

THE AGREEMENT BETWEEN

**THE FOX LAKE FIRST NATION as represented
by Chief and Council (“Fox Lake”)**

and

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF
MANITOBA as represented by the Minister of Aboriginal and Northern
Affairs (“Manitoba”)**

and

THE MANITOBA HYDRO-ELECTRIC BOARD (“Hydro”)

THIS AGREEMENT made as of this day of , 2004

BETWEEN:

**THE FOX LAKE FIRST NATION as represented
by Chief and Council (“Fox Lake”)**

and

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF MANITOBA as
represented by the Minister of Aboriginal and Northern Affairs (“Manitoba”)
and**

THE MANITOBA HYDRO-ELECTRIC BOARD (“Hydro”)

WHEREAS:

- A. **Manitoba** administers and controls provincial lands, waters and water powers as provided in the Manitoba Natural Resources Transfer Agreement, which is part of the *Constitution Act, 1930*. Provincial water powers are managed and controlled by the Minister of Conservation of Manitoba under *The Water Power Act* (Manitoba);
- B. **Hydro** is a Crown Corporation established in 1949 and continued by *The Manitoba Hydro Act* (Manitoba), for the purpose, among others, of providing for the continuance of a supply of power adequate for the needs of the Province of Manitoba, and may engage in and promote the development, generation, transmission, distribution, supply and end-use of power;
- C. Pursuant to licenses issued by **Manitoba** to **Hydro** under *The Water Power Act* (Manitoba), **Hydro** developed and operates an electrical power system including the existing generation, transmission and distribution facilities in the lower Nelson River area, for the ongoing benefit of the people of Manitoba;
- D. The Fox Lake First Nation, a “band” as defined in the *Indian Act* (Canada), received its band status in 1947. The First Nation is represented by the **Chief and Council** who derive their authority and powers through the custom of **Fox Lake** and the *Indian Act* (Canada), and who are responsible for the administration of all band affairs;
- E. **Fox Lake** has traditionally used the areas shown as the “Intensive Land Use Area” and the “Seasonal Land Use Area” on the map attached hereto as Schedule 1.1;

- F. The **Project** (as defined in this **Agreement**) caused adverse effects upon the natural environment in the **Traditional Territory** and upon the members of **Fox Lake**;
- G. **Fox Lake** described social and economic impacts it attributes to the **Project** in *Forgotten Nation in the Shadow of the Dams, Grievance Statement, 1997*;
- H. **Manitoba's** community planning efforts, to accommodate the development of water power on the Nelson River preceding and during the modernization and development of Gillam, did not adequately address land use and community issues of **Fox Lake** and **Fox Lake Citizens**;
- I. **Manitoba** and **Hydro** recognize that it is appropriate for actions to be taken to resolve the issues identified above, and to this end, **Fox Lake, Manitoba** and **Hydro** have participated in negotiations to resolve those issues;
- J. Those negotiations resulted in an **Agreement in Principle** which sets out principles and understandings to guide and govern the negotiation of a settlement agreement;
- K. As a result of these negotiations among **Fox Lake, Manitoba** and **Hydro**, pursuant to the **Agreement in Principle**, the Parties are entering into this **Agreement**.

NOW THEREFORE, the Parties agree as follows:

ARTICLE 1 - AGREEMENT AND INTERPRETATION

1.1 AGREEMENT

1.1.1 Contents. This **Agreement** consists of the following Articles 1 through 11, and includes the following schedules and appendices which are attached to this **Agreement**:

Article 1	Agreement and Interpretation
Article 2	Payments and Costs
Article 3	Water Regime and Project Operations
Article 4	Water Regime Downstream of Limestone
Article 5	Lands
Article 6	Resource Management
Article 7	Citizens' Claims
Article 8	Future Development and Decommissioning
Article 9	Matters Addressed
Article 10	Approval, Signing and Implementation
Article 11	General Provisions
Schedule 1.1	Map of Traditional Territory
Schedule 3.1	Fully Compensated Zone and Pre-determined Compensation Zone - Kettle Forebay
Schedule 3.2	Fully Compensated Zone and Pre-determined Compensation Zone - Long Spruce Forebay
Schedule 3.3	Fully Compensated Zone and Pre-determined Compensation Zone - Limestone Forebay
Schedule 3.4	Fully Compensated Zone - Limestone Tailrace
Schedule 3.5	Sample Calculation of Pre-determined Compensation
Schedule 5.1	Survey Instructions
Schedule 5.2	Form of Project Easement Agreement
Schedule 5.3	Form of Land Use Permit
Schedule 5.4	Map of Kettle River Site
Schedule 5.5	Map of Angling Lake Site
Schedule 5.6	Description and Map of Kettle Crescent Site
Schedule 5.7	Form of Manitoba Order in Council (Transfer of Interests in Kettle Crescent Site)
Schedule 5.8	Description and Map of Sundance Site
Schedule 5.9	Map of Limestone Construction Camp
Schedule 5.10	Location of Gillam Trailer Court
Schedule 5.11	Consultant Terms of Reference
Schedule 5.12	Form of Letter from Minister
Schedule 6.1	Map of Fox Lake Resource Management Area
Schedule 7.1	Undertaking of Claims Officer

Schedule 7.2	Claimant Acceptance and Release for Compensation for Citizen's Claim
Schedule 9.1	Certificate of Independent Advice
Schedule 10.1	Ballot Question
Appendix "A"	Indenture

1.2 INTERPRETATION

1.2.1 Definitions. In this **Agreement**, the following words and phrases, when capitalized and printed in bold type, whether in the plural, the singular or the possessive, have the following meanings:

- (a) **Account** means the **Per Capita Account**, the **Community Development Account** or the **Claims Account** established pursuant to Articles 10.8, 13 and 14 respectively of the **Indenture**;
- (b) **Adult Fox Lake Citizen** means a **Fox Lake Citizen** who, at the relevant time, is eighteen (18) years of age or older;
- (c) **Adverse Effects** means the direct or indirect negative consequences of the **Project** or of any **Future Development**, or the operation thereof by **Hydro**, which consequences include, without limitation:
 - (i) impacts on, or changes to, the physical, chemical or biological characteristics of the environment;
 - (ii) risks or injuries to the health, safety, well-being, comfort or enjoyment of life by **Fox Lake** or **Fox Lake Citizens**; and
 - (iii) impacts on interests in and the exercise of rights in relation to lands, pursuits, activities, opportunities, lifestyles and assets of **Fox Lake** or **Fox Lake Citizens**;
- (d) **Agreement** means this agreement and all schedules and appendices listed in subsection 1.1.1;
- (e) **Agreement in Principle** means the agreement in principle among **Fox Lake**, **Hydro** and **Manitoba** dated March 20, 2001;
- (f) **Alternate Claims Officer** means the alternate claims officer appointed pursuant to subsection 7.2.1;

- (g) **Angling Lake Site** means the parcel of Crown (Manitoba) land that is depicted on the map attached as Schedule 5.5 and that is the subject of section 5.6;
- (h) **ASL** means above sea level;
- (i) **Auditor** means the auditor appointed under Article 11.1 of the **Indenture**;
- (j) **Canada** means Her Majesty the Queen in Right of Canada;
- (k) **Capital Works** means any permanent structure or works erected, constructed, acquired or developed using **Financial Proceeds**;
- (l) **Chief** means the Chief of **Fox Lake** in office at the relevant time;
- (m) **Chief and Council** means the Council of **Fox Lake** in office at the relevant time;
- (n) **Citizen's Claim** means a claim of a **Claimant** for loss or damage arising from **Adverse Effects** of the **Project**;
- (o) **Claimant** means a **Fox Lake Citizen** who advances a **Citizen's Claim** under Article 7;
- (p) **Claims Account** means the **Account** established under Article 14 of the **Indenture**;
- (q) **Claims Officer** means the claims officer appointed pursuant to subsection 7.2.1;
- (r) **Community Development Account** means the **Account** established under Article 13 of the **Indenture**;
- (s) **Community Organization** means any of:
 - (i) a group or unincorporated association whose membership is wholly comprised of **Fox Lake Citizens**,
 - (ii) an unincorporated association established by **Chief and Council**,

- (iii) a corporation or cooperative, with share capital, wholly owned legally or beneficially, and controlled by **Fox Lake** or **Fox Lake Citizens**, or
- (iv) a corporation or cooperative, without share capital, the membership of which consists wholly of **Fox Lake** or **Fox Lake Citizens**;

whether created before or after the execution of the **Indenture**;

- (t) **Consumer Price Index** means the publication by Statistics Canada of statistical data related to changes in the price of goods and services (All-Items) in the Province of Manitoba;
- (u) **Council Resolution** means a lawful resolution of **Chief and Council**;
- (v) **Daily Average Water Levels** means the arithmetic average of readings of water levels recorded in a day at each of the **Gauges** and where relevant adjusted to eliminate the effect of wind, or, a valid representative substitute for such hourly readings, if such hourly readings are unavailable or demonstrably in error;
- (w) **Date of this Agreement** means the date this **Agreement** has been signed by the last **Party**;
- (x) **Development Plan** means a development plan as defined in *The Planning Act* (Manitoba) or any similar plan or instrument adopted under successor legislation;
- (y) **Deviation** means any event where **Daily Average Water Levels** fall outside of the **Fully Compensated Zone**;
- (z) **Draw-down Event** means any **Deviation** resulting from **Hydro** intentionally drawing down the water on any of the Kettle, Long Spruce or Limestone Forebays to a level below the **Pre-determined Compensation Zone**:
 - (i) for emergency situations or for **Hydro** maintenance, inspection and other purposes, and
 - (ii) for a duration of no more than four (4) weeks;

- (aa) **Draw-down Event Compensation** means the lump sum payment by **Hydro** to **Fox Lake** under subsection 3.7.5 of the **Agreement** as compensation for the effects of a **Draw-down Event**.
- (bb) **Easement Line** means a line established in accordance with section 5.3 demarcating the upper boundary of the land that is to be subject to a **Project Easement**;
- (cc) **Financial Proceeds** means the amounts paid pursuant to section 2.2 by **Hydro** and **Manitoba** to **Fox Lake**;
- (dd) **Fish** means fish as defined in the *Fisheries Act* (Canada);
- (ee) **Fox Lake** means Fox Lake First Nation, a “band” within the meaning of the *Indian Act* (Canada), which for all purposes of this **Agreement** is represented by **Chief and Council**;
- (ff) **Fox Lake Citizen** means a person who is a member of **Fox Lake** pursuant to the *Indian Act* (Canada);
- (gg) **Fox Lake Resource Management Area** means the area established under subsection 6.2.1, which is depicted on the map attached as Schedule 6.1, subject to amendments made in accordance with subsection 6.2.2;
- (hh) **Fox Lake Resource Management Board** means the Fox Lake Resource Management Board established under subsection 6.3.1;
- (ii) **Fully Compensated Zone** means the zones described in subsection 3.6.1 and shown graphically in Schedules 3.1 to 3.4;
- (jj) **Funds Available** in a fiscal year of the **Trust** means:
 - (i) in the fiscal year 2004, the amount identified in Article 13.1 of the **Indenture**, and
 - (ii) in any subsequent fiscal year:
 - (A) the **Income** for the year, plus
 - (B) the amount by which the **Net Value of the Assets** at the close of the prior fiscal year, excluding the **Claims Account**, the **Per Capita Account** and the amount of any outstanding loans

made to **Fox Lake** or **Community Organizations** pursuant to Article 8.9 of the **Indenture**, plus any **Financial Proceeds** received in the current fiscal year, exceeds the **Minimum Capital Amount**;

(kk) **Future Development** means:

- (i) any construction or development of any physical works related to hydro-electric development on the Churchill, Nelson, Rat and Burntwood River Systems, including the Lake Winnipeg Regulation System north of the 53rd parallel, that were not physically developed and constructed by or on behalf of **Hydro** as of the **Date of this Agreement**, and thereafter any reconstruction or redevelopment of those physical works, including without limitation to the foregoing, in both cases any construction camp or town site established to support such construction or development or reconstruction or redevelopment of such physical works, and
- (ii) any major redevelopment or reconstruction of the **Project**, including without limitation to the foregoing, any construction camp or town site established to support such reconstruction or redevelopment of the **Project**,

which physical works, or which construction, development, reconstruction or redevelopment, have a reasonable likelihood of having a material and continuing physical, chemical or biological impact upon a water body within the **Traditional Territory**;

(ll) **Gauge** means any one of the **Kettle Forebay Gauge**, the **Long Spruce Forebay Gauge**, the **Limestone Forebay Gauge** or the **Limestone Tailrace Gauge**;

(mm) **Gillam Trailer Court** means the area depicted on the map of the Town of Gillam which is attached as Schedule 5.10 and which is the subject of section 5.10;

(nn) **Hydro** means The Manitoba Hydro-Electric Board;

(oo) **Income** or **Income of the Trust** means income for a fiscal year as calculated in accordance with Section 3 of the *Income Tax Act* (Canada) without reference to subsections 75(2) or 104(6) of the *Income Tax Act* (Canada) except that in making such calculation there shall be included 100% of any capital gains and there shall be excluded 100% of any capital losses and any gross up of any dividend;

- (pp) **Indenture** means the trust agreement, a copy of which is attached as Appendix "A";
- (qq) **Kettle Crescent Site** means the parcel of Crown (Canada) land that is described and depicted in Schedule 5.6 and that is the subject of section 5.7;
- (rr) **Kettle Forebay Gauge** means the gauge **Hydro** uses to measure the water level of the Kettle Generating Station forebay or such replacement gauge as may be required;
- (ss) **Kettle River Site** means the parcel of Crown (Manitoba) land that is depicted on the map attached as Schedule 5.4 and that is the subject of section 5.5;
- (tt) **Land Corporation** means a legal entity to be established by **Fox Lake** for the purpose of holding interests in land under this **Agreement**;
- (uu) **Land Use Plan** means a plan developed by the **Fox Lake Resource Management Board** in accordance with subsection 6.4.5;
- (vv) **Limestone Construction Camp** means the parcel of Crown (Manitoba) land that is depicted on the map attached as Schedule 5.9 and that is the subject of section 5.9;
- (ww) **Limestone Forebay Gauge** means the gauge **Hydro** uses to measure the water level of the Limestone Generating Station forebay or such replacement gauge as may be required;
- (xx) **Limestone Tailrace Gauge** means the gauge **Hydro** uses to measure the water level of the Limestone Generating Station tailrace or such replacement gauge as may be required;
- (yy) **Long Spruce Forebay Gauge** means the gauge **Hydro** uses to measure the water level of the Long Spruce Generating Station forebay or such replacement gauge as may be required;
- (zz) **Majority Vote** means a vote of **Adult Fox Lake Citizens**, at a **Meeting of Fox Lake Citizens**, where the majority of those **Adult Fox Lake Citizens** in attendance and voting approve the matter voted upon. The vote will be by a show of hands, unless a secret ballot is requested by a minimum of twenty (20) of such **Adult Fox Lake Citizens**;

- (aaa) **Manitoba** means Her Majesty the Queen in Right of Manitoba;
- (bbb) **Meeting of Fox Lake Citizens** means a meeting of **Fox Lake Citizens**, notice of which is provided for and described in Articles 8.4 and 9 of the **Indenture**;
- (ccc) **Minimum Capital Amount** at any time prior to April 1, 2019 shall be nil. The **Minimum Capital Amount** at any time after April 1, 2019 shall be nine million (\$9,000,000.00) dollars less any amounts paid to **Manitoba** or **Hydro** pursuant to section 3.9 of the **Indenture** from sources other than the **Claims Account**;
- (ddd) **Multi-Year Program** means a proposal, plan or initiative, including a proposal, plan or initiative related to a **Capital Work**, for which specific expenditures from **Funds Available** are approved for more than one (1) but no more than three (3) fiscal years;
- (eee) **Net Value of the Assets** means the amount at any specific date by which the value of all of the assets of the **Trust**, including the value of any **Financial Proceeds** held for the use and benefit of **Fox Lake**, exceeds all liabilities of the **Trust**. All assets will be valued at the lower of cost or fair market value;
- (fff) **Municipality** means a city, town, village, rural municipality, local government district or other like municipal organization and includes a community under *The Northern Affairs Act* (Manitoba);
- (ggg) **Operation and Maintenance** means works, administration, management and activities reasonably necessary for the ongoing operation, maintenance, repair and replacement of **Capital Works**;
- (hhh) **Parties** means **Manitoba, Fox Lake, and Hydro**;
- (iii) **Party** means any one of **Manitoba, Fox Lake or Hydro**;
- (jjj) **Per Capita Account** means the account established pursuant to Article 10.8 of the **Indenture**;
- (kkk) **Personal Property** means boats, boat motors, and other equipment reasonably required by **Fox Lake Citizens** to practice traditional pursuits;
- (lll) **Pre-determined Compensation** means the payment to be made by **Hydro** to **Fox Lake** under subsection 3.7.2 as compensation when a

Deviation occurs within a **Pre-determined Compensation Zone**, but does not include **Draw-down Event Compensation**.

