

THIS AGREEMENT made as of the    day of    , 1995.

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF  
CANADA, as represented by The Minister of  
Indian Affairs and Northern Development,

(hereinafter referred to as "**Canada**"),

OF THE FIRST PART,

- and -

HER MAJESTY THE QUEEN IN RIGHT OF  
THE PROVINCE OF MANITOBA, as  
represented by The Minister of Northern  
Affairs,

(hereinafter referred to as "**Manitoba**"),

OF THE SECOND PART,

- and -

THE YORK FACTORY FIRST NATION, as  
represented by the Chief and Council,

(hereinafter referred to as "**York Factory**"),

OF THE THIRD PART,

- and -

THE MANITOBA HYDRO-ELECTRIC  
BOARD,

(hereinafter referred to as "**Hydro**"),

OF THE FOURTH PART.

WHEREAS the **Parties** are parties to the NFA, with **York Factory**

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THIS AGREEMENT made as of the     day of             , 1995.

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF  
CANADA, as represented by The Minister of  
Indian Affairs and Northern Development,

(hereinafter referred to as "**Canada**"),

OF THE FIRST PART,

- and -

HER MAJESTY THE QUEEN IN RIGHT OF  
THE PROVINCE OF MANITOBA, as  
represented by The Minister of Northern  
Affairs,

(hereinafter referred to as "**Manitoba**"),

OF THE SECOND PART,

- and -

THE YORK FACTORY FIRST NATION, as  
represented by the Chief and Council,

(hereinafter referred to as "**York Factory**"),

OF THE THIRD PART,

- and -

THE MANITOBA HYDRO-ELECTRIC  
BOARD,

(hereinafter referred to as "**Hydro**"),

OF THE FOURTH PART.

WHEREAS the **Parties** are parties to the **NFA**, with **York Factory**

formerly represented with respect to the **NFA** by the **NFC**, as its agent, and now acting on its own behalf;

AND WHEREAS pursuant to the **NFA** there are obligations on each of the **Parties** which the **Parties** wish to implement and resolve on a comprehensive basis;

AND WHEREAS the **Parties**, through the performance of the undertakings of this **Agreement**, are implementing and settling their respective obligations under the **NFA**.

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

## ARTICLE 1

### 1.0 AGREEMENT AND INTERPRETATION

#### 1.1 AGREEMENT

1.1.1 Contents. The following Schedules are attached to and form part of this **Agreement**:

Schedule 1.1	<b>Financial Schedule</b>
Schedule 1.2	Terms and Conditions of <b>Hydro Bond</b>
Schedule 1.3	Past Payments
Schedule 1.4	<b>Trust Indenture</b>
Schedule 2.1	Map of Location of Transportation Measures
Schedule 2.2	Predetermined Compensation
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Schedule 3.3	<b>Easement Agreement</b>
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## 1.2 INTERPRETATION

1.2.1 Definitions. For all purposes within this **Agreement**, unless otherwise specifically provided, the following words and phrases, when capitalized and printed in bold type, whether in the plural or the singular, shall have the meaning ascribed to them in Article 1.2.1:

**Account** means an account established pursuant to this **Indenture**.

**Adverse Effects** means the direct or indirect negative consequences of the **Project**, or the operation thereof by **Hydro**, which consequences impact or change the physical, chemical or biological characteristics of the environment and include, without limitation, risks or injuries to the health, safety, well-being, comfort or enjoyment of **York Factory** or **Members**, and impacts on interests in and the exercise of rights in relation to lands, pursuits, activities, opportunities, lifestyles and assets of **York Factory** or **Members**.

**Agreement** means this agreement and all schedules listed in Article 1.1.1, including the arrangements between the **Parties** set forth in the **Indenture** and the **Easement Agreement**, notwithstanding that those documents, once executed, shall, in themselves, have binding force.

**Arbitrator** means the person appointed under Article 10, to arbitrate disputes.

**Assets** means all property of every nature and kind to which the investment provisions of Articles 14.1 and 14.2 of the **Indenture** apply.

**A.S.L.** means above sea level, as established by the Geodetic Survey of Canada in accordance with Revision No. 1 dated May, 1970, quad 56096.

**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**.

**Auditor** means the auditor appointed under Article 9.1 of the **Indenture**.

**Basic Planning Statement** means a basic planning statement as defined in The Planning Act (Manitoba).

**Canada** means Her Majesty the Queen in Right of Canada who, for the purposes of this **Agreement**, is represented by the Minister of Indian Affairs and Northern Development.

**Capital Works** means any permanent structure or works erected, constructed, acquired or developed using **Financial Proceeds** except for single family houses.

**Chief** means the Chief of **York Factory** elected and in office.

**Chief and Council** means the Council of **York Factory**.

**Claimant** means any of:

- (a) **Chief and Council;**
- (b) **York Factory;**

- (c) any person who is a **Member**;
- (d) any group, or unincorporated association, whose membership or shareholding is wholly or substantially comprised of **Members**;
- (e) any unincorporated association established by **Chief and Council**;
- (f) any share capital corporation, the shares of which are wholly or substantially owned, both legally and beneficially, and controlled by **York Factory** or **Members**; or
- (g) any non - share capital corporation, the membership of which consists wholly or substantially of **York Factory** or **Members**

who or which suffered a loss or damage resulting from or attributable to an **Adverse Effect**.

**Claims Account** means the account established under Article 12 of the **Indenture**.

**Community Approval Process** means the Community Approval Process established by Article 8 of the **Indenture** and the procedures set forth therein.

**Community Development Account** means the account established under Article 10.2 of the **Indenture**.

**Compensation Lands** means the lands described in Schedule 3.1 the administration and control of which is to be transferred by **Manitoba to Canada** and which are to be set apart by **Canada** as **Reserve Lands**, including any replacement **Compensation Lands** selected under Article 3.5 and excluding any lands which cease to be **Compensation Lands** under Article 3.5.5 or Article 3.5.16.

**Compensated Range** means the range of **Daily Average Water Levels and Rates of Change** set forth in Article 2.4.1.

**Consumer Price Index** means the publication by Statistics Canada of statistical data related to changes in price of goods and services (All-Items) in the Province of Manitoba.

**Controlled Institution** means any entity, association or group, a majority of whose board of directors or other governing body is directly or indirectly chosen by **Members**, the **Chief**, **Chief and Council** or Elders or other leaders chosen in accordance with **York Factory** custom.

**Controlling Bench Mark** means any and all of

B.M. #8 ----- Water Survey of Canada brass cap in rock approximately 150m 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 m (548.74 ft.) **ASL Local Datum**

MB8037 ——— Lag bolt in east side of nursing station foundation in the community of Split Lake. Near the south east corner.

Elevation: 174.587 m (572.79 ft.) **ASL Local Datum**

MB8038 ——— Water Survey of Canada brass cap in rock approximately 80 m east of B.M. #8. Marked by a short metal flag of rebar.

Elevation: 168.175 m (551.75 ft.) **ASL Local Datum**

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 m (551.74 ft.) **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 Article 2.2.1.

**Corporate Trustee** means the trust corporation which is the signatory to the **Indenture** and its successors in that office and includes where, transitional obligations are being fulfilled and the context requires, both an outgoing and an incoming trustee.

**Council Resolution** means a resolution approved by **Chief and Council**.

**Daily Average Water Level** means the arithmetic average of readings of water levels recorded in a day at the **Split Lake Gauge** taken each hour, from 0100 to 2400, on the hour, for that day adjusted:

- (a) to **ASL Local Datum**; and
- (b) to eliminate the effects of wind;

or a valid representative substitute for such hourly readings, if such hourly readings are unavailable or demonstrably in error.

**Date of this Agreement** means the date this **Agreement** has been executed by all **Parties**.

**Development Plan** means a development plan as defined in The Planning Act (Manitoba).

**Easement** means the interest in **Easement Lands** to be granted by **Canada** to **Hydro and Manitoba**.



**Easement Agreement** means the agreement in the form and content of Schedule 3.3.

**Easement Lands** means the lands which are described in Schedule 3.4.

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

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

and the access road and other physical construction with respect to the proposed Conawapa Generating Station.

**Fee Simple Lands** means any tract of land, the legal and beneficial title to which is to be held by the **Corporate Trustee** in trust for **York Factory**, or a corporation wholly owned and controlled by **York Factory**, in accordance with this **Agreement** or the **Indenture**.

**Financial Proceeds** means the principal amounts paid pursuant to the **Financial Schedule**, and any subsequent amounts paid by **Hydro** to the **Trust** or to **Canada**, for the benefit of **York Factory** pursuant to this **Agreement** and any revenue derived from such amounts earned by or paid to the **Trust**.

**Financial Schedule** means Schedule 1.1 to this **Agreement**.

**Fish** means fish as defined in the Fisheries Act (Canada) at the **Date of this Agreement**.

**Funds Available** means:

- (a) in the fiscal years 1995 and 1996, the amounts identified in Article

- 11.1 of the **Indenture**; and
- (b) in any subsequent fiscal year, the greater of the income earned on **Assets** and whichever of the following applies:
- (i) pending receipt by the **Trust** of interest on the **Hydro Bond**, an amount determined by the **Community Approval Process**, not to exceed two million, five hundred thousand (\$2,500,000.00) dollars; or
  - (ii) during the period when the **Trust**, either directly or through **Canada** receives the interest on the **Hydro Bond**, the interest paid on that bond; and
  - (iii) in any other circumstances, the amount by which the **Net Value of the Assets** as determined by the **Corporate Trustee** at the close of the prior fiscal year, excluding the **Assets** held in the **Investment and Heritage Account**, exceeds fourteen million (\$14,000,000.00) dollars.

Where the fiscal year is changed so as to create a fiscal period which contains more or less than twelve (12) months, the amount of **Funds Available** shall be pro-rated accordingly.

**Future Development** means:

- (a) the construction of any portion or parts of the **Project** not physically constructed at the **Date of this Agreement**; and
- (b) any major redevelopment or reconstruction of any **Existing Development**;

which is reasonably likely to have a material and continuing physical, chemical or biological impact upon a water body within the **Resource Management Area**.

**Hydro** means the Manitoba Hydro-Electric Board.

**Hydro Bond** means the bond to be issued by **Hydro** pursuant to the **Financial Schedule** in the form and content of Schedule 1.2.

**Indenture** means the trust agreement in the form and content of Schedule 1.4 .

**Investment and Heritage Account** means the account established under Article 10.2 of the **Indenture**.

**Majority Vote** means a vote conducted by **Chief and Council**, where a majority of those **Members** eighteen (18) years of age and over voting at a **Meeting of Members** either by a show of hands or by secret ballot where a minimum of twenty (20) **Members** request a secret ballot vote, approve the matter voted upon.

**Manitoba** means Her Majesty the Queen in Right of the Province of Manitoba who, for the purposes of this **Agreement**, is represented by the Minister of Northern Affairs.

**Meeting of Members** means a meeting of **Members** on **Reserve** convened pursuant to the **Indenture** and in particular Article 8.2 of the **Indenture**.

