



Manitoba



**Manitoba
Hydro**

WAR LAKE FIRST NATION PAST ADVERSE EFFECTS AGREEMENT

BETWEEN

**WAR LAKE FIRST NATION
as represented by Chief and Council ("War 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")

2005

Photograph taken by Doug Gibson

THE AGREEMENT BETWEEN
WAR LAKE FIRST NATION
as represented by Chief and Council (“War 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”)

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THIS AGREEMENT made as of this day of , 2004

BETWEEN:

WAR LAKE FIRST NATION
as represented by Chief and Council (“War 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, water and water power 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 **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), and permits issued by **Canada** to **Hydro** under the *Navigable Waters Protection Act* (Canada), **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 War Lake First Nation, a “band” as defined in the *Indian Act* (Canada), received its band status in 1980. War Lake First Nation is represented by the **Chief and Council** who derive their authority and powers through the custom of **War Lake** and the *Indian Act*.

- E. **War Lake Members** have traditionally used certain lands and resources in **Manitoba**. Certain hydro-electric developments have caused adverse effects upon the natural environment in some of those lands and, in consequence, upon the **War Lake Members**.
- F. At the time of the signing of the Northern Flood Agreement in December 1977, a number of the current **War Lake Members** were members of Split Lake First Nation and York Factory First Nation, which First Nations were signatories to the Northern Flood Agreement.
- G. **Manitoba** and **Hydro** recognize that it is appropriate for actions to be taken to resolve all outstanding issues subject to specific exceptions described in this **Agreement** and, to this end, **War Lake, Manitoba** and **Hydro** have participated in negotiations to resolve those issues. As a result of these negotiations, the **Parties** are entering into this **Agreement**.

NOW THEREFORE, the **Parties** agree as follows:

ARTICLE 1 - AGREEMENT INTERPRETATION AND DEFINITIONS

1.1 AGREEMENT

1.1.1 Contents. This **Agreement** consists of Articles 1 through 9, and includes the following schedules which are attached to this **Agreement**:

ARTICLE No.	TITLE
Article 1	Agreement Interpretation and Definitions
Article 2	Payments and Costs
Article 3	Project Operations, Water Regime and Compensated Range
Article 4	Negotiation of Reserve Lands at Ilford
Article 5	Members' Claims
Article 6	Future Development
Article 7	Settlement and Satisfaction
Article 8	Approval and Execution
Article 9	General Provisions
SCHEDULE No.	TITLE
Schedule 2.1	Trust Indenture
Schedule 2.2	Summary of Settlement Costs - War Lake First Nation
Schedule 3.1	Fully Compensated Zone
Schedule 3.2	Pre-determined Compensation Zones
Schedule 4.1	Memorandum of Understanding
Schedule 5.1	Undertaking of Claims Officer
Schedule 5.2	Claimant Acceptance and Release for Compensation for Member's Claim
Schedule 7.1	Community Consultation Report
Schedule 7.2	Certificate of Independent Legal Advice
Schedule 7.3	Certificate of Independent Technical Advice

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 or the singular, have the following meanings:

- (a) **Adult War Lake Member** means a member of **War Lake** who is 18 years of age or older;
- (b) **Adverse Effects** means the direct or indirect negative consequences of the **Project**, or the operation thereof by **Hydro**, which consequences impact on or change the physical, chemical or biological characteristics of the environment and which consequences include, without limitation, risks or injuries to the health, safety, well-being, comfort or enjoyment of life by **War Lake** or **War Lake Members**, and which consequences impact on interests in and the exercise of rights in relation to lands, pursuits, activities, opportunities, lifestyles and assets of **War Lake** or **War Lake Members**;
- (c) **Agreement** means this agreement including all schedules listed in subsection 1.1.1;
- (d) **ASL** means above sea level as established by Geodetic Survey of Canada in accordance with Revision No. 2, dated May, 1970;
- (e) **ASL Local Datum** means, for the purposes of computing the **Daily Average Water Level**, the agreed elevations which have been assigned to the **Controlling Bench Marks**;
- (f) **Canada** means Her Majesty the Queen in Right of Canada;
- (g) **Chief** means the Chief of **War Lake** in office at the relevant time;
- (h) **Chief and Council** means the Chief and the Council of **War Lake** in office at the relevant time;
- (i) **Claimant** means a **War Lake Member** or group of **War Lake Members** who advance(s) a **Member's Claim** in accordance with Article 5;

- (j) **Claims Account** means the account established under Article 10 of the **Indenture**;
- (k) **Claims Officer** means a person appointed pursuant to section 5.2 of the **Agreement** and subsection 5.1.9 of the **Indenture** to administer the claims process;
- (l) **Community Development Account** means the account established under Article 9 of the **Indenture**;
- (m) **Controlling Bench Marks** shall mean any and all of:
 - (i) B.M. #8 - Water Survey of Canada brass cap in rock approximately 150 metres north and east of the Water Survey of Canada recording shelter. Near the waters edge. Marked by a short metal flag on rebar,

Elevation: 167.257 metres (548.74 feet) **ASL Local Datum**,
 - (ii) MB8037 - Lag bolt in east side of nursing station foundation. Near south east corner,

Elevation: 174.587 metres (572.79 feet) **ASL Local Datum**,
 - (iii) MB8038 - Water Survey of Canada brass cap in rock approximately 80 metres east of B.M. #8. Marked by a short metal flag on rebar,

Elevation: 168.175 metres (551.75 feet) **ASL Local Datum**,
 - (iv) 78R129 - Surveys and Mapping Manitoba aluminum cap in rock. Located on a small island just east of the community of Split Lake on the highest point of bedrock,

Elevation: 168.172 metres (551.74 feet) **ASL Local Datum**,which bench marks are all located in or around the community of Split Lake, or any replacement bench mark established as provided in subsection 3.2.1;
- (n) **Council Resolution** means a lawful resolution of **Chief and Council**;

- (o) **Daily Average Water Levels** means the average of all water levels, measured hourly, in a 24 hour period (midnight to midnight), at the **Split Lake Gauging Station** adjusted to **ASL Local Datum** and to eliminate the effect of wind;
- (p) **Date of this Agreement** means the date this **Agreement** has been signed by the last **Party**;
- (q) **Financial Proceeds** means the amounts paid pursuant to section 2.2 by **Hydro** and **Manitoba** to **War Lake** to be settled on the **Trustees**, for the benefit of **War Lake** pursuant to this **Agreement**, and any revenue derived from such amounts earned by or paid to the Mooseocoot Trust;
- (r) **Future Development** means all construction, development, reconstruction or redevelopment of 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, which works have not been physically developed and constructed by or on behalf of **Hydro** as of the **Date of this Agreement**, and all major redevelopment or reconstruction of the **Project**, which construction, development, reconstruction or redevelopment has a reasonable likelihood of having a material and continuing physical, chemical, or biological impact upon a water body in the Split Lake Resource Area;
- (s) **Future Development Adverse Effects** means the direct or indirect negative consequences of **Future Development**, which consequences impact on or change the physical, chemical or biological characteristics of the environment and which consequences include, without limitation, risks or injuries to the health, safety, well-being, comfort or enjoyment of life by **War Lake** or **War Lake Members**, and which consequences impact on interests in and the exercise of rights in relation to lands, pursuits, activities, opportunities, lifestyles and assets of **War Lake** or **War Lake Members**;
- (t) **Hydro** means The Manitoba Hydro-Electric Board;
- (u) **Indenture** means the Trust Indenture in the form and content of Schedule 2.1;
- (v) **Manitoba** means Her Majesty the Queen in Right of Manitoba;

- (w) **Members' Claims** means claims of **War Lake Members** for individual loss or damage arising from those **Adverse Effects** of the **Project** that are addressed under Article 5 of this **Agreement**;
- (x) **Parties** means **Manitoba, War Lake, and Hydro**;
- (y) **Party** means, as the context requires, any one of **Manitoba, Hydro or War Lake**;
- (z) **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** as of 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,
- and the access road and other physical construction with respect to the proposed Conawapa Generating Station;
- (aa) **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 **War Lake**;
- (bb) **Split Lake Gauging Station** means the Government of Canada Measuring Station No. 05UF003 used for measuring water levels at Split Lake, or such replacement gauge as may be required;

- (cc) **Trust** means the Mooseocoot Trust created and funded pursuant to this **Agreement** and the **Indenture**;
- (dd) **Trustees** means the individual Trustees signatory to the **Indenture**, and their successors in office, selected in accordance with the **Indenture**;
- (ee) **War Lake** means War Lake First Nation, a “Band” within the meaning of the *Indian Act* (Canada); and
- (ff) **War Lake Member** means a person who is a member of **War Lake** pursuant to the *Indian Act* (Canada).

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, as amended from time to time:

- (a) Acts of the Parliament of Canada:
 - (i) *Indian Act*, R.S.C. 1985, c. I-5,
 - (ii) *Navigable Waters Protection Act*, R.S.C. 1985, c. N-22;
- (b) Acts of the Legislature of Manitoba:
 - (i) *The Manitoba Hydro Act*, C.C.S.M., c. H190,
 - (ii) *The Northern Affairs Act*, C.C.S.M., c. N100,
 - (iii) *The Trustee Act*, C.C.S.M., c. T160,
 - (iv) *The Water Power Act*, C.C.S.M., c. W60;
- (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,
- (ii) *Constitution Act, 1930* (Manitoba - Natural Resources Transfer Agreement, 1929 which took effect in 1930 and forms part of the *Constitution Act, 1930*).

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 establishes the amounts to be treated as **Financial Proceeds**, the amounts attributed to the costs of negotiation of this **Agreement**, and the effect of those payments on ongoing Provincial programs and **Hydro** policies.

2.2 FINANCIAL PROCEEDS

2.2.1 Financial Schedule. The **Financial Proceeds** of this **Agreement** are the funds referenced in subsection 2.2.2 and the funds set out in the following Financial Schedule:

WAR LAKE - FINANCIAL SCHEDULE

	Manitoba	Hydro	Total
Payments to be made on or before:			
The Date of this Agreement	\$500,000		\$500,000
December 31, 2004	\$50,000	\$50,000	\$100,000
December 31, 2005	\$50,000	\$50,000	\$100,000
December 31, 2006	\$50,000	\$50,000	\$100,000
December 31, 2007	\$50,000	\$50,000	\$100,000
December 31, 2008	\$50,000	\$50,000	\$100,000
December 31, 2009	\$50,000	\$50,000	\$100,000
December 31, 2010	\$50,000	\$50,000	\$100,000
December 31, 2011	\$50,000	\$50,000	\$100,000
December 31, 2012	\$600,000	\$780,000	\$1,380,000
TOTAL	\$1,500,000	\$1,180,000	\$2,680,000

2.2.2 Past Payment by Hydro. **War Lake** acknowledges having received \$530,000 from **Hydro** between October 2000 and June 2002 with respect to compensation agreed upon in this **Agreement**.

2.2.3 Future Payments by Hydro. On or before the dates set out in the subsection 2.2.1 Financial Schedule, **Hydro** covenants and agrees to pay, by cheque or

bank draft payable to **War Lake**, the **Financial Proceeds**, to be paid by **Hydro**, to be settled on the **Trustees** in accordance with the **Indenture**.

2.2.4 Payments by **Manitoba**. On or before the dates set out in the subsection 2.2.1 Financial Schedule, **Manitoba** covenants and agrees to pay, by cheque or bank draft payable to **War Lake**, the **Financial Proceeds**, to be paid by **Manitoba**, to be settled on the **Trustees** in accordance with the **Indenture**.

2.2.5 Preservation of Capital. A minimum sum of two million (\$2,000,000.00) dollars will be set aside from the **Financial Proceeds** and, in accordance with the **Indenture**, will be preserved as capital.

2.3 COSTS

2.3.1 Past Costs/Fees/Contingency Fees. No portion of the monies payable under this **Agreement** shall 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 **War Lake** in relation to, or as payment for, work done in the settlement process.

2.3.2 Payment of Negotiation, Documentation and Approval Costs. **War Lake** has been reimbursed by **Hydro**, **Manitoba** and **Canada** for costs incurred in negotiating and concluding this **Agreement**, including the costs of legal and consulting services required for the informed participation of **War Lake**, as set out in Schedule 2.2. **Manitoba** and **Hydro** are not responsible for any costs other than those specifically set out in this section.

2.3.3 Limitation. The agreement of **Manitoba** and **Hydro** to reimburse **War Lake** for its costs set out under subsection 2.3.2 does not include any costs incurred by **War 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** Programming. The payments made to **War Lake** under section 2.2 shall not be considered a substitute for 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. Neither the payments made to **War Lake** under section 2.2, nor the release given by **War Lake** in favour of **Hydro**, shall disentitle or disadvantage **War Lake** or **War Lake Members** from the opportunity to participate fully in, or receive, the full benefit of any general business opportunity, employment or training policies of **Hydro** in force from time to time.

**SCHEDULE 2.1
TRUST INDENTURE**

THIS TRUST INDENTURE made as of the day of , 2004

BETWEEN:

WAR LAKE FIRST NATION
as represented by Chief and Council,
("War Lake"),

OF THE FIRST PART,

- and -

MOOSECOOT TRUST
("the Original Trustees"),

OF THE SECOND PART.

WHEREAS

- A. **Manitoba, Hydro and War Lake** entered into the **Agreement** dated , 2004.
- B. Pursuant to the **Agreement, Manitoba and Hydro** have paid and/or will pay compensation funds to **War Lake** to be held in trust under this **Indenture**.
- C. Pursuant to the **Agreement, War Lake** now delivers and settles these compensation funds upon the **Original Trustees** to be held in trust and used as set forth in this **Indenture**.

NOW THEREFORE the **Parties** agree as follows:

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ARTICLE 1 - CONTENTS AND DEFINITIONS

1.1 **Contents.** This **Indenture** consists of Articles 1 through 18, and includes the following schedules which are attached to this **Indenture**.