(mmm) **Pre-determined Compensation Zone** means the zones described in subsection 3.7.1 and shown graphically in Schedules 3.1 to 3.3;

(nnn) **Process Officer** means the person appointed by **Chief and Council** to oversee the conduct of the **Vote**;

(ooo) **Project** means all those physical works related to hydro-electric development on the Churchill, Nelson, Rat and Burntwood River Systems and the development of the Lake Winnipeg Regulation System north of the 53rd parallel, to the extent such works have been physically developed and constructed by or on behalf of **Hydro** to the **Date of this Agreement**; and, without limiting the generality of the foregoing, includes all dams, dikes, channels, control structures, excavations, generating stations, roads, transmission lines and other works forming part of, or related to, all aspects of such hydro-electric development including:

- Lake Winnipeg Regulation,
- Churchill River Diversion, including without limitation, the Notigi and Missi control structures,
- Grand Rapids Generating Station,
- Laurie River Generating Station,
- Kelsey Generating Station,
- Kettle Generating Station,
- Long Spruce Generating Station,
- Limestone Generating Station, including the **Sundance Site**,

and the access road and other physical construction with respect to the Conawapa Generating Station to the extent that such works have been physically developed and constructed by or on behalf of **Hydro** to the **Date of this Agreement**;

(ppp) **Project Easement** means the right and privilege to regulate the flow of water on or over, to inundate and store water on or over, and to affect from time to time certain lands in accordance with a **Project Easement Agreement**;

(qqq) **Project Easement Agreement** means an agreement in the form of Schedule 5.2;

(rrr) **Reserve** has the same meaning as in the *Indian Act* (Canada), but is restricted to those reserves set apart for the use and benefit of **Fox Lake**;

- (sss) **Resources** includes **Fish, Wildlife**, forests, plants, land and water in the **Fox Lake Resource Management Area**;
- (ttt) **Resource Management Plan** means a plan developed by the **Fox Lake Resource Management Board** in accordance with subsection 6.4.2;
- (uuu) **Split Lake Resource Management Area** means the area established as the Split Lake Resource management Area pursuant to the Agreement entered into in June 1992 between **Canada, Manitoba, Hydro** and Split Lake Cree First Nation;
- (vvv) **Sub-Account** means the Manitoba Community Development Sub-Account, the Housing Community Development Sub-Account, the Hydro Community Development Sub-Account, or the Heritage Capital Sub-Account established under Article 13 of the **Indenture**;
- (www) **Sundance Site** means the parcel of Crown (Manitoba) land that is described and depicted in Schedule 5.8 and that is the subject of section 5.8;
- (xxx) **Traditional Territory** means the areas traditionally used by **Fox Lake**, as shown on the map attached as Schedule 1.1;
- (yyy) **Trust** means the Nikanihk Itapowin (Future Vision) Trust established and settled by **Fox Lake** pursuant to the **Indenture**;
- (zzz) **Trust Funds** means all property of every nature and kind held in **Trust** by the **Trustees**;
- (aaaa) **Trustees** means the individual **Fox Lake** Trustees signatory to the **Indenture**, and their successors in office, selected in accordance with Article 5 of the **Indenture**;
- (bbbb) **Vote** means the vote held to approve this **Agreement** in accordance with section 10.2;
- (cccc) **Voters List** means the list of **Fox Lake Citizens** eligible to vote, prepared by the **Process Officer** in accordance with subsection 10.2.8;
- (dddd) **Wildlife** means wildlife as defined in *The Wildlife Act* (Manitoba); and
- (eeee) **York Factory Resource Management Area** means the area established as the York Factory Resource Management Area pursuant

to the Agreement entered into in January 1996 between **Canada, Manitoba, Hydro** and York Factory First Nation.

1.2.2 Use of Definitions. Except for use in this **Agreement**, these definitions are without prejudice to and are not binding upon any of the **Parties**.

1.2.3 Statutory References. The following Acts are referred to in this **Agreement** and, unless otherwise specifically provided, when described by the title set out in this subsection, the Act will be interpreted to mean the Act as cited in this subsection:

(a) Acts of the Parliament of Canada:

- (i) *Fisheries Act*, R.S.C. 1985, c. F-14,
- (ii) *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supplement);
- (iii) *Indian Act*, R.S.C. 1985, c. I-5,

(b) Acts of the Legislature of Manitoba:

- (i) *The Arbitration Act*, C.C.S.M. c. A120,
- (ii) *The Crown Lands Act*, C.C.S.M. c. C340,
- (iii) *The Freedom of Information and Protection of Privacy Act*, C.C.S.M. c. F175,
- (iv) *The Manitoba Hydro Act*, C.C.S.M. c. H190,
- (v) *The Mines and Minerals Act*, C.C.S.M. c. M162,
- (vi) *The Northern Affairs Act*, C.C.S.M. c. N100,
- (vii) *The Planning Act*, C.C.S.M. c. P80,
- (viii) *The Real Property Act*, C.C.S.M. c. R30,
- (ix) *The Trustee Act*, C.C.S.M. c. T160,
- (x) *The Water Power Act*, C.C.S.M. c. W60,

- (xi) *The Wildlife Act*, C.C.S.M. c. W130; and
- (c) Acts constituting part of the Constitution of Canada:
 - (i) *Constitution Act, 1982*, being Schedule B to the *Canada Act, 1982* (U.K.) 1982, c. 11.

1.2.4 Legislation Speaks from Present. All references to Acts referred to in subsection 1.2.3 will include all regulations made in accordance with that Act and any amendment, re-enactment or replacement from time to time of that Act.

ARTICLE 2 - PAYMENTS AND COSTS

2.1 INTRODUCTION

2.1.1 Introduction. Article 2 provides for certain payments to be made to **Fox Lake**.

2.2 PAYMENTS

2.2.1 Past Payment by Hydro. **Fox Lake** acknowledges having received \$500,000.00 from **Hydro** in March 2001 in accordance with the **Agreement in Principle**.

2.2.2 Future Payments by Hydro. **Hydro** covenants and agrees to make the following additional payments by cheque or bank draft payable to **Fox Lake** to be settled on the **Trustees** in accordance with the **Indenture**:

- (a) \$1,000,000.00 within thirty (30) days of the **Date of this Agreement**;
- (b) \$200,000.00 within thirty (30) days of the **Date of this Agreement**;
- (c) \$200,000.00 on or before April 1, 2005;
- (d) \$200,000.00 on or before April 1, 2006;
- (e) \$200,000.00 on or before April 1, 2007;
- (f) \$200,000.00 on or before April 1, 2008;
- (g) \$200,000.00 on or before April 1, 2009;
- (h) \$200,000.00 on or before April 1, 2010;
- (i) \$200,000.00 on or before April 1, 2011;
- (j) \$200,000.00 on or before April 1, 2012;
- (k) \$200,000.00 on or before April 1, 2013;
- (l) \$200,000.00 on or before April 1, 2014;
- (m) \$200,000.00 on or before April 1, 2015;

- (n) \$200,000.00 on or before April 1, 2016;
- (o) \$200,000.00 on or before April 1, 2017;
- (p) \$200,000.00 on or before April 1, 2018; and
- (q) \$11,234,000.00 on or before April 1, 2019.

2.2.3 Preservation of Capital. A minimum sum of nine million (\$9,000,000.00) dollars from the payment made under paragraph 2.2.2(q) will be set aside in the **Trust** and, in accordance with the **Indenture**, will be preserved as capital.

2.2.4 Interest on Payments by Hydro. **Hydro** will pay interest on any payment not made when due in accordance with subsection 2.2.2 at the rate equal to the prime rate established by the Royal Bank of Canada from time to time, from the 1st day after the due date until payment is made.

2.2.5 Payments by Manitoba. **Manitoba** covenants and agrees to make the following payments by cheque or bank draft payable to **Fox Lake** to be settled on the **Trustees** in accordance with the **Indenture**:

- (a) \$2,000,000.00 within thirty (30) days of the **Date of this Agreement**;
- (b) \$340,000.00 within thirty (30) days of the **Date of this Agreement**;
- (c) a second \$340,000.00 within thirty (30) days of the **Date of this Agreement**;
- (d) \$340,000.00 on or before April 1, 2005;
- (e) \$340,000.00 on or before April 1, 2006; and
- (f) \$340,000.00 on or before April 1, 2007.

2.2.6 Interest on Payments by Manitoba. **Manitoba** will pay interest on any payment not made when due in accordance with subsection 2.2.5 in accordance with the following:

- (a) with respect to the payment referred to in paragraph 2.2.5(a), **Manitoba** will pay interest at the rate equal to the prime rate established by the Bank of Nova Scotia from time to time, from the 1st day after the due date until payment is made; and

- (b) with respect to the payments referred to in paragraphs 2.2.5(b) to (f) inclusive, **Manitoba** will pay interest at the rate equal to the prime rate established by the Bank of Nova Scotia from time to time, from the 1st day after the due date until payment is made.

2.2.7 Purposes of Payments. In accordance with the **Indenture**, the payments made pursuant to subsection 2.2.5 will be used as follows:

- (a) the payment made pursuant to paragraph 2.2.5(a) will be used for investing in business and commercial ventures of material benefit to **Fox Lake** and for designing and implementing a strategy to address health and social issues; and
- (b) the payments made pursuant to paragraphs 2.2.5(b) to (f) inclusive will be used for a housing program.

2.3 COSTS

2.3.1 Contingency Fees and Bonuses. No portion of the monies paid or payable under the **Agreement in Principle** or this **Agreement** will be used to pay contingency fees or bonuses to any member of **Chief and Council**, or to any advisor or legal counsel acting on behalf of **Fox Lake** in relation to, or as payment for, work done in the settlement process.

2.3.2 Payment of Negotiation, Documentation and Approval Costs. Negotiation, documentation and approval costs are addressed as follows:

- (a) **Fox Lake** has been reimbursed by **Hydro** for reasonable costs incurred in negotiating and concluding this **Agreement** and the **Agreement in Principle**, including the costs of legal and consulting services required for the informed participation of **Fox Lake**, as well as the costs involved in carrying out the consultation and approval processes set out in Article 10. **Manitoba** and **Hydro** are not responsible for any costs other than those specifically set out in this paragraph 2.3.2(a);
- (b) the total amount reimbursed to **Fox Lake** for negotiating and concluding this **Agreement** as of the **Date of this Agreement** is \$4,446,448.48; and
- (c) the estimated costs for the consultation and approval process set out in Article 10 as of the **Date of this Agreement** is \$294,600.00.

2.3.3 Limitation. The responsibilities of **Manitoba** and **Hydro** to reimburse **Fox Lake** for its reasonable costs under subsections 2.3.1 and 2.3.2 will not include any costs incurred by **Fox Lake** in the resolution of any claims or grievances it may have against **Canada**.

2.4 PROVINCIAL PROGRAMMING AND HYDRO POLICIES

2.4.1 Manitoba Programs. The payments made to **Fox Lake** under subsection 2.2.5 will not affect eligibility for, or reduce the availability of, funding and programming available from **Manitoba** to communities, residents, or groups of residents of Manitoba, under the normal program criteria in effect from time to time.

2.4.2 Hydro Policies. The payments made to **Fox Lake** under subsections 2.2.1 and 2.2.2 are not intended to, and shall not in any way, disentitle or disadvantage **Fox Lake** or **Fox Lake Citizens** from receiving, any benefit or opportunity that would otherwise be available to them under any general business opportunity, or employment or training policy of **Hydro** in force from time to time.

ARTICLE 3 - WATER REGIME & PROJECT OPERATIONS

3.1 INTRODUCTION

3.1.1 Introduction. Article 3 establishes the **Fully Compensated Zone** settled by this **Agreement** and sets out a payment schedule for compensation payable by **Hydro** to **Fox Lake**:

- (a) to the extent that **Daily Average Water Levels** fall within the **Pre-determined Compensation Zone**; and
- (b) in the event of a **Draw-down Event**.

3.2 PURPOSE AND INTENT OF WATER REGIME PROVISIONS

3.2.1 Fully Compensated Zone. **Fox Lake** and **Hydro** have agreed on a **Fully Compensated Zone** as set out in subsection 3.6.1. **Fox Lake** acknowledges that, subject to subsection 9.2.3, it has been fully compensated for past, present and future **Adverse Effects** of the **Project** so long as **Hydro** operates the **Project** in such a way that **Daily Average Water Levels** fall within that zone.

3.2.2 Infrequent Deviations. After the **Date of this Agreement**, it is anticipated that **Deviations** will occur from time to time. **Deviations** have the potential to cause incremental **Adverse Effects** on **Fox Lake** or **Fox Lake Citizens** which have not been compensated by the **Financial Proceeds**. **Deviations** may be caused by **Hydro's** operation of the **Project** or by conditions which are beyond the control of **Hydro**.

3.2.3 Deviations. To avoid extensive investigations, negotiations and disputes about:

- (a) whether or not any **Deviation** is the result of the operation of the **Project**;
- (b) the existence and extent of any loss or damage suffered by **Fox Lake** and **Fox Lake Citizens** arising from such **Deviation**; and
- (c) the liability of **Hydro** for such loss or damage;

the **Parties** have agreed that, subject to subsection 3.7.5 and section 3.10:

- (d) whenever a **Deviation** falls within the **Pre-determined Compensation Zone**, **Hydro** will pay compensation to **Fox Lake** at a fixed rate, in

accordance with section 3.7, regardless of the apparent cause or effect of the **Deviation**; and

- (e) whenever a **Deviation** results from a **Draw-down Event**, **Hydro** shall pay **Draw-down Event Compensation** to **Fox Lake** at a fixed rate, as set forth in subsection 3.7.5 in addition to any **Pre-determined Compensation** due under paragraph 3.2.3(d) as a result of that **Draw-down Event**.

3.2.4 Genuine Pre-estimate of Compensation. The rate of payment established for the **Pre-determined Compensation Zone** and the **Draw-down Events** is based on a predictive judgment about **Project** impacts resulting from **Deviations** and the associated monetary loss based on a review of historical data about **Project** impacts. In analyzing **Project** impacts, **Fox Lake** has relied on data provided by **Hydro** relating to historic levels and flows on the relevant water bodies and has not undertaken an independent investigation as to the accuracy of this data.

3.2.5 Basis for Rejection and Termination Provisions. The **Parties** recognize that the **Pre-determined Compensation** and **Draw-down Event Compensation** payments may not ultimately be appropriate to equitably address the cause or extent of the **Adverse Effects** on **Fox Lake** or **Fox Lake Citizens**, and accordingly, they have included provisions for the rejection of the **Pre-determined Compensation** or **Draw-down Event Compensation** or both and the termination of the **Pre-determined Compensation** or **Draw-down Event Compensation** provisions.

3.3 RECORDS

3.3.1 Daily Average Water Level Records. From and after the **Date of this Agreement**, **Hydro** agrees to maintain a record of the **Daily Average Water Levels** based on data recorded by the following gauges:

- (a) **Kettle Forebay Gauge**;
- (b) **Long Spruce Forebay Gauge**;
- (c) **Limestone Forebay Gauge**; and
- (d) **Limestone Tailrace Gauge**;

and provide such records to any **Party** when requested or required for purposes of this **Agreement**.

3.3.2 No Warranty. Although the **Parties** believe that the gauges referred to in subsection 3.3.1 accurately record water levels on the Kettle Forebay, the Long Spruce Forebay, the Limestone Forebay, and the Limestone Tailrace, no **Party** warrants the accuracy of such records.

3.3.3 Notice of Malfunction. If at any time it comes to the attention of any **Party** that a **Gauge** is malfunctioning and not accurately recording the water level measurements required by this **Agreement**, that **Party** will forthwith notify the other **Parties**. Upon **Hydro** becoming aware that a **Gauge** is malfunctioning and not accurately recording water levels, **Hydro** will take such steps as may be necessary to ensure that the **Gauge** is operating accurately, including establishing and operating a replacement gauge to record the required water level measurements.

3.4 OPERATION OF THE PROJECT

3.4.1 No Restraint on Operation. Nothing in this **Agreement** will impose, or be read or construed to impose, any restraint on the lawful operation of the **Project** by **Hydro**.

3.5 PROJECTIONS

3.5.1 Daily Average Water Level Projections. **Hydro** will, early in each month, provide a two month **Daily Average Water Level** projection to **Fox Lake**, which will indicate the anticipated **Daily Average Water Levels** for that month and the next month on the Kettle Forebay (Stephens Lake).

3.5.2 Limitations on Accuracy. The projections in subsection 3.5.1 will be as accurate as is reasonable, based on the information available at the time they are made. **Hydro** may set forth any appropriate qualification as to the accuracy of **Daily Average Water Level** projections.

3.6 FULLY COMPENSATED ZONE

3.6.1 Fully Compensated Zone. The parameters of the **Fully Compensated Zone** are shown graphically on Schedules 3.1 to 3.4 and depict the range within which the **Daily Average Water Levels** have generally fallen during the period from the start of operation of each of the generating stations respectively, to the present, and within which it is anticipated that **Daily Average Water Levels** will generally fall in the future and shall be described as follows:

(a) on the Kettle Forebay, by **Daily Average Water Levels** which do not:

- (i) exceed 463 feet (141.12 m) **ASL**, and
- (ii) fall below 454 feet (138.38 m) **ASL**; and
- (b) on the Long Spruce Forebay, by **Daily Average Water Levels** which do not:
 - (i) exceed 362 feet (110.34 m) **ASL**, and
 - (ii) fall below 358.5 feet (109.27 m) **ASL** from January 1st to April 30th and from December 1st to December 31st, and 356.5 feet (108.66 m) **ASL** from May 1st to November 30th; and
- (c) on the Limestone Forebay, by **Daily Average Water Levels** which do not:
 - (i) exceed 280 feet (85.34 m) **ASL**, and
 - (ii) fall below 277 feet (84.43 m) **ASL**; and
- (d) on the Limestone Tailrace, by **Daily Average Water Levels** which do not
 - (i) exceed 189 feet (57.61 m) **ASL** from January 1st to March 30th,
 - (ii) exceed 186.5 feet (56.85 m) **ASL** from April 1st to April 30th,
 - (iii) exceed 184 feet (56.08 m) **ASL** from May 1st to May 31st and from November 1st to November 30th,
 - (iv) exceed 182 feet (55.47 m) **ASL** from June 1st to October 31st,
 - (v) exceed 186 feet (56.69 m) **ASL** from December 1st to December 31st, and
 - (vi) fall below 170 feet (51.82 m) **ASL**.