**Member** means a person who at the relevant time is or who has applied and is entitled to be, a member of **York Factory** pursuant to the Indian Act (Canada).

**Minister** means the minister, federal or provincial, responsible for the exercise of powers in relation to the matter in question.

**Municipality** means a city, town, village, rural municipality, local government district or other like municipal organization and includes a community under The Northern Affairs Act (Manitoba).

**Net Value of the Assets** means the amount at any specific date by which the value of the **Assets**, and the value of any **Financial Proceeds** being held by **Canada** for the use and benefit of **York Factory** exceeds all liabilities of the **Trust**. The issued **Hydro Bond** will be valued at its face amount, and all other **Assets** will be valued at the lower of cost or market value.

**NFA** means the agreement dated December 16, 1977, between **Manitoba, Hydro, NFC** and **Canada**, including all schedules annexed thereto, and shall include the Economic Development Agreement between the same parties and dated the 1st day of September, 1977.

**NFC** means the Northern Flood Committee, Inc.

**Normal Funding and Programming** means the moneys or services which may be granted by the Government of Canada or the Government of Manitoba pursuant to appropriation acts of the Parliament of Canada or of the Legislative Assembly of Manitoba, and which may be available on a discretionary basis to persons, entities or groups in Canada, and which could be at the relevant time available or potentially or conditionally available to **York Factory, Chief and Council, or Members**.

**Operation and Maintenance** means work, administration, management and activities reasonably necessary for the ongoing operation, maintenance and repair of **Capital Works**.

**Ordinary High Water Mark (OHWM)** means a line defined by the normal high water mark determined by plant growth and soil conditions observed in the field. The **OHWM** shall be the limit or edge of a body of water, where the bed is the land so long covered by water so as to wrest it from vegetation or as to mark a distinct character on the vegetation where it extends into the water or upon the soil itself.

**Party** means any of **Canada, Manitoba, York Factory and Hydro**.

**Planning Scheme** means a planning scheme as defined in The Planning Act (Manitoba).

**Project** means and includes all **Existing Development** and all future hydro-electric development or redevelopment by **Hydro** on the Churchill, Nelson, Rat and Burntwood River Systems and includes all development or re-development by **Hydro** of the Lake Winnipeg Regulation System north of the 53rd (fifty third) parallel.

**Rate of Change** means the difference between the highest **Daily Average Water Level** and the lowest **Daily Average Water Level**, whether an increase or a decrease, between any two days in the applicable 7 and 31 day periods which shall be calculated as set forth in Article 2.5.4(b) and as illustrated in Schedule 2.6.

**Reference Bench Marks** means the bench marks to be established by **Manitoba** in and around York Landing as provided in Article 3.3.7.

**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 **York Factory**.

**Reserve Lands** means lands within the **Reserve**.

**Resource Management Area** means the area described and shown in Schedule 4.1 and includes the rivers and lakes and any **Reserve Lands** therein, subject to any changes that may be made in accordance with Article 4.

**Resources** means **Fish**, wildlife, forests, plants, land and water.

**Setback Lines** means the lines marking the upper boundary of the **Easement Lands** comprising the severance lines on **Reserves** shown on plans deposited in the Canada Lands Surveys Records as further described in Schedule 3.4.

**Split Lake Gauge** means the Government of Canada Gauging Station No. 05UF003 at Split Lake operated by **Canada**, and any replacement gauge installed and operated in accordance with Article 2.2.2.

**Static Inundation Level** means the inundation level with wind effects eliminated.

**Trust** means the Kitche-Waskahigan Trust created and funded pursuant to this **Agreement** and the **Indenture**.

**Trust Moneys** means all payments of cash or kind from the **Trust**.

**Trustees** means collectively the **York Factory Trustees** and the **Corporate Trustee**.

**York Factory** means York Factory First Nation, a "band" within the meaning of the Indian Act (Canada).

**York Factory Trustees** means the individual trustees signatory to the **Indenture** and their successors in office, in accordance with Article 6 of the **Indenture**.

1.2.2 Purposes. These definitions are intended only for purposes of this **Agreement** and may not be used for any other purpose. Except for use in this **Agreement** these definitions are without prejudice to and are not binding upon any of the **Parties**.

### 1.3 FINANCIAL ARRANGEMENTS

1.3.1 Payments. **Manitoba, Canada** and **Hydro** severally agree with each other, and with **York Factory**, to make their respective payments and deliver all bonds when required and when due pursuant to the **Financial Schedule**.

1.3.2 Advance. The one million two hundred and fifty thousand

(\$1,250,000.00) and five hundred fifty thousand (\$550,000.00) dollar advances referenced in the **Financial Schedule** were paid under a separate agreement among the parties dated May 24 , 1994 as amended by an Agreement dated July 21, 1995.

1.3.3            Loans.            **Manitoba** forgives **York Factory** and is credited for the amount of eight hundred thousand (\$800,000.00) dollars being the loan/credit referenced in the **Financial Schedule**. **Hydro** forgives **York Factory** and is credited for the amount of two hundred, thirty-three thousand (\$233,000.00) dollars being the loan/credit referenced in the **Financial Schedule**.

1.3.4            Past Payments.        Schedule 1.3 sets forth the prior expenditures of **Canada**, **Manitoba** and **Hydro** pursuant to the **NFA** in relation to **York Factory**. The **Parties** agree that the funds identified were not all spent on **Reserve**.

1.3.5            Payment by Canada        In addition to the payments by **Canada** under the **Financial Schedule**, **Canada** shall pay to the legal counsel for **York Factory**, in trust for **York Factory**, the sum of two hundred thousand (\$200,000.00) dollars on the **Date of this Agreement**. These funds may be used by **York Factory** to pay legal fees, other consultants fees and disbursements incurred in the ordinary course in advising on this **Agreement**.

1.3.6            Interest on Late Payments.            Payments which are made by **Hydro** or **Manitoba** after the dates set out in Schedule 1.1 shall bear interest at the rate equal to the then current rate paid by the Royal Bank of Canada on its business investment accounts.

SCHEDULE 1.1

**FINANCIAL SCHEDULE**

A total settlement as follows:

<b>by Canada:</b>	<b><u>Cash</u></b> \$6,260,000.00	<b><u>Payable</u></b> <b>Date of this Agreement</b>
<b>by Manitoba</b>	<b><u>Cash</u></b> \$1,250,000	Paid as provided in Article 1.3.2
	\$ 800,000	Existing loan/credit extended to and forgiven on <b>Date of this Agreement</b>
	\$ 550,000	Paid as provided in Article 1.3.2 in August, 1995
	\$ 450,000	August 1, 1997
	\$1,400,000	August 1, 1998
	<b><u>Cash</u></b>	
<b>by Hydro</b>	\$ 233,000	Existing loan/credit extended to and forgiven on <b>Date of this Agreement</b>
	\$ 225,000	August 1, 1998

and the issuance of the **Hydro Bond**:

Amount:	\$14,000,000.00
Effective Date:	August 1, 1998
Coupon Rate:	9.762% per annum, payable semi-annually, accruing from the effective date with the first payment of interest under the bond being made on February 1, 1999.
Date of Maturity:	August 1, 2014



SCHEDULE 1.2  
TERMS AND CONDITIONS OF HYDRO BOND

THE MANITOBA HYDRO-ELECTRIC BOARD

FR00001  
Winnipeg, Manitoba, Canada \$ 14,000,000  
9.762 % BOND SERIES 3U  
DUE August 1, 2014

Issued under authority of The Manitoba Hydro Act and  
of an Order of the Lieutenant Governor in Council of  
the Province of Manitoba.

August 1, 1998

---

THE MANITOBA HYDRO-ELECTRIC BOARD, for value received, hereby promises to pay  
to the order of

KITCHE-WASKAHIGAN TRUST IN TRUST FOR YORK FACTORY FIRST NATION

the sum of \*\*\*FOURTEEN MILLION DOLLARS\*\*\*

on August 1, 2014

at the Head Office of THE MANITOBA HYDRO-ELECTRIC BOARD

in lawful money of Canada with interest payable semi-annually at the rate of 9.762% per  
annum from the date hereof to the date of maturity, upon due presentation and surrender  
of this Bond, all in accordance with the Terms and Conditions endorsed hereon.

Countersigned on behalf of  
The Manitoba Hydro-Electric  
Board

By

"SPECIMEN"  
Authorized Signing Officer

THE MANITOBA HYDRO-ELECTRIC  
BOARD

By

"SPECIMEN"  
"SPECIMEN"  
Chairman  
Secretary

---

This Bond shall become valid only when it shall be manually countersigned by a duly  
Authorized Signing Officer.

Dated August 1, 1998

## Terms and Conditions

1. Interest on this Bond will be payable semi-annually on August 1 and February 1 of each year prior to and including maturity, commencing February 1, 1999 at an interest rate of 9.762 % per annum. Interest will no longer accrue after maturity. For yield comparison purposes, the 9.762% interest rate per annum payable semi-annually is the yield equivalent of 10.00% per annum payable annually.
2. This Bond will be issued in fully registered form only, in denominations of \$1,000,000.00 and integral multiples thereof. This Bond will be dated August 1, 1998 and will mature on August 1, 2014.
3. Interest will be payable to the order of the registered holder and will be paid by cheque forwarded to the registered address.
4. The Manitoba Hydro-Electric Board will maintain a register of the name and address of the registered holder of this Bond at its Head Office in the City of Winnipeg.
5. This Bond is non-transferable and non-assignable.
6. At the option of the registered holder only, this Bond, or any portion thereof, which is \$1,000,000.00 or an integral multiple thereof, may be redeemed at the fair market value six business days after delivery of notice of redemption in writing and upon due presentation and surrender of this Bond at the Head Office of The Manitoba Hydro-Electric Board in the City of Winnipeg. The fair market value will be determined by the middle quote of three bid price quotes, for a provincially guaranteed marketable Bond of The Manitoba Hydro-Electric Board, having the same interest rate and maturity date as this Bond. The bid price quotes will be supplied in writing, by three investment dealers used by the Province of Manitoba to underwrite its securities. The bid price for this Bond will be set one business day following receipt of the notice of redemption for value and settlement six business days following receipt of the notice of redemption. The settlement amount will include accrued interest, if any.
7. Market bid price quotes will be supplied upon request of the holder, from time to time, as reasonably required.
8. This Bond is repayable for the full principal amount upon due presentation and surrender, at the Head Office of The Manitoba Hydro-Electric Board, in the City of Winnipeg, during regular business hours on August 1, 2014 or any business day thereafter.
9. Manitoba Hydro will not be bound to see the execution of a trust affecting the ownership of this Bond.

