement is made the 5th day of August, 1997,

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA,
represented by the Minister of Education, Skills and Training
("Province")

OF THE FIRST PART

AND:

ALCAN ALUMINIUM LIMITED ("Alcan")

OF THE SECOND PART.

WHEREAS the Province and Alcan wish to resolve all issues arising in connection with the action commenced by Alcan against the Province in the Supreme Court of British Columbia, Vancouver Registry (Action No. C970386).

NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of the premises and of the covenants and agreements hereinafter set forth (the receipt and sufficiency of which is acknowledged by each of the parties) the parties covenant and agree that:

1. DEFINITIONS AND INTERPRETATION

1.1 Words and phrases defined in Schedule 1 and used in this Agreement have the meanings given in Schedule 1. Words and phrases used in a Schedule and defined therein have, for the purpose of the Schedule, the meanings given therein.

1.2 Rules of interpretation set out in Schedule 1 apply to this Agreement.

1.3 The following Schedules are attached to this Agreement:

- 1 Definitions and Interpretation
- 2A Replacement Electricity Supply Agreement
- 2B LTEPA Memorandum
- 3A 1997 Amendment
- 3B Final Water Licence
- 3C Amended Permit
- 4 Nechako Environmental Enhancement Fund
- 5 Northern Development Fund
- 6 Mutual Release

1.4 Schedule 1 -- Definitions and Interpretation, Schedule 4 -- Nechako Environmental Enhancement Fund and Schedule 5 -- Northern Development Fund form part hereof and the remaining Schedules are attached hereto for reference purposes and are being entered into pursuant hereto.

2. POWER AGREEMENTS

2.1 Replacement Electricity Supply Agreement

Pursuant to and concurrently with the execution and delivery of this Agreement, the Province and Alcan are entering into the Replacement Electricity Supply Agreement to provide Alcan, on the terms and conditions therein set out, with a source of electric power to replace in part the electric power Alcan would have generated from its Kemano Completion Project if Alcan had completed that project.

2.2 LTEPA and LTEPA Memorandum

The Province for itself, and on behalf of BC Hydro, acknowledges that BC Hydro will abide, and Alcan acknowledges that it will abide, by the LTEPA, including the LTEPA Memorandum. Pursuant to and concurrently with the execution and delivery of this Agreement, BC Hydro and Alcan are entering into the LTEPA Memorandum.

3. 1997 AMENDMENT, FINAL WATER LICENCE AND AMENDED PERMIT

Pursuant to and concurrently with the execution and delivery of this Agreement, the Province and Alcan are entering into the 1997 Amendment and the Province is issuing to Alcan the Final Water Licence and Amended Permit.

4. NECHAKO ENVIRONMENTAL ENHANCEMENT FUND

The parties agree to the arrangements relating to the Nechako Environmental Enhancement Fund described in Schedule 4.

5. NORTHERN DEVELOPMENT FUND

The parties agree to the arrangements relating to the Northern Development Fund described in Schedule 5.

6. KCP ACTION

6.1 The consideration given by the Province under this Agreement, the Concurrent Agreements, the Final Water Licence and the Amended Permit is, inter alia, for the release of the claim for loss by Alcan in Action No. C970386 in accordance with this Agreement.

6.2 Concurrently with the execution and delivery of this Agreement, the parties are executing and delivering the Mutual Release. In section 1 thereof, the Mutual Release contains a condition that, if fulfilled, renders the Mutual Release void ab initio.

6.3 The parties shall forthwith take appropriate steps to place the Action in abeyance. Alcan shall have the right to continue the Action only if the Mutual Release is rendered void ab initio in accordance with section 1 thereof, and, if it is not so rendered void ab initio, the Province shall have the right to have the Action dismissed by consent without costs to either party and Alcan hereby consents to such dismissal.

6.4 The parties agree that they will co-operate with each other and take all steps that may be required to ensure that either Alcan is able to continue with the Action if it were to become entitled to do so or the Action is dismissed by consent if Alcan were not entitled to do so, as the case may be.

6.5 This Agreement provides for the settlement of the Action, but nothing in this Agreement constitutes, or may be relied upon by any party as, an admission of any liability, fact or legal principle relative to the Action on the part of the Province or of Alcan.