ARTICLE No.	TITLE
Article 1	Contents and Definitions
Article 2	Basic Provisions
Article 3	Chief and Council
Article 4	Appointment and Removal of Trustees
Article 5	Decisions and Duties of Trustees
Article 6	Trustees' Powers
Article 7	Budgetary Process
Article 8	Auditor
Article 9	Community Development Account
Article 10	Claims Account
Article 11	Investment of Trust Assets
Article 12	Payments from the Trust
Article 13	Administration of Trust Funds
Article 14	Trustees' Report
Article 15	Disputes
Article 16	Amendment and Dissolution
Article 17	Acknowledgement and Release
Article 18	General Provisions

SCHEDULE No.	TITLE
Schedule 1	Undertaking and Acceptance of Chief or Councillor
Schedule 2	Undertaking and Acceptance of Trustees
Schedule 3	Resolution of Trustees - Certificate of Disclosure
Schedule 4	Acknowledgement of Receipt by Parent, Guardian or Legal Representative

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

- (a) **Adult War Lake Member** means a **War Lake Member** of who is 18 years of age or older;
- (b) **Agreement** means the Agreement entered into between **War Lake, Hydro and Manitoba**, dated _____, of which this **Indenture** forms a part;
- (c) **Chief** means the Chief of **War Lake** in office at the relevant time;
- (d) **Chief and Council** means the Chief and the Council of **War Lake** in office at the relevant time;
- (e) **Claimant** means a **War Lake Member** or group of **War Lake Members** who advance(s) a **Member's Claim** in accordance with Article 5 of the **Agreement**;
- (f) **Claims Account** means the account established under Article 10 of this **Indenture**;
- (g) **Claims Officer** means a person appointed pursuant to Section 5.2 of the **Agreement** and Section 5.9 of the **Indenture** to administer the claims process;
- (h) **Community Approval Process** means the process for the members of **War Lake** to review the use of income from the **Trust**, as established under Section 7.3 of this **Indenture**;
- (i) **Community Organization** means any of:
 - (i) a group or unincorporated association whose membership is wholly or substantially comprised of **War Lake Members**;
 - (ii) an unincorporated association established by **Chief and Council**;
 - (iii) a corporation or cooperative with share capital, wholly or substantially owned legally or beneficially, and controlled by **War Lake or War Lake Members**;

- (iv) a corporation or cooperative without share capital, the ownership of which consists wholly or substantially of **War Lake** or **War Lake Members**;
- (j) **Community Development Account** means the account established under Article 9 of this **Indenture**;
- (k) **Date of the Agreement** means the date the **Agreement** has been executed by the last party;
- (l) **Financial Proceeds** means the amounts to be paid pursuant to Section 2.2 of the **Agreement** by **Hydro** and **Manitoba** to **War Lake** to be settled by **War Lake** on the **Trustees**, for the benefit of **War Lake** and **War Lake Members** pursuant to the **Agreement**, and any revenue derived from such amounts earned by or paid to the **Trust**;
- (m) **Funds Available** in a fiscal year of the **Trust** means the income of the **Trust** earned in that fiscal year, or the amount if any by which the funds in the **Trust** in that fiscal year exceed \$2,000,000.00, or such lesser amount that may remain if any portion of the capital is required to be paid to either **Hydro** or **Manitoba** to honour an indemnity obligation under the terms of the **Agreement**;
- (n) **Hydro** means the Manitoba Hydro-Electric Board;
- (o) **Indenture** means this trust indenture;
- (p) **Majority Vote** means a vote of **Adult War Lake Members**, at a **Meeting of War Lake Members**, where the majority of those **Adult War Lake Members** in attendance and voting approve the matter voted upon. The vote shall be by secret ballot, with a simple majority of those voting determining the matter;
- (q) **Manitoba** means Her Majesty the Queen in Right of Manitoba;
- (r) **Meeting of War Lake Members** means a meeting of members, at which all **War Lake Members** shall be welcome to attend and participate, convened pursuant to the **Indenture** on not less than two (2) weeks

written notice posted in the Band Office and in a prominent place in Ilford specifying the time, place and purpose of the meeting;

- (s) **Members' Claims** means claims of **War Lake Members** for individual loss or damage arising from those Adverse Effects of the Project that are referred to the Members Claims' Process under Article 5 of the **Agreement**;
- (t) **Original Trustee** means the initial **Trustees** and signatories of the **Trust** namely, *[names of three trustees to be inserted prior to execution]*;
- (u) **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 **War Lake**;
- (v) **Trust** means the Mooseocoot Trust created and funded pursuant to the **Agreement** and this **Indenture**;
- (w) **Trustees** means the individual **Original Trustees** signatory to this **Indenture**, and their successors in office, selected in accordance with the **Indenture**;
- (x) **War Lake** means the War Lake First Nation; and
- (y) **War Lake Member** means a member of **War Lake**.

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

ARTICLE 2 - BASIC PROVISIONS

2.1 Name. The **Trust** created by this **Indenture** shall be known as Mooseocoot Trust.

2.2 Purposes of the Trust. The purposes of the **Trust** shall be exclusively for the benefit of **War Lake** and **War Lake Members**, by establishing:

- (a) a **Community Development Account** for the purposes set forth in Section 9.1 of this **Indenture**; and
- (b) a **Claims Account** for the purposes of addressing **Members' Claims** under Article 5 of the **Agreement** and Article 10 of this **Indenture**.

2.3 Beneficiaries. Subject to the terms of this **Indenture**, the beneficiaries of the **Trust** are **War Lake** and **War Lake Members**.

2.4 Non-divisibility. The **Trust** funds are not divisible into individual shares or benefits, and no **War Lake Member** may claim an individual share of, or benefit from **Trust** funds except as specifically authorized pursuant to this **Indenture** or the **Agreement**.

2.5 Residence. It is the intention of **War Lake** and the **Trustees** that the **Trust** shall be resident on a reserve and the **Trustees** shall take all reasonable steps to ensure, to the extent possible, that the **Trust** shall always be so resident.

2.6 Taxes. The **Trustees** in conjunction with **Chief and Council** shall make their best efforts to have the trust pay as little tax as legally and reasonably possible while still fulfilling the purposes of the **Trust**.

2.7 Indemnity Payments. If **War Lake** is required by Section 7.3 of the **Agreement** to make a payment to indemnify **Manitoba** or **Hydro**, the **Trustees** shall make such payment for **War Lake** out of the **Claims Account** first and then, if necessary, out of the **Community Development Account**. If it is necessary to draw funds from the capital of the **Trust** in order to honour an indemnity obligation, the minimum capital amount of \$2,000,000.00 referenced in Article 13 of the **Indenture** may be reduced by a corresponding amount.

ARTICLE 3 - CHIEF AND COUNCIL

3.1 Duties of Chief and Council. Chief and Council shall:

- (a) pay any money received by **War Lake** under the **Agreement** into the **Trust**; and
- (b) perform any other duties given to **Chief and Council** by this **Indenture** or the **Agreement**.

3.2 Disclosure of Conflicts of Interest. Any member of **Chief and Council** with a direct or indirect financial interest in any matter involving the **Trust** funds, which matter is before **Chief and Council**, shall:

- (a) immediately disclose such financial interest in writing to **Chief and Council**;
- (b) withdraw from any meeting of **Chief and Council** while such matter is being considered; and
- (c) refrain from voting on, or otherwise influencing, the decision of **Chief and Council** in relation to such matter.

3.3 Exception. The restrictions set forth in Section 3.2 of the Indenture shall not apply if such interest is that of a **War Lake Member** in common with all **War Lake Members**, or of a **War Lake Member** in common with a group or class of **War Lake Members** with a common interest or common characteristic.

ARTICLE 4 - APPOINTMENT AND REMOVAL OF TRUSTEES

4.1 Eligibility. Trustees must:

- (a) be **Adult War Lake Members**;
- (b) be resident in or around Ilford, and be regularly available to attend meetings of the **Trustees**; and

(c) not be members of **Chief and Council**.

4.2 Appointment of Trustees. The **Trustees** shall be appointed by a resolution of **Chief and Council**.

4.3 Removal. A **Trustee** who subsequently becomes a member of **Chief and Council** shall cease to be eligible to serve as a **Trustee** while a member of **Chief and Council** and that **Trustee's** term of office shall be deemed to be terminated.

4.4 Resignation. Where a **Trustee** resigns his or her office, that **Trustee** shall cease to be a **Trustee**.

4.5 Replacement of Trustees. The **Chief and Council** may at any time replace a **Trustee** by a resolution of **Chief and Council**.

4.6 Validity of Actions. Until resignation or termination, no action by the **Trustees** shall be invalid due solely to the ineligibility of a **Trustee**.

4.7 Acceptance of Indenture. Prior to assuming office, a **Trustee**, other than an **Original Trustee**, shall execute an Undertaking and Acceptance of Trustees in the form of Schedule 2 to this **Indenture** and deposit it with **Chief and Council**.

4.8 Trustees' Dealings with the Trust. A **Trustee** shall act for the **Trust** only in that capacity and cannot work for the **Trust** in any other capacity.

4.9 General Duty of Trustees. Every **Trustee** shall:

- (a) act honestly and in good faith, with a view to the best interests of the **Trust**;
- (b) use such care, diligence and skill as a reasonably prudent person would in exercising comparable duties; and
- (c) comply with the terms of this **Indenture** and the duties associated with the **Trust** contained in the **Agreement**.

4.10 Liability of Trustees. Trustees shall be liable for their own negligence, wilful misconduct, or breach of the provisions of this Indenture. Trustees shall not be liable for honest errors in judgment.

4.11 Disclosure of Conflicts of Interests. Any Trustee with a direct or indirect financial interest in any matter involving the Trust or Trust funds shall:

- (a) immediately disclose such interest in writing to the other Trustees;
- (b) withdraw from any meeting of the Trustees while such matter is being considered; and
- (c) refrain from voting on, or otherwise influencing, the decision of the other Trustees in relation to the matter.

4.12 No Power of Appointment. The authority of a Trustee to delegate the execution or exercise of all or any powers and discretions invested in that Trustee pursuant to section 36 of *The Trustee Act* (Manitoba) is hereby denied and disallowed.

ARTICLE 5 - DECISIONS AND DUTIES OF TRUSTEES

5.1 Trustees. The Trust shall have three (3) Trustees each of whom shall faithfully administer the terms of this Indenture.

5.2 Decisions by Trustees. Decisions of the Trustees shall be made by majority vote.

5.3 No Liability for other Trustees. No Trustee shall be liable for the acts, omissions, neglect or default of any other Trustee, or be liable to indemnify any other Trustee against any losses, costs, claims, charges or expenses brought against, incurred or suffered by any other Trustee.

5.4 No Encumbering. The Trustees shall not make any commitments with respect to future income of the Trust or commit any Trust funds beyond the current fiscal year.

5.5 Maintain Records and Books. The Trustees shall maintain current, accurate and complete records and books of accounts of the Trust at the Band office on Reserve. The Trustees, in cooperation with Chief and Council, shall make appropriate custodial

arrangements to safeguard the records and books of accounts and provide reasonable access thereto to **War Lake Members**.

5.6 Meetings. The **Trustees** shall meet to conduct the business of the **Trust** and they may conduct such business by telephone as long as the majority of **Trustees** are in attendance, either in person or by telephone.

5.7 Chair of Meetings. At any meeting of the **Trustees**, a Chair for the meeting shall be selected from among the **Trustees** in attendance.

5.8 Minutes. Written minutes of all **Trustees'** meetings shall be kept and the minutes of the preceding meeting will be considered for approval at the commencement of the next meeting.

5.9 Appointment of Claims Officer. **Chief and Council** and the **Trustees** shall jointly appoint a Claims Officer.

ARTICLE 6 - TRUSTEES' POWERS

6.1 Power and Authorities. The **Trustees** may:

- (a) make agreements with any person or corporation, concerning **Trust** funds;
- (b) for the purposes of the **Trust**,
 - (i) open or operate bank accounts and deposit money in any chartered bank or trust company or credit union,
 - (ii) sign, endorse and deposit cheques, and any other bills of exchange,
 - (iii) enter into agreements with such bank or trust company or credit union, and
 - (iv) designate any **Trustee** or **Trustees** as signing authority for any such accounts at a bank, trust company or credit union and the signatures of **Trustees** designated as signing authorities shall be binding upon the **Trust**;

- (c) following notice to **Chief and Council**, employ professional advisors of any kind to help with the administration of the **Trust**, provided that the aggregate amount expended for such professional advice and all associated expenses shall not exceed five thousand (\$5,000.00) dollars in any one year, unless a greater amount is approved by **Majority Vote**;
- (d) following approval by **Chief and Council**, prosecute, defend or settle any suits, actions or other proceedings affecting them or the **Trust**, provided that approval of **Chief and Council** is not required if **Chief and Council** is a party adverse in interest;
- (e) make, or refrain from making, any election, determination or designation permitted by any statute or regulation, which exercise of discretion by the **Trustees** shall be binding upon all of the beneficiaries of this **Trust**;
- (f) sell or retain, as an authorized investment of the **Trust**, property originally transferred to the **Trustees** pursuant to this **Indenture**;
- (g) following written notice to **Chief and Council**, purchase, pay premiums on, and hold policies of insurance;
- (h) following written notice to **Chief and Council**, pay any taxes payable in respect of any **Trust** funds; and
- (i) exercise such other incidental powers and authorities as are necessary to accomplish the purposes of the **Trust** set out in Section 2.2 of the **Indenture**.

6.2 Proper Execution of Documents. No contract, document, instrument, promissory note, bill of lading, commercial instrument or other similar commercial or legal document made on behalf of this **Trust** shall bind this **Trust** unless it is executed by a majority of the **Trustees** or a designated trustee or individual appointed by the **Trustee** to execute documents on behalf of the **Trust**.

6.3 Trustees' Indemnification. Each **Trustee** assumes office on the express understanding and condition that the **Trustee**, and the heirs, executors, administrators and successors of that **Trustee** shall be indemnified out of the **Trust**, from and against all costs, charges and expenses which are brought, commenced or prosecuted against the **Trustee**, for or in respect of any act, deed, matter or thing, done or permitted by the **Trustee**, related to the duties set out in this **Indenture** and at law, and also from and

against all other costs, charges and expenses which the **Trustee** sustains or incurs with respect to the **Trust**, except such costs, charges or expenses which arise due to matters a **Trustee** is liable for under Section 4.10 of the **Indenture**.

ARTICLE 7 - BUDGETARY PROCESS

7.1 Preparation of Proposals, Plans and Initiatives. Each fiscal year **Chief and Council, War Lake Members** and **Community Organizations** may prepare proposals, plans and initiatives consistent with those purposes of the **Trust** set out in Article 9 of the **Indenture** for the use of the **Funds Available**, and submit their proposals to the **Trustees** for review.

7.2 Preparation of the Budget. Not later than thirty (30) days before the end of the fiscal year, the **Trustees** shall prepare a budget to determine the use of the **Funds Available**. In preparing the budget, the **Trustees** shall consider the proposals, plans and initiatives submitted under Article 7 of the **Indenture**, the previous proposals, plans and initiatives of the **Trust** and the purposes of the **Trust**, and prepare a budget that is consistent with both the purposes of the **Trust** and the amount of the **Funds Available**.

7.3 Community Review. Not later than thirty (30) days before the end of the fiscal year, the **Trustees** shall give notice of a **Meeting of War Lake Members** in order to review the proposed budget and the use of the **Funds Available**. The notice of the meeting shall be given in the manner set out in Section 7.4 of the **Indenture**. The **Trustees** shall make available for review at least fifteen (15) days before the meeting:

- (a) the budget prepared in accordance with Section 7.2 of the **Indenture**;
- (b) for each proposal, plan or initiative:
 - (i) a description of the proposal,
 - (ii) a budget, including cash flow requirements and cost analysis,
 - (iii) a business plan or feasibility study if determined to be necessary by the **Trustees**,
 - (iv) implementation and administration methods, including the experience and capability of any organization to be employed in implementation and administration,

- (v) anticipated benefits including, where applicable, jobs, training and income support details, and
- (vi) where applicable and known, the contractors or subcontractors.

7.4 **Meeting of War Lake Members.** A **Meeting of War Lake Members** referred to in Section 7.3 of the **Indenture** shall be held each January and a notice of the meeting shall be given which shall:

- (a) specify the time, place and purpose of the meeting;
- (b) be publicized prior to December 16 of the preceding year by posting notices at the Band Office and in public places on the **Reserve** and in Ilford and by other means reasonably likely to reach **War Lake Members** who are not resident on **Reserve**; and
- (c) indicate where the information and relevant documents referred to in Section 7.3 of the **Indenture** can be obtained or reviewed by **War Lake Members**.