10. This Bond will rank equally with all other debt obligations of The Manitoba Hydro-Electric Board.

---

Notice of Redemption

The registered holder of this Bond serves notice to redeem \$\_\_\_\_\_ of this Bond at the fair market value in accordance with the Terms and Conditions endorsed hereon.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Authorized Signing Officer (s)

\_\_\_\_\_  
Signature and Authority to  
Sign Guaranteed

Financial Institution: \_\_\_\_\_

SCHEDULE 1.3

PAST PAYMENTS

(reference Article 1.3.4)

Canada 1974 - 1994

Description	York Factory Share
Community Planning	301,338
Neyanun	331,895
NFA Implementation	898,311
NFA Expenditure Study	28,875
Core Funding	1,147,340
Land Use	62,313
Housing	1,362,070
Water & Sewer	7,265,282
Mercury	233,402
Environment	263,438
PAB	2,000
Employment	80,134
Arbitrator's Office	73,816
Legal Fees	353,728
<b>TOTAL</b>	<b>\$12,403,942</b>

SCHEDULE 1.3

**PAST PAYMENTS**

(reference Article 1.3.4)

**Hydro**

Description	York Factory Share
Settlement Costs	528,070
General Claims and Remedial Works	138,596
Pro-Rated NFA Claims	2,244,207
<b>TOTAL PAST COSTS</b>	<b>2,910,873</b>

SCHEDULE 1.3

**PAST PAYMENTS**

(reference Article 1.3.4)

**Manitoba**

Description	York Factory Share
Surveys, Mapping & Geotechnical, Land Exchange & Land Use	235,200
Arbitrator	59,100
Advisory Groups	97,700
Environmental Monitoring and Wildlife Monitoring	242,200
Resource Technology	92,800
Claim Costs - Legal & Consulting	278,800
Coordination	37,600
Guide Training	6,900
Community Development Planning	24,300
Key Communicator Program	132,500
Provincial Negotiator for Global Negotiations	25,300
Neyanun	331,000
<b>TOTAL</b>	<b>1,563,400</b>

SCHEDULE 1.4

TRUST INDENTURE

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THIS TRUST INDENTURE made this      day of      , 1995 between:

YORK FACTORY FIRST NATION as represented by **Chief and Council**, (hereinafter called "**York Factory**") ,

of the First Part,

- and -

Chief Eric Saunders, George Beardy, Jacqueline Beardy, Rusty Beardy, Roddy Ouskan and Clara Ouskan, all of York Landing in the Province of Manitoba (hereinafter called the "**York Factory Trustees**"),

Of the Second Part,

- and -

Royal Trust Corporation of Canada, (hereinafter called the "**Corporate Trustee**"), incorporated under the laws of Canada,

of the Third Part,

- and -

HER MAJESTY THE QUEEN IN RIGHT OF MANITOBA, as represented by the Minister of Northern Affairs, (hereinafter called "**Manitoba**")

of the Fourth Part,

- and -

THE MANITOBA HYDRO-ELECTRIC BOARD, (hereinafter called "**Hydro**")

of the Fifth Part,

- and -

HER MAJESTY THE QUEEN IN RIGHT OF CANADA, as represented by the Minister of Indian Affairs and Northern Development, (hereinafter called "**Canada**")

of the Sixth Part,

Whereas, **York Factory** will receive **Financial Proceeds** and may receive other property

from **Hydro, Manitoba and Canada**, in accordance with the **Agreement** dated the same date as this **Indenture**;

And Whereas, the **Agreement** has been entered into for the purpose of implementing, and resolving claims and obligations under, the **NFA**;

And Whereas, pursuant to the **Agreement, York Factory**, as a condition of receiving the **Financial Proceeds**, has agreed to settle a trust on the terms, and for the purposes, set out in this **Indenture**;

Now Therefore the **Parties** agree as follows:

## **PART ONE: DEFINITIONS AND INTERPRETATION**

### **1.0 ARTICLE 1: INTERPRETATION**

#### **1.1 Guides to Interpretation. In this **Indenture****

- (a) any reference to a person shall include the successor to that person;
- (b) singular words shall include the plural and vice versa;
- (c) the headings and the division of this **Indenture** into articles is for convenience of reference only, and shall not affect the construction or interpretation of this **Indenture**;

- (d) this **Indenture** shall be read in conjunction with the **Agreement** of which it forms a part; and
- (e) references to articles or schedules mean articles or schedules of this **Indenture** unless otherwise indicated.

2.0

**ARTICLE 2: DEFINITIONS**

2.1 Definitions from Agreement. All defined terms in Article 1 of the **Agreement** have the same meaning where used in this **Indenture** with a capital letter and in bold type face. For ease of reference, those terms which are defined in the **Agreement** and which are also used in this **Indenture** have been repeated in Article 2.

2.2 Additional Definition of "reserve". Where the term "reserve" is used in this **Indenture** and not capitalized and printed in bold type, it shall mean any reserve as defined in the Indian Act (Canada).

2.3 Definitions. For all purposes within this **Indenture**, unless otherwise specifically provided, the following words and phrases, when capitalized and printed in bold type, whether in the plural or the singular, shall have the meaning ascribed to them in Article 2.3:

**Account** means an account established pursuant to this **Indenture**.

**Adverse Effects** means the direct or indirect negative consequences of the **Project** or the operation thereof by **Hydro**, which consequences impact or change the physical, chemical or biological characteristics of the environment and include, without limitation, risks or injuries to the health, safety, well-being, comfort or enjoyment of **York Factory** or **Members**, and impacts on interests in and the exercise of rights in relation to lands, pursuits, activities, opportunities, lifestyles and assets of **York Factory** or **Members**.

**Agreement** means the agreement of even date to which this **Indenture** is attached as Schedule 1.4.

**Arbitrator** means a person appointed under Article 10 of the **Agreement** to arbitrate disputes.

**Assets** means all property of every nature and kind to which the investment provisions of Articles 14.1 and 14.2 apply.

**Auditor** means the auditor appointed under Article 9.1.

**Canada** means Her Majesty the Queen in Right of Canada who, for the purposes of this **Indenture**, is represented by the Minister of Indian Affairs & Northern Development.

**Capital Works** means any permanent structure or works erected, constructed, acquired or developed using **Financial Proceeds** except single family houses.

**Chief** means the Chief of **York Factory** elected and in office.

**Chief and Council** means the Council of **York Factory**.

**Claimant** means any of:

- (a) **Chief and Council**;
- (b) **York Factory**;
- (c) any person who is a **Member**;
- (d) any group, or unincorporated association, whose membership or shareholding is wholly or substantially comprised of **Members**;
- (e) any unincorporated association established by **Chief and Council**;
- (f) any share capital corporation, the shares of which are wholly or substantially owned, both legally and beneficially, and controlled by **York Factory** or **Members**; or
- (g) any non - share capital corporation, the membership of which consists wholly or substantially of **York Factory** or **Members**;



who or which suffered a loss or damage resulting from or attributable to an **Adverse Effect**.

**Claims Account** means the account established under Article 12.

**Community Approval Process** means the Community Approval Process established by Article 8 and the procedures set forth therein.

**Consumer Price Index** means the publication by Statistics Canada of statistical data related to changes in price of goods and services(All-Items) in the Province of Manitoba.

**Corporate Trustee** means the trust corporation which is the signatory to the **Indenture** and its successors in that office and includes, where transitional obligations are being fulfilled and the context requires, both an outgoing and an incoming trustee.

**Council Resolution** means a resolution passed by **Chief and Council**.

**Date of the Agreement** means the date the **Agreement** has been executed by the **Parties**.

**Fee Simple Lands** mean any tract of land, the legal and beneficial title to which is to be held by the **Corporate Trustee** in trust for **York Factory**, or a corporation wholly owned and controlled by **York Factory**, in accordance with the **Agreement** or this **Indenture**.

**Financial Schedule** means Schedule 1.1 to the **Agreement**.

**Financial Proceeds** means the principal amounts paid pursuant to the **Financial Schedule**, and any subsequent amounts paid by **Hydro** to the **Trust** or to **Canada** for the benefit of **York Factory** pursuant to the **Agreement** and any revenue derived from such amounts earned by or paid to the **Trust**.

**Funds Available** means:

- (a) in the fiscal years 1995 and 1996 the amount identified in Article 11.1; and
- (b) in any subsequent fiscal year, the greater of the income earned on **Assets** and whichever of the following applies:
  - (i) pending receipt by the **Trust** of interest on the **Hydro Bond**, an amount determined by the **Community Approval Process**, not to exceed two million five hundred thousand (\$2,500,000.00) dollars; or
  - (ii) during the period when the **Trust**, either directly or through

- Canada** receives the interest on the **Hydro Bond**, the interest paid on that bond; and
- (iii) in any other circumstances, the amount by which the **Net Value of the Assets** as determined by the **Corporate Trustee** at the close of the prior fiscal year, excluding the **Assets** held in the **Investment and Heritage Account**, exceeds fourteen million (\$14,000,000.00) dollars.

Where the fiscal year is changed so as to create a fiscal period which contains more or less than twelve (12) months, the amount of **Funds Available** shall be pro-rated accordingly.

**Hydro** means the Manitoba Hydro-Electric Board.

**Hydro Bond** means the bond to be issued by **Hydro** pursuant to the **Financial Schedule** in the form and content of Schedule 1.2 of the **Agreement**.

**Indenture** means the trust agreement in the form and content of Schedule 1.4 of the **Agreement**.

**Investment and Heritage Account** means the account established under Article 10.2.

**Majority Vote** means a vote conducted by **Chief and Council**, where a majority of those **Members** eighteen (18) years of age and over voting at a **Meeting of Members** either by a show of hands or by secret ballot where a minimum of twenty (20) **Members** request a secret ballot vote, approve the matter voted upon.

**Manitoba** means Her Majesty the Queen in Right of the Province of Manitoba who, for the purposes of this **Agreement**, is represented by the Minister of Northern Affairs.

**Meeting of Members** means a meeting of **Members** on **Reserve** convened pursuant to the **Indenture** and in particular Article 8.2 of the **Indenture**.

**Member** means a person who, at the relevant time, is, or who has applied and is entitled to be, a member of **York Factory** pursuant to the Indian Act (Canada).

**Net Value of the Assets** means the amount at any specific date by which the value of the **Assets**, including the value of any **Financial Proceeds** held by **Canada** for the use and benefit of **York Factory**, exceeds all liabilities of the **Trust**. The issued **Hydro Bond** will be valued at its face amount and all other **Assets** will be valued at the lower of cost or market value.

**Operation and Maintenance** means works, administration, management and activities reasonably necessary for the ongoing operation, maintenance and repair of **Capital Works**.

**Party** means any of **Canada, Manitoba, York Factory and Hydro**.

**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 **York Factory**.

**Trust** means the Kitche-Waskahigan Trust created and funded pursuant to the **Agreement** and this **Indenture**.

**Trust Moneys** means all payments of cash or kind from the **Trust**.

**Trustees** means collectively the **York Factory Trustees** and the **Corporate Trustee**.

**York Factory** means **York Factory First Nation**, a "band" within the meaning of the Indian Act (Canada).

**York Factory Trustees** means the individual trustees signatory to this **Indenture** and successors in office, in accordance with Article 6.

## **PART TWO: BASIC PROVISIONS**

### **3.0 ARTICLE 3: BASIC PROVISIONS**

3.1 Name. The **Trust** created by this **Indenture** shall be known as "**Kitche-Waskahigan Trust**".

3.2 Change of Name. The **Trustees**, with the consent of **Chief and Council** as set out in a **Council Resolution**, and a **Majority Vote** at a **Meeting of Members**, may change the name of the **Trust** to any lawful name.