3.7 PRE-DETERMINED COMPENSATION ZONE AND DRAW-DOWN EVENTS

3.7.1 **Pre-determined Compensation Zone**. The parameters of the **Pre-determined Compensation Zone** are shown graphically on Schedules 3.1 to 3.3 inclusive, and delineate that zone in which **Daily Average Water Levels** have infrequently fallen during the period from the start of operations of each of the generating stations respectively to the present, and within which it is anticipated that **Daily**

Average Water Levels will infrequently fall in the future and will be described as follows:

- (a) on the Kettle Forebay, by **Daily Average Water Levels** which do not:
 - (i) exceed 454 feet (138.38 m) **ASL**, and
 - (ii) fall below 451 feet (137.46 m) **ASL**; and

- (b) on the Long Spruce Forebay, by **Daily Average Water Levels** which do not:
 - (i) exceed 358.5 feet (109.27 m) **ASL** from December 1st to the next April 30th, and 356.5 feet (108.66 m) **ASL** from May 1st to November 30th, and
 - (ii) fall below 356.5 feet (108.66 m) **ASL** from January 1st to April 30th and from December 1st to December 31st, and 354 feet (107.90 m) **ASL** from May 1st to November 30th; and

- (c) on the Limestone Forebay, by **Daily Average Water Levels** which do not:
 - (i) exceed 277 feet (84.43 m) **ASL**, and
 - (ii) fall below 275 feet (83.82 m) **ASL**.

3.7.2 Calculation and Payment. Not later than March 31st in each calendar year, **Hydro** will calculate and pay compensation, if any, for the previous calendar year (in the case of the calendar year in which the **Agreement** is signed, only for the period of that year after the **Date of the Agreement**) at the rates indicated on Schedules 3.1 to 3.3 inclusive, in accordance with the following provisions:

- (a) for any day where the **Daily Average Water Levels** fall in the **Pre-determined Compensation Zone**, as depicted on Schedules 3.1 to 3.3 inclusive, compensation for that day will be calculated at the rate shown for the relevant zone on that graph; and

- (b) **Pre-determined Compensation** is expressed in dollars per foot per day and, as it relates to **Daily Average Water Levels**, the compensation is to be calculated on a pro rata basis to the nearest tenth of a foot, as demonstrated in Schedule 3.5.

- 3.7.3 Annual Minimum. Where **Daily Average Water Levels** fall within the **Pre-determined Compensation Zones** and some **Pre-determined Compensation** of less than five thousand (\$5,000.00) dollars is calculated to be payable for any calendar year pursuant to subsection 3.7.2, **Hydro** will, notwithstanding such calculation, pay five thousand (\$5,000.00) dollars to **Fox Lake** with respect to that calendar year. If **Daily Average Water Levels** do not enter the **Pre-determined Compensation Zone** in a particular calendar year, no compensation will be payable for that year.
- 3.7.4 Annual Maximum. The maximum amount of **Pre-determined Compensation** for any calendar year is two hundred thousand (\$200,000.00) dollars.
- 3.7.5 Compensation for Draw-down Events. Not later than March 31 in each calendar year, **Hydro** will calculate and pay **Draw-down Event Compensation**, if any, for the previous calendar year (in the case of the calendar year in which the **Agreement** is signed, only for the period of that year after the **Date of the Agreement**) at the rate of twenty thousand (\$20,000.00) dollars per **Draw-down Event**. Where a **Draw-down Event** extends beyond four weeks in duration, it shall constitute a new **Draw-down Event** for the purposes of this **Agreement**.
- 3.7.6 Use of Compensation. The **Draw-down Event Compensation** paid pursuant to section 3.7 will be provided to **Fox Lake** to be paid into the **Trust** and used in accordance with the **Indenture**.
- 3.7.7 Rejection of Pre-determined Compensation or Draw-down Event Compensation. If in any year, **Fox Lake** determines that:
- (a) the compensation, if any, paid pursuant to subsection 3.7.2 is insufficient to compensate for damages caused by **Daily Average Water Levels** within the **Pre-determined Compensation Zone**; or
 - (b) the compensation, if any, paid pursuant to subsection 3.7.5 is insufficient to compensate for damages caused by a **Draw-down Event**;
- Fox Lake** may within one hundred and twenty (120) days of receipt of such compensation, return either amount so paid and explain in writing its reasons for rejecting either the **Pre-determined Compensation** or the **Draw-down Event Compensation**, or both, and state the quantum of compensation which it believes is appropriate in the circumstances.
- 3.7.8 Action by Fox Lake. **Hydro** will endeavour to advise **Fox Lake** in writing of its position not later than ninety (90) days following its receipt of **Fox Lake's** reasons for rejecting the compensation. If **Hydro** either fails to respond, or fails to respond to the satisfaction of **Fox Lake**, within the ninety (90) day period, **Fox**

Lake's sole remedy is to proceed with an action against **Hydro** for the amount **Fox Lake** believes is appropriate.

- 3.7.9 Deemed Acceptance of Compensation. If **Fox Lake** fails to return the **Pre-determined Compensation** payment or the **Draw-down Event Compensation** payment within the one hundred and twenty (120) day time period referred to in subsection 3.7.7, **Fox Lake** will conclusively be deemed to have accepted such **Pre-determined** or **Draw-down Event Compensation** in full and complete satisfaction of any and all claims **Fox Lake** may otherwise have had against **Manitoba** and **Hydro** arising from **Daily Average Water Levels** within the **Pre-determined Compensation Zone** or arising from **Draw-down Events** in that year.
- 3.7.10 Indexing. Where any amount of **Pre-determined Compensation** or **Draw-down Event Compensation** is specified in dollars, the amount payable will be read as if it had been adjusted up or down over time from the **Date of this Agreement** based upon the **Consumer Price Index**, provided that no such adjustment will result in the reduction of the compensation amounts, as specified in dollars, to less than the amounts specified in this **Agreement**.

3.8 NOTICE OF DRAW-DOWN EVENTS

- 3.8.1 Notice of Draw-down Events. Where **Hydro** has scheduled a **Draw-down Event** for maintenance, inspection or other purposes, **Hydro** will give **Fox Lake** fourteen (14) days notice of the **Draw-down Event**. Where the **Draw-down Event** occurs for emergency purposes or where it is otherwise not reasonably practicable to give fourteen (14) days notice, **Hydro** will give **Fox Lake** as much notice, if any, as is practicable in the circumstances.
- 3.8.2 Notice of Draw-down for More than Four Weeks. Where **Hydro** has scheduled a draw-down of any of the Kettle, Long Spruce or Limestone Forebays to a level below the **Pre-determined Compensation Zone** for a period of more than four weeks, **Hydro** will give **Fox Lake** at least fourteen (14) days notice of such an occurrence, in which it will advise **Fox Lake** of the anticipated duration of, and the reason for, the draw-down. Where such a draw-down occurs for emergency purposes, during the course of a **Draw-down Event**, or where it is otherwise not reasonably practicable to give fourteen (14) days notice, **Hydro** will give **Fox Lake** as much notice, if any, as is practicable in the circumstances.

3.9 WATER LEVELS OUTSIDE ZONES

- 3.9.1 Hydro and Fox Lake to Discuss Cause. Should **Daily Average Water Levels** fall outside the **Fully Compensated Zone** and the **Pre-determined**

Compensation Zone, Hydro and Fox Lake will discuss the reasons for such an occurrence.

- 3.9.2 **Hydro Not Released.** **Hydro** is not, by this **Agreement**, released with respect to any damages arising from **Daily Average Water Levels** falling outside of the **Fully Compensated Zone** and the **Pre-determined Compensation Zone**, except where such damage is attributable to a **Draw-down Event**.

3.10 **TERMINATION OR AMENDMENT OF PRE-DETERMINED AND DRAW-DOWN COMPENSATION PROVISIONS**

- 3.10.1 Notice of Termination of Section 3.7. At any time following the **Date of this Agreement**, either **Hydro** or **Fox Lake** may give written notice to the other that it no longer considers that the **Pre-determined Compensation** or **Draw-down Event Compensation** calculated under section 3.7 equitably addresses the issue of compensation for loss or damage suffered as a consequence of the occurrence of water levels in the **Pre-determined Compensation Zone** or as a consequence of **Draw-down Events**, and that the provisions of section 3.7 will terminate at the end of the first full calendar year following the date of such notice.

- 3.10.2 Amendment of Compensation Provisions. Following receipt of the notice provided for in subsection 3.10.1, **Hydro** and **Fox Lake** may agree in writing upon amended pre-determined or draw-down compensation provisions and in that case, this **Agreement** will be amended accordingly.

- 3.10.3 Termination of Compensation Provisions. If **Hydro** and **Fox Lake** are unable to agree upon amended pre-determined compensation or draw-down compensation provisions in accordance with subsection 3.10.2, this **Agreement** will, upon written notice from either **Party** to the other, be amended, effective at the end of the period contemplated in subsection 3.10.1, by terminating the provisions of section 3.7 and those provisions of subsection 9.2.1 in which **Fox Lake** provides releases to **Hydro** in return for payment of **Pre-determined Compensation** and **Draw-down Event Compensation**.

3.11 **INTEREST**

- 3.11.1 Payment of Interest. **Hydro** will pay interest, at the rate set forth in subsection 2.2.4 on any amount of **Pre-determined Compensation** or **Draw-down Event Compensation** that:

- (a) **Hydro** has calculated is owing and knowingly fails to pay, such interest to commence on the date that the payment is required to be made under the **Agreement**; or

- (b) **Fox Lake** has calculated is owing and should be paid, provided that **Hydro** agrees with **Fox Lake's** calculations or the amount claimed is confirmed following dispute resolution.

Interest on the amount under paragraph 3.11.1(b) will begin to accrue 30 days after **Hydro** has received written notice from **Fox Lake** of the amount that **Fox Lake** claims is owing, together with a copy of the calculations made by **Fox Lake** to determine the amount the **Pre-determined Compensation** or **Draw-down Event Compensation** **Fox Lake** claims is owing.

ARTICLE 4 - WATER REGIME DOWNSTREAM OF LIMESTONE

4.1 INTRODUCTION

4.1.1 Introduction. Article 4 identifies measures agreed to by **Fox Lake** and **Hydro** to address the unique circumstances arising from the significant fluctuations in the water regime downstream of the Limestone Generating Station.

4.2 SAFETY AND MITIGATORY MEASURES

4.2.1 Risks. The **Parties** acknowledge that there are particular risks associated with the use of the Nelson River between the Limestone Generating Station and Conawapa Rapids and that the use of this portion of the river for any reason has the potential to result in injury, death and/or loss or damage to **Personal Property**.

4.2.2 Fox Lake to Inform Fox Lake Citizens. **Fox Lake** will take reasonable and continuing steps to inform **Fox Lake Citizens** of the risks associated with using the area referenced in subsection 4.2.1, in order to discourage **Fox Lake Citizens** from travelling in this area.

4.2.3 Additional Risk Management Measures. **Hydro** and **Fox Lake** will work together to identify additional reasonable measures, if any, such as increased signage, which may be undertaken to discourage the use of the stretch of the Nelson River referenced in subsection 4.2.1. Neither **Fox Lake** nor **Hydro** is obliged by this subsection to implement any new measure to discourage the use of that stretch of the Nelson River.

4.2.4 Measures Downstream of Conawapa. Although the risks associated with the use of the Nelson River downstream of Limestone are significantly lower below Conawapa Rapids, in an effort to reduce the risks associated with the use of the Nelson River between Conawapa Rapids and Hudson Bay and to enhance the continued use of this stretch of the Nelson River by **Fox Lake Citizens**, **Hydro** will:

- (a) subject to any regulatory and permitting requirements, in consultation with **Fox Lake** construct three cabins (16 feet by 16 feet; wooden frame structure; two windows; one door, one woodstove, and sufficient plywood and dimensional lumber to construct one table and four bunk-beds per cabin);
- (b) subject to any regulatory and licensing requirements, in consultation with **Fox Lake** provide and install a portable, durable and easily removable

boat landing ramp (designed to provide a smooth surface over which boats can be hauled into and out of the water) in the vicinity of each of Monkey Island, Jackfish Island, Weir River, Angling River and Roblin River/Deer Island;

- (c) purchase and deliver to **Fox Lake** three satellite phones for the use of **Fox Lake Citizens** who use the Nelson River downstream of Conawapa Rapids; and
- (d) transfer legal ownership as personal property of the cabins, boat ramps and satellite phones to **Fox Lake**.

4.2.5 Limitation on Hydro Responsibilities. With the exception of those requirements set out in subsection 4.2.6, **Hydro** will not be responsible for:

- (a) the operation, maintenance or replacement of any of the items listed in subsection 4.2.4, or of any component thereof, irrespective of whether such items are lost, damaged, stolen or no longer suitable;
- (b) the replacement of any of the items listed in subsection 4.2.4 with alternate measures in the event that the listed items are no longer suitable; and
- (c) any operating expenses and charges that arise in connection with the satellite phones.

4.2.6 Installation of Boat Landing Ramps. Subject to subsection 4.2.7, **Hydro** will be responsible for the installation, removal and replacement of the boat landing ramps referenced in paragraph 4.2.4(b) on a seasonal basis and may enter into a contract for such services with **Fox Lake Citizens** who regularly use the Nelson River downstream of Conawapa Rapids.

4.2.7 Removal of Boat Landing Ramps. If it is determined that the boat landing ramps referenced in paragraph 4.2.4(b) do not effectively address the concerns of **Fox Lake Citizens** or are no longer suitable, then **Hydro** may remove the boat landing ramps and will no longer be required to install them on a seasonal basis or replace them as set out in subsection 4.2.6. If the boat landing ramps are not capable of providing access **Hydro** will meet with **Fox Lake** in an effort to find other suitable ways to address the access issue.

4.2.8 Fox Lake Responsibilities. **Fox Lake** shall be responsible for:

- (a) subject to subsections 4.2.6 and 4.2.7, the operation, maintenance or replacement of any of the items listed in subsection 4.2.4, or of any component thereof; and
- (b) all operating expenses and charges that arise in connection with the satellite phones.

Subject to the requirements of the **Indenture**, **Fox Lake** may use the **Financial Proceeds** paid by **Hydro** towards the costs of operation, maintenance, or replacement of any of the items identified in subsection 4.2.4.

4.3 CLAIMS FOR LOSS OR DAMAGE TO PERSONAL PROPERTY

- 4.3.1 No Release for Certain Claims. **Hydro** and **Fox Lake** acknowledge that, in accordance with paragraph 9.2.3(d), claims may continue to be made against **Hydro** for loss or damage to **Personal Property** which is suffered by **Fox Lake** and **Fox Lake Citizens**, on the Nelson River downstream of the Limestone Generating Station after the **Date of this Agreement**.
- 4.3.2 Assessment of Claims. **Hydro** and **Fox Lake** acknowledge that if a claim of the nature described in subsection 4.3.1, is advanced by **Fox Lake** or **Fox Lake Citizens** against **Hydro**, a factor that may be considered by **Hydro** in assessing the claim, is the responsibility or contributory negligence of the claimant.

ARTICLE 5 - LANDS

5.1 INTRODUCTION

5.1.1 Introduction. Article 5 provides for:

- (a) the transfer of the **Kettle River Site** to or for the benefit of **Fox Lake**, subject to a **Project Easement**;
- (b) the transfer of the **Angling Lake Site** to the **Land Corporation** in fee simple;
- (c) the transfer of the mines and minerals and residual Crown (Manitoba) interests within the **Kettle Crescent Site** to **Canada**;
- (d) the transfer of the **Sundance Site** to the **Land Corporation** in fee simple;
- (e) the withholding of the **Limestone Construction Camp** from disposition to any third party for a specified period of time; and
- (f) a study related to the establishment of a **Reserve** in the **Gillam Trailer Court**.

5.2 BOUNDARY SURVEYS

5.2.1 Request for Approval of Survey Instructions. **Manitoba** will request that the Surveyor General of Canada approve the survey instructions set out in Schedule 5.1 as such instructions relate to the **Kettle River Site**.

5.2.2 Surveys by Manitoba. As soon as reasonably practicable after the **Date of this Agreement**, and having regard to field conditions, **Manitoba**, in consultation with **Fox Lake** and **Hydro**, will commence legal surveys of the boundaries of the **Kettle River Site**, **Angling Lake Site** and **Sundance Site** in accordance with subsection 5.2.3 and the survey instructions referred to in subsection 5.2.1.

5.2.3 Completion of Boundary Surveys. Subject to subsection 5.2.4, **Manitoba** will make reasonable efforts to have legal surveys of the boundaries of the **Kettle River Site**, **Angling Lake Site** and **Sundance Site** completed within twelve (12) months of the commencement of the survey of that site.

5.2.4 Delay in Surveying. Where a legal survey referred to in subsection 5.2.2 is delayed due to weather or other conditions outside the control of **Manitoba** or

Hydro, Manitoba will complete or cause to be completed a legal survey of the boundaries of that site as soon thereafter as may be reasonably practicable.

5.2.5 Costs of Surveys. Subject to subsection 5.2.6, **Manitoba** will complete:

- (a) all surveys for the **Kettle River Site, Angling Lake Site** and **Sundance Site**; and
- (b) the transfers and registrations of title for the **Kettle River Site, Angling Lake Site** and **Sundance Site**;

at no cost to **Fox Lake** or the **Land Corporation**, and **Manitoba** will pay any land transfer tax which may otherwise be payable.