7.5 **Budget Decisions.** Following the **Meeting of War Lake Members** under Section 7.4 of the **Indenture**, the **Trustees** shall, where applicable:

- (a) make a final decision on the expenditure of the **Funds Available**; and
- (b) provide confirmation of their decision by means reasonably likely to reach **War Lake Members**, such as posting a notice at the Band Office and sending a letter to **War Lake Members**.

7.6 **Disclosure to War Lake Members.** If the **Trustees** propose to vary in any material way from the information previously disclosed under Section 7.3 of the **Indenture**, the **Trustees** shall make fresh disclosure with respect to those variations in accordance with Section 7.4 of the **Indenture**.

ARTICLE 8 - AUDITOR

8.1 **Auditor.** The **Trustees** shall annually appoint a chartered accountant licensed in the Province of Manitoba as the auditor to audit the **Trust** accounts and the receipt and expenditure of all **Trust** funds.

8.2 Restrictions. Except as may be required by law, or where the **Trustees** agree unanimously that a payment is needed to protect **Trust** funds, no moneys shall be paid from the **Trust** while the office of auditor is vacant.

8.3 Auditor's Duties. The auditor shall be retained to:

- (a) review and report on the system for comprehensive accounting and reporting of **Trust** funds;
- (b) conduct an annual audit of all assets and **Trust** funds and provide same to the **Trustees** and **Chief and Council**;
- (c) provide any other necessary reports on assets, **Trust** funds and the **Trust** to the **Trustees** and **Chief and Council**; and
- (d) provide advice and recommendations on the management and disposition of **Trust** funds as an element of the audit.

8.4 Copy of Agreement and Indenture. The **Trustees** shall provide a copy of this **Indenture** and the **Agreement** to the auditor upon appointment.

ARTICLE 9 - COMMUNITY DEVELOPMENT ACCOUNT

9.1 Establishment and Use of Community Development Account. The **Community Development Account** shall be established and used for any or all of the following purposes:

- (a) to implement the **Agreement** and administer the **Trust**;
- (b) for the economic, social and cultural development of **War Lake**;
- (c) for compensatory, mitigatory and remedial programs;
- (d) for such other undertakings beneficial to **War Lake** and its members that are approved by the **Trustees** and **Chief and Council** following the **Community Approval Process**; and

- (e) to be used to make payments on behalf of **War Lake** to **Hydro** and **Manitoba** if required pursuant to Section 7.3 of the **Agreement** and Section 2.7 of the **Indenture**.

ARTICLE 10 - CLAIMS ACCOUNT

10.1 Establishment and Use of the Claims Account. The **Claims Account** shall be established and used:

- (a) for the payment of approved **Members' Claims** and costs in accordance with Article 5 and in particular Subsection 5.3.8 of the **Agreement**;
- (b) for the remuneration of the **Claims Officer** and the reasonable costs of the **Claims Officer** to investigate claims; and
- (c) to make payments on behalf of **War Lake**, to indemnify **Hydro** and **Manitoba** if required pursuant to Section 7.3 of the **Agreement** and Section 2.7 of the **Indenture**.

10.2 Minimum Balance. Immediately upon settlement of the **Trust**, \$50,000.00 shall be paid into the **Claims Account**. Thereafter the **Claims Account** shall be replenished at the beginning of each fiscal year to ensure that, after payment of all **Members' Claims** approved for payment in the previous fiscal year, a minimum balance of \$50,000.00 is maintained. Funds in the **Claims Account** in excess of \$50,000.00 on the last business day of the second and every subsequent fiscal year shall be transferred and credited to the **Community Development Account**.

10.3 Reduction in Balance. If **Members' Claims** paid are less than \$50,000.00 per year in the previous five (5) year period, the **Trustees** may reduce the balance to be maintained in the **Claims Account** to an amount equivalent to the highest amount paid in any one of the previous five (5) years. Any amounts by which the **Claims Account** is so reduced shall be transferred and credited to the **Community Development Account**.

10.4 Increase to Minimum Balance. The minimum balance to be maintained in the **Claims Account** may be increased by the **Trustees**.

10.5 Payment of Claims. The **Trustees** shall promptly pay the amount of compensation and costs awarded against, or payable by, the **Trust** under Subsection 5.3.8 of the **Agreement** provided the **Trustees** have received:

- (a) a copy of any written decision made by the **Claims Officer** under paragraph 5.3.6(e) of the **Agreement**;
- (b) in relation to a payment with respect to a **Claimant**:
 - (i) a copy of any claim or submission made by a **Claimant** to whom compensation is payable, and
 - (ii) a copy of the **Claimant's** acceptance and release in the form of Schedule 5.2 of the **Agreement** signed by the **Claimant**.

10.6 Charge on Funds Available. The amount of any **Members' Claim** under Article 5 of the **Agreement** that has been accepted by the **Claims Officer** for payment and with respect to which the required Schedule 5.2 release has been provided, shall, until paid in full, constitute a first charge against the **Funds Available**.

ARTICLE 11 - INVESTMENT OF TRUST ASSETS

11.1 Investments. The **Trustees** shall be permitted to invest **Trust** funds in any investment in which a person, exercising the judgment and care that a person of prudence, discretion and intelligence would exercise in administering the property of others, would invest.

ARTICLE 12 - PAYMENTS FROM THE TRUST

12.1 General Requirements. Prior to making any payment under the **Indenture**, the **Trustees** shall do the following:

- (a) complete a Resolution of the Trustees Certificate of Disclosure in the form of Schedule 3 as attached hereto;
- (b) determine, on reasonable grounds, that immediately after the payment is made, this **Trust** will be able to meet its liabilities as they become due;

- (c) determine that the use of the funds, as disclosed in the documents, will not entail any forward commitment of **Trust** funds not authorized by this **Indenture**; and
- (d) determine that Section 10.2 of the **Indenture** has been complied with.

12.2 **Disbursement of Funds Available.** Subject to Article 13 of the **Indenture**, the **Trustees** shall make payments from the **Funds Available** as provided for in the budgetary process established in Article 7 of the **Indenture**.

12.3 **Claims Account.** The **Trustees** shall make payments from the **Claims Account** to **Claimants** pursuant to Article 10 of the **Indenture**.

12.4 **Payments for Children.** Payments to any person under the age of majority shall be made to the minor's parent or legal guardian in trust for the minor; and otherwise shall be paid to the Public Trustee of **Manitoba**. Any payments to mentally incompetent persons shall be paid to the Public Trustee of **Manitoba**.

12.5 **Acknowledgement of Receipt.** No payments shall be made to a parent or legal guardian of a person under the age of majority until the parent or legal guardian has completed and provided an Acknowledgement of Receipt in a Schedule 4 form as attached hereto.

12.6 **Per Capita Distributions.** No per capita distributions to **War Lake Members** shall be paid from the **Trust**.

ARTICLE 13 - ADMINISTRATION OF TRUST FUNDS

13.1 **Minimum Capital Amount.** Except for the payment of indemnities to **Hydro** or **Manitoba**, no payments shall be made from the capital of the **Trust** if such payment would have the effect of reducing the capital of the **Trust** below \$2,000,000.00. If it is necessary to draw funds from the capital of the **Trust** in order to honour such an indemnity obligation, this minimum capital amount of \$2,000,000.00 shall be reduced by a corresponding amount and the provisions of this Section shall be amended accordingly.

13.2 **Distribution of Funds Available.** The **Funds Available** which are used to fund proposals, plans and initiatives of the beneficiaries or to pay amounts to the beneficiaries in a fiscal year of the **Trust** shall be paid:

- (a) firstly out of income of the **Trust** for the year; and
- (b) secondly out of the capital of the **Trust**.

13.3 Payment of all Income. If, in any fiscal year, the amount otherwise authorized and paid from the **Trust** is less than the total income earned in that fiscal year, the remaining income shall be paid to **Chief and Council** on or before the last day of that fiscal year. **Chief and Council** shall in turn pay such funds into the **Trust**, as agreed to by them in Schedule 1 attached hereto, and such funds shall be transferred and credited to the **Community Development Account**.

13.4 Moneys Not Spent in Fiscal Year Do Not Lapse. Any moneys approved for expenditure but not paid or expended by the **Trustees** in the fiscal year in which they were approved, may be paid or expended by the **Trustees** in a subsequent fiscal year for the same purpose and subject to the same restrictions, if any.

ARTICLE 14 - TRUSTEES' REPORT

14.1 Annual Reporting Requirements. Within ninety (90) days after the end of each fiscal year, the **Trustees** shall provide to **Chief and Council** and make available to **War Lake Members** and **Manitoba** and **Hydro**, an annual report, signed by a majority of the **Trustees**, on the financial operations of the **Trust**, including:

- (a) the annual report and financial statement for the **Trust**;
- (b) the auditor's report and opinion referred to in Section 8.3 of the **Indenture**, including any supporting documentation; and
- (c) any special audit reports and opinions requested by the **Trustees**.

14.2 Review of Trustees' Report by War Lake Members. Within thirty (30) days of the provision of the **Trustees'** report to **Chief and Council**, the **Trustees** shall call a **Meeting of War Lake Members** to discuss the report, which meeting shall be held by May 15. The **Trustees** and the **Chief and Council** shall attend this meeting.

14.3 Required Meeting. If the **Trustees'** report signed by a majority of **Trustees** is not provided as required by Section 14.1 of the **Indenture**, **Chief and Council** shall by April 15 call a **Meeting of War Lake Members** to take place no later than May 15. The **Trustees** shall attend and explain their failure to comply with the reporting

requirements. The failure of the **Trustees** to attend such **Meeting of War Lake Members** or to provide an explanation satisfactory to **Chief and Council** and the **War Lake Members** shall be grounds for termination by **Chief and Council**.

ARTICLE 15 - DISPUTES

15.1 Disputes. Any dispute in relation to this **Indenture** involving parties to or beneficiaries of this **Indenture** may be referred to a court of competent jurisdiction.

ARTICLE 16 - AMENDMENT AND DISSOLUTION

16.1 Amendment or Dissolution of Trust. The **Trust** established by this **Indenture** may only be varied or dissolved in accordance with the conditions of this Article 16.

16.2 Application to Court. Subject to Sections 16.3 and 16.7 of the **Indenture**, **War Lake** or the **Trustees** may apply to a court of competent jurisdiction to dissolve or amend the terms or conditions of this **Indenture** if;

- (a) **Manitoba** and **Hydro** have provided their written consents, which consents shall not be unreasonably withheld; or
- (b) on the application the court determines such consent has been unreasonably withheld or is unnecessary in the circumstances.

16.3 Consent of War Lake Members. Before applying to a court of competent jurisdiction under Section 16.2 of the **Indenture**, **War Lake** or the **Trustees** shall:

- (a) give **War Lake Members** at least thirty (30) days notice in the same manner and with the same disclosures as for a **Meeting of War Lake Members** under Section 7.4 of the **Indenture**, that a meeting will be held to discuss varying or dissolving the **Trust**;
- (b) hold a meeting where the **Trustees** shall explain the nature and significance of the dissolution, amendment, variation, addition, revision, modification, payment or transfer;
- (c) where the intention is to amend, vary, add to, revise or modify the terms and conditions of this **Indenture**, obtain a **Majority Vote of Adult War**

Lake Members present at such meeting, by secret ballot, authorizing the **Trustees** to make the court application;

- (d) where the intention is to dissolve the **Trust**, obtain a seventy-five percent (75%) vote of the **Adult War Lake Members** present at a meeting where not less than forty percent (40%) of all **Adult War Lake Members** or seventy-five percent (75%) of all **Adult War Lake Members** ordinarily resident on the **Reserve**, whichever is the greater are present for the vote, by secret ballot authorizing the **Trustees** to make the court application; and
- (e) compile a list of those **Adult War Lake Members** attending the meeting and the results of the vote, which document shall be filed in court with the application.

16.4 Effective Date of Amendment or Dissolution. Where a court approves an application under Section 16.2 of the **Indenture**, a change in the **Trust** under Section 16.2 of the **Indenture** shall take effect only after all appeals are exhausted or the time for filing them has expired.

16.5 Compliance. Upon being served with an order of the court dissolving the **Trust**, the **Trustees** shall, subject to Section 16.4 of the **Indenture** immediately comply with the court order.

16.6 Use of Trust Funds upon Dissolution of Trust. If, upon a court application to dissolve the **Trust** referred to in Section 16.2 of the **Indenture**, the court orders that the **Trust** be dissolved, the **Trustees** and the **Chief and Council** shall ensure that all remaining **Trust** funds shall be used exclusively for the benefit of **War Lake, War Lake Members** and **Community Organizations**.

16.7 Trust to Exist for a Minimum Period. Notwithstanding anything else contained in Article 16 of the **Indenture**, the **Trust** may not be dissolved for a minimum period of fifty (50) years and this Section 16.7 may not be amended during that fifty (50) year period.

ARTICLE 17 - ACKNOWLEDGEMENT AND RELEASE

17.1 Acknowledgement. **War Lake** acknowledges that the arrangements in this **Indenture** provide decision-making and management authority, disclosure and accountability by, to, and within, **War Lake**, and that neither **Manitoba** nor **Hydro** shall be responsible for the effectiveness or operation of these arrangements. **War Lake**

further acknowledges that there is no sanction or warranty, either express or implied, by **Manitoba** or **Hydro**, that the arrangements in this **Indenture** or the **Agreement** will satisfy or fulfil the objectives of the **Trust** or attain the development or other purposes of **War Lake**. This Article 17 does not alter or qualify the obligations of **Manitoba** or **Hydro** pursuant to the **Agreement**.

17.2 Release. **War Lake** releases and forever discharges **Manitoba** and **Hydro** from any and all actions, causes of action, suits, claims, demands, losses or damages of any nature or kind whatsoever, including any claims of a fiduciary character, if any, which **War Lake** has had, now has, or hereafter shall or may have, for, or in respect of obligations of **Manitoba** or **Hydro** to **War Lake** for anything done or omitted to be done by **Manitoba** and **Hydro** to and from the date of this **Indenture**, with respect to any of the matters or arrangements provided for in this **Indenture**. This Article 17 does not limit the obligations assumed by **Manitoba** and **Hydro** pursuant to the **Agreement**. Nothing in this Article 17 shall relieve **Manitoba** or **Hydro** of liability for breaches of the **Agreement**, future negligent acts or omissions, or wilful misconduct, on their own part, or on the part of those for whom they are responsible at law.

ARTICLE 18 - GENERAL PROVISIONS

18.1 Proper Law of Trust. This **Trust** shall be governed and interpreted according to federal and provincial laws in force in **Manitoba** from time to time.

18.2 Assignment. This **Indenture** and the rights and obligations under it shall not be assigned.

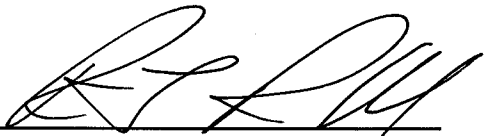
18.3 Enurement. This **Indenture** shall enure to the benefit of, and be binding upon the parties, the beneficiaries, and the heirs, executors, administrators, and successors of all of them.