- 3.3 Beneficiaries. Subject to the terms of this **Indenture** the beneficiaries of the **Trust** are **York Factory** and **Members**.
- 3.4 On-Reserve Benefit. In addition to compensation for claims, the **NFA** makes provision for mitigatory works, remedial measures and other programs principally, and often exclusively, directed to the **Reserve** and **Members** resident thereon. As the **Agreement** implements the **NFA**, the **Trust** will be used to fund programs that may principally, or exclusively, benefit the **Reserve** and **Members** ordinarily resident on **Reserve** and to address classes of compensation claims.
- 3.5 Community Approval Process. Except as specifically provided in this **Indenture** or the **Agreement**, the **Community Approval Process** shall determine all uses of **Assets** and **Trust Moneys**.
- 3.6 Non-divisibility. The **Assets** are not divisible into individual shares or benefits, and no **Member** may claim an individual share of, or benefit from, **Assets** or **Trust Moneys** except as specifically authorized pursuant to this **Indenture** or the **Agreement**.
- 3.7 Fiscal Year. The fiscal year of the **Trust** shall end on December 31 unless otherwise determined by the **Trustees**.

- 3.8 Residence. It is the intention of the **Parties** that the **Trust** shall be situate on a reserve and the **Trustees** shall take all reasonable steps to ensure, to the extent possible, that the **Trust** shall always be so situate.

### **PART THREE : ROLES AND RESPONSIBILITIES**

#### **4.0 ARTICLE 4: CHIEF AND COUNCIL**

##### **4.1 Duties of Chief and Council. Chief and Council shall:**

- (a) appoint successor **York Factory Trustees** as provided in Article 6;
- (b) appoint successor **Corporate Trustees** as provided in Article 7;
- (c) administer the **Community Approval Process** as provided in Article 8;
- (d) settle any unallocated **Funds Available** distributed to it, on the **Trustees** for deposit to either the **Investment & Heritage Account** or the **Community Development Account** in accordance with Article 10.4;
- (e) administer the claims procedure as provided in Article 5 of the **Agreement** in conjunction with the **York Factory Trustees**;
- (f) administer **Trust Moneys** as provided in Article 17;
- (g) obtain and present reports on the administration of **Trust Moneys** as provided in Article 19;

- (h) perform any other duties given to **Chief and Council** by this **Indenture** or the **Agreement**.

4.2 **Chief and Council Acceptance.** Prior to **Chief and Council** carrying out any duty or exercising any right assigned to it under this **Indenture**, the greater of a majority or a quorum of its members shall execute a Schedule 1 form, and deposit same with the **Corporate Trustee**.

4.3 **Consequences of Failure to sign Acceptance.** No member of **Chief and Council** who fails to execute a Schedule 1 form shall participate in decisions of **Chief and Council** respecting the **Indenture** or **Trust Moneys**.

4.4 **No Benefit.** No member of **Chief and Council** who has failed to execute a Schedule 1 form shall receive any benefit from the **Trust**, unless and until:

- (a) the proposed benefit and the refusal to execute a Schedule 1 form have been disclosed to a **Meeting of Members**, and
- (b) the proposed benefit is approved by a **Majority Vote**.

4.5 **Disclosure of Conflicts of Interest.** Any member of **Chief and Council** with a direct or indirect pecuniary interest in any matter before **Chief and Council** involving **Trust Moneys**, shall:

- (a) immediately disclose such 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.

If as a result it is not possible to obtain a quorum of **Chief and Council**, the matter shall be decided by a **Majority Vote** at a **Meeting of Members**.

4.6 Exception. The restrictions set forth in Articles 4.4 and 4.5 shall not apply if such interest is of a **Member** or group of **Members** generally, and is not related to being, or having been, a member of **Chief and Council**.

4.7 No Encumbering. Except as provided in Articles 8.7 and 8.17, **Chief and Council** shall not pledge or forward commit **Assets** or **Trust Moneys** beyond the current fiscal year.

4.8 Liability of Chiefs and Councillors. When handling **Trust Moneys**, members of **Chief and Council** shall:

- (a) spend **Trust Moneys** only as disclosed and approved;
- (b) reimburse the **Trust** for their own misappropriation or misuse of **Trust Moneys**; and
- (c) be liable for their own negligence, wilful misconduct or breach of this **Indenture**;

but shall not otherwise be liable for honest errors in judgment in making any decisions or exercising any discretion, provided same is authorized under this **Indenture** or the **Agreement**.

5.0

**ARTICLE 5: TRUSTEES**

5.1 **Trustees**. The **Trust** shall have one (1) **Corporate Trustee** and six (6) **York Factory Trustees** each of whom shall faithfully administer the terms of this **Indenture**.

5.2 **Decisions by Trustees**. Except where unanimity is required by law, decisions of the **Trustees** shall require the approvals of the **Corporate Trustee** and not fewer than three (3) **York Factory Trustees** comprising:

- (a) at least one (1) **York Factory Trustee** appointed by **Chief and Council** from its members; and
- (b) at least two (2) **York Factory Trustees** elected from among the other **Members**.

pursuant to Article 6.

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



or suffered by any other **Trustee** or the **Trust** unless the undertaking to indemnify is in writing and executed by the indemnifier.

- 5.4 Successor Trustee Duties. A successor **Corporate Trustee** may be required by **Chief and Council** to verify or audit the books, records or accounts of a predecessor **Corporate Trustee**.
- 5.5 No Encumbering. Except as provided in Articles 8.7 and 8.17, the **Trustees** shall not pledge or forward commit **Assets** or **Trust Moneys** beyond the current fiscal year.
- 5.6 Maintain Records and Books. The **Corporate Trustee**, on behalf of the **Trustees**, shall maintain a duplicate set of current, accurate and complete records and books of account of the **Trust** at the Band office on **Reserve**. **Chief and Council** shall make appropriate custodial arrangements to safeguard the duplicate set of records and books of account and provide reasonable access thereto to **Members**.
- 5.7 Meetings. The **Trustees** shall meet on a reserve to conduct the business of the **Trust** and they may conduct such business by telephone as long as the majority of **Trustees** are present on a reserve at the time business is conducted.

6.0 **ARTICLE 6: YORK FACTORY TRUSTEES**

6.1 Election. Subject to Articles 6.4 and 6.5, four (4) **York Factory Trustees** shall be elected by **Majority Vote** at a **Meeting of Members** and shall serve for a term of three (3) years. Subject to Articles 6.4 and 6.5, **Chief and Council** shall appoint two (2) of its members to be **York Factory Trustees** who shall serve for a term concurrent with their tenure on Council. The inaugural **York Factory Trustees'** term of office shall begin on the **Date of this Agreement**.

6.2 Additional Terms. A **York Factory Trustee** may serve more than one term but may be removed by **Chief and Council** for cause.

6.3 Removal. An elected **York Factory Trustee** who subsequently becomes a member of **Chief and Council**, shall resign, or be terminated by **Chief and Council**, and shall not be eligible to serve as an elected **York Factory Trustee** while a member of **Chief and Council** but may be a **York Factory Trustee** appointed by **Chief and Council**.

6.4 Qualifications. **York Factory Trustees** shall be **Members**:

- (a) ordinarily resident at York Landing;
- (b) over eighteen (18) years of age; and
- (c) eligible for fidelity bonding by a licensed surety as determined by the

**Corporate Trustee.****6.5 Successor York Factory Trustees. Where a York Factory Trustee**

- (a) is unable or unwilling to act;
- (b) at any time fails to meet the requirements of Article 6.4;
- (c) is convicted of an indictable offence or a Criminal Code offence related to property; or
- (d) is an undischarged bankrupt;

that **York Factory Trustee's** appointment shall be terminated by **Chief and Council** and upon such termination, if the **York Factory Trustee** was elected and more than one (1) year of that **York Factory Trustee's** term remains, a new **York Factory Trustee** shall be elected in accordance with Articles 6.1, 6.4 and 6.5. In all other cases, **Chief and Council** shall immediately appoint a successor and advise the **Corporate Trustee** and **Members** accordingly.

**6.6 Validity of Actions.** Until resignation or termination under Articles 6.3 or 6.5 no action by the **Trustees** shall be invalid due solely to the ineligibility of a **York Factory Trustee**.

**6.7 Acceptance of Indenture.** Prior to assuming office a **York Factory Trustee**, other than the inaugural **York Factory Trustees**, shall execute a Schedule 2 form and deposit it with the **Corporate Trustee**.

6.8 **Trustees' Dealings with the Trust.** A **York Factory Trustee** shall act for the **Trust** only in that capacity and shall not otherwise be employed or retained by the **Trust** for services for consideration.

6.9 **General Duty of York Factory Trustees.** Every **York Factory Trustee**, in exercising powers and discharging duties under this **Indenture**, 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**.

6.10 **Liability of York Factory Trustees.** **York Factory Trustees** shall be liable for their own negligence, wilful misconduct, or breach of the provisions of this **Indenture**, but shall not otherwise be liable for any honest error in judgment.

6.11 **Disclosure of Conflicts of Interests.** **York Factory Trustees** with a direct or indirect pecuniary interest in any matter involving the **Trust**, **Trust Moneys** or **Assets** shall immediately disclose the interest, in writing, to the other **Trustees** and to **Chief and Council** and withdraw from any consideration of such matter and

refrain from voting on or influencing the decision of the **Trustees** in relation thereto unless such interest is that of a **Member**, or group of **Members** generally, and is not related to being, or having been, a **York Factory Trustee**.

6.12 **York Factory Trustee Compensation.** **York Factory Trustees** shall be entitled to reasonable compensation and reimbursement of reasonable expenses as approved by a **Meeting of Members**.

6.13 **No Power of Appointment.** The authority of a **York Factory Trustee** to delegate execution or authority when absent from Manitoba pursuant to section 36 of **The Trustee Act** (Manitoba) in force at the **Date of this Agreement**, or any similar power, shall not be exercised without the written approval of **Chief and Council**. Where such authority is delegated, subsections 36(4) to and including 36(7) of **The Trustee Act** (Manitoba) do not apply.

## 7.0

### ARTICLE 7: CORPORATE TRUSTEE

7.1 **Corporate Trustee Qualifications.** The **Corporate Trustee** shall:

- (a) be a corporation authorized to conduct the business of a trust company in Canada;
- (b) be able to meet the criteria for a member in good standing with the Canada Deposit Insurance Corporation; and

- (c) maintain an office on a reserve.

7.2 Communications. All communications with the **Corporate Trustee** shall be by way of mail, delivery or facsimile to its office on a reserve and upon appointment the **Corporate Trustee** shall provide the **York Factory Trustees** and **Chief and Council** with its mailing address and its telephone and facsimile numbers at this office.