5.2.6 Costs Chargeable. Should the **Land Corporation** decline to accept fee simple title for the **Kettle River Site**, the **Angling Lake Site** or the **Sundance Site**, the costs of the survey and registration of title, if incurred, plus other reasonable costs, will be paid by **Fox Lake** to **Manitoba**, on demand.

5.3 EASEMENT LINES AND PROJECT EASEMENTS

5.3.1 Establishment of Easement Lines. **Manitoba**, in consultation with **Hydro** and **Fox Lake**, will determine an **Easement Line** on the **Kettle River Site** in accordance with a process and methodology that:

- (a) consider the potential effects of the **Project** on the lands, including the effects of flooding, wind setup, wave uprush, erosion and ice conditions;
- (b) are based on a combination of flood and wind events having a probability of occurrence of once every 100 years;
- (c) apply recognized hydraulic engineering methodology in calculating wind setup and wave uprush values; and
- (d) include estimates of erosion based on geotechnical studies to provide sufficient shoreline offset to accommodate long-term erosion.

5.3.2 Explanatory Plan of Easement Lines. As soon as reasonably practicable after the determination of an **Easement Line** on the **Kettle River Site** in accordance with subsection 5.3.1, **Manitoba** will:

- (a) undertake, or cause to be undertaken, a survey of the **Easement Line** by photogrammetric methods;

- (b) produce, or cause to be produced, an explanatory plan of the **Easement Line** of a nature referred to in section 31 of the *Canada Lands Surveys Act* (Canada);
- (c) provide a copy of the explanatory plan to **Fox Lake, Hydro** and, if requested, **Canada**; and
- (d) provide a description of the land which will be subject to a **Project Easement** to **Fox Lake, Hydro** and, if requested, **Canada**.

5.3.3 Confirmation by **Fox Lake** and **Hydro**. **Fox Lake** and **Hydro** will each, as soon as reasonably practicable after receipt of the explanatory plan referred to in subsection 5.3.2, advise **Manitoba** in writing:

- (a) whether or not the **Easement Line** has been properly determined in accordance with the process and methodology established under subsection 5.3.1;
- (b) whether or not the explanatory plan accurately describes the **Easement Line**; and
- (c) whether or not that **Party** approves the description of the land to be subject to the **Project Easement**.

5.3.4 Accuracy of Explanatory Plan. If, pursuant to subsection 5.3.3, **Fox Lake** or **Hydro** advises **Manitoba** that:

- (a) the **Easement Line** has not been properly determined in accordance with the process and methodology established under subsection 5.3.1;
- (b) the explanatory plan does not accurately describe the **Easement Line**; or
- (c) it does not approve the description of the land to be subject to the **Project Easement**;

Manitoba and **Fox Lake** or **Hydro**, as the case may be, will determine what steps, if any, need to be taken to resolve any issues relating to the description.

5.3.5 Field Survey of **Easement Line**. Where an **Easement Line** is located in an area of the **Kettle River Site** that is developed by **Fox Lake** or in an area that is proposed to be developed by **Fox Lake, Manitoba** will cause the **Easement Line** to be demarcated on the land by field survey methods in accordance with the survey instructions set out in Schedule 5.1:

- (a) within 12 months of the determination of the **Easement Line** where the area adjacent to the **Easement Line** is developed; and
- (b) within 12 months of notice in writing from **Fox Lake** that the area adjacent to the **Easement Line** is proposed to be developed by **Fox Lake**.

5.3.6 **Project Easement Agreement**. The **Kettle River Site** will be subject to a **Project Easement** in favour of **Manitoba** and **Hydro** over that portion of the parcel lying below the **Easement Line**. The **Project Easement Agreement** will be based on the form in Schedule 5.2 (with necessary changes to the form to reflect the transfer of the **Kettle River Site** to the **Land Corporation** in fee simple).

5.4 LAND USE PERMITS

5.4.1 **Land Use Permits**. Where **Fox Lake** proposes developing the **Kettle River Site**, the **Angling Lake Site** or the **Sundance Site** prior to the transfer of the parcel in accordance with Article 5, **Manitoba** will, as soon as reasonably practicable following receipt of a written request by **Fox Lake**, issue a land use permit to the **Land Corporation** for the parcel which **Fox Lake** proposes developing substantially in the form attached as Schedule 5.3.

5.5 KETTLE RIVER SITE

5.5.1 **Map of Kettle River Site**. The **Kettle River Site** is the parcel of Crown (Manitoba) land depicted on the map attached as Schedule 5.4.

5.5.2 **Transfer of Kettle River Site in Fee Simple** **Manitoba** will as soon as practicable after the **Date of this Agreement** transfer the **Kettle River Site** to the **Land Corporation** in fee simple, subject to a **Project Easement** based on the form of **Project Easement Agreement** set out in Schedule 5.2 (with necessary changes to the form to reflect the transfer of the **Kettle River Site** to the **Land Corporation** in fee simple) but otherwise free and clear of all encumbrances, reservations, estates, rights and interests in favour of any person, and for greater certainty:

- (a) no reservations to **Manitoba** under subsection 4(1) of *The Crown Lands Act* (Manitoba) will apply to the **Kettle River Site**; and
- (b) rights in mines and minerals, both precious and base, rights in Crown timber and all other estates, rights and interests will be transferred by **Manitoba** to the **Land Corporation**.

5.5.3 Future Reserve Status. Following a transfer of the **Kettle River Site** in fee simple to the **Land Corporation** under subsection 5.5.2, **Manitoba** will, upon the written request of **Fox Lake** made by **Council Resolution**, cooperate to facilitate a transfer of these lands to **Canada** for the purpose of setting these lands apart as **Reserve** subject to a **Project Easement**. Without the agreement of **Fox Lake** the **Kettle River Site** will not be transferred to **Canada** to be set apart as **Reserve** as part of Fox Lake's Treaty Land Entitlement shortfall.

5.5.4 Dam Safety. The **Kettle River Site** is located on the Kettle River downstream of the Butnau Dam. **Fox Lake** has been advised that in the unlikely event of a failure of the Butnau Dam or other containment dykes in the area, portions of this site will be subject to inundation and that accordingly, **Hydro** is prepared to meet with **Fox Lake** to inform it of the risks which might arise as a consequence of such a dam failure. This provision is not intended to release **Hydro** from any liability which it may have in relation to such a failure.

5.6 ANGLING LAKE SITE

5.6.1 Map of Angling Lake Site. The **Angling Lake Site** is the parcel of Crown (Manitoba) land depicted on the map attached as Schedule 5.5.

5.6.2 Registration of Transfer of Title. Subject to subsection 5.6.3, upon completion of the legal survey of the boundaries of the **Angling Lake Site** in accordance with section 5.2, **Manitoba** will register, in the appropriate Land Titles Office, a transfer to the **Land Corporation** of fee simple title in relation to the **Angling Lake Site**.

5.6.3 Reservations to Manitoba. **Manitoba** will reserve to itself out of the transfer of the **Angling Lake Site** those reservations contained in clauses 4(1)(b), (c), (d), (e), and (f) of *The Crown Lands Act* (Manitoba). The reservation contained in clause 4(1)(a) of *The Crown Lands Act* (Manitoba) will not be reserved to **Manitoba**.

5.7 KETTLE CRESCENT SITE

5.7.1 Description of Kettle Crescent Site. The **Kettle Crescent Site** is the parcel of Crown (Canada) land described and depicted in Schedule 5.6.

5.7.2 Assurances from Canada. In order to support and facilitate **Fox Lake's** initiative to have the **Kettle Crescent Site** set apart as **Reserve**, **Manitoba** will, in accordance with subsections 5.7.4 to 5.7.6 inclusive, transfer the mines and minerals and residual Crown (Manitoba) interests within the **Kettle Crescent Site** to **Canada** following the receipt of written assurances from **Canada** that it will:

- (a) accept administration and control of the mines and minerals and the residual Crown (Manitoba) interests; and
- (b) set the **Kettle Crescent Site**, including mines and minerals, apart as **Reserve**.

5.7.3 **Manitoba to Seek Written Assurances from Canada.** **Manitoba** will seek the written assurances referred to in subsection 5.7.2 from **Canada** as soon as practicable after the **Date of this Agreement**.

5.7.4 **Provision of Form of Order in Council to Canada.** Upon receipt of the written assurances referred to in subsection 5.7.2, **Manitoba** will provide **Canada** with a copy of the form of Order in Council attached as Schedule 5.7 to transfer administration and control of the mines and minerals and residual Crown (Manitoba) interests within the **Kettle Crescent Site** to **Canada** in contemplation of **Canada** setting the mines and minerals apart as **Reserve**.

5.7.5 **Consultation on Changes to Form of Order in Council.** If **Canada** requires changes to the form of Order in Council provided to it by **Manitoba** under subsection 5.7.4, **Manitoba** will consult with **Canada** and **Fox Lake** on the changes required to the form of Order in Council.

5.7.6 **Transfer of Kettle Crescent Site by Order in Council.** Following assurances from **Canada** that the form of Order in Council provided to it pursuant to subsection 5.7.4 is acceptable to **Canada**, **Manitoba** will:

- (a) transfer, by Order in Council substantially in the form of Schedule 5.7, or, where applicable, in the form determined as a result of the consultation under subsection 5.7.5, administration and control of the mines and minerals and residual Crown (Manitoba) interests within the **Kettle Crescent Site** to **Canada** in contemplation of **Canada** accepting administration and control of the mines and minerals and residual Crown (Manitoba) interests and setting the mines and minerals apart as **Reserve**; and
- (b) provide a certified copy of that Order in Council to both **Fox Lake** and **Canada**.

5.8 SUNDANCE SITE

5.8.1 **Description of Sundance Site.** The **Sundance Site** is the parcel of Crown (Manitoba) land that is described and depicted in Schedule 5.8.

- 5.8.2 Registration of Transfer of Title. Subject to subsection 5.8.3, upon completion of the legal survey of the boundaries of the **Sundance Site** in accordance with section 5.2, **Manitoba** will register, in the appropriate Land Titles Office, a transfer to the **Land Corporation** of fee simple title in relation to the **Sundance Site**.
- 5.8.3 Reservations to Manitoba. **Manitoba** will reserve to itself out of the transfer of the **Sundance Site** those reservations contained in clauses 4(1)(b), (c), (d), (e) and (f) of *The Crown Lands Act* (Manitoba). The reservation contained in clause 4(1)(a) of *The Crown Lands Act* (Manitoba) will not be reserved to **Manitoba**.

5.9 LIMESTONE CONSTRUCTION CAMP

- 5.9.1 Map of Limestone Construction Camp. The **Limestone Construction Camp** is the parcel of Crown (Manitoba) land depicted on the map attached as Schedule 5.9.
- 5.9.2 Disposition. Both **Hydro** and **Fox Lake** are interested in the **Limestone Construction Camp**. **Hydro** is interested in the site as a potential staging area for the stock-piling, crushing and shipping of stone required for proposed future development of the Conawapa Generating Station. **Fox Lake** is interested in ultimately acquiring title to the site, after **Hydro's** use has been accommodated, and using it for the benefit of its members.
- 5.9.3 Withhold From Disposition. **Manitoba** will withhold the **Limestone Construction Camp** from disposition to any party, except for the paramount disposition for the use of **Hydro** under subsection 5.9.4 and any interim or subsequent dispositions to **Fox Lake** contemplated under subsections 5.9.5 and 5.9.6.
- 5.9.4 Limited disposition to Hydro. Subject to **Hydro's** obtaining all required environmental and other licences, **Manitoba** agrees to grant to **Hydro** the right, licence and permission to use the **Limestone Construction Camp** for paramount purposes of the proposed future development of the Conawapa Generating Station including using the site for stock-piling, crushing and shipping of stone required for such proposed future development.
- 5.9.5 Subsequent Disposition. **Hydro** will notify **Manitoba** and **Fox Lake** when **Hydro** no longer requires the **Limestone Construction Camp** site for the proposed future development of the Conawapa Generating Station. Upon receiving such notification, **Manitoba** agrees, subject to any required approvals or licences, to have the **Limestone Construction Camp** site surveyed and to convey fee simple title to the site to the **Land Corporation**.

- 5.9.6 Interim Use. **Manitoba** and **Hydro** agree that prior to title being issued to the **Land Corporation, Fox Lake** may, at its own risk and subject to obtaining all required licences, permits and approvals, use the **Limestone Construction Camp** site for reasonable, non-permanent purposes that do not in any way interfere with or impede **Hydro's** use of the site for the proposed future development of the Conawapa Generating Station.
- 5.9.7 Identification of Work Packages. Without affecting or diminishing any other rights, benefits or opportunities which may be available to **Fox Lake** and **Fox Lake Citizens** in the planning, development, construction, operation and maintenance of Conawapa, prior to undertaking any work on the **Limestone Construction Camp** site, in preference to other contractors or communities, **Hydro**, in consultation with **Fox Lake**, shall identify a work package, or work packages, associated with the crushing, stockpiling and shipping of stone taken from the Limestone Quarry, that could reasonably be undertaken by **Fox Lake** or **Fox Lake Citizens** given their then existing business capacity, including joint ventures or co-venturing opportunities then available provided that:
- (a) any such joint or co-venture arrangement has the potential to enhance the capacity or skills of **Fox Lake**;
 - (b) **Fox Lake** or **Fox Lake Citizens** have at least a 50% ownership interest in the joint or co-venturing arrangement; and
 - (c) **Fox Lake** or **Fox Lake Citizens** have a substantial involvement in the decision making of, and a substantial interest in the benefits flowing from, such joint or co-venture.
- 5.9.8 Alternate Site. Should the crushing, stockpiling and shipping of stone taken from the Limestone Quarry, at present contemplated to be undertaken on the **Limestone Construction Camp** site, be relocated to another site in the vicinity of the Limestone Quarry, the first preference referenced in subsection 5.9.7 in relation to the crushing, stockpiling and shipping of stone taken from the Limestone Quarry, shall be available to **Fox Lake** on the new site.
- 5.9.9 Preference for Fox Lake. Where a work package or packages are identified as contemplated in Article 5.9.7 or 5.9.8, **Hydro** will work with **Fox Lake** to negotiate a contract for such work package(s), in priority to any other potential contractor or community, provided that **Fox Lake** can demonstrate the ability to meet reasonable contractual standards in relation to costs, quality and schedule.
- 5.9.10 Hydro Obligation with Respect to Limestone Construction Camp. After notification is given by **Hydro** to **Manitoba** and **Fox Lake** under subsection 5.9.5, **Hydro** will, at the request of **Fox Lake** or **Manitoba**, take all steps necessary to

remove any contaminants from the lands associated with **Hydro's** past use of those lands in full compliance with objective environmental standards set out in the applicable statutes or regulations of **Manitoba** in force at the time the request is made. If **Fox Lake** includes the **Limestone Construction Camp** in a submission to **Canada** for the creation of new **Reserve** lands, **Hydro** will take all steps necessary to remove any contaminants from the lands associated with **Hydro's** past use of those lands in full compliance with objective environmental standards set out in the applicable statutes or regulations of **Canada** in force at the time the request is made.

5.10 GILLAM TRAILER COURT

5.10.1 Description of **Gillam Trailer Court**. The location of the **Gillam Trailer Court** is the area depicted on the map of the Town of Gillam which is attached as Schedule 5.10.

5.10.2 Establishment of Committee. A Committee will be established consisting of one representative of each of **Fox Lake**, **Manitoba**, and the Town of Gillam, with a representative of **Hydro** participating where requested by the Committee.

5.10.3 Study of a Potential **Reserve** in the **Gillam Trailer Court**. The Committee established under subsection 5.10.2 will be responsible for selecting an independent consultant who will conduct a study related to the creation of a **Reserve** in the **Gillam Trailer Court** in accordance with the terms of reference attached as Schedule 5.11.

5.10.4 Commitment by **Manitoba**. In order to facilitate **Fox Lake's** initiative to have the **Gillam Trailer Court** set apart as **Reserve**, **Manitoba** will:

- (a) make available to **Fox Lake** up to \$20,000.00 for the purpose of reimbursing **Fox Lake** for the cost of retaining the independent consultant to conduct the study referred to in subsection 5.10.3; and
- (b) provide **Fox Lake** with a letter in the form of Schedule 5.12.

5.11 NO COMMITMENT TO ESTABLISHMENT OF RESERVES

5.11.1 No Commitment to Establishment of **Reserves**. The **Parties** acknowledge that only **Canada** has the authority to set land apart as **Reserve** for the use and benefit of **Fox Lake** and therefore the commitments made by **Manitoba** and **Hydro** under this **Agreement** are not dependent on any lands being set apart as **Reserve** by **Canada**.

5.12 CONDITION OF LAND AT SUNDANCE SITE AND LIMESTONE CONSTRUCTION CAMP

5.12.1 Underground Infrastructure at Sundance Site Not to be Removed. The **Parties** have agreed that the underground infrastructure at the **Sundance Site** will not be removed.

5.12.2 Satisfaction of Remedial and Pollution Abatement Requirements. **Manitoba** and **Hydro** acknowledge that the **Sundance Site** and **Limestone Construction Camp** are located on Crown (Manitoba) lands and that **Hydro** has met all the remedial and pollution abatement requirements of **Manitoba** associated with **Hydro's** past use of the **Sundance Site** and **Limestone Construction Camp**.