18.4 Entire Agreement. This **Indenture** and the **Agreement** constitute the entire agreement between the parties to this **Indenture**, and except as expressly provided, supersede all prior agreements, understandings, negotiations and discussions whether oral or written, between the parties. There are no representations, warranties, collateral agreements or conditions except as expressed in this **Indenture**.


18.5 Successor Lawful Authority. Where, in this **Indenture**, a statute, legislation or an act of Canada or **Manitoba** is cited, the citation shall include successor statutes, legislation or acts. All references to legislation in this **Indenture** will include all

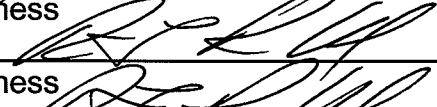
regulations made in accordance with that legislation and any amendment, re-enactment or replacement from time to time of that legislation.

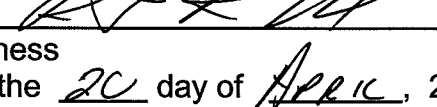
Signed, sealed and delivered
in the presence of:



Witness as to Chief and Councillors
On the 20 day of April, 2004



Witness


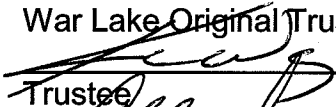
Witness



Witness
On the 20 day of April, 2004

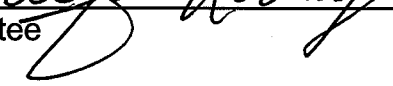
War Lake First Nation
as Settlor


Chief


Councillor
Councillor

War Lake Original Trustees


Trustee


Trustee


Trustee


Schedule 1

Undertaking and Acceptance of Chief or Councillor


I, RUSTY BEARDY, Chief/Councillor of the War Lake First Nation elected to that office APRIL 30, 2003 state and undertake as follows:
(date of most recent election)

1. I have read or I have had explained to me the terms of the Trust Indenture establishing the Mooseocoot Trust, with particular reference to the duties, responsibilities and liabilities of Chief and Council in the administration of the Trust and the expenditure of and accounting for Trust funds in accordance with the terms of the Trust;
2. I have obtained or I hereby waive my right to the advice of legal counsel in connection with my duties and responsibilities under the Trust; and
3. I hereby accept and will honestly and faithfully discharge the duties, responsibilities and obligations as a member of Chief and Council under the Mooseocoot Trust during my term of office.

DATED AT Iford, Manitoba, on the 20 day of APRIL, 2003



Witness



Chief/Councillor

Schedule 1

Undertaking and Acceptance of Chief or Councillor

I, PHILIP MORRIS, ~~Chief~~ Councillor of the War Lake First Nation elected to that office APRIL 30, 2003 state and undertake as follows:
(date of most recent election)

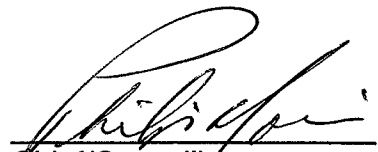
1. I have read or I have had explained to me the terms of the Trust Indenture establishing the Moosecoot Trust, with particular reference to the duties, responsibilities and liabilities of Chief and Council in the administration of the Trust and the expenditure of and accounting for Trust funds in accordance with the terms of the Trust;
2. I have obtained or I hereby waive my right to the advice of legal counsel in connection with my duties and responsibilities under the Trust; and
3. I hereby accept and will honestly and faithfully discharge the duties, responsibilities and obligations as a member of Chief and Council under the Moosecoot Trust during my term of office.

DATED AT Ilford, Manitoba, on the 20 day of April, 2005

Witness



Chief/Councillor



Schedule 2

Undertaking and Acceptance of Trustees

I, KATHLEEN WAVEY APPOINTED by War Lake First Nation as a Trustee
on _____

state and undertake as follows:

1. I have read or I have had explained to me the terms of the Trust Indenture establishing the Moosecoot Trust, with particular reference to the responsibilities and liabilities of Trustees in the administration of the Trust and the disbursement of and accounting of Trust funds in accordance with the terms of the Trust;
2. I have obtained or I hereby waive my right to the advice of legal counsel in connection with my duties and responsibilities under the Trust;
3. I hereby accept and will honestly and faithfully discharge the duties, responsibilities and liabilities as a Trustee under the Moosecoot Trust during my term in that office; and
4. I agree to complete board training within 60 days of my appointment as a Trustee.

DATED AT Ilford, Manitoba, on the 20 day of April, 2005


WAR LAKE TRUSTEES



TRUSTEE

TRUSTEE

TRUSTEE



Witness

Schedule 2

Undertaking and Acceptance of Trustees

I, ALLEN SPENCE APPOINTED by War Lake First Nation as a Trustee
on _____

state and undertake as follows:

1. I have read or I have had explained to me the terms of the Trust Indenture establishing the Moosecoot Trust, with particular reference to the responsibilities and liabilities of Trustees in the administration of the Trust and the disbursement of and accounting of Trust funds in accordance with the terms of the Trust;
2. I have obtained or I hereby waive my right to the advice of legal counsel in connection with my duties and responsibilities under the Trust;
3. I hereby accept and will honestly and faithfully discharge the duties, responsibilities and liabilities as a Trustee under the Moosecoot Trust during my term in that office; and
4. I agree to complete board training within 60 days of my appointment as a Trustee.

DATED AT Ilford, Manitoba, on the 20 day of April, 2005

WAR LAKE TRUSTEES

Allen Spence
TRUSTEE

TRUSTEE

TRUSTEE

[Signature]
Witness

Schedule 2

Undertaking and Acceptance of Trustees

I, ALFRED LALIBERTY APPOINTED by War Lake First Nation as a Trustee
on _____

state and undertake as follows:

1. I have read or I have had explained to me the terms of the Trust Indenture establishing the Moosecoot Trust, with particular reference to the responsibilities and liabilities of Trustees in the administration of the Trust and the disbursement of and accounting of Trust funds in accordance with the terms of the Trust;
2. I have obtained or I hereby waive my right to the advice of legal counsel in connection with my duties and responsibilities under the Trust;
3. I hereby accept and will honestly and faithfully discharge the duties, responsibilities and liabilities as a Trustee under the Moosecoot Trust during my term in that office; and
4. I agree to complete board training within 60 days of my appointment as a Trustee.

DATED AT Ilford, Manitoba, on the 20 day of April, 2008

WAR LAKE TRUSTEES

Alfred Laliberty
TRUSTEE

TRUSTEE

TRUSTEE

Alfred Laliberty
Witness

Schedule 3

Resolution of the Trustees
Certificate of Disclosure

This is to certify that the budget attached hereto for the Funds Available to be spent from _____ to _____ was:

1. To the best of our information and belief the subject of true disclosure in full compliance with the disclosure requirements of Section 7.3 of the Trust Indenture, with respect to all amounts in that budget as evidenced by copies of the notices and other documents attached hereto;
2. Considered at a Meeting of War Lake Members called in accordance with the requirements of Section 7.4 of the Trust Indenture; and
3. Approved by a Majority of Trustees.

DATED AT Ilford, Manitoba, on the ____ day of _____, 20__.

WAR LAKE TRUSTEES

Trustee

Trustee

Trustee

Witness

Schedule 4

Acknowledgment of Receipt by Parent, Guardian or Legal Representative

I, _____ of _____

in the Province of _____, am the _____

_____ (parent/guardian/lawfully appointed legal representative)

of _____, in the Province of _____,

satisfactory evidence of which has been provided to

_____ (indicate whether War Lake Chief and Council or Trustees)

have received from _____

_____ the Trustees of the Moosecoot Trust

the amount of \$_____ to be held and applied on behalf of _____

in accordance with the law.

On behalf of _____, I hereby acknowledge receipt of such funds and release and indemnify the payor with respect thereto.

DATED at Ilford, Manitoba, on the _____ day of _____, 20____.

Witness

Parent/Guardian/Legal Representative

SCHEDULE 2.2 - SUMMARY OF SETTLEMENT COSTS
WAR LAKE FIRST NATION

Summary of Settlement Costs
March 2000 to November 2004 Inclusive

	<u>Sub-Total</u>	<u>Total</u>
<u>COMMUNITY CONSULTATION</u>		
- First Nation Travel, Meeting Expenses, Technical, Analytical Administrative and Negotiating Staff		
- First Nation Travel/Community Costs	\$159,859.25	
- Analytical and Technical Advice	\$22,775.02	
- Administration and Negotiating Staff	<u>\$25,832.57</u>	
Community Consultation Sub-Total:		\$208,466.84
 <u>LEGAL COUNSEL/ADVISOR</u>		
- Fees, Travel, etc.		
- Senior Legal Counsel/Advisor	<u>\$181,466.83</u>	
Legal Counsel/Advisor Sub-Total:		\$181,466.83
 <u>CONSULTANTS</u>		
- Preparation of Grievance Statement, Archival Research, Mapping, etc.		
- Analytical and Technical Advice	<u>\$221,300.77</u>	
Consultants Sub-Total:		<u>\$221,300.77</u>
 Total:	 \$ 611,234.44	 \$ 611,234.44

ARTICLE 3 - PROJECT OPERATIONS, WATER REGIME AND COMPENSATED RANGE

3.1 INTRODUCTION

- 3.1.1 Introduction. Article 3 sets out the Fully Compensated Zone settled by this **Agreement**, and describes the mechanism for addressing future compensation for events occurring outside of the Fully Compensated Zone after the **Date of this Agreement**.

3.2 RECORDS

- 3.2.1 Controlling Bench Marks. For all purposes of this **Agreement** the **Parties** agree that the **Controlling Bench Marks** have been established by **Manitoba** by reference to B.M. No. 8 which, for the purposes of this **Agreement**, is at an elevation of 167.257 m (548.74 ft.) **ASL**. **Manitoba** certifies that all of the **Controlling Bench Marks**, including the referencing of B.M. No. 8, are established to a third-order accuracy in accordance with a recognized Canadian standard on vertical control levelling. If, for the purposes of this **Agreement**, it becomes necessary to replace a **Controlling Bench Mark** it shall be replaced by **Hydro**. Whether a **Controlling Bench Mark** is replaced for the purposes of this **Agreement**, or for any other purpose, such replacement shall be established near the location of, and to the same degree of accuracy as, the original **Controlling Bench Mark** and for the purposes of this **Agreement** be tied to **ASL Local Datum**.
- 3.2.2 Operation of Gauging Station. At the **Date of this Agreement**, **Canada** operates the **Split Lake Gauging Station** in accordance with the Canada - Manitoba Water Quantity Surveys Agreement dated April 1, 1975. The **Parties** agree that, if **Canada** ceases such operation, **Hydro** shall forthwith assume such operation. If it becomes necessary to replace or re-locate the **Split Lake Gauging Station**, it will be replaced by the party responsible for replacement under the applicable provisions, if any, of the Canada - Manitoba Water Quantity Surveys Agreement or any successor agreement, or in the absence of such provisions, by **Hydro** and the location shall be on Split Lake, in reasonable proximity to the existing location and, subject to improvements in the state of the art, the design shall be the same as the existing one and it shall be tied to a benchmark which has been established to a third order accuracy or better, in accordance with a recognized Canadian standard on vertical control levelling. The data recorded by the **Split Lake Gauging Station** shall be tied to the **Controlling Bench Marks** or, where required, adjusted by **Hydro** to **ASL Local Datum**. Prior to construction of any

replacement gauge or relocation of the **Split Lake Gauging Station**, the design and location shall be approved by **War Lake and Hydro**.

3.2.3 Records. From and after the **Date of this Agreement**, **Hydro** will maintain a record of the water levels recorded by the **Split Lake Gauging Station** and provide such records to any **Party** when requested or required for purposes of this **Agreement**. No **Party** warrants the accuracy or adequacy of the data recorded by the **Split Lake Gauging Station**.

3.2.4 Notice of Malfunction. If at any time it comes to the attention of any **Party** that the **Split Lake Gauging Station** is not accurately providing the water level measurements required by this **Agreement**, that **Party** shall forthwith notify the other **Parties**.

3.3 OPERATION OF THE PROJECT

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

3.4 FULLY COMPENSATED ZONE

3.4.1 Fully Compensated Zone. The parameters of the Fully Compensated Zone shall be as follows:

- (a) the **Daily Average Water Levels** on Split Lake, measured at the **Split Lake Gauging Station**, do not exceed the maximum monthly levels, or fall below the minimum monthly levels shown graphically on Schedule 3.1;
- (b) the **maximum** change in the **Daily Average Water Level** on Split Lake, measured at the **Split Lake Gauging Station**, does not exceed on a daily basis or on a weekly basis:

	UPWARD	DOWNWARD
DAILY	0.20 m (0.7 ft.)	0.20 m (0.7 ft.)
WEEKLY	0.65 m (2.1 ft.)	0.50 m (1.6 ft.);

- (c) for the relevant year (which for these purposes shall be a year running from March 1 of one calendar year to February 28 or 29 of the next

following calendar year) the mean water levels at Split Lake during the period of November 1 to February 28 are higher than the mean water levels at Split Lake during the period June 1 to August 31 of the same year; and

- (d) in terms of monthly changes in water levels, the sum of the absolute values of the **Daily Average Water Level** fluctuations on Split Lake, measured at the **Split Lake Gauging Station**, for any calendar month do not exceed 1.83 m (6.0 ft.). To determine the sum, the difference in the **Daily Average Water Level** between succeeding days, whether up or down, shall be added for each day in the calendar month being considered. In doing the addition, the downward movement shall be a positive, not a negative number.

3.5 PRE-DETERMINED COMPENSATION ZONE

3.5.1 Pre-determined Compensation Zone. The parameters of the Pre-determined Compensation Zone are shown graphically on Schedule 3.2.