7.3 Successor to Corporate Trustee. The **Corporate Trustee** may:

- (a) resign upon thirty (30) days written notice to **Chief and Council**;
- (b) be discharged by **Chief and Council** for cause; or
- (c) be discharged by **Chief and Council** upon thirty (30) days written notice to the **Corporate Trustee**;

but the property of the **Trust** shall remain vested in that **Corporate Trustee** until a successor assumes office. If a **Corporate Trustee** is discharged, becomes disqualified, refuses or is unable to act, resigns, or is removed by a court of law, **Chief and Council** shall immediately appoint a new **Corporate Trustee**, and advise **Members, Canada, Hydro** and **Manitoba** accordingly.

7.4 Vacancy. Where the position of **Corporate Trustee** is vacant for more than forty-five (45) days, any **Member, York Factory Trustee, Canada, Manitoba, or Hydro**, may, but shall be under no duty to, apply to have a court appoint a new

**Corporate Trustee.**

7.5 **Corporate Trustee Duties.** The **Corporate Trustee**, on behalf of the **Trustees**, shall:

- (a) keep complete and accurate financial records of the **Trust**;
- (b) submit to **Chief and Council** monthly transaction and investment statements, prepared in accordance with generally accepted accounting principles, as such principles relate to trusts;
- (c) take legal ownership and possession of **Assets**;
- (d) prepare and deliver such reports and documentation on the **Trust** as may be required by government agencies;
- (e) provide all reports and information which the **York Factory Trustees** require to make sound investment decisions;
- (f) invest **Assets** as provided in Article 14;
- (g) advise **Chief and Council** of the amount of **Funds Available** to fund the **Community Development Account** and the **Investment and Heritage Account** after determining the amounts required to be paid, or allocated and reserved for:
  - (i) any future commitment of funds for **Operation and Maintenance** purposes set forth in Article 8.7 or 8.8 or for payment of principal and interest under Article 8.17,
  - (ii) fifty thousand (\$50,000.00) dollars for the **Community**

**Approval Process** under Article 11.3,

- (iii) the amount necessary to maintain the minimum balance in the **Claims Account** required under Article 12.2,
  - (iv) the fees, if any, and reasonable expenses of the **York Factory Trustees** under Article 6.12,
  - (v) the fees of the **Corporate Trustee** under Article 7.10,
  - (vi) charges for administration of the **Trust** under Article 15.1(c),
  - (vii) costs of litigation under Article 15.1(d),
  - (viii) costs of insurance under Article 15.1(h),
  - (ix) indemnities payable under Article 15.4,
  - (x) indemnities payable under Article 16.12, and
  - (xi) any other amounts that the **Trust** is required to pay by law;
- (h) advise **Chief and Council** as to the amounts available for expenditure from the **Investment and Heritage Account**;
  - (i) determine the **Net Value of the Assets** when required;
  - (j) provide access to the records of the **Trust** on the reasonable request of **Chief and Council**, any **Member** or **Party**; and
  - (k) receive and accept title to **Fee Simple Lands**.

7.6 Property Vests in Successor Trustee. Title to property of the **Trust** shall vest in



a successor **Corporate Trustee** concurrent with its assuming office and the **Corporate Trustee** shall execute all documents and do all acts necessary to cause and complete such vesting.

7.7 Acceptance of the Trust Terms. Prior to assuming office, each successor **Corporate Trustee** shall execute a Schedule 3 form.

7.8 General Duties of Corporate Trustee. The **Corporate Trustee**, in exercising powers and discharging duties under this **Indenture**, shall:

- (a) act honestly and in good faith with a view to the best interests of the **Trust**; and
- (b) exercise the care, diligence and skill that a prudent, responsible and competent professional trustee exercises in administering the property of others; and
- (c) comply with the terms of this **Indenture** and the duties associated with this **Trust** contained in the **Agreement**.

7.9 Liability of Corporate Trustee. The **Corporate Trustee** shall be liable only for its own negligence, wilful misconduct or breach of the provisions of this **Indenture**, but shall not otherwise be liable for any honest error in judgment.

7.10 Fee for Service. **Chief and Council** shall negotiate reasonable fees for service

with the **Corporate Trustee**.

**8.0                   ARTICLE 8: COMMUNITY APPROVAL PROCESS**

8.1 Budget Proposals and Public Meetings. In each fiscal year, **Chief and Council** shall, following consultation with **Members**, prepare proposals for the use of **Trust Moneys** from the **Community Development Account** and the **Investment and Heritage Account**. Such proposals shall be discussed at not less than one (1) **Meeting of Members** convened by **Chief and Council** before formal adoption pursuant to Article 8.5.

8.2 Meeting of Members. Notice for a **Meetings of Members** under Article 8.1 shall:

- (a) specify the time, place and purpose of the meeting;
- (b) be publicized at least seven (7) days before the proposed meeting, by posting notices in public places on **Reserve** or by other means reasonably likely to reach all adult **Members** resident at or frequenting the **Reserve**; and
- (c) indicate where the information and relevant documents referred to in Article 8.3 can be obtained or reviewed by **Members**.

8.3 Disclosure Requirements. **Chief and Council** shall make available to **Members** in

accordance with Article 8.2:

- (a) For each program, project or initiative, including **Capital Works**:
  - (i) a description, including any available drawings,
  - (ii) a budget, including cash flow requirements,
  - (iii) the location,
  - (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,
  - (vi) where applicable and known, the contractors or subcontractors;
  
- (b) for each proposed **Capital Works**, the cost of construction of which will exceed twenty-five thousand (\$25,000.00) dollars:
  - (i) an **Operation and Maintenance** budget supported by a written opinion prepared by an Architect, Professional Engineer or other qualified person, unless the cost of construction of such **Capital Work** will not exceed one hundred thousand (\$100,000.00) dollars in which event the opinion of **Chief and Council** shall be sufficient,
  - (ii) arrangements for funding the **Operation and Maintenance** budget;

- (c) for each **Capital Works**, constructed in a previous fiscal year:
  - (i) the costs of **Operation and Maintenance** in the preceding fiscal year determined from the audited financial statements,
  - (ii) arrangements for funding **Operation and Maintenance** in the current fiscal year;
- (d) for any proposed forward commitment of **Funds Available** to pay principal and interest on a secured loan under Article 8.17:
  - (i) the purpose of the loan, including the nature of the assets to be acquired, independent valuations of those assets, the commercial or non-commercial purposes to which the acquired assets will be applied,
  - (ii) how and by what person or organization the assets to be acquired will be administered,
  - (iii) the nature of the security to support the loan, and
  - (iv) loan proposals from at least two (2) unaffiliated financial institutions and the material terms of the loan, including name of the lender, the principal amount of the loan, rate of interest, term of the loan, and repayment terms;
- (e) for proposed allocations to the **Investment and Heritage Account**:
  - (i) the purpose for allocating funds,
  - (ii) proposed restrictions on use, if any;

(f) for any proposed land transaction including transactions involving **Fee**

**Simple Lands:**

- (i) the nature and significance of the proposed transfer, lease, mortgage, pledge, hypothecation, lien, charge, alienation, right of first refusal, option to purchase, encumbrance, or other proposed dealing in or with the land,
- (ii) the anticipated costs of the proposed transaction,
- (iii) the anticipated proceeds, if any, from the proposed transaction,
- (iv) the intended use of any proceeds from the proposed transaction, and
- (v) the expected costs and benefits of any proposed use or disposition.

8.4 Transactions with Third Parties. Notwithstanding Article 8.3(e) if, in the opinion of the **Chief and Council**, the disclosure at a **Meeting of Members** would jeopardize the interests of a third party who may be the recipient of any such transfer, lease, mortgage, pledge, hypothecation, lien, charge, alienation, encumbrance, right of first refusal or option to purchase, such that the third party might reasonably be expected not to proceed with any such transaction, and provided that such transaction is determined by **Chief and Council** to be for the benefit of **York**

**Factory, Chief and Council** shall provide written notice of such determination to the **Trustees** fourteen (14) days prior to the intended date of entering into any such transaction, or such lesser period of time as the **Trustees** may allow. Provided the **Trustees** agree with the determination made by **Chief and Council**, the proposed land transaction may proceed. Forthwith upon the completion of such a transaction a **Meeting of Members** will be convened in accordance with Article 8.2 at which **Chief and Council** shall cause to be explained to the **Members** attending such meeting, the nature and significance of the transaction.

8.5 Budget Decisions. Following the **Meeting of Members** under Articles 8.1, 8.2, and 8.3, **Chief and Council** at a public meeting shall, where applicable:

- (a) make a final decision on
  - (i) the expenditure of the **Funds Available**, as it is advised by the **Corporate Trustee** under Article 7.5(g) is available for expenditure, or
  - (ii) any proposed use or disposition of land;
- (b) pass a **Council Resolution** confirming its decision;
- (c) request release of **Trust Moneys** in a Schedule 4 or 5 form whichever is applicable; and
- (d) request the **Corporate Trustee** take all necessary steps to complete the use or disposition of land, and the **Corporate Trustee** on behalf of the **Trustees** shall comply, if approved.

8.6 Further Disclosure to Members. If **Chief and Council** propose to vary in any material way from the information previously disclosed under Article 8.3 then, prior to passing the **Council Resolution** under Article 8.5(b), **Chief and Council** shall make fresh disclosure with respect to those variations in accordance with Article 8.3 and pass an amending **Council Resolution** under Article 8.5(b).

8.7 Paramount Consideration. The **Trustees** shall not make any payments from the **Trust** towards a new **Capital Work**, unless in the opinion of the **Trustees** the aggregate of the anticipated future cost of **Operation and Maintenance** for that **Capital Work** and any amount forward committed under Article 8.17 can be funded entirely from:

- (a) not more than eight and three-quarters per cent (8 3/4%) of an amount equivalent to the annual interest on the **Hydro Bonds** in any year, or a cumulative of thirty-five per cent (35%) of such amount;
- (b) funding committed by **Canada**, **Manitoba** or **York Factory**; or
- (c) other reliable sources.

8.8 Release of Funds. Where:

- (a) in the opinion of the **Trustees** other sources of funding under Article 8.7(c) cannot reasonably be relied upon;
- (b) **Chief and Council** has fully disclosed the other sources of funding and the opinion of the **Trustees** at a **Meeting of Members**; and

- (c) by a **Majority Vote**, approval is given to override the **Trustees'** opinion;

the **Trustees**, subject to the limits in Article 8.7, shall pay any resulting shortfall of funds for **Operations and Maintenance** from the **Trust**. Upon receipt of such approval, **Chief and Council** shall request release of **Trust Moneys** for the **Capital Works** in a Schedule 4 or 5 form, whichever is applicable.

8.9 Alterations. Subject to Article 8.7, upon application of **Chief and Council**, the **Trustees** shall re-allocate funds previously allocated for **Operation and Maintenance** to **Funds Available** to be used for other purposes if:

- (a) other sources of committed funding are available and the amount allocated is no longer required for **Operation and Maintenance**;
- (b) experience demonstrates that the amount allocated is not required for **Operation and Maintenance**; or
- (c) there is a change in circumstances which warrants such a re-allocation taking into consideration the continuing need for the **Capital Works**.