7. FURTHER ASSURANCES

7.1 General

Each party will do all things necessary, within its lawful capacity, directly and indirectly, through its subsidiaries, agents and representatives, to validate, make effective and give full force and effect to this Agreement, and to implement the transactions contemplated by this Agreement. The foregoing does not require the Province to do anything that would have the effect of fettering the exercise of any statutory power.

7.2 Dispute Resolution

If at any time before January 1, 2012:

a) the Province, its agents, or any person acting under the authority of the Province or its agents exercise any executive power or authority, whether or not constituting a breach under the agreements and documents described in (i) to (iv) below, which abrogates in whole or in part:

- (1) the 1950 Agreement, as amended;
- (2) the 1987 Settlement Agreement;
- (3) the LTEPA, or
- (4) this Agreement, any of the Concurrent Agreements, the Final Water Licence or the Amended Permit,

excluding, however, for greater certainty, the exercise in good faith by the Province, its agents or any person acting under the authority of the Province or its agents, of any executive power or authority regarding any approval, including without limitation the granting or failure to grant any regulatory approval, licence or permit, required for the New Smelter; or

b) an action or proceeding is brought by a third party not assisted or supported, directly or indirectly, by Alcan or is brought by a regulatory or administrative body on its own initiative that results in a court or a regulatory or administrative body making a final order, in respect of which all rights of review or appeal have been exercised or exhausted or the time permitted therefor has expired, that the Province or BC Hydro as applicable, lacked the authority to enter into or to carry out their respective obligations under this Agreement, the Concurrent Agreements, the Final Water Licence or the Amended Permit, provided that Alcan vigorously defends any such action or proceeding to the extent that it is lawfully entitled to do so,

then, at the request of Alcan, Alcan and the Province shall negotiate promptly and in good faith and endeavour to agree upon actions that may lawfully be taken by the Province, or upon adjustments (the "Agreement Adjustments") to this Agreement, the Concurrent Agreements (other than the Mutual Release), the Final Water Licence or the Amended Permit, or upon another basis of resolution as the parties may agree, that are necessary to restore substantially

the benefits thereunder that would have accrued to Alcan if the action described in (a) above had not been taken or the order described in (b) above had not been made.

If the parties are unable to agree upon appropriate lawful actions by the Province, adjustments or other resolution within 90 days after Alcan's request to do so, then the settlement of the terms and conditions of the Agreement Adjustments shall be referred to and finally resolved by arbitration administered by the British Columbia International Commercial Arbitration Centre pursuant to its Rules.

If at the time that arbitration is commenced under this section the British Columbia International Commercial Arbitration Centre or its successor, does not exist, or its Rules do not provide for an administered arbitration, then that dispute shall be referred to and finally resolved by arbitration under the Commercial Arbitration Act, as revised from time to time. The number of arbitrators is 3 and the place of arbitration is Vancouver, British Columbia.

Notwithstanding the foregoing provisions of this section 7.2, **nothing in this section prevents or restricts in any manner whatsoever a party commencing and continuing an action or proceeding against the other party for or in respect of any breach, or failure to comply with, any provision of any of the agreements** and documents described in subparagraphs (a)(i) to (iv) above, except only that, in the case of the exercise of any power or authority described in subparagraph (a) above that may constitute a breach of, or failure to comply with, any agreement or document described in subparagraphs (a)(i) to (iv) above, Alcan must elect either to exercise its rights under that agreement or document or to exercise its rights under this section 7.2.

8. STATUS OF LEGAL RIGHTS AND AGREEMENTS

8.1 Confirmation of Agreements

The Province for itself, and as to the LTEPA on behalf of BC Hydro, and Alcan confirm that the 1950 Agreement, as amended, the 1987 Settlement Agreement and the LTEPA are in full force and effect in accordance with their respective terms and conditions.

8.2 Nanika Replacement

Alcan agrees that any rights which Alcan may have been granted pursuant to the letter of September 2, 1987 from the Honourable Jack Davis, the then Minister of Energy, Mines and Petroleum Resources, on behalf of the Province to Alcan and the letter of September 3, 1987 from Alcan to the Province in response with reference to a replacement of the rights Alcan gave up under the 1987 Amendment to use water from the Nanika River **are extinguished** and of no further force or effect.