3.5.2 Calculation and Payment. Not later than April 29 in each calendar year following the first anniversary of this **Agreement**, **Hydro** will calculate and pay compensation, if any, for the previous year, ending February 28/29 of each year, in accordance with the following provisions:

- (a) for each day that the **Daily Average Water Level** on Split Lake exceeds the maximum monthly levels or falls below the minimum monthly levels constituting the Fully Compensated Zone as set forth in subsection 3.4.1, **Hydro** shall pay to **War Lake** the following:
 - (i) during the period from May 1 to October 31 inclusive, \$42.50 dollars per foot for each day that the **Daily Average Water Level** exceeds the Fully Compensated Zone, but falls on or below elevation 551.40 feet **ASL Local Datum**,
 - (ii) during the period from May 1 to September 30 inclusive, \$175.00 dollars per foot for each day that the **Daily Average Water Level** exceeds elevation 551.40 feet **ASL Local Datum**, but falls on or below elevation 553.50 feet **ASL Local Datum**,
 - (iii) during the periods from January 1 to April 30 inclusive, and from November 1 to December 31 inclusive, \$225.00 dollars per foot for

each day that the **Daily Average Water Level** exceeds the Fully Compensated Zone, but falls on or below elevation 553.00 feet **ASL Local Datum**,

- (iv) during the period from October 1 to October 31 inclusive, \$225.00 per foot for each day that the **Daily Average Water Level** exceeds 551.40 feet **ASL Local Datum**, but falls on or below elevation 553.00 feet **ASL Local Datum**,
 - (v) during the period from May 1 to August 31 inclusive, \$225.00 per foot for each day that the **Daily Average Water Level** exceeds elevation 553.50 feet **ASL Local Datum**, but falls on or below elevation 554.50 feet **ASL Local Datum**,
 - (vi) during the periods from January 1 to April 30 inclusive, and from November 1 to December 31 inclusive, \$225.00 per foot for each day that the **Daily Average Water Level** falls below the Fully Compensated Zone, but falls on or above elevation 544.00 feet **ASL Local Datum**, and
 - (vii) during the period from May 1 to October 31 inclusive, \$337.50 dollars per foot for each day that the **Daily Average Water Level** falls below the Fully Compensated Zone, but falls on or above elevation 543.00 feet **ASL Local Datum**;
- (b) subject to the limitation hereinafter specified, for each six (6) inches, or part thereof, that the mean of the **Daily Average Water Levels** on Split Lake, during the relevant annual period as set forth in paragraph 3.4.1(c), in the months of June through August inclusive, in one calendar year ("Year A") exceeds the mean of the **Daily Average Water Levels** during the succeeding months of November and December in Year A through January and February in the next calendar year ("Year B"), **Hydro** shall pay to **War Lake** compensation in the amount of \$2,500.00. Compensation payable under this paragraph shall be limited to the difference between the pre-determined compensation payable under the other provisions of this Article for events occurring in Year A and \$12,500.00 dollars. No compensation shall be payable under this paragraph 3.5.2(b) if the pre-determined compensation payable under the other provisions of this Article for Year A exceeds \$12,500.00; and

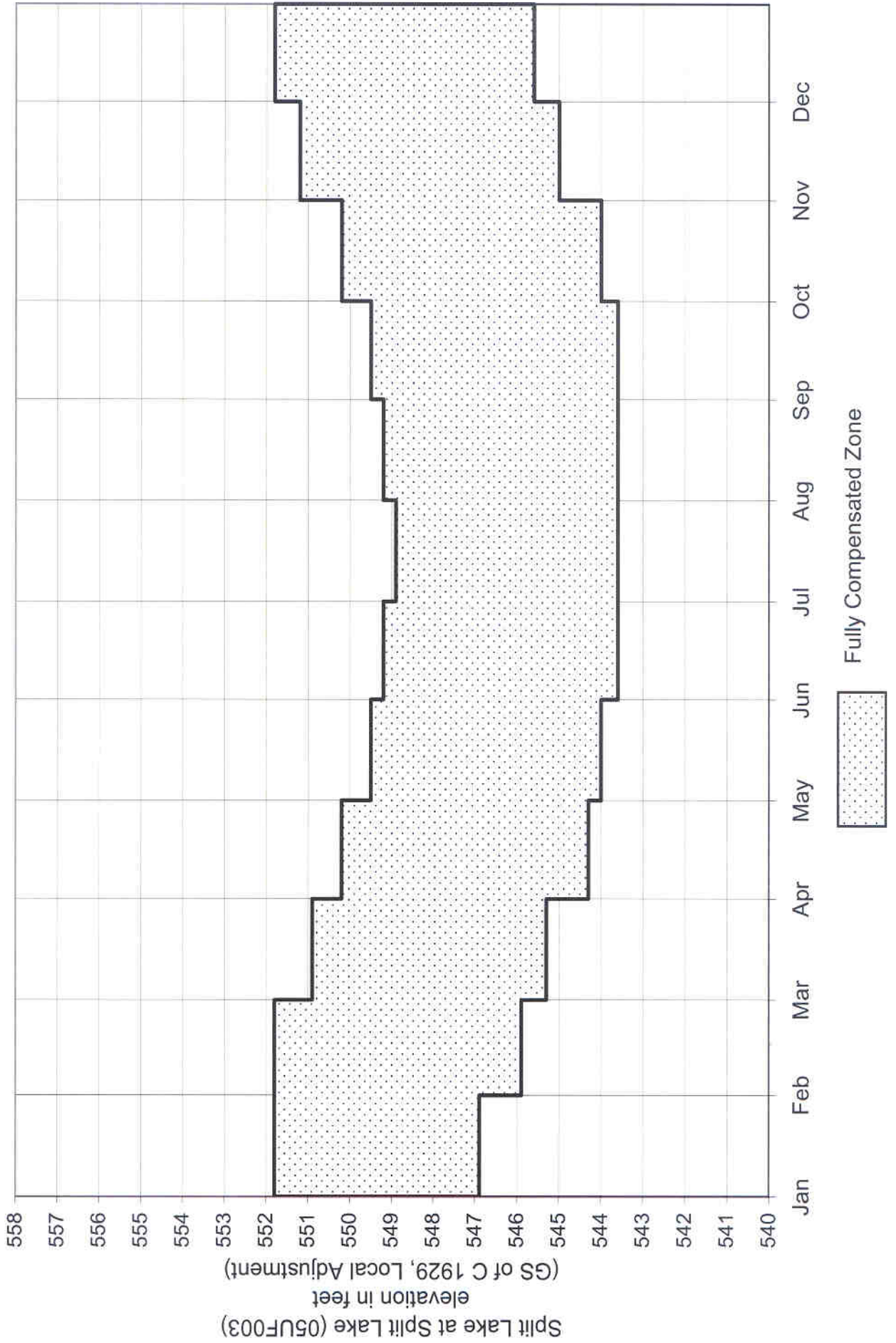
- (c) for each inch, or any part thereof, that the sum of the absolute values of the **Daily Average Water Level** fluctuations on Split Lake, as set forth in paragraph 3.5.2(c), for any calendar month exceeds 6.00 feet, **Hydro** shall pay to **War Lake** fifty (\$50.00) dollars.
- 3.5.3 Annual Maximum. Pre-determined compensation will not exceed a total of fifty thousand (\$50,000.00) dollars in any calendar year.
- 3.5.4 Annual Minimum. Where pre-determined compensation of less than five hundred (\$500.00) dollars is calculated to be payable for any calendar year pursuant to subsection 3.5.2, **Hydro** will, notwithstanding such calculation, pay five hundred (\$500.00) dollars to **War 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.
- 3.5.5 Use of Compensation. The compensation paid pursuant to section 3.5 will be provided to **War Lake** to be paid into the **Trust** and used in accordance with the **Indenture**.
- 3.5.6 Rejection of Pre-determined Compensation. In any year, **War Lake** may within one hundred and twenty (120) days of receipt of pre-determined compensation, return the amount so paid and pursue its remedies at law.
- 3.5.7 Deemed Acceptance of Compensation. If **War Lake** does not reject the pre-determined compensation within the one hundred and twenty (120) day time period referred to in subsection 3.5.6, **War Lake** will conclusively be deemed to have accepted such pre-determined compensation in full and complete satisfaction of any and all claims **War Lake** may otherwise have had against **Manitoba** and **Hydro** arising from **Daily Average Water Levels** within the Pre-determined Compensation Zone in that year.
- 3.6 WATER LEVELS AND LEVEL CHANGES OUTSIDE CALCULATED COMPENSATION RANGE**
- 3.6.1 Hydro Not Released. **Hydro** is not, by this **Agreement**, released with respect to any damages arising from water levels or changes falling outside of the Fully Compensated Zone and the Pre-determined Compensation Zone.

3.7 TERMINATION OR AMENDMENT OF PRE-DETERMINED COMPENSATION PROVISIONS

- 3.7.1 Notice of Termination of section 3.5. At any time following the **Date of this Agreement**, either **Hydro** or **War Lake** may give written notice to the other that it no longer considers that the pre-determined compensation calculated under section 3.5 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, and that the provisions of section 3.5 will terminate at the expiry of the first full calendar year following the date of such notice.
- 3.7.2 Amendment of Compensation Provisions. Following receipt of the notice provided for in subsection 3.7.1, **Hydro** and **War Lake** may agree in writing upon amended pre-determined compensation provisions and in that case, this **Agreement** will be amended accordingly.
- 3.7.3 Termination of Compensation Provisions. If **Hydro** and **War Lake** are unable to agree upon amended pre-determined compensation provisions in accordance with subsection 3.7.2, this **Agreement** will, upon written notice from either **Party** to the other, be amended, effective at the end of the period contemplated in subsection 3.7.1, by terminating the provisions of section 3.5.

Schedule 3.1

War Lake First Nation Fully Compensated Zone

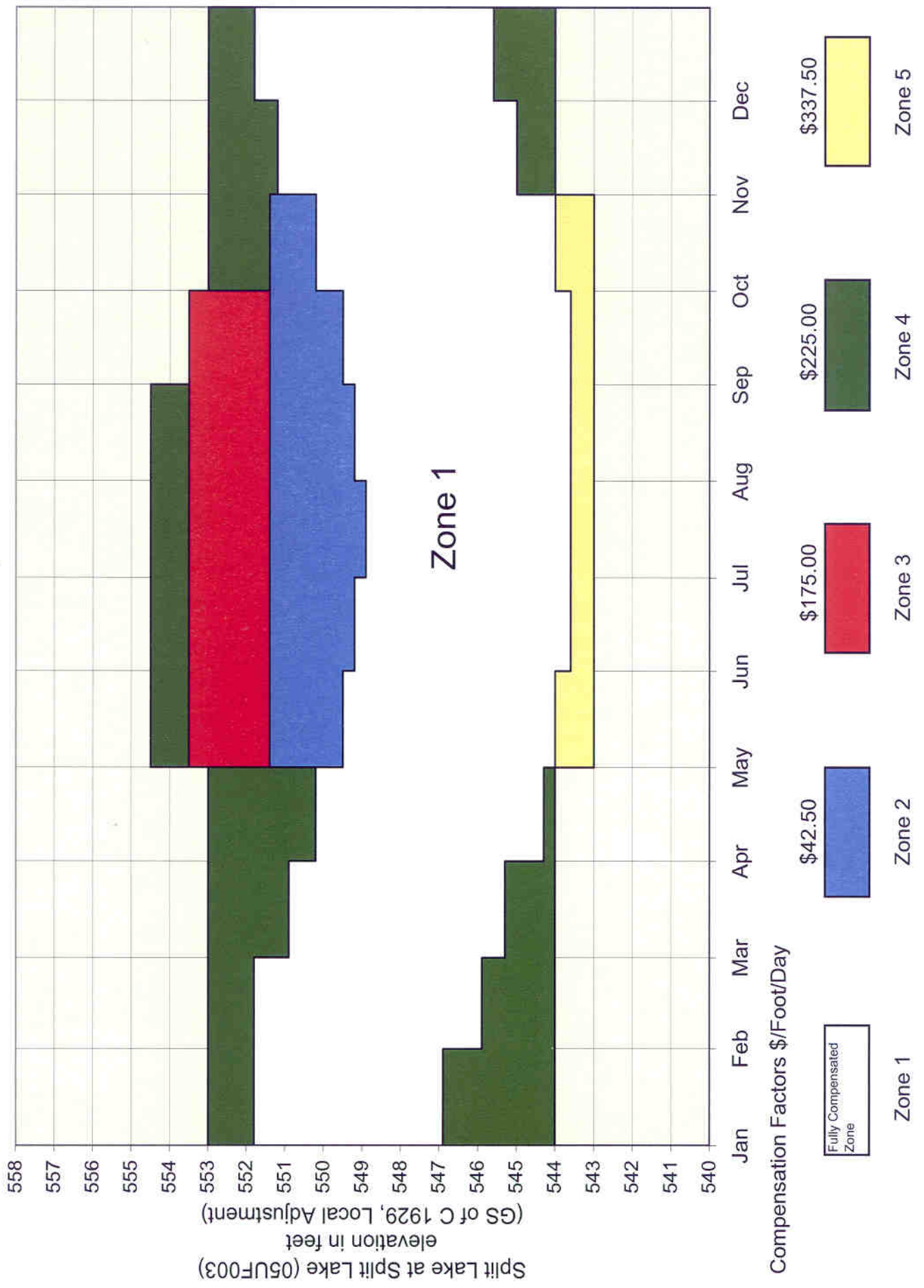


Split Lake at Split Lake (05UF003)
elevation in feet
(GS of C 1929, Local Adjustment)

Fully Compensated Zone

War Lake First Nation Pre-Determined Compensation Zones

Schedule 3.2



ARTICLE 4- NEGOTIATION OF RESERVE LANDS AT ILFORD

4.1 INTRODUCTION

- 4.1.1 Introduction. Article 4 relates to the commitment of **War Lake** and **Manitoba** to a negotiation process with **Canada** for the completion of the transfer of lands at Ilford to become reserve land set apart as reserve for the use and benefit of **War Lake**.

4.2 COMMITMENT TO ESTABLISHMENT OF RESERVE AT ILFORD

- 4.2.1 Memorandum of Understanding. By virtue of the Memorandum of Understanding attached as Schedule 4.1, **War Lake** and **Manitoba** are committed to continuing a process for the completion of the transfer of lands at Ilford to become reserve land set apart for the use and benefit of **War Lake**.

4.3 NEGOTIATIONS NOT TO AFFECT SETTLEMENT AND SATISFACTION

- 4.3.1 No Effect on Settlement and Satisfaction. The negotiations provided for under the Memorandum of Understanding, attached as Schedule 4.1:
- (a) are being conducted pursuant to a commitment by **War Lake** and **Manitoba** and do not involve **Hydro**; and
 - (b) do not relate to matters that are the subject of the Settlement and Satisfaction provided for in Article 7;

and therefore the Settlement and Satisfaction will remain valid and effective in the event that the negotiations provided for by that Memorandum of Understanding are not concluded satisfactorily or in the event of any dispute about any agreement resulting from the negotiations.

Schedule 4.1- Memorandum of Understanding

MEMORANDUM OF UNDERSTANDING for discussions related to establishment of War Lake Reserve Lands at Ilford dated _____.

BETWEEN:

**THE GOVERNMENT OF MANITOBA,
as represented by the Minister of Aboriginal
and Northern Affairs,**

(“Manitoba”)

- and -

WAR LAKE FIRST NATION,

as represented by the Chief and Council of the War Lake First Nation,

(“War Lake”)

WHEREAS:

- A. In October 1993, Her Majesty the Queen in Right of Canada ("Canada"), Manitoba, War Lake and the Community of Ilford entered into an Agreement that provided for the transfer from Manitoba to Canada of certain lands in the Community of Ilford called “Phase 1 Lands”, to be set apart as reserve for the use and benefit of War Lake, as part of the treaty land entitlement of War Lake;
- B. The Phase 1 Lands have been transferred by Manitoba to Canada and have been set apart as reserve for the use and benefit of War Lake, as part of the treaty land entitlement of War Lake;
- C. The October 1993 Agreement also reflected the recognition by the parties that it was appropriate to negotiate agreements in phases to provide for the phased transfer of areas of land and to outline service arrangements and responsibility for each area of land to be transferred;
- D. The October 1993 Agreement also included a list of “Settlement Principles”, dated December 7, 1992, agreed to by Canada and Manitoba and witnessed by

the Chief of War Lake and the Mayor of Ilford. The text of these Settlement Principles is attached as Schedule "A" to this Memorandum;

- E. The Treaty Land Entitlement Committee of Manitoba Inc., Canada and Manitoba entered into the Manitoba Treaty Land Entitlement Framework Agreement, dated May 29, 1997 which, among other things, sets out principles for the selection and acquisition of land to enable entitlement First Nations, including War Lake, to fulfil treaty land entitlement;
- F. The Treaty Land Entitlement Framework Agreement sets out principles for the selection of land to enable land to be set apart as reserve for the use and benefit of Entitlement First Nations. Article 3.08 of the Treaty Land Entitlement Framework Agreement sets out a specific principle for the selection of land in a northern community, such as Ilford. Article 3.08 of the Manitoba Treaty Land Entitlement Framework Agreement is attached as Schedule "B" to this Memorandum;
- G. War Lake, the Treaty Land Entitlement Committee of Manitoba Inc., Canada and Manitoba entered into a treaty entitlement agreement for War Lake dated May 28, 1999, by which the parties agreed that the provisions of the Treaty Land Entitlement Framework Agreement would apply to War Lake; and
- H. War Lake, Manitoba and Canada are currently involved in discussions to address the selection of lands within the Community of Ilford to be set apart as reserve for the use and benefit of War Lake.