8.10 Investment and Heritage Account. A **Majority Vote** at a **Meeting of Members** may:

- (a) authorize and require **Chief and Council** to contribute any **Funds Available** distributed to **Chief and Council** during the fiscal year, to



the **Investment and Heritage Account**;

- (b) impose restrictions on the use of funds in the **Investment and Heritage Account**; and
- (c) subject to such restrictions, authorize expenditures from the **Investment and Heritage Account**.

8.11 Changes to Restrictions. A restriction imposed under Article 8.10(b) may be changed or deleted by **Council Resolution** confirmed by a vote of not less than two-thirds(2/3) of those present:

- (a) at the **Meeting of Members** where the restriction was imposed; or
- (b) at a subsequent **Meeting of Members** called for that purpose in compliance with the notice and disclosure requirements in Articles 8.2 and 8.3.

8.12 Delay in expenditure. Funds allocated to the **Investment and Heritage Account** in any fiscal year shall not be paid to **Chief and Council** in that fiscal year.

8.13 Per Capita Compensation Payment. Promptly following the **Date of the Agreement** the **Trustees** shall pay to **Chief and Council** from **Funds Available** for the 1995 fiscal year an amount sufficient to make the per capita compensation payment under Article 8.13. Upon receipt of such funds, **Chief and Council** shall:

- (a) make a one time only per capita compensation payment in the amount of two hundred and fifty dollars (\$250.00) to persons who are **Members** as of the **Date of the Agreement**,
- (b) maintain a list of the names of **Members** who have received each per capita payment, and
- (c) six (6) months after receipt of such funds, provide the list prepared under Article 8.13(b), and return any unclaimed moneys, to the **Trustees** to be held in the Compensation Sub-Account for payment to **Chief and Council** to satisfy unclaimed entitlements in accordance with Article 8.13.

Unclaimed payments shall be held in the Compensation Sub-Account established under Article 12.6 for a period of four (4) years from the **Date of the Agreement** but thereafter entitlement to such payment shall cease. No further per capita compensation payments shall be paid to **Members** from this **Trust**. Notwithstanding Article 16.9 but subject to the indemnity therein, payments under Article 8.13 for **Members** under the age of majority may be made to their parents or guardians upon receipt of acknowledgment of payment in a Schedule 6 form.

8.14 Social Assistance and Cash Compensation. Based on the determination by **Manitoba**, and the application of that determination by **Canada**, the cash compensation payments referenced in Article 8.13 will not be considered as income for the purposes of calculating the social assistance entitlement of any **Member**. No social assistance payment, to which any **Member** is otherwise entitled, will be

reduced due to the receipt by such **Member** of the cash compensation payment referenced in Article 8.13.

- 8.15 Investment and Heritage Account Decisions. **Chief and Council** shall forward to the **Trustees** any proposed expenditure plan for and request for release of **Trust Moneys** for the **Investment and Heritage Account** together with a Schedule 5 certificate of compliance with the provisions of Articles 8.1, 8.2, 8.3, 8.10 and, if applicable, Article 8. 11.
- 8.16 Initial Year. For the fiscal year ending December 31, 1995 and the fiscal year ending December 31, 1996, compliance with the provisions of Article 8 shall be satisfied notwithstanding that proceedings and meetings were held or decisions were made after January 31, 1995 and before the **Date of the Agreement**.
- 8.17 Forward Commitment. Subject to the limits in Article 8.7, **Chief and Council** and **Trustees** may forward commit up to one hundred thousand (\$100,000.00) dollars per annum for repayment of principal and interest on a loan providing all of the following conditions are met:
- (a) the proceeds of the loan are exclusively used to acquire assets or property to be wholly owned and controlled by **York Factory** or the **Trust**, directly or through a corporation;
  - (b) the loan is secured by assets which do not form part of **Assets** or **Trust**

**Moneys;**

- (c) there is no direct debit by the **Corporate Trustee** from, or direct or indirect recourse by the lender against, **Assets** or **Trust Moneys**; and
- (d) the forward commitment has been approved by the **Community Approval Process** and by the **Trustees** under Article 8.7.

The provisions of Article 23.6 do not apply to Article 8.17.

9.0

**ARTICLE 9: AUDITOR**

9.1 **Auditor.** **Chief and Council** and the **Trustees** shall appoint a chartered accountant in private practice as the **Auditor** to audit the **Trust**, **Accounts** and the receipt and expenditure of **Trust Moneys** by **Chief and Council** and its agents.

9.2 **Restrictions.** Except as may be required under Article 16.12, or by law, or where the **Trustees** agree unanimously that a payment is needed to protect **Assets**, no moneys shall be paid from the **Trust** while the office of **Auditor** is vacant.

9.3 **Auditor's Duties.** The **Auditor** shall be retained to:

- (a) review and report on the system for comprehensive accounting and reporting of **Trust Moneys**;
- (b) conduct an annual audit of all **Assets** and **Trust Moneys** and provide same to the **Trustees** and **Chief**

**and Council;**

- (c) provide any other necessary reports on **Assets, Trust Moneys** and the **Trust** to the **Trustees** and **Chief and Council**; and
- (d) for the purposes of Article 8.3.(c)(i), conduct an annual audit of the financial statement for the **Operation and Maintenance** for each **Capital Work**.

9.4 Copy of Indenture. **Chief and Council** shall provide a copy of this **Indenture** and the **Agreement** to the **Auditor** upon appointment.

#### **PART FOUR: TRUST ACCOUNTS**

#### **10.0 ARTICLE 10: RECEIPT AND ALLOCATION OF TRUST FUNDS**

10.1 Delivery of Financial Proceeds. Subject to Article 7 of the **Agreement**, **York Factory** agrees and irrevocably directs that all **Financial Proceeds** shall be delivered by the payor to the **Corporate Trustee** on behalf of the **Trustees**, to be held by the **Trustees** upon the terms of this **Indenture**.

10.2 Accounts of the Trust. The **Trustees** shall establish the **Community**

**Development Account, the Claims Account and the Investment and Heritage Account.**

10.3 Funding Accounts. The **Trustees** shall fund the **Claims Account** and the **Community Development Account** from the **Financial Proceeds** and the **Funds Available** in each year in accordance with the terms of this **Indenture** and the **Community Approval Process**. The **Investment and Heritage Account** shall be funded as authorized in Article 13.3.

10.4 Unallocated Moneys. Any part of the **Funds Available** unallocated or unpaid on the last business day of a fiscal year shall be distributed to **Chief and Council** who shall settle such funds on the **Trustees** with **Chief and Council's** direction that the funds be deposited to the **Investment and Heritage Account** or the **Community Development Account**. If funds are deposited to the **Community Development Account**, they shall, subject to the **Community Approval Process**, be spent in a subsequent fiscal year in addition to the **Funds Available** for that year.

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

10.6 Distribution of Funds Available. **Funds Available** in a fiscal year shall be paid :

- (a) firstly out of the net income of the **Trust** for the fiscal year, including interest earned on any bonds held for the use and benefit of **York Factory** which is paid to the **Trust**;
- (b) secondly out of any realized and received capital gains of the **Trust**;
- (c) thirdly out of any accumulated income from prior years, and
- (d) lastly out of the balance of the **Trust** capital.

10.7 Limitation. Moneys disbursed from the **Trust** in a fiscal year shall not, in aggregate, exceed:

- (a) amounts available and approved for disbursement from the **Investment and Heritage Account**;
- (b) the **Funds Available**;
- (c) amounts approved, but not paid to or expended by **Chief and Council**, in a previous fiscal year; and
- (d) payment of indemnities under Article 16.12.

## 11.0 **ARTICLE 11: COMMUNITY DEVELOPMENT ACCOUNT**

11.1 Initial Allocation. From the **Financial Proceeds** first received under Schedule 1.1 of the **Agreement**, one million, eight hundred thousand (\$1,800,000.00) dollars, or

such lesser amount as **Chief and Council** may determine and advise the **Trustees**, shall be the **Funds Available** for the fiscal year ending December 31, 1995 and two million, five hundred thousand (\$2,500,000.00) dollars or such lesser amount as **Chief and Council** may determine and advise the **Trustees**, shall be the **Funds Available** for the fiscal year ending December 31, 1996.

11.2 **Community Development Account.** The **Community Development Account** shall be used:

- (a) to implement the **Agreement**, administer the **Trust** and conduct the **Community Approval Process**;
- (b) for the economic, social, and cultural development of **York Factory**;
- (c) for the physical development of the **Reserve**;
- (d) for environmental monitoring and resource management programs;
- (e) for **Operation and Maintenance of Capital Works**;
- (f) for compensatory, mitigatory and remedial programs;
- (g) to distribute approved **Funds Available** to **Chief and Council** for allocation to the **Investment and Heritage Account**; and
- (h) for such other purposes approved by **Chief and Council** following the **Community Approval Process**.

11.3 **Trustees' Discretion.** If there are insufficient funds in the **Community Development Account** to pay for preparing and conducting the annual



**Community Approval Process**, the **Trustees** may, prior to the budget being approved, advance to **Chief and Council** up to fifty thousand (\$50,000.00) dollars from the anticipated **Funds Available** for that purpose.

## 12.0 **ARTICLE 12: CLAIMS ACCOUNT**

12.1 Uses of the Claims Account. The **Claims Account** shall be used for:

- (a) the payment of claims and costs in accordance with Article 5 of the **Agreement**;
- (b) the reasonable costs of the **Arbitrator** arising from claims under Article 5 of the **Agreement**;
- (c) the reasonable costs to investigate claims; and
- (d) payment of costs awarded to a **Claimant**;

12.2 Minimum Balance. Immediately upon settlement of the **Trust**, ten thousand (\$10,000.00) dollars shall be paid into the **Claims Account** from the **Financial Proceeds**. Thereafter, the **Claims Account** shall be replenished at the beginning of each fiscal year as a first priority from the **Funds Available** to ensure that, after payment of all claims approved for payment in the previous fiscal year, a minimum balance of ten thousand (\$10,000.00) dollars is maintained. Funds in the **Claims Account** in excess of ten thousand (\$10,000.00) dollars on the last business day

of a fiscal year shall be transferred on that date to the **Investment and Heritage Account**.

12.3 Reduction in Balance. If claims paid are less than ten thousand (\$10,000.00) dollars per year in the previous five (5) year period, the balance to be maintained in the **Claims Account** may, by **Council Resolution** and the unanimous consent of the **York Factory Trustees**, be reduced to an amount equivalent to the highest amount paid in any of the previous five (5) years. The minimum balance to be maintained in the **Claims Account** may be increased by **Council Resolution** and the unanimous consent of the **York Factory Trustees**.

12.4 Advance Payments. Upon request by **Council Resolution**, the **Trustees** shall release five thousand (\$5,000.00) dollars from the **Claims Account** to **Chief and Council** for the payment of claims. Such **Trust Moneys** so advanced shall be deposited by **Chief and Council** in a separate interest bearing trust account. The **Trustees** may advance further funds, provided they are satisfied that such further amounts are required for the settlement of claims, and provided **Chief and Council** have given to the **Trustees**:

- (a) an accounting of previous funds advanced, including any interest accrued thereon;
- (b) copies of all applications made by **Claimants** to whom money was paid;

- (c) copies of all written decisions made by the **York Factory Trustees**, the **Arbitrator**, or the Court of Appeal in relation to those applications; and
- (d) copies of the Release and Acknowledgement forms signed by **Claimants**.