5.12.3 Hydro Obligation. If **Fox Lake** includes the **Sundance Site** or the **Limestone Construction Camp** in a submission to **Canada** for the creation of new **Reserve** lands, **Hydro** will take all steps necessary to remove any contaminants from the lands associated with **Hydro's** past use of those lands in full compliance with objective environmental standards set out in the applicable statutes or regulations of **Manitoba** or **Canada** in force at the time the request is made.

ARTICLE 6 - RESOURCE MANAGEMENT

6.1 INTRODUCTION

6.1.1 Introduction. Article 6 provides for:

- (a) the establishment of the **Fox Lake Resource Management Area**;
- (b) the operation of the **Fox Lake Resource Management Board** composed of representatives appointed by **Fox Lake** and **Manitoba**; and
- (c) strategic planning in response to initiatives developed by **Fox Lake** relating to economic and **Resource** related activities within the **Fox Lake Resource Management Area**.

6.2 FOX LAKE RESOURCE MANAGEMENT AREA

6.2.1 Establishment of Fox Lake Resource Management Area. The lands and waters depicted on the map attached as Schedule 6.1 are hereby established as the **Fox Lake Resource Management Area**.

6.2.2 Amendment of Area. The **Fox Lake Resource Management Area** may be amended by agreement in writing between **Fox Lake** and **Manitoba**.

6.2.3 Amalgamation of Area. The **Fox Lake Resource Management Area** may, by agreement in accordance with subsection 6.2.2, be amalgamated with all or any portion of:

- (a) the **Split Lake Resource Management Area**, provided that the Split Lake Cree First Nation agrees in writing with the amalgamation;
- (b) the **York Factory Resource Management Area**, provided that the York Factory First Nation agrees in writing with the amalgamation; and
- (c) any other Resource Management Area, provided that any First Nation or community having rights which arise out of an agreement with **Manitoba** in relation to that Resource Management Area agrees in writing with the amalgamation.

6.2.4 Relationship with Town of Gillam. Subject to subsection 6.2.3, **Fox Lake** and **Manitoba** may, with the Town of Gillam, consider mechanisms to integrate the activities of the **Fox Lake Resource Management Board** with the activities of

the Town of Gillam. **Fox Lake, Manitoba** and the Town of Gillam may, by agreement in writing, provide for the implementation of those mechanisms.

6.3 FOX LAKE RESOURCE MANAGEMENT BOARD

- 6.3.1 Establishment. Within thirty (30) days following the **Date of this Agreement**, **Fox Lake** and **Manitoba** will each appoint four (4) persons to constitute the **Fox Lake Resource Management Board** and advise the other in writing of the appointments.
- 6.3.2 Board Meetings. The **Fox Lake Resource Management Board** will meet not later than sixty (60) days following the appointment of its last member. Except during the first year after the **Date of this Agreement**, the **Fox Lake Resource Management Board** will meet at least four (4) times a year at a location agreed upon by Board members.
- 6.3.3 Change in Number of Members. The number of Board members may be changed by agreement in writing between **Fox Lake** and **Manitoba** provided that there is always an equal number of members appointed by each.
- 6.3.4 Alternate Members. Subject to subsection 6.3.5, if any Board member is unable to attend a meeting, the **Party** that appointed that member may, by providing notice in writing to the other **Party**, appoint a temporary replacement of that member.
- 6.3.5 Limitation on Number of Alternate Members. There will be a maximum of one (1) temporary replacement appointed by each **Party** pursuant to subsection 6.3.4 in attendance at any meeting of the **Fox Lake Resource Management Board**.
- 6.3.6 Replacing Members. **Fox Lake** and **Manitoba** may, at any time, by providing notice in writing to the other, revoke the appointment of any member of the **Fox Lake Resource Management Board** appointed by that **Party**, including an alternate member under subsection 6.3.4, and appoint a replacement of that member.
- 6.3.7 Rules and Procedures The **Fox Lake Resource Management Board** may establish its own rules and procedures for the conduct of the business of the Board, consistent with this **Agreement**.
- 6.3.8 Selection of Chairperson. A Chairperson will be selected from among the members of the **Fox Lake Resource Management Board**. The Chairperson will have a vote as a member of the Board but will not have an additional deciding vote as Chairperson.

6.3.9 Quorum. A quorum will be at least three (3) of the members appointed by each of **Fox Lake** and **Manitoba**.

6.3.10 Decisions. Decisions of the **Fox Lake Resource Management Board** will be made by consensus unless a member requests that a vote be taken. Equal numbers of members appointed by each of **Fox Lake** and **Manitoba** will participate in any vote. Every motion put to a vote will be defeated unless supported by a majority of the members appointed by **Fox Lake** and a majority of the members appointed by **Manitoba** participating in that vote.

6.3.11 Sharing of Costs. Notwithstanding section 6.8:

- (a) **Fox Lake** will pay the costs of its representatives on the **Fox Lake Resource Management Board**; and
- (b) **Manitoba** will pay the costs of its representatives on the **Fox Lake Resource Management Board**.

6.4 FUNCTIONS AND PURPOSES OF THE BOARD

6.4.1 Board Activities. In order to promote land use planning and **Resource** management, the **Fox Lake Resource Management Board**:

- (a) will develop and recommend **Resource Management Plans** in accordance with subsection 6.4.2;
- (b) will develop and recommend **Land Use Plans** in accordance with subsection 6.4.5;
- (c) may examine, study and review **Resources**, their use, and matters affecting the same, including the nature and extent of **Fish** and **Wildlife** populations, and their environment;
- (d) may conduct and coordinate monitoring activities, including, subject to subsection 6.4.8, environmental monitoring, of the effects of activities within the **Fox Lake Resource Management Area**, which may include the consideration of any information made available under subsections 6.9.2 and 6.9.3;
- (e) may monitor and review the use and allocation of **Resources**;
- (f) will, where directed to do so by agreement of **Fox Lake** and **Manitoba**, engage in strategic planning in response to initiatives developed by **Fox**

Lake relating to economic and **Resource** related activities within the **Fox Lake Resource Management Area**, including:

- (i) the review of provincial laws and policies relating to land and **Resource** management, including considering any proposed changes to those laws and policies,
 - (ii) the consideration of opportunities for the involvement of the **Resource Management Board, Fox Lake** or **Fox Lake Citizens** relating to the use of **Resources**,
 - (iii) the amalgamation of the **Fox Lake Resource Management Area** with other resource management areas, in a manner consistent with section 6.2,
 - (iv) the cooperation of the **Fox Lake Resource Management Board** with other resource management boards, and
 - (v) other matters jointly agreed to by **Fox Lake** and **Manitoba**;
- (g) may propose subjects for research;
 - (h) may prepare information and communication strategies;
 - (i) may hold meetings and workshops or otherwise consult publicly or privately with any person; and
 - (j) will carry out other responsibilities as may be agreed upon by **Fox Lake** and **Manitoba**, including any responsibilities arising out of a strategic planning activity under paragraph 6.4.1(f).

6.4.2 **Resource Management Plans**. Subject to subsection 6.4.3, the **Fox Lake Resource Management Board** will develop and recommend **Resource Management Plans** for the **Fox Lake Resource Management Area**, or any part thereof, which, without limitation, may include provision for:

- (a) measures to enhance and preserve areas of significant **Fish** and **Wildlife** populations;
- (b) methods of harvesting **Resources**;
- (c) health and safety considerations;

- (d) procedures for the assignment or re-assignment of new, vacant or under-utilized traplines, fishery quotas and wild rice licences;
- (e) enforcement considerations;
- (f) protecting, conserving and enhancing **Resources** and the environment, including areas of ecological, cultural or historical significance;
- (g) prescribing and monitoring levels of use of **Resources**;
- (h) proposing the modification of existing priorities and allocations for domestic, commercial and recreational uses of **Resources** by lease, permit, quota or otherwise;
- (i) resolving conflicts related to the use of **Resources**;
- (j) sustainable development of **Resources**; and
- (k) proposing a role for the **Fox Lake Resource Management Board** in the implementation of the **Resource Management Plan**.

6.4.3 Application of **Resource Management Plans**. Notwithstanding subsection 6.4.2 and subject to applicable legislation, a **Resource Management Plan** will apply within a **Municipality** only insofar as it does not conflict with a **Development Plan** for the **Municipality** or any part thereof.

6.4.4 **Resource Use**. **Fox Lake** and **Manitoba** recognize that:

- (a) other individuals may, as provided by law, hunt, trap or fish in the **Fox Lake Resource Management Area**, subject to:
 - (i) the aboriginal and treaty rights of aboriginal peoples recognized and affirmed by section 35 of the *Constitution Act, 1982*, and
 - (ii) **Resource Management Plans** in force;
- (b) the conservation, management and protection of **Resources** in the **Fox Lake Resource Management Area** is desirable; and
- (c) actions under Article 6 by the **Fox Lake Resource Management Board**, **Fox Lake** and **Manitoba** will be consistent with the rights of **Fox Lake** and other aboriginal peoples, the rights of other individuals, and the desirability

of conservation, management and protection of **Resources** in the **Fox Lake Resource Management Area**.

6.4.5 **Land Use Plans**. The **Fox Lake Resource Management Board** will develop and recommend **Land Use Plans** for the **Fox Lake Resource Management Area**, or any part thereof, which, without limitation, may include provision for:

- (a) zoning lands;
- (b) prescribing areas of land or bodies of waters for purposes of regulating use and activities thereon;
- (c) prescribing and regulating land uses;
- (d) establishing administrative arrangements for the construction or occupation of cabins or shelters;
- (e) recognizing and preserving areas of ecological, cultural or historical significance;
- (f) resolving conflicting uses of land; and
- (g) the implementation of a **Land Use Plan**.

6.4.6 **Application of Land Use Plans**. Notwithstanding subsection 6.4.5 and subject to applicable legislation, **Land Use Plans** will not apply within a **Municipality** in which a **Development Plan** is effective.

6.4.7 **Environmental Monitoring by the Board**. The **Fox Lake Resource Management Board** may conduct and coordinate environmental monitoring within the **Fox Lake Resource Management Area**, or any part thereof, which, without limitation, may include the following activities:

- (a) receiving and analyzing environmental data or information:
 - (i) supplied by any **Party**, or
 - (ii) supplied by or obtained from any other source;
- (b) monitoring, investigating, identifying and assessing any environmental data or information;

- (c) collecting information on environmental conditions relevant to the **Fox Lake Resource Management Area**;
- (d) compiling and maintaining a baseline of environmental conditions within the **Fox Lake Resource Management Area**;
- (e) recommending to **Fox Lake, Manitoba** and other interested parties the nature and scope of environmental investigation and monitoring activities which could be undertaken in response to any environmental concern which may arise;
- (f) conducting consultations with interested parties in connection with environmental findings and activities in the **Fox Lake Resource Management Area**; and
- (g) performing such other duties as **Fox Lake** and **Manitoba** may jointly direct.

6.4.8 Environmental Monitoring by the Parties. No **Party** is required to take any action in relation to environmental monitoring except as:

- (a) expressly provided in this **Agreement**; or
- (b) otherwise required by law.

6.5 CONSULTATION ABOUT PLANS

6.5.1 Consultation with Interested Parties. Before recommending that a **Land Use Plan** or **Resource Management Plan** be adopted, the **Fox Lake Resource Management Board** will hold one (1) or more public meetings at such place and in such manner as it determines appropriate in order to provide information to and obtain the view of interested parties.

6.5.2 Giving Notice. The **Fox Lake Resource Management Board** will give at least thirty (30) days written notice of the meeting under subsection 6.5.1, with a copy of any proposed plan or recommendation to:

- (a) **Hydro**;
- (b) any First Nation which could be affected by the plan;
- (c) any **Municipality** within the **Fox Lake Resource Management Area**;

- (d) any third party that the **Fox Lake Resource Management Board** considers appropriate to be notified; and
- (e) any board or group that **Manitoba** or **Fox Lake** advises the **Fox Lake Resource Management Board** be notified.

6.6 ADOPTION OF PLANS AND RECOMMENDATIONS

- 6.6.1 Submission of Plans and Recommendations to **Fox Lake** and **Manitoba**. The **Fox Lake Resource Management Board** will submit proposed **Land Use Plans, Resource Management Plans**, environmental monitoring plans or any recommendations to **Fox Lake** and **Manitoba** accompanied by written reasons for supporting the plan or recommendation and written confirmation of consultation and notice in accordance with subsections 6.5.1 and 6.5.2, and **Fox Lake** and **Manitoba** will each consider this submitted plan or recommendation within ninety (90) days of submission.
- 6.6.2 Adoption of Plans and Recommendations. Where **Fox Lake** and **Manitoba** both advise the **Fox Lake Resource Management Board** that a plan or recommendation submitted under subsection 6.6.1 is acceptable for adoption, each will promptly take all appropriate steps within its jurisdiction to give such plan or recommendation full effect and will promptly provide the **Fox Lake Resource Management Board** with documentation evidencing that such effect has been given.
- 6.6.3 Non-Adoption of Plans and Recommendations. If either **Fox Lake** or **Manitoba** does not adopt a plan or recommendation of the **Fox Lake Resource Management Board** submitted to it under subsection 6.6.1, the **Party** not adopting the plan or recommendation will, within the ninety (90) day period referred to in subsection 6.6.1:
 - (a) refer the matter to the Board for further consideration; and
 - (b) provide written reasons for its decision not to adopt the plan or recommendation to the Board, with a copy to the other **Party**.
- 6.6.4 Resubmission of Plan or Recommendation to **Fox Lake** and **Manitoba**. Where either **Fox Lake** or **Manitoba** has referred a matter to the **Fox Lake Resource Management Board** for further consideration under paragraph 6.6.3(a), the **Fox Lake Resource Management Board** may, within thirty (30) days following its next meeting, submit to **Fox Lake** and **Manitoba**:
 - (a) a revised plan or recommendation; or

- (b) a request that the plan or recommendation first submitted under subsection 6.6.1 be reconsidered, including such additional information as the **Fox Lake Resource Management Board** may consider relevant.
- 6.6.5 Final Decision. **Fox Lake** and **Manitoba** will each, within ninety (90) days of a submission of a plan, recommendation or request under subsection 6.6.4, advise the **Fox Lake Resource Management Board** and the other **Party** in writing of its decision on whether or not it adopts the plan or recommendation.
- 6.6.6 No Further Submission. Where a plan or recommendation submitted under subsection 6.6.4 is not adopted by both **Fox Lake** and **Manitoba**, the **Fox Lake Resource Management Board** may not make a further submission under subsection 6.6.4 of the same plan or the same recommendation without first having obtained the approval of both **Fox Lake** and **Manitoba**.
- 6.6.7 Extensions. Time limits set forth in section 6.6 may be extended by agreement in writing between **Fox Lake** and **Manitoba**.
- 6.6.8 Plans and Recommendations of No Force or Effect. Unless adopted by both **Fox Lake** and **Manitoba**, no **Resource Management Plan** or **Land Use Plan** developed by the **Fox Lake Resource Management Board** or recommendation of the **Fox Lake Resource Management Board** will have any force or effect.
- 6.6.9 Review of Plans and Recommendations. The **Fox Lake Resource Management Board** will conduct a regular review of all adopted plans and recommendations and, where the **Fox Lake Resource Management Board** considers necessary, propose amendments to **Fox Lake** and **Manitoba** along with supporting reasons. The procedures set out in subsections 6.6.1 to 6.6.8, inclusive, will apply to any proposed amendments.

6.7 ALLOCATIONS OF LAND AND RESOURCES

- 6.7.1 Application of Section 6.7. Section 6.7 applies only to allocations of land and **Resources** in circumstances where there is no applicable approved **Land Use Plan** or **Resource Management Plan**.
- 6.7.2 Forwarding of Requests by Manitoba to Board. Pending approval of any **Land Use Plan** or **Resource Management Plan** with respect to the lands and **Resources** within the **Fox Lake Resource Management Area**, **Manitoba** will forward to the **Fox Lake Resource Management Board** for its consideration a copy of any request or application for an allocation or disposition of **Resources** related to Crown (Manitoba) land in the **Fox Lake Resource Management Area** and a copy of any application for a mineral exploration licence, quarry lease or quarry permit under *The Mines and Minerals Act* (Manitoba).

- 6.7.3 Forwarding Requests by Fox Lake to Board. Pending approval of any **Land Use Plan or Resource Management Plan** with respect to the lands and **Resources** within the **Fox Lake Resource Management Area**, **Fox Lake** will forward to the **Fox Lake Resource Management Board** for its consideration a copy of any request or application for an allocation or disposition of **Resources** related to **Reserve** land in the **Fox Lake Resource Management Area**.
- 6.7.4 Consideration of Requests by Board. The **Fox Lake Resource Management Board** will consider requests or applications forwarded to it under subsection 6.7.2 or 6.7.3 within forty-five (45) days of the request or application.
- 6.7.5 Recommendation by Board. Where the **Fox Lake Resource Management Board** considers a request or application under subsection 6.7.4, the **Fox Lake Resource Management Board** may submit recommendations to the **Party** which forwarded the request or application under subsection 6.7.2 or 6.7.3, in which case the procedures set out in subsections 6.6.1 to 6.6.8, inclusive, will apply with necessary modifications.
- 6.7.6 No Recommendation by Board. In the absence of a recommendation being submitted by the **Fox Lake Resource Management Board** within the time period provided under section 6.6, **Fox Lake** or **Manitoba**, in the sole discretion of each, may act within its respective jurisdiction upon such requests or applications and will advise the **Fox Lake Resource Management Board** of its actions.
- 6.7.7 Transitional Measures. From the **Date of this Agreement** to the date the **Fox Lake Resource Management Board** first meets, **Fox Lake** and **Manitoba** will defer any request or application for an allocation or disposition of **Resources** within the **Fox Lake Resource Management Area** which is received after the **Date of this Agreement**. Where **Manitoba** has, prior to the **Date of this Agreement**, provided copies of a request or application to **Fox Lake**, and deferred such request or application pending the execution of this **Agreement**, **Manitoba** will provide such request or application and any new request or application to the **Fox Lake Resource Management Board** at its first meeting, and the **Fox Lake Resource Management Board** will submit its recommendation on any such request or application within forty-five (45) days of the appointment of the last member of the Board, and the procedures set out in subsections 6.6.1 to 6.6.8 inclusive will apply with necessary modifications.