THEREFORE, the parties reflect their common understanding as follows:

- 1. War Lake and Manitoba are committed to continuing the discussions with Canada designed to result in the transfer of additional lands in the Community of Ilford to Canada to become reserve for the use and benefit of War Lake, as part of the treaty land entitlement of War Lake.
- 2. War Lake and Manitoba will be guided in these discussions with Canada by:
 - (a) the 1992 Settlement Principles attached as Schedule "A"; and
 - (b) the Manitoba Treaty Land Entitlement Framework Agreement, and in particular Article 3.08 of that Agreement, which is attached to this Memorandum as Schedule "B".

3. The Community of Ilford will be involved in the discussions as required.
4. War Lake and Manitoba are committed to exchanging and providing information necessary for the discussions to be effective.
5. The discussions may result in one or more agreements for the transfer and setting apart of land as reserve for the use and benefit of War Lake, including the transfer of land in phases to accommodate existing buildings and infrastructure.
6. This Memorandum does not affect any aboriginal or treaty rights of any aboriginal peoples including War Lake or any of its members.
7. This Memorandum does not affect any of the provisions of the Manitoba Treaty Land Entitlement Framework Agreement dated May 29, 1997, or the Treaty Entitlement Agreement involving War Lake dated May 28, 1999.
8. This Memorandum is not intended to create a legally binding agreement between the parties, nor is it intended to create any legally enforceable rights or obligations, but it reflects, as a matter of policy, the common understanding of the parties.

This Memorandum has been signed on behalf of Manitoba and War Lake on the dates noted below.

For Her Majesty the Queen in Right of Manitoba, as
Represented by the Minister of Aboriginal and
Northern Affairs

Date: _____

For the War Lake First Nation, as represented by the
Chief and Council of the War Lake First Nation

Date: _____

Schedule "A" to Memorandum of Understanding

SETTLEMENT PRINCIPLES

GOVERNMENT OF CANADA, GOVERNMENT OF MANITOBA

CONCERNING: Establishment of a Reserve at Ilford.

WHEREAS the War Lake Band, hereafter to be referred to as "the Band", was created under section 17 of the Indian Act in 1980;

AND WHEREAS the Band does not have a Reserve land base;

AND WHEREAS the Government of Canada, hereafter to be referred to as "Canada", has confirmed that the Band has outstanding treaty land entitlement;

AND WHEREAS, pursuant to paragraph 11 of the Natural Resource Transfer Agreement of 1929/30, the Government of Manitoba, hereafter to be referred to as "Manitoba", shall set aside out of unoccupied Crown land areas as necessary to enable Canada to fulfill its outstanding treaty land entitlement obligations;

AND WHEREAS the Band has submitted the War Lake Band Proposal for a Reserve in Ilford, on August 28, 1990, hereafter to be referred to as "the proposal";

AND WHEREAS the majority of residents of Ilford are Status Indians and members of the War Lake Band, or have applied for reinstatement of their Status through Bill C31;

AND WHEREAS the Ilford Community Council, hereafter to be referred to as "the Community Council", through Resolution #31-90/91 "agrees in principle that the community become a reserve", and, through Resolution #35-91/92, "supports the War Lake Band's proposal";

AND WHEREAS Canada has indicated its desire to establish a Reserve in accordance with the wishes of the Band, in partial fulfillment of the War Lake Band's treaty land entitlement claim;

AND WHEREAS Manitoba has indicated its commitment to negotiating as expeditiously as possible the transfer of land to Reserve status, in partial fulfillment of

the War Lake Band's treaty land entitlement claim, in accordance with the wishes of the Community, and has further indicated its desire to assist the Community in negotiations;

AND WHEREAS it is deemed appropriate and financially beneficial to establish a Reserve utilizing all or a part of the current Community of Ilford rather than establishing a separate Reserve community site;

AND WHEREAS the Reserve area in the proposal includes Manitoba Crown Land; land owned by the Manitoba Housing and Renewal Corporation, Frontier School Division, Canada Mortgage and Housing Corporation, and various private interests; and land upon which Manitoba Hydro, the Manitoba Telephone System, and Indian and Northern Affairs Canada have interests;

AND WHEREAS the establishment of a Reserve land base will result in fundamental changes to government jurisdictional responsibilities as they pertain to funding and services to the Community of Ilford, the future Reserve, and their respective residents;

AND WHEREAS Canada and Manitoba have appointed senior negotiators to undertake negotiations with the Band and the Community Council regarding various issues and implications of transferring land to Reserve status;

THEREFORE, it is considered advisable to set out the following principles to provide a framework for negotiations designed to result in an agreement or agreements to provide for the transfer of land at Ilford to Canada for designation as Indian Reserve land for the benefit of the War Lake Band.

These principles are not intended to create a legal relationship among the parties. It is intended that the legal relationship will be set out in the agreement or agreements.

A. General

- 1) While every effort will be made to ensure that provincial and federal policies and positions regarding this specific negotiation are consistent with those developed for Province-wide treaty land entitlement, it is recognized that nothing in any proposed agreements should be construed to have any impact or effect on subsequent treaty land entitlement policy development.
- 2) All land transferred, as per section C, will be considered to be part of the fulfillment of Canada's treaty land entitlement obligations and Manitoba's

obligation through the Natural Resource Transfer Agreement to set aside land to fulfill outstanding treaty land entitlement. The outstanding treaty land entitlement for the War Lake Band will be decreased accordingly.

- 3) The proposal will be considered to be the initial position of the Band, and subject to revision, modification, etc. in accordance with negotiations undertaken by Canada, Manitoba, the Band, and the Community Council.
- 4) Fundamental objectives of negotiations will be expediency in establishing a Reserve land base for the Band, and ensuring that the rights of all residents of the Community of Ilford are protected during and as a result of negotiations.
- 5) Direct negotiations regarding the establishment of a Reserve at Ilford will be undertaken between Canada, Manitoba, the Band, and the Community Council. Community consultation for all Band members and residents of the Community of Ilford will be considered to be of fundamental importance to these negotiations. Ongoing consultation will be the primary responsibility of the Band and the Community Council, with Canada and Manitoba assisting where required.
- 6) Canada will take the necessary reasonable steps to ensure that all members of the Band, and Manitoba will take the necessary reasonable steps to ensure that all residents of the Community of Ilford, are aware of legal, funding, and future servicing implications related to any proposed agreements.

B. Process

- 7) It is recognized that, in consideration of the potentially lengthy negotiations required to finalize all land transfers, it may be appropriate to separate land transfers into a number of phases in order to facilitate the securing of a Reserve land base for the Band. It is expected that or intended that a schedule outlining the order of negotiation of these phases will be developed by Canada, Manitoba, the Band, and the Community Council within one year of the signing of these settlement principles.
- 8) It is intended that these settlement principles will form the basis for an agreement and subsequent sub-agreement(s) between the Band, the Community Council, Canada and Manitoba. The sub-agreement(s) will outline service arrangements and responsibilities for each area of land to be transferred.

- 9) Land transfer sub-agreements, per #8, will outline specific service arrangements, and may include but are not limited to the following:
- Sewer and water;
 - Fire protection;
 - Education;
 - Social services (including Health);
 - Operations and maintenance;
 - Public facilities;
 - Roads;
 - Housing;
 - Environment.
- 10) It is recognized that servicing arrangements related to social services, education and other areas of service requirements for residents of Ilford/War Lake will be undertaken through various federal and provincial departments/agencies. Such arrangements will be directed at eliminating duplication of services. These settlement principles will in no way prejudice negotiations regarding such arrangements.
- 11) Coordination of provincial land transfers, as per section C, will be by Manitoba Northern Affairs, with individual principal departments and agencies directly representing their own interests in associated negotiations.
- 12) Coordination of federal involvement in land transfers, as per section C, will be by Indian and Northern Affairs Canada, with individual federal departments and agencies maintaining the right to directly represent their own interests in associated negotiations if they so choose.

C. Land

- 13) Based on the determination of acceptable terms and conditions for Canada, Manitoba, the Band, and the Community Council, as specified in the proposed agreement or agreements, Manitoba may arrange for an initial transfer of unencumbered provincial Crown land at sites selected by the Band and agreed to by Canada, Manitoba, the Band and the Community Council.
- 14) Subsequently, Manitoba may, as necessary, also arrange the transfer of other unencumbered provincial Crown land and, to the extent possible, take the necessary administrative steps to deal with encumbrances to enable the transfer

of land, other than those lands required for public purpose. Where a government department or agency has an interest in lands, those lands may be transferred subject to such terms and conditions as are specified in the proposed agreement or agreements.

- 15) The Band will provide appropriate Band Council Resolutions identifying the sites selected, consistent with the schedule as outlined in #7.
- 16) Manitoba will be responsible for providing land-related information and services for proposed transfers of land under its control, using normal provincial departmental processes and procedures.
- 17) Prior to the transfer of land as selected by the Band and agreed to by Canada, Manitoba, the Band and the Community Council, Canada will be responsible for any environmental reviews or assessments required in accordance with federal policy. Any upgrading required to mitigate adverse environmental effects or impacts will be subject to federal and provincial environmental policies and will be negotiated separately.
- 18) Surveying required for land transfers will be agreed to by Canada, Manitoba, the Band, and the Community Council, and will be undertaken according to normal Canada/Manitoba land transfer practices and standards.

Schedule "B" to Memorandum of Understanding

3.08 Specific Principles for Selection or Acquisition of Land in a Northern Community

- (1) Subject to Subsection (2), an Entitlement First Nation may Select or Acquire land in a Northern Community, provided:
 - (a) the Entitlement First Nation gives Canada, Manitoba and the Northern Community notice in writing of the intention of the Entitlement First Nation to Select or Acquire the land; and
 - (b) consultation about the Selection or Acquisition and the intent of the Entitlement First Nation to request that the land be set apart as Reserve by Canada has first occurred with the community council, the local committee or the incorporated community council (as the case may be) of the Northern Community.
- (2) Where the intent of an Entitlement First Nation is ultimately to have all or substantially all of the land in the Northern Community set apart as Reserve, the Entitlement First Nation may not Select or Acquire land in that Northern Community until Canada, Manitoba and the Entitlement First Nation have entered into an agreement which addresses:
 - (a) the timing of the Selection or Acquisition of land and the subsequent setting apart of the land as Reserve;
 - (b) the transfer and operation of capital infrastructure and related costs;
 - (c) the ongoing provision of social and public services to Members of the Entitlement First Nation and other persons ordinarily resident in the Northern Community and related costs; and
 - (d) other matters of the nature which may be addressed by a Municipal Development and Services Agreement if the land was located in a Municipality.
- (3) Where the intent and purpose of the Selection or Acquisition in a Northern Community is not ultimately to have all or substantially all of a Northern Community set apart as Reserve, Section 3.07 shall apply with necessary modifications.

- (4) For the purposes of Subsections (2) and (3), the intent of an Entitlement First Nation shall be deemed to be ultimately to have all or substantially all of the land in the Northern Community set apart as Reserve where:
 - (a) the Entitlement First Nation has declared by Council Resolution that its intent is ultimately to have all or substantially all of the land in the Northern Community set apart as Reserve; or
 - (b) the Selection or Acquisition of the land, whether by itself or in combination with other Selections or Acquisitions of land by the Entitlement First Nation, would result in more than 25 per cent of the area comprising the Northern Community being set apart as Reserve for the Entitlement First Nation.
- (5) The parties may develop Agreed Forms of agreements of the nature referred to in Subsection (2) or a checklist of items to be addressed in those agreements.
- (6) Where land is Selected by an Entitlement First Nation within eight kilometres of the boundary of a Northern Community, Manitoba will not confirm whether the Selection is eligible to be set apart as Reserve in accordance with the Principles until the Minister of Northern Affairs of Manitoba has consulted with the community council, the local committee or the incorporated community council (as the case may be) in accordance with subsection 9(2) of *The Northern Affairs Act*, which consultation shall be undertaken forthwith upon Canada providing to Manitoba the documents referred to in subsection 6.02(4).

ARTICLE 5 - MEMBERS' CLAIMS

5.1 INTRODUCTION

5.1.1 Introduction. Article 5 provides for:

- (a) **War Lake** to assume responsibility for resolving **Members' Claims** against **Hydro** for individual losses caused by **Adverse Effects**; and
- (b) **War Lake** to indemnify **Hydro** for any **Members' Claims** advanced against **Hydro** after the **Date of this Agreement**.

5.2 CLAIMS OFFICER

5.2.1 Appointment of Claims Officer. **Chief and Council** and the **Trustees** shall jointly appoint an independent **Claims Officer** who will determine **Members' Claims** in accordance with this **Agreement** and the **Indenture**.

5.2.2 Qualifications of Claims Officer. Any **Claims Officer** appointed pursuant to this **Agreement** and the **Indenture** shall be a **War Lake Member** who meets all the qualifications and requirements of eligibility for a **Trustee** at the time of appointment, but a **Trustee** in office may not serve as a **Claims Officer**.

5.2.3 Revocation of Appointment. The appointment of a **Claims Officer** shall be automatically revoked where **Chief and Council** and the **Trustees** become aware that the **Claims Officer** ceases to meet the qualifications in subsection 5.2.2, in which case a replacement **Claims Officer** will be appointed in accordance with subsection 5.2.1. Until such time as **Chief and Council** and the **Trustees** become aware that the **Claims Officer** has ceased to meet the qualifications in subsection 5.2.2, no decision of the **Claims Officer** shall be invalidated due to such lack of qualification.

5.2.4 Undertaking. Prior to assuming office, a **Claims Officer** shall sign an undertaking in the form attached as Schedule 5.1.

5.2.5 Conflict. No **Claims Officer** who has an interest in the outcome of a claim may take part in the determination of that claim.