12.5 Payment by Trustees. If **Chief and Council** are unwilling or unable to comply with the provisions of Article 12.4 and, as a consequence, or for any other reason, approved claims cannot be paid, the **Trustees** shall have the authority to pay such claims directly upon receipt of the **Claimant's** application, the applicable written decision and a Schedule 5.4 form under the **Agreement** signed by the **Claimant**.

12.6 Compensation Sub-Account. Any per capita compensation payments under Article 8.13, which are not claimed within six (6) months of the date such funds were advanced by the **Trustees**, shall be returned by **Chief and Council** to the **Trustees** and held in the Compensation Sub-Account until the earlier of the date such payment is claimed or the expiry of four (4) years from the **Date of the Agreement**. Any interest earned on funds held in the Compensation Sub-Account shall be paid on the last day of the fiscal year to **Chief and Council** who shall settle such funds on the **Trustees**, with direction that they shall be deposited to the Community Development Account, the **Claims Account** or the **Investment and Heritage Account**. Any funds unclaimed following the expiry of the four (4) year period shall

be paid into the **Investment and Heritage Account**.

12.7 Subsequent Payments. Where a valid request for an unpaid per capita compensation payment is subsequently made to **Chief and Council**, **Chief and Council** shall advise the **Trustees** of the individual names, and the **Trustees** shall advance the requisite amount from the Compensation Sub-Account to **Chief and Council** to make the payment.

### 13.0 **ARTICLE 13: INVESTMENT AND HERITAGE ACCOUNT**

13.1 Investment and Heritage Account. The **Investment and Heritage Account** shall hold funds for future uses and contingencies in accordance with this **Indenture**.

13.2 Investment Sub-accounts. The **Trustees** shall, as required, establish and maintain separate records within the **Investment and Heritage Account** for amounts:

- (a) which are available for disbursement in that fiscal year;
- (b) which are not available for disbursement in the fiscal year, but which are otherwise unrestricted; and
- (c) on which restrictions have been placed by the **Community Approval Process**.

13.3 Funding of the Investment and Heritage Account. The **Investment and Heritage Account** may be funded:

- (a) as decided by the **Community Approval Process** under Article 8;
- (b) as decided by a **Majority Vote** of a **Meeting of Members** under Article 8.10 or as may be amended under Article 8.11;
- (c) by transfers of excess funds from the **Claims Account** under Article 12.2;
- (d) from **Hydro** payments allocated under Schedule 2.2 of the **Agreement**;
- (e) by transfers of unallocated portions of the **Funds Available** under Article 10.4 at the end of a fiscal year; and
- (f) by transfer of unclaimed funds from the Compensation Sub-Account established under Article 12.6.

#### 14.0 **ARTICLE 14: INVESTMENT OF TRUST ASSETS**

14.1 Investments. Subject to Article 14.2, the **Trustees** shall, through an office of a financial institution located on a reserve, invest **Assets** only in bills, bonds, debentures, mortgages, or other evidences of indebtedness, guaranteed by the Government of Canada, or a Provincial government of Canada; or rated "R 1-middle" or better by Dominion Bond Rating Service, or rated equivalently by a recognized national or international debt rating service.

- 14.2 Other Investments. The **Trustees** shall, through an office of a financial institution located on a reserve, invest **Assets** of the **Investment and Heritage Account** only in investments authorized by the Pension Benefits Act (Canada) as amended from time to time.
- 14.3 Investments Require Approval of York Factory Trustees. Subject to Articles 14.3 and 14.4, the **Corporate Trustee** shall not invest any **Assets**, other than short term investments, without the prior approval of the **York Factory Trustees**. The **Corporate Trustee** shall invest **Assets** prior to disclosure, as required below, on a short term basis only, in investments issued on a reserve which are as similar as possible to Government of Canada Treasury Bills. The **Corporate Trustee** shall not invest **Assets** without prior disclosure to the **Trustees** of comparative interest rates and terms in deposits or other instruments to those of the **Corporate Trustee**, its parents or subsidiaries, where such investments are proposed.
- 14.4 Market Changes. The **Corporate Trustee** may hold or sell an investment of the **Trust** without consultation with the **York Factory Trustees** in circumstances where in the opinion of the **Corporate Trustee** the market is volatile and, as a consequence of rapid market changes, the time required to consult is likely to result in a loss to the **Trust** of capital value or an opportunity for capital growth.

14.5 Location of Assets. The **Trustees** shall maintain custody of all **Assets** on a reserve.

15.0 **ARTICLE 15: TRUSTEES' POWERS**

15.1 Power and Authorities. Subject to the investment provisions in Article 14, the **Trustees** may:

- (a) make, execute, acknowledge and deliver any agreements, with any person or corporation, concerning any **Asset**;
- (b) subject to Article 14.3 open and operate bank accounts and deposit any cash balances in the hands of the **Corporate Trustee** in any office of a chartered bank or trust company operating on a reserve which is a member in good standing with the Canada Deposit Insurance Corporation;
- (c) following notice to **Chief and Council**:
  - (i) employ other trust companies, professional investment counsellors, solicitors, auditors, accountants and agents,
  - (ii) determine and pay, by direct debit from the **Community Development Account** their reasonable compensation for all expenses, including the agreed fees of the **Corporate Trustee** properly incurred in the administration of this **Trust** subject to the limitation that such costs, exclusive of the costs of the

**Corporate Trustee** and litigation costs relating to the proper administration of the **Trust** will, in the absence of approval by **Majority Vote**, be no greater than five thousand (\$5,000.00) dollars per annum, unless otherwise approved by **Majority Vote**;

- (d) following notice to, and provided they are not parties adverse in interest with the approval of, **Chief and Council**, institute, prosecute, defend or settle any suits or actions or other proceedings affecting them or the **Trust**;
- (e) make, or refrain from making, any election, determination or designation permitted by any statute or regulation enacted by Parliament or by a Legislature of a province of Canada or by any other legislative or governmental body of any other country, which exercise of discretion by the **Trustees** shall be binding upon all of the beneficiaries of this **Trust**;
- (f) vote all shares and stocks forming part of the **Assets**; exercise all rights incidental to the ownership of shares, stocks, bonds, debentures or other securities or investments forming part of the **Assets**, issue proxies appointing one of them , or another person to vote for the election of themselves, or any other candidate, to any executive or other board or committee of any such company or corporation or association; serve in any such office or on any such



board or committee; consent to, and join in, any plan for reconstruction, reorganization, amalgamation, consolidation, readjustment, liquidation, dissolution or winding-up, in respect of any company or corporation whose shares, stocks, bonds, debentures, notes or other securities form part of the **Assets**;

- (g) sell, call in and convert into money, any **Assets** not consisting of money, at such time, and in such manner and upon such terms, as they decide; or postpone such conversion of property, or any part of that property, for such length of time as they consider advisable. The **Trustees** may retain, as an authorized investment of the **Trust**, for all purposes of this **Trust**, for such length of time as they consider necessary, any cash or other property originally transferred to the **Trustees** pursuant to this **Indenture**;
- (h) following notice to **Chief and Council** purchase, pay premiums on, and hold policies of insurance; and
- (i) following notice to **Chief and Council**, pay any taxes payable in respect of any **Assets**.

15.2 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 the **Corporate Trustee**.

15.3 Reliance Upon Reports. The **Trustees** may rely and act upon the accuracy of any statement, report, certificate or opinion from **Chief and Council**, the **Arbitrator**, the **Auditor**, or any solicitor for the **Trust**, or any person required to prepare a report or certificate under this **Indenture**, and shall not be responsible or held liable for any loss or damage resulting from acting in good faith, upon such statement, certificate, opinion or report.

15.4 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 Articles 6. 10 and 7.9.

15.5 Procedures for Indemnification. When requesting indemnification under Article 15.4, the **Trustee** shall give written notice to **Chief and Council**, setting out the amount sought, the reason for the indemnification and the time such payment is

required. Within thirty (30) days of receipt of the notice, **Chief and Council** may either approve payment of the indemnification by notifying the **Trustees** in writing or if it disapproves, refer the matter to the **Arbitrator** for resolution. Failure of **Chief and Council** to refer the matter to the **Arbitrator** within thirty (30) days shall be deemed to be approval of the indemnification. No indemnification shall be paid from the **Funds Available** before provision is made to maintain the minimum balance in the **Claims Account** and the indemnification has been approved by **Chief and Council**, or ordered by the **Arbitrator** or the Court of Appeal of Manitoba.

## 16.0 **ARTICLE 16 : PAYMENTS FROM THE TRUST**

16.1 General requirements. Prior to making any payment under Article 16 the **Corporate Trustee**, on behalf of the **Trustees**, shall have:

- (a) received with respect to any amount requested, a **Council Resolution** in a Schedule 4 or 5 form, as applicable;
- (b) received evidence, in a form acceptable to the **Corporate Trustee**, that **Chief and Council** is not in default of the accounting and reporting requirements as set out in Articles 17 and 19;
- (c) received evidence, in a form acceptable to the **Trustees**, that the annual audit opinion required pursuant to Article 17.2 is not

subject to a qualification as set out in Article 17.2, or any other qualification as would indicate a material breach of the **Agreement** or this **Indenture**, which qualification has not been rectified to the satisfaction of the **Trustees** in their sole discretion; but, except where expressly required by Article 8.7, the **Trustees** shall have no obligation or right to question the appropriateness of an expenditure approved by the **Community Approval Process**;

- (d) confirmed there are sufficient funds to meet the request;
- (e) determined, on reasonable grounds, that immediately after the payment is made this **Trust** will be able to meet its liabilities as they become due;
- (f) determined that the use of the funds, as disclosed in the documents, will not entail any forward commitment of **Assets** not authorized by this **Indenture**; and
- (g) determined that the **Net Value of the Assets** will, after such payment, be not less than fourteen million (\$14,000,000.00) dollars.

After complying with Article 16.1 the **Trustees** shall make the necessary payments from a financial institution located on a reserve.

16.2 Disbursement of Funds Available. Subject to Article 16 the **Trustees** shall

make payments to **Chief and Council** or its designated agent, from the **Funds Available** as specified in a budget approved by the **Community Approval Process**.

16.3 **Claims Account**. The **Trustees** shall make payments from the **Claims Account** to **Chief and Council** or to **Claimants** pursuant to Article 12.

16.4 **Investment and Heritage Account**. Prior to making payments from the **Investment and Heritage Account**, the **Corporate Trustee** shall:

- (a) receive a certificate, and the required supporting documents, from **Chief and Council** in a Schedule 5 form confirming that a **Meeting of Members** approved the expenditure of **Trust Moneys** in the amount specified from the **Investment and Heritage Account**; and
- (b) determine that the use proposed for the funds complies with the restrictions imposed by **Majority Vote** under Article 8.10 or as amended under Article 8.11 or that there are sufficient unrestricted funds to make the payment.