9. ANNOUNCEMENT OF NEW SMELTER/RESTART OF IDLE CAPACITY

Upon execution and delivery of this Agreement, Alcan shall announce publicly its intention to use all reasonable efforts, subject to market and economic conditions and force majeure, to construct, itself or in association with others, the New Smelter at Kitimat, B.C., and its decision to return any idle capacity at its existing smelter at Kitimat, B.C. to full capacity on a priority basis relative to other idle aluminum smelting capacity controlled by Alcan, **and, in any event, not later than January 1, 1998.**

10. GENERAL

10.1 Governing Laws

This Agreement will be governed by and construed in accordance with the applicable laws of Canada and of the Province of British Columbia.

10.2 Entire Agreement

This Agreement, the Concurrent Agreements, the Final Water Licence and the Amended Permit are the entire agreement between the parties relative to the subject matter hereof.

10.3 Continuation of Agreement

Except as herein provided, this Agreement will continue in full force and effect for the duration of the Final Water Licence, and of all further licences, permits and authorities issued or granted to Alcan or its successors or permitted assigns.

10.4 Amendment

This Agreement may be amended only by an instrument in writing signed by the parties or their successors or permitted assigns.

10.5 Notices

All notices, requests and other communications required or permitted to be given under this Agreement must be in writing and delivered by hand as follows:

To Alcan: Alcan Aluminium Limited 1188 Sherbrooke Street West Montreal, Quebec, H3A 3G2 Attention: Chief Legal Officer

To the Province: Deputy Attorney General 1001 Douglas Street Victoria, British Columbia V8V 1X4

or to such other address as may be given by notice as aforesaid by the particular party, and will be deemed to have been given on the date of delivery.

10.6 Non-Waiver

No waiver of any provision of this Agreement is enforceable unless in writing and no such waiver will be deemed to, or will, constitute a waiver of any other provision of this Agreement, nor will any such waiver constitute a continuing waiver, unless otherwise expressly provided therein.

10.7 Jurisdiction

Subject to section 7.2 hereof, the courts of the Province of British Columbia, and courts to which appeals therefrom may be taken, have exclusive jurisdiction in respect of any action, suit or proceeding arising out of or relating to this Agreement, and the parties irrevocably and unconditionally attorn to the jurisdiction of those courts in respect of any such action, suit or proceeding. The foregoing does not affect any agreement to arbitrate contained in any Concurrent Agreement.

10.8 Severability

If any part of this Agreement is declared or held invalid for any reason, that invalidity does not affect the validity of the remainder which continues in full force and effect and must be construed as if this Agreement had been executed without the invalid

portion and it is hereby declared the intention of the parties that this Agreement would have been executed without reference to any portion which may, for any reason, be hereafter declared or held invalid.

10.9 Currency

All amounts of money stated herein are expressed in Canadian dollars unless otherwise stated.

10.10 Time

Time is of the essence of this Agreement.

10.11 Enurement/Assignment

This Agreement is binding upon and enures to the benefit of the Province and its permitted assigns and is binding upon and enures to the benefit of Alcan and its successors and permitted assigns. This Agreement may not be assigned by either party without the prior written consent of the other party, which consent may be arbitrarily withheld. The foregoing does not apply to the assignment of any Concurrent Agreement permitted in accordance with its terms.

IN WITNESS WHEREOF this Agreement has been executed and delivered by the parties on the day and year first above written.