6.8 PROGRAMS AND BUDGETS

- 6.8.1 Annual Program and Budget. On or before September 1 in any year, except for the first year of this **Agreement**, the **Fox Lake Resource Management Board** will submit to **Fox Lake** and **Manitoba** for approval an annual program and budget for the next fiscal year, approved by the Board. **Fox Lake** and **Manitoba**

each will, within ninety (90) days of receiving the annual program and budget, advise the **Fox Lake Resource Management Board** and the other **Party** in writing as to whether it accepts or rejects all or part of the annual program and budget. Where all or part of the annual program and budget is rejected by **Fox Lake** or **Manitoba**, **Fox Lake** or **Manitoba**, as the case may be, will provide reasons for its rejection, and the **Fox Lake Resource Management Board** will consider and submit a revised annual program and budget.

6.8.2 Budget Components. The annual program and budget may:

- (a) include anticipated requirements for:
 - (i) staff, facilities, equipment and administration,
 - (ii) public meetings, consultations and hearings,
 - (iii) research, publications and public education,
 - (iv) technical assistance,
 - (v) environmental monitoring, and
 - (vi) other programs or activities determined by the **Fox Lake Resource Management Board**; and
- (b) include anticipated requirements for activities associated with consultation by **Manitoba** and others with **Fox Lake** including consultation about matters outside the **Fox Lake Resource Management Area**, and
- (c) identify how the budget will be funded and to whom elements of the budget will be paid.

6.8.3 Fiscal Year. The fiscal year of the **Fox Lake Resource Management Board** will commence on April 1 in each year unless changed by agreement in writing between **Fox Lake** and **Manitoba**.

6.8.4 Reports. The **Fox Lake Resource Management Board**:

- (a) will within ninety (90) days after the end of the fiscal year provide **Fox Lake** and **Manitoba** with a written report which includes:
 - (i) a description of the activities carried out during the year,

- (ii) a summary of decisions and recommendations,
 - (iii) an evaluation of the success or failure of the activities undertaken, and the reasons therefor, and
 - (iv) an identification of any deficiencies in activities related to land use planning, resource management and environmental monitoring; and
- (b) may produce, from time to time, other reports or materials.

6.9 ASSISTANCE AND INFORMATION

6.9.1 Technical Support. Technical support for land use planning, **Resource** management and environmental monitoring normally available from **Manitoba** will be made available to, and coordinated with programs of, the **Fox Lake Resource Management Board**, without charge. However, in those instances where a fee or charge has been established, it will be levied, unless otherwise waived by **Manitoba**.

6.9.2 Requesting Information. **Fox Lake** and **Manitoba** will each, upon the written request of the **Fox Lake Resource Management Board**, **Fox Lake** or **Manitoba**, and subject to payment, unless waived, of any set fee or charge, provide the **Fox Lake Resource Management Board** with information within its control about matters being dealt with by or of interest to the **Fox Lake Resource Management Board**.

6.9.3 Requesting Assistance. **Fox Lake** and **Manitoba** will each, upon the written request of the **Fox Lake Resource Management Board**, **Fox Lake** or **Manitoba**, provide to the **Fox Lake Resource Management Board**:

- (a) information concerning the application of existing laws, policies, procedures and plans affecting management or use of **Resources** in the **Fox Lake Resource Management Area**;
- (b) information concerning any proposed changes to any laws, policies, procedures and plans affecting management or use of **Resources** in the **Fox Lake Resource Management Area** to the extent that that information is not confidential or privileged;
- (c) any completed reports, data, findings or recommendations prepared or submitted by any board or group advising **Fox Lake** or **Manitoba** on

matters which might relate to or affect the management of **Resources** in the **Fox Lake Resource Management Area**; and

- (d) assistance in drafting any recommendation or plan. This will not imply that **Manitoba** or **Fox Lake** will adopt the recommendation or plan.

6.9.4 Disclosure subject to Legislation. Provision of information under Article 6 will be subject to the restrictions on use and disclosure of information set out in *The Freedom of Information and Protection of Privacy Act* (Manitoba).

6.10 GENERAL

6.10.1 No Derogation. Nothing in Article 6 will derogate from any authority of **Fox Lake** or **Manitoba**, each within its respective jurisdiction, ownership or administration and control, over the **Resources** in the **Fox Lake Resource Management Area**.

6.10.2 Aboriginal or Treaty Rights Not Affected. Nothing in Article 6 affects the right of **Fox Lake** or **Fox Lake Citizens** to assert and rely on their existing aboriginal, treaty or constitutional rights in the **Traditional Territory**.

6.10.3 Access to Lands. Nothing in Article 6 restricts the right of any person to enter on Crown (Manitoba) lands for any lawful purpose.

6.10.4 Existing Rights. Nothing in Article 6 will affect any rights or privileges granted under any licences, permits, leases or approvals issued by or on behalf of **Fox Lake** or **Manitoba** prior to the **Date of this Agreement**.

6.10.5 Statutory Requirements. Nothing in Article 6 alters any statute or any statutory authority or requirement or confers any statutory approval.

6.10.6 Discontinuance. **Fox Lake** and **Manitoba** may, by agreement in writing:

- (a) discontinue the **Fox Lake Resource Management Board** and its activities; or
- (b) assign the functions of the **Fox Lake Resource Management Board** under Article 6 to other entities.

6.10.7 No Revenue Sharing. The functions and purposes of the **Fox Lake Resource Management Board** do not extend to consideration of royalties, income or other revenue derived from or attributable to **Resources**, and nothing in this **Agreement** entitles **Fox Lake** or **Manitoba** to share in the royalties, income or

other revenue derived from **Resources** within the other's jurisdiction, ownership or administration and control.

6.10.8 Amendment of Article 6. Except for section 6.5, **Fox Lake** and **Manitoba** may amend Article 6, by agreement in writing, provided that any such amendment is not prejudicial to **Hydro**.

ARTICLE 7 - CITIZENS' CLAIMS

7.1 INTRODUCTION

7.1.1 Introduction. Article 7 provides:

- (a) subject to subsection 9.2.3, for **Fox Lake** to assume responsibility for resolving **Citizens' Claims** advanced before and after the **Date of this Agreement**;
- (b) pursuant to section 9.3, for **Fox Lake** to indemnify **Hydro** for any **Citizen's Claim** advanced against **Hydro** before and after the **Date of this Agreement**.

7.2 CLAIMS OFFICER

7.2.1 Appointment of Claims Officer. The **Trustees** will, in accordance with section 6.9 of the **Indenture**, appoint:

- (a) an independent **Claims Officer**; and
- (b) an **Alternate Claims Officer** to act in the place of the **Claims Officer**, in the event that the **Claims Officer** is unable or unwilling to act;

who will administer claims in accordance with section 7.3.

7.2.2 Qualifications of Claims Officer. Any **Claims Officer** and any **Alternate Claims Officer** appointed pursuant to subsection 7.2.1 will be a **Fox Lake Citizen** who meets all the qualifications and requirements of eligibility for a **Trustee**, but a **Trustee** may not serve as a **Claims Officer**.

7.2.3 Tenure. The tenure of a **Claims Officer** will be automatically revoked where the **Claims Officer** ceases to meet the qualifications in subsection 7.2.2, in which case the **Alternate Claims Officer** will be deemed to be the **Claims Officer**, and a new **Alternate Claims Officer** will be appointed in accordance with subsection 7.2.1.

7.2.4 Undertaking. Prior to assuming office, the **Claims Officer** and **Alternate Claims Officer** will sign an undertaking in the form attached as Schedule 7.1.

7.2.5 Conflict. No **Claims Officer** who has an interest in the outcome of a claim that could affect the impartiality of such person may take part in the administration of

that claim under section 7.3, in which case the **Alternate Claims Officer** will administer that claim.

7.3 ADMINISTRATION OF CLAIMS

7.3.1 **Claims Account.** **Fox Lake** acknowledges that a portion of the payment being made by **Hydro** pursuant to subsection 2.2.2 is to be used to cover the payment of **Citizens' Claims** advanced before and after the **Date of this Agreement**, and accordingly, a **Claims Account** has been established under the **Indenture** to cover the cost of these claims.

7.3.2 **Citizen's Claim.** A **Claimant** may advance a **Citizen's Claim** against the **Claims Account** within no more than two (2) years following the later of:

- (a) the **Date of this Agreement**; or
- (b) the date the loss or damage first became evident to the **Claimant**;

for compensation for loss or damage, which occurred or became evident to the **Claimant**, no earlier than two years prior to the **Date of this Agreement** and which is reasonably attributable to an **Adverse Effect** of the **Project**.

7.3.3 **Personal Property Loss or Damage Occurring before Date of this Agreement.** Notwithstanding the limitation period set forth in subsection 7.3.2, for one (1) year following the **Date of this Agreement**, **Fox Lake Citizens** shall have the one-time opportunity to advance **Citizen's Claims** against the **Claims Account** for loss or damage to **Personal Property** where the loss or damage occurred and/or became evident to the **Claimant** earlier than two years prior to the **Date of this Agreement**.

7.3.4 **Hydro to Notify Claimant.** If a **Citizen's Claim** is advanced against **Hydro**, **Hydro** will immediately:

- (a) forward the claim to **Chief and Council**; and
- (b) notify the **Claimant** in writing that the claim should be advanced against the **Claims Account**, in accordance with the provisions of this **Agreement**.

7.3.5 **Hydro to Consider Matters Addressed in Subsection 9.2.3.** Where a **Citizen's Claim** advanced against **Hydro** relates to a matter identified in subsection 9.2.3, **Hydro** will retain responsibility for administering that claim.

7.3.6 Initial Determination. All **Citizen's Claims** received by **Fox Lake** will be forwarded to the **Claims Officer** who will, as soon as reasonably practicable:

- (a) investigate the claim;
- (b) determine whether the claim has been brought within the relevant time limit imposed under subsection 7.3.2 or 7.3.3;
- (c) determine whether the **Claimant** was a **Fox Lake Citizen** at the time of the alleged loss or damage; and
- (d) determine whether the claim or a portion of the claim is a matter falling under subsection 9.2.3 in which case the **Claims Officer** will:
 - (i) forward the claim to **Hydro**, and
 - (ii) advise the **Claimant** in writing of the determination.

7.3.7 Claims Officer Determination not Binding on Hydro. Where the **Citizen's Claim** is referred to **Hydro** by the **Claims Officer**, **Hydro** shall address the said claim outside of the terms of this **Agreement**, but the **Claims Officer's** determination shall be without prejudice to **Hydro's** right to resist the claim or, if the claim is found to have merit, to claim an indemnity otherwise available under section 9.3.

7.3.8 Further Decision Process. If, pursuant to subsection 7.3.6, the **Claims Officer** determines that:

- (a) the **Citizen's Claim** is not one referable to **Hydro**;
- (b) the **Citizen's Claim** has been brought within the relevant time limit imposed under subsection 7.3.2 or 7.3.3; and
- (c) the **Claimant** was a **Fox Lake Citizen** at the time of the alleged loss or damage;

then the **Claims Officer** will:

- (d) determine whether the **Citizen's Claim** is reasonably related to an **Adverse Effect** of the **Project** that is settled by this **Agreement** and determine whether the claim should be paid;

- (e) determine whether the amount of compensation requested is appropriate, taking into account any prior benefit received by, or compensation or insurance proceeds, paid or payable to, the **Claimant**;
- (f) provide **Chief and Council** and the **Trustees** with written notice of his or her determinations under paragraphs (d) and (e); and
- (g) provide the **Claimant** with written notice of his or her determination under paragraphs (d) and (e) above, and where a **Citizen's Claim** is to be paid in whole or in part, provide the **Claimant** with an Acceptance and Release Form in the form of Schedule 7.2.

7.3.9 Notice to Hydro. Upon being advised pursuant to paragraph 7.3.8(f), that the **Claims Officer** has determined that:

- (a) a **Citizen's Claim** should not be paid; or
- (b) the amount of compensation requested is inappropriate;

Chief and Council will provide **Hydro** with written notice of such determination.

7.3.10 Payment of Citizens' Claims. Where the **Claims Officer** determines pursuant to paragraphs 7.3.8(d) and (e) that all or any portion of a **Citizen's Claim** is to be paid and provides notice to the **Trustees** in accordance with paragraph 7.3.8(f), the **Trustees** will:

- (a) upon receipt of the Acceptance and Release Form in the form of Schedule 7.2 signed by the **Claimant**, pay the **Citizen's Claim** with **Trust Funds** advanced from the **Claims Account**; and
- (b) immediately upon payment of the claim, notify **Hydro** of the payment and provide a copy of the Acceptance and Release Form referenced in paragraph 7.3.10(a) to **Hydro**.

7.3.11 Liability of Chief and Council and the Fox Lake Trustees. Members of **Chief and Council**, the **Trustees**, the **Claims Officer** and, where applicable, the **Alternate Claims Officer** will be responsible for the fair, prudent and impartial administration and payment of the **Citizen's Claims** and provided they act in good faith they will incur no liability with respect to their administration and payment of such claims.

ARTICLE 8 - FUTURE DEVELOPMENT & DECOMMISSIONING

8.1 INTRODUCTION

8.1.1 Introduction. Article 8 sets forth cooperative planning principles and processes for the analysis, discussion and resolution of potential **Adverse Effects** caused by and in relation to **Future Development**.

8.2 NOTICE

8.2.1 Future Development. **Hydro** and **Fox Lake** acknowledge that **Hydro** may, within the foreseeable future, undertake **Future Development** and initiate further preparatory and other work related to such **Future Development**.

8.2.2 Notice. **Hydro** will, at least annually, provide to **Fox Lake** a letter advising whether or not it is actively considering a **Future Development**. If at any time, a **Future Development** is being actively considered, in addition to so advising in its annual letter, **Hydro** will give written notice to **Fox Lake**, as early as practicable in the planning stages of the **Future Development**, of its intention to commence the planning process outlined in section 8.3.

8.2.3 Agreement to Begin Adverse Effects Compensation Process. After notice is provided in accordance with subsection 8.2.2, **Hydro** and **Fox Lake** agree to conduct the process outlined in section 8.3 to consider the issue of compensation for potential **Adverse Effects** of **Future Development**.

8.3 PROCESS TO ADDRESS ADVERSE EFFECTS OF FUTURE DEVELOPMENT

8.3.1 Annual Meeting. After notice is provided under subsection 8.2.2, **Hydro** agrees to annually convene in Gillam, or elsewhere in Manitoba, a special meeting with, or attend a regular meeting of, **Chief and Council** and its advisors:

- (a) to review work undertaken by **Hydro** since the **Date of this Agreement** or the last annual meeting in relation to **Future Development**;
- (b) to review any physical works related to **Future Development** which **Hydro** intends to construct in the coming year; and
- (c) to discuss issues and concerns relevant to **Future Development** and decommissioning.

8.3.2 **Future Development Compensation Process.** As part of the planning process for **Future Development, Hydro** will:

- (a) with respect to each option for **Future Development** being considered by **Hydro**, provide to **Fox Lake**:
 - (i) maps showing potential sites,
 - (ii) detailed descriptions of each option for **Future Development** including anticipated impacts on water levels and rates of change in water levels of Stephens Lake and other water bodies in the area identified in Schedule 1.1,
 - (iii) maps showing the anticipated extent of inundation,
 - (iv) an outline of anticipated effects on water bodies in the area identified in Schedule 1.1, and
 - (v) as changes are made, up-dates of the maps, descriptions and outlines referred to in subparagraphs (i) to (iv);
- (b) in consultation with **Fox Lake**, identify any issues of particular concern or importance to **Fox Lake** and **Fox Lake Citizens** related to **Future Development**;
- (c) in consultation with **Fox Lake**, identify and review potential **Adverse Effects** on **Fox Lake** and **Fox Lake Citizens** which could result from each option for **Future Development**;
- (d) undertake such studies and investigations as are necessary to obtain a reasonable assessment and understanding of such potential **Adverse Effects** which have been identified and after consultation with **Fox Lake**, consider reasonable design modifications which could eliminate or alleviate any identified **Adverse Effects**;
- (e) after consultation with **Fox Lake**, identify, design and cost mitigatory and remedial works which are reasonable, to alleviate anticipated **Adverse Effects** which cannot be eliminated by design modifications;
- (f) consult with **Fox Lake** to determine which option for **Future Development**, if any, is preferred by **Fox Lake**; and

- (g) in accordance with section 8.3.3, and in consultation with **Fox Lake**, endeavour to develop, negotiate and finalize an agreement to compensate **Fox Lake** for residual unmitigated **Adverse Effects** of **Future Development** which are known and foreseeable.