5.3 ADMINISTRATION OF CLAIMS

- 5.3.1 **Claims Account.** War Lake acknowledges that a portion of the payment being made by **Hydro** pursuant to section 2.2 is to be used to cover the payment of **Members' Claims**, and accordingly, the **Indenture** requires the establishment of a **Claims Account** to cover **Members' Claims**.
- 5.3.2 **Member's Claim.** A **Claimant** may advance a **Member's Claim** against the **Claims Account** for compensation for personal loss or damage which is caused by or reasonably attributable to an **Adverse Effect** of the **Project**. For the purposes of this **Agreement**, a **Member's Claim** for personal loss or damage does not include loss or damage to community rights and interests, including interests in the nature of aboriginal and treaty rights. Community loss or damage is to be addressed by the **Trustees** by making use of the **Community Development Account**.
- 5.3.3 **Limitation.** The right to bring a claim under subsection 5.3.2 in relation to loss or damage expires four (4) years from the date the loss or damage occurred.
- 5.3.4 **Hydro to Notify Claimant.** If a **Member'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**.
- 5.3.5 **Initial Determination.** All **Members' Claims** received by **War Lake** shall be forwarded to the **Claims Officer** who will, as soon as reasonably practicable:
- (a) investigate the claim;
 - (b) determine whether the **Member's Claim** has been brought within the time limit imposed under subsection 5.3.3; and

- (c) determine whether the claim, or a portion of the claim, is a matter falling under subsection 7.2.3 in which case the **Claims Officer** will:
 - (i) forward the **Member's Claim** to **Hydro**, and
 - (ii) advise the **Claimant** in writing of the determination.

5.3.6 Further Decision Process. If, pursuant to subsection 5.3.5, the **Claims Officer** determines that:

- (a) the **Member's Claim** is not one referable to **Hydro** under subsection 7.2.3; and
- (b) the **Member's Claim** has been brought within the time limit imposed under subsection 5.3.3;

the **Claims Officer** shall:

- (c) determine whether the **Member's Claim** is reasonably related to personal loss or damage caused by or reasonably attributable to an **Adverse Effect** of the **Project** that is settled by this **Agreement**;
- (d) assess 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** in relation to that personal loss or damage under any other contract or agreement and decide whether the claim should be paid;
- (e) provide **Chief and Council** with his or her written decision pursuant to paragraphs (c) and (d); and
- (f) provide the **Claimant** with written notice of his or her determination under paragraphs (c) and (d), and where a **Member'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 5.2.

- 5.3.7 Claims Referred to Hydro. Where the **Claims Officer** forwards a **Member's Claim** to **Hydro** pursuant to subparagraph 5.3.5(c)(i), **Hydro** will consider the **Member's Claim**. However, the determination by the **Claims Officer** that the claim, or a portion of the claim, is a matter falling under subsection 7.2.3 shall not be binding on **Hydro**.
- 5.3.8 Payment of Members' Claims. Where the **Claims Officer** determines pursuant to paragraphs 5.3.6(c) and (d) that all or any portion of a **Member's Claim** is to be paid and provides notice to **Chief and Council** in accordance with paragraph 5.3.6(e), **Chief and Council** shall, upon its receipt of the Acceptance and Release Form in the form of Schedule 5.2 signed by the claimant, pay the **Member's Claim** with funds advanced from the **Claims Account**.
- 5.3.9 Liability of Chief and Council and the War Lake Trustees. Members of **Chief and Council**, the **War Lake Trustees**, and the **Claims Officer** shall be responsible for the fair, prudent and impartial administration and payment of the **Members' Claims** and provided they act in good faith they shall incur no liability arising out of their administration and payment of such claims.

SCHEDULE 5.1

Undertaking of Claims Officer

I, _____, being an appointee of the Chief and Council of the War Lake First Nation and the Trustees of the Mooseocoot Trust to serve as a Claims Officer, state and undertake as follows:

1. I have read the terms of the 2004 War Lake Settlement Agreement and Trust Indenture with particular reference to the provisions relating to administration and deciding of Members' Claims as defined in the Settlement Agreement, and understand the terms of the Settlement Agreement and the Trust Indenture.
2. I hereby accept and will honestly and faithfully discharge the duties and responsibilities of a Claims Officer, during my term of office.

DATED at _____ on the _____ day of _____, _____.

WITNESS

CLAIMS OFFICER

SCHEDULE 5.2

**Claimant Acceptance and Release for
Compensation for Member's Claim**

I, _____, filed a claim dated _____, under
(name of Claimant)
Article 5 of the 2004 War Lake Settlement Agreement in respect of loss or damage that
occurred on _____, arising from an adverse effect caused
by the development or operation of works by Manitoba Hydro.

A decision on the claim was made by the Claims Officer, dated _____, a
copy of which is attached.

That decision is a fully satisfactory settlement of the damage or loss referenced in the
claim dated _____.

In consideration of the payment of _____, I hereby fully and finally release the War
(amount)
Lake First Nation, Chief and Council, the Moosecoot Trust, the Claims Officer and the
Trustees of the Moosecoot Trust with respect to this claim, and I will bring no further
claim for the same damage or loss against any other person, including Manitoba Hydro.

Dated at _____, Manitoba this _____ day of _____, _____.

Witness

Claimant

ARTICLE 6 - FUTURE DEVELOPMENT

6.1 INTRODUCTION

6.1.1 Introduction. Article 6 sets forth cooperative planning principles and processes for the analysis, discussion and resolution of potential **Future Development Adverse Effects** caused by and in relation to **Future Development**.

6.2 NOTICE

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

6.2.2 Notice. **Hydro** will, at least annually, provide to **War 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 of its intention to commence the planning process outlined in section 6.3 to **War Lake** as early as practicable in the planning stages of the **Future Development**.

6.2.3 Agreement to Begin Future Development Adverse Effects Compensation Process. After notice is provided in accordance with subsection 6.2.2, **Hydro** and **War Lake** agree to conduct the process outlined in section 6.3 to consider the issue of compensation for potential **Future Development Adverse Effects** .

6.3 PROCESS TO ADDRESS FUTURE DEVELOPMENT ADVERSE EFFECTS

6.3.1 Annual Meeting. After notice is provided under subsection 6.2.2, **Hydro** agrees to annually convene in Ilford, 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**.

6.3.2 **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 **War 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 in the Split Lake Resource Management Area,
 - (iii) maps showing the anticipated extent of inundation,
 - (iv) an outline of anticipated effects on water bodies in the Split Lake Resource Management Area, and
 - (v) as changes are made, updates of the maps, descriptions and outlines referred to in subparagraphs (i) to (iv);
- (b) in consultation with **War Lake**, identify any issues of particular concern or importance to **War Lake** and **War Lake Members** related to **Future Development**;
- (c) in consultation with **War Lake**, identify and review potential **Future Development Adverse Effects** on **War Lake** and **War Lake Members** 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 **Future Development Adverse Effects** which have been identified and, after consultation with **War Lake**, consider reasonable design modifications which could eliminate or alleviate any identified **Future Development Adverse Effects**;

- (e) after consultation with **War Lake**, identify, design and cost mitigatory and remedial works which are reasonable to alleviate anticipated **Future Development Adverse Effects** which cannot be eliminated by design modifications;
- (f) consult with **War Lake** to determine which option for **Future Development**, if any, is preferred by **War Lake**; and
- (g) in accordance with subsection 6.3.3, in consultation with **War Lake**, endeavour to develop, negotiate and finalize an agreement to compensate **War Lake** for residual unmitigated **Future Development Adverse Effects** which are known and foreseeable.

6.3.3 **War Lake Interests.** In order to reach the agreement contemplated in paragraph 6.3.2(g), **War Lake** and **Hydro** will work together to fully assess the cost and methods of compensating **War Lake** and **War Lake Members** for residual unmitigated **Future Development Adverse Effects**. In relation to such matters, **War Lake** will:

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

6.3.4 **Costs of War Lake.** Where a **Future Development** can reasonably be expected to cause **Future Development Adverse Effects** on **War Lake**, **Hydro** will reimburse the pre-approved reasonable costs of **War Lake** which are incurred by **War Lake** to participate in the processes described in subsection 6.3.2, as

required to develop, negotiate and finalize the **Future Development Adverse Effects** agreement referred to in paragraph 6.3.2(g).

6.4 OPPORTUNITIES ARISING FROM FUTURE DEVELOPMENT

6.4.1 Opportunities Arising from Future Development. **War Lake** and **Hydro** will, separate and apart from the **Future Development Adverse Effects** compensation process outlined in section 6.3, but in a reasonably timely manner, identify:

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

ARTICLE 7 - SETTLEMENT AND SATISFACTION

7.1 INTRODUCTION

7.1.1 Introduction. Article 7 provides for confirmation by **War Lake** of the settlement and satisfaction of all obligations and liabilities of **Manitoba** and **Hydro** arising out of the **Project**.

7.2 SETTLEMENT AND SATISFACTION

7.2.1 Settlement and Satisfaction. The execution of this **Agreement** by the **Parties** and payment of the amounts paid or payable under section 2.2 by **Manitoba** and **Hydro** will, subject to subsection 7.2.3, constitute a full and final settlement and satisfaction of any and all obligations and liabilities of **Manitoba** or **Hydro** related to:

- (a) all existing responsibilities and obligations of **Manitoba** and **Hydro** to **War Lake** arising out of the **Project**;
- (b) all past, present and future loss or damage suffered by **War Lake** and **War Lake Members**, attributable to **Adverse Effects**; and
- (c) any and all actions, causes of action, suits, claims, demands, losses or damages of any nature or kind whatsoever, at law or in equity, which **War Lake**, or **War Lake** on behalf of any **War Lake Member**, 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 all construction and operational activity associated with the **Project**.

7.2.2 Matters Addressed. This **Agreement** also addresses the **Adverse Effects** on **War Lake Members** and groups of **War Lake Members**.

7.2.3 Exclusions. Subsections 7.2.1 and 7.2.2 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** which were unknown and/or unanticipated and were not discernible with the ordinary exercise of due diligence by **War Lake** at the **Date of this Agreement**; or
- (d) liabilities and obligations arising out of breaches of this **Agreement**.

7.2.4 Agreement Not to Make Claims. **War Lake** covenants and agrees that it will not, with respect to the matters addressed in subsections 7.2.1 and 7.2.2, subject to the exclusions in subsection 7.2.3:

- (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**,

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.

7.3 INDEMNITIES

7.3.1 Indemnity re: Payments to **War Lake** or **Canada**. Subject to subsection 7.3.4, **War 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 **War Lake** with respect to the matters addressed in subsections 7.2.1 and 7.2.2, subject to the exclusions in subsection 7.2.3;
- (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 **War Lake** against **Canada** with respect to the matters addressed pursuant to subsections 7.2.1 and 7.2.2, subject to the exclusions in subsection 7.2.3; and

- (c) any amount ordered by a court of competent jurisdiction to be paid by **Manitoba** or **Hydro** to **War Lake** or **War Lake Members** arising out of any claim relating to:
 - (i) the use of the settlement proceeds by **War Lake** or the **Trustees**,
 - (ii) the sufficiency of the settlement proceeds, or
 - (iii) the effectiveness of any measure undertaken by **War Lake** in relation to this **Agreement**.

7.3.2 Indemnity re: Payments to **War Lake Members**. Subject to subsection 7.3.3 and 7.3.4, **War Lake** covenants and agrees to indemnify and save harmless **Manitoba** and **Hydro** with respect to any amount that may be ordered by a court of competent jurisdiction to be paid by **Manitoba** or **Hydro** to any **War Lake Member** with respect to the matters addressed in subsection 7.2.1 and 7.2.2, subject to the exclusions in subsection 7.2.3.

7.3.3 Limitation on Amount and Timing of Payment of 7.3.2 Indemnity. Where **War Lake** is liable to indemnify and save harmless **Manitoba** or **Hydro** under the indemnity provided in subsection 7.3.2 (the "7.3.2 Indemnity"):

- (a) **War Lake** shall immediately pay to **Manitoba** or **Hydro** firstly out of the **Claims Account** and, if necessary, out of the **Community Development Account**, the amount that it is liable to pay under the 7.3.2 Indemnity or, if there are not sufficient funds in these Accounts to pay such obligation in full, the amount that is then in these Accounts;
- (b) where there are insufficient funds in the **Trust** for **War Lake** to pay its obligations under the 7.3.2 Indemnity, in full, and further payments remain to be made by **Manitoba** or **Hydro** under subsection 2.2.1, **Manitoba** or **Hydro** may withhold from its further payments under subsection 2.2.1 the amount remaining to be paid by **War Lake** under the 7.3.2 Indemnity;
- (c) notwithstanding that payment to **Manitoba** or **Hydro** under the 7.3.2 Indemnity may be delayed, to the extent such delay is attributable to the arrangements for payment set forth in subsection 7.3.3, neither **Manitoba** nor **Hydro** shall be entitled to any interest on the outstanding balance owing under the 7.3.2 Indemnity;

- (d) where there are insufficient funds in the **Trust** for **War Lake** to pay its obligations under the indemnities in full, and no further payments remain to be made by **Manitoba** or **Hydro** under subsection 2.2.1, **War Lake** shall draw funds from the capital of the **Trust**; and
- (e) neither **Manitoba** nor **Hydro** shall have recourse to pursue payment from **War Lake** under the 7.3.2 Indemnity beyond the amounts that either **Party** is entitled:
 - (i) to be paid by **War Lake** from funds in the **Trust** as provided in paragraph 7.3.3(a), or
 - (ii) to deduct from the amounts that that **Party** would otherwise be obligated to pay under subsection 2.2.1 as provided in paragraph 7.3.3(b).

In no event shall the amount payable under the 7.3.2 Indemnity to either **Manitoba** or **Hydro**, or payable to **Manitoba** and **Hydro** collectively, exceed in the aggregate the amount of the **Financial Proceeds** paid by **Manitoba** and **Hydro** pursuant to subsection 2.2.1.

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

- (a) the indemnities contained in subsections 7.3.1 and 7.3.2 do not extend to indemnifying the costs of **Manitoba** or **Hydro** in defending any claims; and
- (b) the obligations of **War Lake** in connection with the indemnities referred to in section 7.3 are conditional upon **Manitoba** or **Hydro**, as the case may be:
 - (i) forthwith, upon becoming aware of such claim, giving notice to **War Lake**,
 - (ii) consenting to any application by **War Lake** to be named as a party to the claim, and
 - (iii) first having received from **War Lake** its consent to the terms of any settlement.

7.4 INDEPENDENT ADVICE

7.4.1 Acknowledgement re: Independent Advice. **War 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 **War 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 **War Lake Members** at which **War Lake Members** were provided the opportunity to ask questions, which meetings were open to all **War Lake Members** as set forth in the Community Consultation Report attached as Schedule 7.1.

7.4.2 Certificate of Independent Advice. **War Lake** will produce, on closing, a Certificate of Independent Legal Advice from Robert F. Roddick, Q.C. and a Certificate of Independent Technical Advice from Thomas Henley in the forms attached as Schedule 7.2 and Schedule 7.3 respectively.

7.5 CANADA

7.5.1 No Release of Canada. The **Parties** acknowledge, although such acknowledgement will not constitute a warranty or indemnity on the part of **Manitoba** or **Hydro**, that none of the provisions of this **Agreement** is intended to have the effect of or is 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 **War Lake** or **War Lake Members**, 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**.

WAR LAKE FIRST NATION PAST ADVERSE EFFECTS COMMUNITY CONSULTATION

1.0 Introduction

War Lake First Nation is located southeast of Split Lake on the Hudson Bay railway at Ilford, Manitoba. The Band has a land base at Moosecoot Reserve and about 230 Members reside on the reserve, within the Northern Affairs community of Ilford. War Lake First Nation was established as a First Nation in 1980, and is comprised primarily of former members of Split Lake First Nation, who had traditionally sustained themselves by hunting, fishing, trapping, and working for local industries within the region.