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA,
as represented by the Premier of British Columbia and by the Minister of Education,
Skills and Training

Per:

(signed) Glen Clark Premier of British Columbia

Per:

(signed) Paul Ramsey Minister of Education, Skills and Training and Minister
responsible for the Industrial Development Act

ALCAN ALUMINIUM LIMITED

Per:

(signed) Jacques Bougie, President and Chief Executive Officer

Witness: (signed)

Name Lorne D. Peterson

Address Bowen Island, British Columbia

SCHEDULE 1
DEFINITIONS AND INTERPRETATION
[Reference Section 1]

DEFINITIONS

"1950 AGREEMENT"

means the agreement made December 29, 1950 between the Province and Alcan and includes:

- (a) Conditional Water Licence No. 19847 issued December 29, 1950 as amended by Amended Conditional Water Licence No. 19847 issued December 29, 1987;
- (b) Permit Authorizing the Occupation of Crown Land No. 3449 issued December 29, 1950 as amended by Amended Permit Authorizing the Occupation of Crown Land No. 3449 issued December 29, 1987; and
- (c) any plans, descriptions and other documents that, under the terms of the agreement as amended, are made part of it;

"1950 AGREEMENT, AS AMENDED"

means the 1950 Agreement as amended by the 1987 Amendment and the 1997 Amendment;

"1987 AMENDMENT"

means the agreement authorized by Order in Council 2572/87 and made December 29, 1987 between the Province and Alcan;

"1987 SETTLEMENT AGREEMENT"

means the agreement entered into between Alcan, Her Majesty the Queen in Right of Canada, and the Province, dated September 14, 1987;

"1997 AMENDMENT"

means the agreement authorized by Order in Council No. 0977 and made August 5, 1997 between the Province and Alcan amending the 1950 Agreement, as amended by the 1987 Amendment, a copy of which is attached as Schedule 3A;

"ACTION"

means the action commenced by Alcan against the Province in the Supreme Court of British Columbia, Vancouver Registry (Action No. C970386);

"ALCAN"

means Alcan Aluminium Limited, a Canadian corporation (formerly named "Aluminum Company of Canada, Limited"), and includes the successors and permitted assigns of Alcan Aluminium Limited and any person claiming through it or any of them;

"AMENDED PERMIT"

means the Amended Permit issued to Alcan pursuant to the 1950 Agreement, as amended, a copy of which is attached as Schedule 3C;

"BC HYDRO"

means British Columbia Hydro and Power Authority;

"CONCURRENT AGREEMENTS"

means the Replacement Electricity Supply Agreement, the 1997 Amendment, the LTEPA Memorandum, and the Mutual Release;

"FINAL WATER LICENCE"

means the Final Water Licence issued pursuant to the 1950 Agreement, as amended, a copy of which is attached as Schedule 3B;

"KEMANO COMPLETION PROJECT"

means the Works and proposed Works comprised in the hydroelectric project with that name, including:

- (a) the plans, descriptions and other documents pertaining to components of that hydroelectric project that are filed with the Province by or on behalf of Alcan; and
- (b) the Works and proposed Works comprised in the Kenney Dam Release Facility (as defined in the 1987 Settlement Agreement);

"LTEPA"

means the Long Term Electricity Purchase Agreement between Alcan and BC Hydro dated February 27, 1990;

"LTEPA MEMORANDUM"

means the memorandum of even date herewith entered into between BC Hydro and Alcan under the LTEPA and pursuant to section 2.2 of this Agreement, a copy of which is attached as Schedule 2B;

"MUTUAL RELEASE"

means the mutual release of even date herewith, a copy of which is attached as Schedule 6;

"NECHAKO RIVER"

means the Nechako River in British Columbia and includes all streams and lakes tributary thereto;

"NEW SMELTER"

means a new aluminium smelting facility of approximately 225,000 tonnes/annum to be announced by Alcan pursuant to section 9 of the Agreement and as further defined in the Replacement Electricity Supply Agreement;

"REPLACEMENT ELECTRICITY SUPPLY AGREEMENT"

means the agreement of even date herewith entered into between the Province and Alcan pursuant to section 2.1 of this Agreement, a copy of which is attached as Schedule 2A;

"SCHEDULE" means a schedule to this Agreement;

"WATER RELEASE FACILITY" means a water release facility at or near the Kenney Dam that may be proposed for development pursuant to Schedule 4.

INTERPRETATION

Grammatical variations of any defined terms have similar meanings; words importing the singular number include the plural and vice versa where the context requires; the division of this Agreement into separate sections, subsections and Schedules, and the

insertion of headings, are for convenience of reference only and do not affect the interpretation of this Agreement. References to a section within the agreement, or within a Schedule, mean a section of the agreement or the Schedule, as the case may be, unless otherwise indicated.