8.3.3 Fox Lake Interests. In order to reach the agreement contemplated in paragraph 8.3.2(g), **Fox Lake** and **Hydro** will work together to fully assess the cost and methods of compensating **Fox Lake** and **Fox Lake Citizens** for residual unmitigated **Adverse Effects** of **Future Development**. In relation to such matters, **Fox Lake** will:

- (a) participate in compiling and providing data and information about potential **Adverse Effects** within the knowledge of **Fox Lake** and **Fox Lake Citizens**;
- (b) participate in community surveys regarding potential **Adverse Effects**;
- (c) participate in the design, implementation and analysis of alternative compensation approaches for resolving issues of concern to **Fox Lake** and **Fox Lake Citizens**; and
- (d) conduct polls or referenda of **Fox Lake Citizens** with respect to an **Adverse Effects** agreement.

8.3.4 Costs of Fox Lake. Where **Hydro** and **Fox Lake** agree that a **Future Development** is likely to cause **Adverse Effects** on **Fox Lake**, **Hydro** will reimburse the pre-approved reasonable costs of **Fox Lake** which are incurred by **Fox Lake** to participate in the processes described in subsection 8.3.2, as required to develop, negotiate and finalize the **Adverse Effects** agreement referred to in paragraph 8.3.2(g).

8.3.5 Costs of Fox Lake to Investigate. Where **Hydro** advises **Fox Lake** that it does not anticipate that a **Future Development** is likely to cause an **Adverse Effect** and **Fox Lake** is uncertain, **Hydro** is prepared to provide funding to **Fox Lake** to cover pre-approved reasonable costs associated with **Fox Lake's** consideration of whether or not such a **Future Development** would have an **Adverse Effect** on **Fox Lake**.

8.4 OPPORTUNITIES ARISING FROM FUTURE DEVELOPMENT

8.4.1 Opportunities Arising From Future Development. **Fox Lake** and **Hydro** will, separate and apart from the **Adverse Effects** compensation process outlined in section 8.3, but in a reasonably timely manner, identify:

- (a) any employment and training opportunities related to **Future Development** of which **Fox Lake Citizens** may take advantage; and
- (b) any business opportunities related to **Future Development** of which **Fox Lake** and **Fox Lake Citizens** may take advantage.

8.5 CONVERTER STATION AND SWITCHYARD

8.5.1 Converter Station and Switchyard. At a reasonable time after **Hydro** decides to begin major planning and environmental assessment activities in support of regulatory applications for environmental licences and approvals for the development of:

- (a) a major converter station or a switchyard associated with a major converter station, or
- (b) a major expansion of a development described in paragraph (a)

in the **Traditional Territory**, **Hydro** will provide written notice to **Fox Lake** of its intention to commence, as early as practical, the processes and activities outlined in paragraph 8.5.2.

8.5.2 Consultation Process. **Hydro** will undertake the following actions in the planning process in relation to a development described in subsection 8.5.1:

- (a) provide **Fox Lake** with information on the size and nature of the development, including criteria for locating alternative sites;
- (b) in consultation with **Fox Lake**, identify any issues of particular concern or importance to **Fox Lake** and **Fox Lake Citizens** related to the development;
- (c) in consultation with **Fox Lake**, identify and review the potential site alternatives and related maps and evaluate the comparative positive and negative impacts on **Fox Lake Citizens** which could potentially result from such alternatives;
- (d) in consultation with **Fox Lake**, identify and evaluate potential mitigation measures, that are reasonably practicable:
 - (i) to prevent or avoid works or measures associated with the development which will cause negative impacts,

- (ii) to lessen or reduce unavoidable negative impacts,
 - (iii) to provide appropriate replacements, substitutions or opportunities to offset any negative impact that can not be avoided;
- (e) in consultation with **Fox Lake**, review **Hydro's** employment, training and business policies related to the development and identify the associated opportunities of which **Fox Lake Citizens** may take advantage;
- (f) in consultation with **Fox Lake**, review the site specific mitigation measures **Hydro** will apply during the construction, operation and maintenance of a development described in subsection 8.5.1;
- (g) in consultation with **Fox Lake**, identify and describe negative impacts which are known and foreseeable and which cannot be addressed by mitigation measures; and
- (h) negotiate and endeavour to finalize an agreement, separate and apart from the **Adverse Effects** compensation process outlined in section 8.3, to compensate **Fox Lake** for any negative impacts identified in accordance with paragraph 8.5.2(g).

8.5.3 Evolution of Consultation Process. In the future, as planning and consultation practices evolve, **Hydro** and **Fox Lake** will consult about any proposed changes that they both believe could improve the consultation process outlined in paragraph 8.5.2.

8.5.4 Costs of Fox Lake. **Hydro** will reimburse **Fox Lake's** reasonable consultation costs associated with **Fox Lake's** cooperative participation in the processes outlined in paragraphs 8.5.2(a) to (g) that have been approved in advance by **Hydro**. Additionally, **Hydro** will reimburse **Fox Lake's** reasonable negotiating costs, that have been approved in advance by **Hydro**, for **Fox Lake's** participation in the process outlined in paragraph 8.5.2(h) provided there is a reasonable likelihood that a compensation agreement can be reached.

8.5.5 Discussion with Others. Without implying acceptance or validation by **Fox Lake** of concerns of others relating to a development as described in subsection 8.5.1 within the **Traditional Territory**, section 8.5 does not preclude **Hydro** from discussion with others about such developments.

8.6 DECOMMISSIONING

- 8.6.1 Decommissioning. **Hydro** and **Fox Lake** agree that, if **Hydro** decides to initiate preparatory or other work related to decommissioning of any aspect of the **Project**, which work has a reasonable likelihood of having a material and continuing physical, chemical or biological impact upon a water body within the **Traditional Territory**, **Hydro** and **Fox Lake** will enter into a process to address any **Adverse Effects** of decommissioning on **Fox Lake**, using the processes described in section 8.3 with whatever changes are reasonable and relevant in the circumstances.

ARTICLE 9 - MATTERS ADDRESSED

9.1 INTRODUCTION

9.1.1 Introduction. Article 9 provides for confirmation by **Fox Lake** of the settlement and satisfaction of all obligations and liabilities of **Manitoba** and **Hydro** arising out of the **Project**.

9.2 MATTERS ADDRESSED

9.2.1 Matters Resolved. The signing of this **Agreement**, the payment of the amounts paid or payable under section 2.2, and the other actions taken under this **Agreement** by **Manitoba** and **Hydro** will, subject to subsection 9.2.3, constitute a full and final settlement and satisfaction of any and all obligations and liabilities of **Manitoba** and **Hydro** related to:

- (a) all existing responsibilities and obligations of **Manitoba** and **Hydro** to **Fox Lake** arising out of the **Project**;
- (b) all past, present and future loss or damage suffered by **Fox Lake** and **Fox Lake Citizens**, attributable to **Adverse Effects** of the **Project**;
- (c) any and all actions, causes of action, suits, claims or grievances of any nature or kind whatsoever, at law or in equity, which **Fox Lake**, or **Fox Lake** on behalf of any **Fox Lake Citizen**, their respective successors, assigns, heirs, executors or administrators, have had, now have or hereafter can, shall or may have, for, or by reason of, any cause, matter or thing whatsoever to the extent attributable to the **Project** including, without limitation, actions, claims, demands, losses or damages in relation to:
 - (i) the creation of the LGD of Gillam,
 - (ii) the redevelopment and expansion of Gillam, and
 - (iii) all construction and operational activity associated with the **Project**;
- (d) any interference with the exercise of any existing aboriginal or treaty right recognized and affirmed by the *Constitution Act, 1982* resulting from the **Project** (recognizing that nothing in this paragraph shall be construed so as to diminish, abrogate or derogate from, or to have diminished, abrogated or derogated from, the aboriginal rights, treaty rights or constitutional rights of **Fox Lake** or **Fox Lake Citizens**).

9.2.2 Matters Addressed. Through the **Citizens' Claims** process outlined in Article 7 and the indemnities provided for under section 9.3, this **Agreement** also provides a mechanism to address the **Adverse Effects** of the **Project** on **Fox Lake Citizens**.

9.2.3 Matters Not Resolved. Subsections 9.2.1 and 9.2.2 do not apply to:

- (a) human disabilities, illness or death resulting from the ingestion of methyl mercury caused by or attributable to the **Project**;
- (b) the personal injury or death of an individual caused by or attributable to the **Project**;
- (c) any loss or damage, or any interference with the exercise of any aboriginal or treaty rights, resulting from **Adverse Effects** of the **Project** which were unknown and/or unanticipated and were not discernible with the ordinary exercise of due diligence by **Fox Lake** at the **Date of this Agreement**;
- (d) any claims for loss or damage to **Personal Property** which is suffered by **Fox Lake** or **Fox Lake Citizens**:
 - (i) outside of the **Traditional Territory**, or
 - (ii) on the Nelson River downstream of the Limestone Generating Station after the **Date of this Agreement**;
- (e) **Adverse Effects** to the extent, and only to the extent, such **Adverse Effects** are attributable to **Daily Average Water Levels** occurring after the **Date of this Agreement** outside of both the **Fully Compensated Zone** and the **Pre-determined Compensation Zone**, except where such **Adverse Effect** is attributable to a **Draw-down Event** compensated for under this **Agreement**;
- (f) **Adverse Effects** if:
 - (i) the **Pre-determined Compensation** or **Draw-down Event Compensation** provisions of section 3.7 are terminated pursuant to section 3.10, to the extent, and only to the extent, such **Adverse Effects** are attributable to **Daily Average Water Levels** falling outside of the **Fully Compensated Zone** after the date of such termination, or

- (ii) a **Pre-determined Compensation** or **Draw-down Event Compensation** payment is returned to **Hydro** pursuant to subsection 3.7.7, to the extent, and only to the extent, such **Adverse Effects** are attributable to **Daily Average Water Levels** falling outside of the **Fully Compensated Zone** during the period which would have been compensated by the payment of **Pre-determined Compensation** or **Draw-down Event Compensation** if such amount had not been returned to **Hydro**;
- (g) claims, based on unlawful actions, if any, of **Manitoba** or **Hydro** with respect to the exercise of their powers and authority in matters affecting the establishment of a reserve in and around Gillam; and
- (h) liabilities and obligations arising out of breaches of this **Agreement**.

9.2.4 Agreement Not to Make Claims. **Fox Lake** covenants and agrees that, except as may be required in order to enforce any covenants and agreements of **Manitoba** or **Hydro** contained in this **Agreement** or any other agreement entered into pursuant hereto, it will not, with respect to the matters addressed pursuant to subsections 9.2.1 and 9.2.2, subject to the exclusions in subsection 9.2.3:

- (a) commence or prosecute any action, claim, demand or proceeding on its own behalf or on behalf of any other person or entity against **Manitoba** or **Hydro**; or
- (b) seek any further redress against **Manitoba** or **Hydro**.

9.2.5 No Warranty for Effectiveness of Mitigation Measures. **Hydro** and **Fox Lake** jointly identified the mitigation measures outlined in section 4.2. **Hydro** is not responsible for, and makes no warranty or representation in relation to:

- (a) the design, construction or effectiveness of any mitigation measure; and
- (b) whether the mitigation measures are suitable to meet the purposes intended by **Fox Lake Citizens**.

9.3 INDEMNITIES

9.3.1 Indemnity re: Payments to **Fox Lake** or **Canada**. Subject to subsection 9.3.6, **Fox Lake** covenants and agrees to indemnify and save harmless **Manitoba** and **Hydro** with respect to:

- (a) any amount ordered by a court of competent jurisdiction to be paid by **Manitoba** or **Hydro** to **Fox Lake** with respect to the matters addressed pursuant to subsections 9.2.1 and 9.2.2, subject to the exclusions in subsection 9.2.3;
- (b) any amount ordered by a court of competent jurisdiction to be paid by **Manitoba** or **Hydro** to **Canada**, arising directly or indirectly out of an action brought by **Fox Lake** against **Canada** with respect to the matters addressed pursuant to subsections 9.2.1 and 9.2.2, subject to the exclusions in subsection 9.2.3; and
- (c) any amount ordered by a court of competent jurisdiction to be paid by **Manitoba** or **Hydro** to **Fox Lake** or **Fox Lake Citizens** arising out of any claim relating to the use of the settlement proceeds by **Fox Lake** or the **Fox Lake Trustees**, and/or the sufficiency or the effectiveness of any measure undertaken by **Fox Lake** in relation to this **Agreement**.

9.3.2 Indemnity in favour of **Manitoba** re: Payments to **Fox Lake Citizens**. Subject to subsections 9.3.3 and 9.3.6, **Fox Lake** covenants and agrees to indemnify and save harmless **Manitoba** with respect to any amount that may be ordered by a court of competent jurisdiction to be paid by **Manitoba**, or any settlement amount paid by **Manitoba** with the consent of **Fox Lake**, to any **Fox Lake Citizen** with respect to **Adverse Effects** of the **Project**.

9.3.3 Limitation on Amount and Timing of Payment of 9.3.2 Indemnity. Where **Fox Lake** is liable to indemnify and save harmless **Manitoba** under the indemnity provided in subsection 9.3.2 (the "9.3.2 Indemnity"):

- (a) **Fox Lake** shall immediately pay to **Manitoba** out of either or both of the Manitoba Community Development **Sub-Account** or the Housing Community Development **Sub-Account**, in the proportions determined by the **Trustees**, the amount that it is liable to pay under the 9.3.2 Indemnity or, if there are not sufficient funds in these **Sub-Accounts** to pay such obligation in full, the amount that is then in these **Sub-Accounts**;
- (b) where there are insufficient funds in the **Trust** for **Fox Lake** to pay its obligations under the 9.3.2 Indemnity, in full, and further payments remain to be made by **Manitoba** under subsection 2.2.5, **Manitoba** may withhold from such further payments under subsection 2.2.5 the amount remaining to be paid by **Fox Lake** under the 9.3.2 Indemnity;
- (c) notwithstanding that payment to **Manitoba** under the 9.3.2 Indemnity may be delayed, to the extent such delay is attributable to the arrangements for

payment set forth in subsection 9.3.3, **Manitoba** shall not be entitled to any interest on the outstanding balance owing under the 9.3.2 Indemnity;

- (d) **Manitoba** shall have no recourse to pursue payment from **Fox Lake** under the 9.3.2 Indemnity beyond the amounts that **Manitoba** is entitled:
 - (i) to be paid by **Fox Lake** from funds in the **Trust** as provided in paragraph 9.3.3(a), or
 - (ii) to deduct from the amounts **Manitoba** would otherwise be obligated to pay under subsection 2.2.5 as provided in paragraph 9.3.3(b); and
- (e) in no event shall the amount payable under the 9.3.2 Indemnity exceed in the aggregate the amount of the **Financial Proceeds** paid by **Manitoba** pursuant to subsection 2.2.5.

9.3.4 Indemnity in favour of **Hydro** re: Payments to **Fox Lake Citizens**. Subject to subsection 9.3.5 and 9.3.6, **Fox Lake** covenants and agrees to indemnify and save harmless **Hydro** with respect to any amount that may be ordered by a court of competent jurisdiction to be paid by **Hydro**, or any settlement amount paid by **Hydro** with the consent of **Fox Lake**, to any **Fox Lake Citizen** with respect to **Adverse Effects** of the **Project**.

9.3.5 Limitation on Amount and Timing of Payment of 9.3.4 Indemnity. Where **Fox Lake** is liable to indemnify and save harmless **Hydro** under the indemnity provided in subsection 9.3.4 (the "9.3.4 Indemnity"):

- (a) **Fox Lake** shall immediately pay to **Hydro** out of the **Claims Account** and, if necessary, out of either or both of the Hydro Community Development **Sub-Account** or the Heritage Capital **Sub-Account**, in the proportions determined by the **Trustees**, the amount that it is liable to pay under the 9.3.4 Indemnity or, if there are not sufficient funds in these **Accounts** or **Sub-Accounts** to pay such obligation in full, the amount that is then in these **Accounts** or **Sub-Accounts**;
- (b) where there are insufficient funds in the **Trust** for **Fox Lake** to pay its obligations under the 9.3.4 Indemnity, in full, and further payments remain to be made by **Hydro** under subsection 2.2.2, **Hydro** may withhold from such further payments under subsection 2.2.2 the amount remaining to be paid by **Fox Lake** under the 9.3.4 Indemnity;
- (c) notwithstanding that payment to **Hydro** under the 9.3.4 Indemnity may be delayed, to the extent such delay is attributable to the arrangements for

payment set forth in subsection 9.3.5, **Hydro** shall not be entitled to any interest on the outstanding balance owing under the 9.3.4 Indemnity;

- (d) **Hydro** shall have no recourse to pursue payment from **Fox Lake** under the 9.3.4 Indemnity beyond the amounts that **Hydro** is entitled:
 - (i) to be paid by **Fox Lake** from funds in the **Trust** as provided in paragraph 9.3.5(a), or
 - (ii) to deduct from the amounts **Hydro** would otherwise be obligated to pay under subsection 2.2.2 as provided in paragraph 9.3.5(b); and
- (e) in no event shall the amount payable under the 9.3.4 Indemnity exceed in the aggregate the amount of the **Financial Proceeds** paid by **Hydro** pursuant to subsections 2.2.1 and 2.2.2.

9.3.6 Limitations on Indemnities. The **Parties** acknowledge that:

- (a) the indemnities contained in section 9.3 do not extend to indemnifying the costs of **Manitoba** or **Hydro** in defending any claims;
- (b) the obligations of **Fox Lake** in connection with the indemnities referred to in section 9.3 are conditional upon **Manitoba** or **Hydro**, as the case may be:
 - (i) forthwith, upon becoming aware of such claim, giving notice to **Fox Lake**,
 - (ii) consenting to any application by **Fox Lake** to be named as a party to the claim, and
 - (iii) first having received from **Fox Lake** its consent to the terms of any settlement, whether or not submitted to a court of competent jurisdiction to be made an order of that Court; and
- (c) where an order of a court of competent jurisdiction referenced in section 9.3 is under appeal, there will be no obligation on **Fox Lake** to indemnify until the appeal is withdrawn, settled or decided.