War Lake Chiefs, Councilors, and Members have believed, for several decades that the First Nation was not fairly compensated for adverse effects on their livelihoods and traditional lands as a result of hydro-electric development. For many years their claims were presented to responsible authorities by their leaders with no result.

2.0 Basis for Consultation

The War Lake community consultation process on past adverse effects of hydro-electric development was initiated in February 2000 with the preparation of a related terms of reference. The Chief Executive Officer of Manitoba Hydro, Director General of Indian and Northern Affairs, Canada, Northern and Aboriginal Affairs, Manitoba, and the Chief, War Lake First Nation, agreed to the following terms of reference - "select a consultant to perform information gathering about compensation concerns expressed by War Lake First Nation" and perform work consisting of the following components:

- Identification of potential adverse effects on the War Lake First Nation arising from the Lake Winnipeg Regulation/Churchill River Diversion Project;
- Actions take by Canada, Manitoba and Manitoba Hydro to prevent, mitigate, remedy, or compensate for those effects; and
- Remaining adverse effects and methods available to mitigate, remedy or compensate for those effects.

3.0 Milestones

Chief and Council assisted by Members and Elders worked with consultants, Manitoba Hydro, Manitoba and INAC staff to direct and support the research process that led to the preparation of a final report, May 5, 2001, entitled *War Lake Impact Project: Statement of Adverse Effects*.

A review of files provided by Manitoba Hydro, a traditional land use and occupancy survey of thirty-four Band Members, a review of related literature, an assessment of the biophysical data, preparation of maps and air photos, and an analysis of band membership formed the basis for the Final Report.

Chief and Council held the strong belief that War Lake Members must be involved directly in the consultation process, given the importance of any outcomes to present and future generations. Equally important was the belief that the negotiation team needed regular feedback and direction from Members to ensure that any final settlement accounted for Members' interests and concerns. Further, Chief and Council believed that Aboriginal traditional knowledge and the advice of Band Elders were needed and necessary to inform both the community consultation process and the research process. Youth were active participants in the process. War Lake Chief and Council and community Members at large reviewed and verified the Final Report. Manitoba, Manitoba Hydro and INAC also provided review and commentary.

Completion of the technical Final Report was followed by a transition to a negotiation process. Mr. Robert Roddick was engaged by War Lake in September of 2001 to act as lead negotiator in meetings with Manitoba and Manitoba Hydro to conclude a past adverse effects Settlement Agreement. Canada withdrew from the negotiation process in November of 2001, necessitating a major change in the negotiation process on land-related issues. At the outset, an office was established and equipped at the Band Office, Mooseocoot Reserve. A coordinator was employed to facilitate the community consultation process. Manitoba Hydro paid reasonable costs to facilitate the community consultation process.

In December, 2001, concurrent with the past adverse effects process, War Lake First Nation entered into a partnership process to consider participation in the proposed Gull Lake hydro-electric project, then under consideration by Tataskweyak Cree Nation. Funding for War Lake community participation in the proposed Gull Lake hydro-electric project enabled Chief and Council and community representatives to travel to Winnipeg on a weekly basis to attend related meetings. At the same time, past adverse effects meetings were also held, and Taskaskweyak Cree Nation Chief and Council and community representatives were consulted on a number of technical issues.

Schedule 7.1 - Community Consultation Report

War Lake First Nation, following a unanimous community vote in March 2003, joined Tataskweyak Cree Nation in a Cree Nation Partnership. The Agreement in Principle with Manitoba, Manitoba Hydro and Tataskweyak Cree Nation, although separate and apart from the past adverse effects negotiation process, provided an incentive to continue to work toward a past adverse effects agreement.

A War Lake First Nation vote held in May 2003 resulted in the election of a new Chief and Council. The past adverse effects process was supported and continued by the new community leadership. Increased efforts were made at the political level to build upon the technical work associated with land transfer to increase the size of the reserve and to extend sewer and water for off reserve Members.

Weekly meetings in Winnipeg between the consulting team, Chief and Council, and representatives from War Lake First Nation considered key themes that emerged from the past adverse effects Final Report. In addition, community meetings with War Lake Members at Ilford enabled band Members to provide input throughout the consultation process. Although in most community meetings English was the primary language of communication, exchanges in Cree, often for the benefit of Elders, were not uncommon and were interpreted on an as-needed basis.

Community based meetings and meetings with other interested parties in Winnipeg were held regularly to review progress. Community newsletters were used to keep Members informed of progress, with draft documents circulated for discussion. A War Lake management committee met on a weekly basis in Winnipeg to consider matters related to past adverse effects of hydro-electric development.

A draft Agreement among War Lake First Nation, the Province of Manitoba, and Manitoba Hydro was the product of negotiation meetings over the two year period. In July 2002, Chief and Council signed a letter of agreement on the financial schedule of payments and costs. The draft Past Adverse Effects Agreement was the subject of general membership meetings and discussions by Chief and Council. A schedule of payments and costs, lands schedule, members' claims, water regime and compensated range were some of the key articles in the agreement.

A trust indenture, named by Chief and Council as the Moosecoot Trust, was developed to describe the mechanisms for the receipt and distribution of compensation funds. Preservation of capital, administration of the Trust, appointment and roles of community members in Trust matters, was considered by Chief and Council and direction provided to the negotiation team.

4.0 War Lake First Nation Community Consultation

Meetings among War Lake community leaders, Members, and consultants encompassed the following number of days:

	2000	2001	2002	2003	2004
Chief and Council	10	12	07	03	08
Management Committee (in Winnipeg)	00	18	08	02	12
Community meetings in Ilford/Thompson	45	13	05	01	02
Total	55	43	20	06	22

The War Lake Past Adverse Effects Agreement (2004) was mailed to all non-resident Members of voting age who were identified on a Band List provided by the First Nation and delivered to all residences in Ilford. A covering letter from Chief Beardy and Councillor Morris notified Members of their intention to hold community consultation meetings prior to a secret ballot ratification vote.

Advertisements were placed in the Winnipeg Free Press, Thompson Citizen, and posters were placed in key locations. Radio ads were placed on CBC North and NCI to announce the community consultation meetings to be held November 29 and November 30, 2004 in Thompson and Ilford, respectively. Members from Winnipeg were provided with the opportunity to travel to Thompson by vans and to have related costs reimbursed.

At each community consultation meeting, Chief Beardy provided a formal overview of the Agreement, using a power point presentation method. Legal and technical questions from Members were answered by Mr. Roddick and by Mr. Henley, respectively. About thirty (30) members attended the Thompson meeting and about forty (40) attended the Ilford meeting.

The ballot question was - "**Do you approve the War Lake Past Adverse Effects Agreement? Yes / No**". Seventy-six (76) Members voted and sixty-seven (67) Members approved the Agreement.

5.0 Warranty/Certificate of Independent Advice

The final provisions of the Agreement have been negotiated under the direction of Chief and Council and with the assistance of Band Members. Robert Roddick, negotiator, and Thomas Henley, technical advisor, worked with the First Nation on the Agreement. Each warrants that the main provisions of the Agreement have been explained to Chief and Council at key points and meetings throughout the negotiation process, and to Members at related War Lake First Nation general membership meetings.

Draft material and summary information have been provided throughout the consultation process to ensure that Members had the opportunity to make an informed decision at the time of ratification. Members were also informed that the Final Agreement, available to Members prior to ratification, contained the legal undertakings of the parties.

SCHEDULE 7.2

Certificate of Independent Legal Advice

I, Robert F. Roddick, Q.C., of Edmonton, Alberta, hereby certify that, throughout the negotiations leading to the Agreement of the “30” day of “March”, 2004, between the War Lake First Nation, Her Majesty the Queen in Right of the Province of Manitoba, and The Manitoba Hydro-Electric Board, that:

- (a) the War Lake First Nation has been independently advised by me as legal counsel and negotiator, with respect to all matters arising in connection with or dealt with in that Agreement which have been brought to my notice and attention or which I was reasonably able to contemplate;
- (b) the Agreement has been drafted, considered and revised with my participation; and
- (c) I have been present at community meetings of the War Lake First Nation to consider the provisions of the Agreement, which I believe to have been open to all Members of the First Nation.

CERTIFIED this “30” day of “March”, 2004.

“Robert F. Roddick”

Schedule 7.3

Certificate of Independent Technical Advice

I, Thomas Henley, of Winnipeg, Manitoba, hereby certify that, throughout the negotiations leading to the Agreement of the “30” day of “March”, 2004, between the War Lake First Nation, Her Majesty the Queen in Right of the Province of Manitoba, and The Manitoba Hydro-Electric Board, that:

- (a) the War Lake First Nation has been independently advised by me as a technical advisor, with respect to all matters arising in connection with or dealt with in that Agreement which have been brought to my notice and attention or which I was reasonably able to contemplate;
- (b) the Agreement has been drafted, considered and revised with my participation; and
- (c) I have been present at community meetings of the War Lake First Nation to consider the provisions of the Agreement, which I believe to have been open to all Members of the First Nation.

CERTIFIED this “30” day of “March”, 2004.

“Thomas Henley”

ARTICLE 8 - APPROVAL AND EXECUTION

8.1 INTRODUCTION

8.1.1 Introduction. Article 8 provides for the process of approving and signing this **Agreement**.

8.2 APPROVAL PROCESS

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

- (a) by the **War Lake Members** on behalf of **War Lake**, in accordance with subsections 8.2.2 to 8.2.7;
- (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**.

8.2.2 Public Meetings. Following the completion of the negotiation of this **Agreement**, **Chief and Council** will convene public meeting(s) in the following locations:

- (a) Ilford; and
- (b) Thompson

at which its consultants and legal advisor will explain the nature and significance of the **Agreement**.

8.2.3 Notice. The **Chief and Council** on behalf of **War Lake** will give advance notice of the meetings referred to in subsection 8.2.2, in accordance with the following:

- (a) notice of such meetings will be posted in not less than three (3) prominent, public locations in Ilford, including the Band Council offices, at least two (2) weeks in advance of such meeting;
- (b) notice of the meetings will also be advertised in the following media on at least two (2) occasions, and at least two (2) weeks in advance of the meeting:
 - (i) the Thompson Citizen,
 - (ii) the Winnipeg Free Press, and
 - (iii) CBC North;
- (c) each notice and announcement will:
 - (i) give the time, date and place of the meetings,
 - (ii) advise where copies of the **Agreement** can be reviewed or obtained, and
 - (iii) advise of the time, date and polling places for the vote held in accordance with section 8.3; and
- (d) **Manitoba** and **Hydro** will be given copies of the notices posted in accordance with paragraph 8.2.2(a) and (b) at least five (5) days before the meeting.

8.2.4 Voters. **War Lake Members**, who are eighteen (18) years of age or older at the time of the vote, may vote on whether or not to approve this **Agreement**.

8.2.5 Vote. The vote shall take place on two separate days, the dates of which shall be determined by **Chief and Council**. Polling stations shall be set up as follows:

- (a) one day for voting, in Thompson; and
- (b) one day for voting, in Ilford.

The votes cast on the first day shall not be counted on that day but shall remain sealed and preserved until the second day of voting has been completed, after which all votes cast on both days shall be counted.

- 8.2.6 Question. Voters will be asked to indicate their approval of this **Agreement** and to authorize the **Chief and Council** to execute this **Agreement** on their behalf.
- 8.2.7 Approval. This **Agreement** will be deemed to be approved if a majority of the votes cast are in favour of the approval of this **Agreement**.

8.3 SIGNING

- 8.3.1 Signing of Agreement. Forthwith upon approval of this **Agreement** in accordance with section 8.2:
- (a) the **Chief and Council** will sign this **Agreement** on behalf of **War 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**.
- 8.3.2 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 8.

8.4 IMPLEMENTATION

- 8.4.1 Meetings. Any **Party** may, at any time, request a 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.
- 8.4.2 Costs. Each of the **Parties** shall be responsible for covering their own costs of attending and participating in the meetings contemplated in subsection 8.4.1.

ARTICLE 9- GENERAL PROVISIONS

9.1 INTRODUCTION

9.1.1 Introduction. Article 9 contains provisions of a general nature relating to this **Agreement**.

9.2 INTERPRETATION

9.2.1 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**.

9.2.2 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.

9.2.3 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 shall 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, 1 hectare equals 2.47105 acres, 1 acre equals 0.40468 hectares.

9.2.4 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**.

9.3 VALIDITY OF PROVISIONS

9.3.1 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 the **Chief and Council**.

9.3.2 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; and

- (b) exempts any **Party** from any requirement arising under statute or regulation.

9.3.3 Aboriginal and Treaty Rights. Subject to the settlement and satisfaction in section 7.2, nothing in this **Agreement** shall be construed so as to abrogate or derogate from the existing aboriginal rights or treaty rights of aboriginal persons that are recognized and affirmed by section 35 of the *Constitution Act, 1982*.

9.4 PARTIES

9.4.1 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**.

9.5 NOTICE

9.5.1 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 9.5.2 or to alternate addresses a **Party** may from time to time provide 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 shall 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 **War Lake** provided for in this **Agreement** will be performed by notice, delivery, communication or provision of documents to the **Chief and Council**.

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

To **War Lake**:

Chief and Council
War Lake First Nation
General Delivery
Ilford, Manitoba
R0B 0S0

To Hydro:

Manitoba Hydro
General Counsel
3rd Floor, 820 Taylor Avenue
Winnipeg, Manitoba
R3C 2P4

To Manitoba:

Deputy Minister of Aboriginal & Northern Affairs
Legislative Building
Room 344 - 450 Broadway
Winnipeg, Manitoba
R3C 0V8

9.6 ENTIRE AGREEMENT

9.6.1 Assignment. Neither this **Agreement**, nor any portion or provision of this **Agreement**, may be assigned without prior written permission of all of the **Parties**.

9.6.2 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**.

9.7 GOVERNING LAW

9.7.1 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.

9.8 GENERAL

9.8.1 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 **War Lake**.

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

9.8.3 Amendment. This **Agreement** may only be amended in whole or in part by written agreement among the **Parties**.

9.8.4 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**;

Manitoba will:

- (d) where paragraph 9.8.4(a) or paragraph 9.8.4(b) applies, assume all of the rights and obligations of **Hydro** under this **Agreement**; or
- (e) where paragraph 9.8.4(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**.

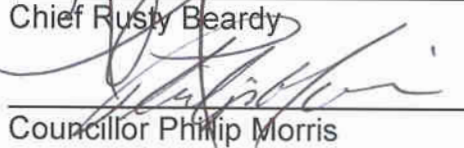
9.8.5 Notice. **Manitoba** will give immediate notice to the other **Parties** where the events specified under paragraphs 9.8.4(a), (b) or (c) occur.

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

IN WITNESS WHEREOF the parties have executed this **Agreement** in Principle on the dates indicated below.

WAR LAKE FIRST NATION


Per: 

Chief Rusty Beardy


Councillor Philip Morris

On the 30 day of MARCH, 2005.

**HER MAJESTY THE QUEEN IN RIGHT OF
THE PROVINCE OF MANITOBA**

Per: 

On the 30 day of MARCH, 2005.

THE MANITOBA HYDRO-ELECTRIC BOARD

Per: 

On the 30 day of MARCH, 2005.