9.4 INDEPENDENT ADVICE.

9.4.1 Acknowledgement re: Independent Advice. **Fox Lake** warrants that, throughout the negotiations leading to this **Agreement**:

- (a) it has been independently advised by negotiators, legal counsel, technical advisors and consultants of its choice with respect to all matters arising in connection with or dealt with in this **Agreement**;
- (b) this **Agreement** has been jointly drafted, considered and revised by representatives of all **Parties**, and duly authorized **Fox Lake** representatives have participated fully in the preparation of this **Agreement**; and
- (c) it has caused all aspects of this **Agreement** and the significance thereof, to be explained at one or more meetings of **Fox Lake**, which were open to all **Fox Lake Citizens** as required under section 10.2.

9.4.2 Certificate of Independent Advice. **Fox Lake** will produce, on closing, Certificates of Independent Advice from Doreen Redhead, Pitblado, Fillmore Riley and Robert Wavey in the form attached as Schedule 9.1, with appropriate modifications where necessary.

9.5 CANADA

9.5.1 No Release of Canada. The **Parties** acknowledge, although such acknowledgement will not constitute an indemnity on the part of **Manitoba** or **Hydro** in favour of **Fox Lake**, that none of the provisions of this **Agreement** are intended to have the effect of or are intended to constitute a remission, release, acquisition or discharge of **Canada**, or in any way prejudice or affect any action, proceeding, remedy, claim or demand which **Fox Lake** or **Fox Lake Citizens**, or any of them, may have against **Canada** in respect of its obligations and liabilities related to the **Project**, and any obligations or liabilities of **Canada** for **Adverse Effects** of the **Project**.

ARTICLE 10 - APPROVAL, SIGNING AND IMPLEMENTATION

10.1 INTRODUCTION

10.1.1 Introduction. Article 10 provides for the process of approving and signing this **Agreement**.

10.2 APPROVAL PROCESS

10.2.1 Approval of **Agreement**. Prior to the signing of this **Agreement**, the **Agreement** will have been considered for review and approval by each of the **Parties** as follows:

- (a) by the **Fox Lake Citizens** on behalf of **Fox Lake**, in accordance with subsections 10.2.2 to 10.2.16 inclusive;
- (b) by The Manitoba Hydro-Electric Board, on behalf of **Hydro**, following which it will pass a resolution authorizing its appropriate officers to sign this **Agreement** on behalf of **Hydro**; and
- (c) by the Lieutenant Governor-in-Council, on behalf of **Manitoba**, following which it will authorize the Minister of Aboriginal and Northern Affairs to sign this **Agreement** on behalf of **Manitoba**.

10.2.2 Public Meetings. Following the completion of the negotiation of this **Agreement**, **Chief and Council** will, in accordance with subsection 10.2.3, convene public meetings at which its consultants and legal advisors will explain the nature and significance of this **Agreement**.

10.2.3 Location of Public Meetings. At least twenty-one (21) days before the **Vote**, at least one public meeting will be held in each of the following locations:

- (a) Bird;
- (b) Churchill;
- (c) Gillam;
- (d) Thompson; and
- (e) Winnipeg.

10.2.4 Content of Written Notice. **Fox Lake** will give written notice of the **Vote** and of the public meetings referred to in subsection 10.2.2, which written notice will include:

- (a) the times, dates and places of any upcoming public meeting referred to in subsection 10.2.3;
- (b) the time, date and polling places for the **Vote**; and
- (c) information as to where copies of this **Agreement** can be reviewed or obtained.

10.2.5 Notice. At least two (2) weeks prior to the first public meeting held pursuant to subsection 10.2.3, the notices referred to in subsection 10.2.4 will be:

- (a) posted in not less than three (3) prominent, public locations in each of Gillam and Bird, including the Band Council offices;
- (b) published on one (1) occasion in:
 - (i) the Winnipeg Free Press, and
 - (ii) the Winnipeg Sun; and
- (c) mailed to each **Fox Lake Citizen** for whom **Fox Lake** has a mailing address.

10.2.6 Radio Announcement. A radio announcement will be broadcast on at least two (2) occasions on Native Communications Inc., advising listeners of the general purpose of the **Agreement** and of the date on which the **Vote** will be held.

10.2.7 Copy of Notices. **Fox Lake** will provide both **Manitoba** and **Hydro** with a copy or transcript of all notices and announcements referred to in subsection 10.2.5 and 10.2.6.

10.2.8 Voters List. **Fox Lake** will provide to the **Process Officer** the names and addresses of all **Adult Fox Lake Citizens** from which the **Process Officer** shall prepare the **Voters List**.

10.2.9 Mail-In Ballots. At least forty-two (42) days prior to the **Vote**, the **Process Officer** will mail or deliver, with a request for confirmation of receipt, the following material to every person on the **Voters List** who does not reside in any of the locations listed in subsection 10.2.11 for whom **Fox Lake** has provided an address:

- (a) the times, dates and places of any upcoming public meeting referred to in subsection 10.2.3;
- (b) the time, date and polling places for the **Vote**;
- (c) information as to where copies of the **Agreement** can be reviewed or obtained, including instructions from the **Process Officer** on how to access a copy of the **Agreement** via the Internet;
- (d) a letter from the **Chief and Council** providing any information relating to the **Agreement** that the **Chief and Council** determines is appropriate, with a view to ensuring that **Adult Fox Lake Citizens** receiving mail-in ballot packages are fully informed;
- (e) a letter of instruction from the **Process Officer** explaining the procedure for voting by mail-in ballot, and advising the recipient that mail-in ballots must be received by the time the polls close on the day of the **Vote** in order to be counted;
- (f) a mail-in ballot, initialled on the back by the **Process Officer**;
- (g) an inner envelope marked "Ballot" for insertion of the completed ballot; and
- (h) an outer postage-paid return envelope pre-addressed to the **Process Officer** which is marked with the name of the **Adult Fox Lake Citizen** to whom the package was sent as the name appears on the **Voters List**.

10.2.10 Provision of Material upon Request. At the request of an **Adult Fox Lake Citizen** who resides in a location listed in subsection 10.2.11, the **Process Officer** will provide that **Adult Fox Lake Citizen** with the material referred to in subsection 10.2.9.

10.2.11 Vote. The **Vote** will take place on a date determined by **Chief and Council**, and polling stations will be set up in the following locations:

- (a) Bird;
- (b) Churchill;
- (c) Gillam;

(d) Thompson; and

(e) Winnipeg.

10.2.12 Ballot Question. The ballot question for the **Vote** is set out in Schedule 10.1 and will be the same on both the mail-in ballot and the in-person ballot.

10.2.13 In-Person Voting. Despite an **Adult Fox Lake Citizen** having been provided with a mail-in ballot package pursuant to subsection 10.2.9 or 10.2.10, the **Adult Fox Lake Citizen** may choose to vote in person on the day of the **Vote**, rather than by mail-in ballot.

10.2.14 Process Officer to Cross-Reference. Immediately following the **Vote**, the **Process Officer** will compare the name on the outside of the outer envelope of each mail-in ballot received, with the names appearing on the **Voters List**. Where the **Voters List** indicates that an individual whose name appears on the outside of a mail-in ballot has voted in person, the mail-in ballot will be considered void and will not be counted as a vote cast. All other mail-in ballots will be counted as a vote cast.

10.2.15 Receipt of Mail-in Ballots. Mail-in ballots that are not received by the **Process Officer** before the time at which the polls close on the date of the **Vote** are void and will not be counted as a vote cast.

10.2.16 Approval. This **Agreement** will be approved by **Fox Lake** if:

(a) a quorum of at least two hundred (200) eligible votes are cast either by mail-in ballot or in person; and

(b) a majority of the votes cast answer "YES" to the ballot question in Schedule 10.1.

10.2.17 Statement of Results. As soon as practicable after the results of the **Vote** are known, the **Process Officer** will provide **Manitoba** and **Hydro** with a statement of results indicating the total number of ballots cast, the number of voters who voted "YES", the number of voters who voted "NO" and the number of spoiled ballots.

10.2.18 Quorum not Met. Where the quorum referred to in paragraph 10.2.16 is not met, **Chief and Council** may call a further vote in respect of the ballot question and the provisions of section 10.2 may apply with necessary modifications.

10.2.19 Approval at Second Vote. If a further vote is held, as contemplated in subsection 10.2.18, this **Agreement** will be approved by **Fox Lake** if a majority of the **Adult Fox Lake Citizens** voting in such further vote, vote "YES" to the ballot question.

10.2.20 Council Resolution. Forthwith upon approval of this **Agreement** in accordance with Section 10.2, **Chief and Council** will by **Council Resolution** confirm the results of the **Vote** and authorize the **Chief and Council** to sign the **Agreement** on behalf of **Fox Lake**.

10.3 SIGNING

10.3.1 Signing of Agreement. Forthwith upon approval of this **Agreement** in accordance with section 10.2:

- (a) **Chief and Council** will sign this **Agreement** on behalf of **Fox Lake**;
- (b) the appropriate officers will sign this **Agreement** on behalf of **Hydro**; and
- (c) the Minister of Aboriginal and Northern Affairs will sign this **Agreement** on behalf of **Manitoba**.

10.3.2 Agreement of No Force and Effect. This **Agreement** will be without force and effect and without prejudice to any of the **Parties**, unless and until it has been duly approved and signed by all of the **Parties** in accordance with Article 10.

10.4 IMPLEMENTATION

10.4.1 Annual Meeting. The **Parties** will convene a meeting on an annual basis to review the status of implementation of this **Agreement**, water regime conditions, environmental monitoring and other matters.

10.4.2 Additional Meetings. Any **Party** may, at any time, request an additional meeting of all or some of the **Parties** for purposes relating to this **Agreement** by providing not less than thirty (30) days written notice setting forth the purpose, date, time and place in Winnipeg, or any other agreed place in Manitoba, for such meeting.

10.4.3 Costs. Each of the **Parties** will be responsible for covering their own costs of attending and participating in the meetings contemplated in subsections 10.4.1 and 10.4.2.

ARTICLE 11 - GENERAL PROVISIONS

11.1 INTRODUCTION

11.1.1 Introduction. Article 11 contains provisions of a general nature relating to this **Agreement**.

11.2 INTERPRETATION

11.2.1 Headings. All headings, and the introductory provision of each Article are for reference and information purposes only, and will not affect in any way the meaning or interpretation of this **Agreement**.

11.2.2 Numbers, Plural. Words importing the singular number only will include the plural, and vice versa, as the context may require; and words importing persons will include firms, governments and corporations, and vice versa, as the context may require.

11.2.3 Metric Measure. Except where the original document, data or measuring device was in Imperial, and subject to any legislative requirement, in the event of a conflict between metric and Imperial measure, metric measure will prevail. The **Parties** agree that the metric conversion rate to be used for purposes of this **Agreement** will be 1 foot equals 0.3048 meters, 1 meter equals 3.28084 feet.

11.2.4 No Presumptions. The **Parties** have endeavoured to ensure that the terms of this **Agreement** are as clear as possible and, except as otherwise provided there will be no presumption or rule of interpretation in favour of or against any **Party**.

11.3 VALIDITY OF PROVISIONS

11.3.1 Powers and Prerogatives. Nothing in this **Agreement** will be interpreted to bind or infringe upon the powers and prerogatives of the Legislative Assembly of Manitoba or any legislative powers of the **Chief and Council**.

11.3.2 Statutory Requirements. Except as provided herein, nothing in this **Agreement**:

- (a) requires any **Party** to take any actions not otherwise provided for in this **Agreement**, or required by statute or regulation;
- (b) exempts any **Party** from any requirement arising under statute or regulation; or

- (c) will be deemed or interpreted to modify any requirement arising under statute or regulation.

11.3.3 Aboriginal and Treaty Rights. Nothing in this **Agreement**, including Article 9, shall be construed so as to diminish, abrogate, infringe or derogate from:

- (a) the existing aboriginal rights or treaty rights of **Fox Lake** or **Fox Lake Citizens**, as recognized and affirmed by section 35 of the *Constitution Act, 1982*, including any rights of aboriginal title that are so recognized and affirmed; and
- (b) the rights and protections of **Fox Lake** and **Fox Lake Citizens** recognized, affirmed or provided for by the Constitution of Canada.

11.4 PARTIES

11.4.1 Binding on Parties. This **Agreement** will be binding upon and enure to the benefit of the **Parties** and their respective successors and permitted assigns. Nothing in this **Agreement** is intended to confer upon any person not a **Party** to this **Agreement** any rights or remedies under or by reason of this **Agreement**.

11.5 NOTICE

11.5.1 Notices. All notices and other communications provided for in this **Agreement** will be in writing, and shall be given or served to the applicable addresses set out in subsection 11.5.2 or to addresses a **Party** may from time to time designate to the other **Parties**. Any such communication will be deemed to have been validly and effectively given on the date of such delivery, if such date is a business day and such delivery has been made during the normal business hours of the recipient; otherwise, it will be deemed to have been validly and effectively given on the business day next following such date of delivery. Except where personal service is used, the notice or communication will be deemed to have been received on the date such delivery is confirmed by the receiving party. Any notice, delivery, communication or provision of documents to **Fox Lake** provided for in this **Agreement** will be performed by notice, delivery, communication or provision of documents to the **Chief and Council**.

11.5.2 Addresses. The addresses for the **Parties** are:

To **Fox Lake**:

Chief and Council of Fox Lake
Box 369
Gillam, MB
R0B 0L0

To **Hydro**:

Manitoba Hydro
General Counsel
3rd Floor, 820 Taylor Ave.
Winnipeg MB R3C 2P4

To **Manitoba**:

Deputy Minister of Aboriginal & Northern Affairs
Legislative Bldg.
Winnipeg MB R3C 0V8

11.6 ENTIRE AGREEMENT

11.6.1 **Agreement Supersedes.** This **Agreement** supersedes all prior understandings, negotiations and discussions, whether oral or written, among the **Parties**, in relation to matters dealt with in this **Agreement**. There are no representations, warranties or conditions to this **Agreement** except as expressly stated in this **Agreement**.

11.6.2 **No Merger.** Except for the **Agreement in Principle**, and as otherwise expressly provided for in this **Agreement** or in any other agreement between the **Parties**, no provisions of any other agreement will merge with this **Agreement**.

11.6.3 **Assignment.** Except as provided for in subsection 11.8.4, neither this **Agreement** nor any portion or provision of this **Agreement**, may be assigned without prior written permission of all of the **Parties**.

11.6.4 **Further Action.** Each of the **Parties** to this **Agreement** will, from time to time, and without further consideration, execute and deliver such other instruments of transfer, conveyance and assignment, and take such further action as required, to complete more effectively any matter provided for in this **Agreement**.

11.7 GOVERNING LAW

11.7.1 **Laws in Manitoba.** This **Agreement** will be governed by, and construed in accordance with, the federal and provincial laws from time to time in force in the Province of Manitoba.

11.7.2 Licences. Except as expressly provided in this Agreement, nothing in this **Agreement** is intended to detract from, or relieve any **Party** from, obligations incurred pursuant to any legislation, approvals, licences or authorities under which such **Party** operates.

11.8 GENERAL

11.8.1 No Precedent. Neither this **Agreement** nor any provision of this **Agreement**, will constitute a precedent for interpreting the rights and obligations of, or for identifying the intention of any **Party** in relation to any matter involving any person who is not:

- (a) a **Party** to this **Agreement**;
- (b) an agent of the **Chief and Council**; or
- (c) a person claiming through, under or by **Fox Lake**.

11.8.2 No Admission. Nothing in this **Agreement** will constitute an admission of liability on the part of any **Party**.

11.8.3 Amendment. Subject to subsections 3.10.2 and 6.10.8, this **Agreement** may only be amended in whole or in part by written agreement among the **Parties**.

11.8.4 Assumption of Liability. If **Hydro** ceases:

- (a) to be an agent of **Manitoba**;
- (b) to have legal authority and control over the operation of the **Project**; or
- (c) to have legal authority and control over the operation of any major work or structure constituting part of the **Project**, the operation of which could affect inundation or storage of water for purposes of the **Project** in the **Traditional Territory**;

then **Manitoba** will:

- (d) where paragraph 11.8.4(a) or paragraph 11.8.4(b) applies, assume all of the rights and obligations of **Hydro** under this **Agreement**; or
- (e) where paragraph 11.8.4(c) applies, assume the rights and obligations of **Hydro** under this **Agreement**, as such rights and obligations relate to the

works or structures over which **Hydro** no longer has legal authority and control

in which case, the provisions of this **Agreement** will be read with the necessary changes to reflect the assumption of rights and obligations by **Manitoba** but such assumption will not relieve **Hydro**, or any successor of **Hydro**, of its obligations under this **Agreement**.

11.8.5 Notice. **Manitoba** will give immediate notice to the other **Parties** where an event specified under paragraph 11.8.4(a), (b) or (c) occurs.

11.8.6 No Merger of Covenants. The covenants under this **Agreement** will not merge with the transfer of lands to or for the benefit of **Fox Lake**.

IN WITNESS WHEREOF the Parties have executed this Agreement on the dates indicated below.

FOX LAKE FIRST NATION

Per:

Chief

Councillor

Councillor

On the day of , 2004.

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF MANITOBA

Per:

On the day of , 2004.

THE MANITOBA HYDRO-ELECTRIC BOARD

Per:

On the day of , 2004 .

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