16.5 **Community Development Account**. Subject to Article 16.6, the **Corporate Trustee** shall pay **Chief and Council**, or its designated agents the amounts allocated to the **Community Development Account** to the extent requested by

**Chief and Council** but not more than a third (1/3) thereof shall be paid in respect of any quarter (1/4) of a fiscal year. Within those limits, any amounts not requested by **Chief and Council** in a prior quarter may be requested and if requested shall be paid in a subsequent quarter in addition to the amounts which may be requested and paid in that quarter. If in the initial year of this **Trust** the **Financial Proceeds** are paid part way through the fiscal year, advances pursuant to this Article shall be payable as though the **Trust** commenced at the beginning of that year. Prior to the end of the fiscal year, the **Trustees** shall allocate all advances paid during the year in accordance with Articles 10.4 and 10.6.

16.6 Limitation on Disbursement of Funds. The **Trustees** shall not release a quarterly payment from the **Funds Available** if more than one quarterly report required from **Chief and Council** pursuant to Article 19.1(a) is outstanding.

16.7 Payment to Agent. Where permitted by this **Indenture** and upon request by **Chief and Council**, the **Trustees** shall make payments to an agent of **Chief and Council** provided that:

- (a) the agent is and continues to be covered by the **Auditor's** certification under Article 17.2 with respect to comprehensive accounting and reporting systems; and
- (b) if such agent is a corporation, **Chief and Council** have certified that the corporation is:

- (i) wholly controlled by **Chief and Council**,
- (ii) in good standing, and
- (iii) resident on **Reserve**.

16.8 Transmittal. Funds paid to a designated agent of **Chief and Council** shall be forwarded with a transmittal clearly documenting that they are **Trust Moneys** and the purposes for which they have been advanced and the **Corporate Trustee** shall at the same time forward a copy of such transmittal to **Chief and Council**.

16.9 Payments for Children. Payments to any person under the age of majority shall be held in the **Trust** until such person reaches the age of majority subject to parents or guardians of such persons applying under applicable law for advances for the benefit or maintenance of their child or ward. **York Factory** will indemnify **Canada, Hydro** and **Manitoba** in respect of any claim by a **Member** arising from the administration or distribution of payments from the **Trust** under Article 16.9 to parents or guardians for the use and benefit of persons under the age of majority.

16.10 Acknowledgment and Receipt. No payments shall be made to a parent or guardian of a person under the age of majority until the parent or guardian has completed and provided an Acknowledgment and Receipt in a Schedule 6 form.

16.11 Payment Absolute Discharge. Any moneys paid by the **Trustees** to **Chief and**

**Council**, or its designated agent or pursuant to Article 16.7 and 16.9, shall be a sufficient discharge to the **Trustees** with respect thereto.

16.12 Indemnity. The **Trustees** shall honour the indemnity obligations under Articles 12.3.1 and 5.4.3(b) and (e) of the **Agreement** and return the **Hydro Bond** or moneys from the **Trust** to meet the indemnity obligation.

17.0 **ARTICLE 17: ADMINISTRATION OF FUNDS**  
**RECEIVED FROM THE TRUST**

17.1 Separate Trust Accounts. All **Trust Moneys** received by **Chief and Council**, or its designated agent, from separate **Accounts** shall be deposited in separate accounts in a financial institution on a reserve, and not mingled with money from other accounts or other sources. However, **Chief and Council** or its designated agent may establish additional segregated trust accounts in a financial institution on a reserve, for **Trust Moneys** disbursed from the **Community Development Account** or the **Investment and Heritage Account**.

17.2 Establishment of Expenditure Records. The **Trustees** shall not advance funds from the **Trust** to **Chief and Council** or its designated agents until the **Auditor** has provided written confirmation that an adequate system has been established by **Chief and Council** to provide for the comprehensive accounting and reporting of



**Trust Moneys** and the disclosures made, and budget approved during, the **Community Approval Process**. If the annual audit contains any qualification with respect to the operation of that system, the **Trustees** shall not make any further payments to **Chief and Council** or its designated agent until the **Auditor** confirms such deficiency has been rectified.

- 17.3 Expenditures. Expenditures of **Trust Moneys** by **Chief and Council** or its designated agents shall be fully documented in such a manner as to evidence readily and accurately that such expenditure has not varied from the budget approved by and disclosures made during the **Community Approval Process**.
- 17.4 Direct Management. Where **Trust Moneys** are administered by its designated agents, **Chief and Council** shall remain responsible for the proper use thereof.
- 17.5 Indirect Management. When authorized by the **Community Approval Process**, **Chief and Council** may meet its responsibilities for the administration of **Trust Moneys** for specified purposes indirectly through the efforts of community organizations or **Members**. In such circumstances the responsibility of **Chief and Council** will, after payment to such community organization or **Member**, be limited to reporting in accordance with the requirements of Article 19.1.

**PART FIVE: REPORTS AND AUDITS**

**18.0                   ARTICLE 18: TRUSTEES' REPORT**

18.1 Annual Reporting Requirements. Within ninety (90) days after the end of each fiscal year, the **Trustees** shall provide **Chief and Council**, and, upon request, any **Member** or **Party**, with an annual report on the financial operations of the **Trust**, including:

- (a) the **Auditor's** report and opinion, including any supporting documentation; and
- (b) any special audit reports and opinions requested by the **Trustees**.

18.2 Required Meeting. If the **Trustees'** report signed by all **Trustees** is not provided as required in Article 18.1, **Chief and Council** shall within fifteen (15) days call a **Meeting of Members**. The **Trustees** shall attend and explain their failure to comply with the reporting requirements. The failure of the **Trustees** to attend such **Meeting of Members** or to provide an explanation satisfactory to **Chief and Council** and the **Members** shall be grounds for termination.

**19.0                   ARTICLE 19: REPORT ON APPLICATION OF TRUST MONEYS**

19.1 Financial Reports. **Chief and Council** shall make available to **Members** and

provide the **Trustees** with:

- (a) quarterly reports, within thirty (30) days of the end of each quarter, which reconcile **Trust Moneys** received and spent; and
- (b) a yearly narrative and audited financial report which report shall include:
  - (i) a financial statement of **Trust Moneys** received,
  - (ii) an opinion of the **Auditor** as to the compliance, or otherwise, of the accounting system utilized, with the standards established in Article 17.2, and
  - (iii) the audited financial statement for **Operation and Maintenance of Capital Works** for the purposes of Article 8.3(c)(i).

19.2 Availability of Reports. The annual report required pursuant to Article 19.1, shall be approved by **Chief and Council** and shall be provided to the **Trustees** within ninety (90) days after the end of the fiscal year, and notice of the availability of the report shall be given in the same manner as for a **Meeting of Members**.

19.3 Members Meeting. Within thirty (30) days of the provision of the **Trustees'** report to **Chief and Council** pursuant to Article 18.1, and **Chief and Council's** report to the **Trustees** pursuant to Article 19.1, a **Meeting of Members** shall be held to discuss both reports. The **Trustees** and **Chief and Council** shall attend this

meeting.

19.4 Non-compliance. If **Chief and Council** does not comply with the reporting provisions set out in Article 19, the **Trustees** shall suspend payment of **Trust Moneys** except for indemnities pursuant to the **Agreement** or the **Indenture** or payments specifically approved by a **Majority Vote** of a **Meeting of Members**, until the required reports have been provided.

19.5 Required Meeting. If the report required by Article 19.1 (b) is not provided to the **Trustees** within ninety (90) days after the end of the fiscal year, any **Member** may apply to an **Arbitrator** on the list under Article 10.3.1 of the **Agreement** to conduct a **Meeting of Members** at which **Chief and Council** shall explain its failure to comply with the reporting requirements.

## PART SIX: DISPUTES AND ENFORCEMENT

### 20.0                   ARTICLE 20: DISPUTES AND ENFORCEMENT

20.1 Disputed Vacancy. If a dispute arises between **Chief and Council** and any **York Factory Trustee** as to whether a **York Factory Trustee** position is vacant, either party may, within thirty (30) days of the date the dispute arose, refer the matter to arbitration. In the event of a referral to **Arbitration**, the incumbent **York Factory**

**Trustee** shall remain in office until removed by the **Arbitrator** following which **Chief and Council** shall appoint a successor.

20.2 Dispute with York Factory Members. Any **Member** who alleges that a **York Factory Trustee** has violated the **Agreement** or this **Indenture** may submit the matter to arbitration.

20.3 Dispute With Chief and Council. The **Corporate Trustee**, a **York Factory Trustee** or any **Member** who alleges that **Chief and Council** or a member of **Chief and Council** has violated the **Agreement** or this **Indenture** may submit the matter to arbitration.

20.4 Arbitration of Trust. If the **Corporate Trustee** or the **York Factory Trustees** do not perform their obligations and duties under this **Indenture**, **Chief and Council** or any **Member** may apply to the **Arbitrator** to resolve any dispute, interpret this **Indenture**, or declare rights and obligations under this **Indenture**, or apply to court for an order compelling compliance.

20.5 Other Disputes. Any dispute in relation to this **Indenture** involving parties to or beneficiaries of this **Indenture** may be referred to the **Arbitrator** provided that there shall be no arbitration under the **Indenture** involving **Canada, Manitoba** or **Hydro** which involves any other person except **York Factory**.

**PART SEVEN: AMENDMENT AND TERMINATION**

**21.0                    ARTICLE 21: AMENDMENT AND TERMINATION**

21.1 **Trust Irrevocable.** Except as otherwise provided in this **Indenture**, the **Trust** established by this **Indenture** is irrevocable.

21.2 **Application to Court.** Subject to Article 21.3, **York Factory** may, with the written consent of **Canada, Manitoba** and **Hydro**, which consents shall not be unreasonably withheld, apply to a court of competent jurisdiction to dissolve, amend, vary, add to, revise or modify the terms and conditions of this **Indenture**. Such application may proceed in the absence of written consent from **Canada, Manitoba** or **Hydro** if the court determines such consent has been unreasonably withheld.

21.3 **Consent of Members.** Before applying to a court of competent jurisdiction under Article 21.2, **Chief and Council** shall:

- (a) give **Members** at least thirty (30) days notice in the same manner and with the same disclosures as for a **Meeting of Members** under Article 8.2, that a meeting will be held to discuss varying or dissolving the **Trust**;
- (b) hold a meeting where **Chief and Council** 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 the adult **Members** present at such meeting, by secret ballot, authorizing **Chief and Council** to make the court application;
- (d) where the intention is to dissolve the **Trust**, obtain a two-thirds (2/3) majority vote of the adult **Members** present at a meeting where not less than twenty-five (25%) per cent of all adult **Members**, or fifty (50%) per cent of all adult **Members** ordinarily resident on **Reserve**, whichever is the greater are present for the vote, by secret ballot, authorizing **Chief and Council** to make the court application;
- (e) compile a list of those **Members** attending the meeting and the results of the vote, which document shall be filed in court with the application;  
and
- (f) after obtaining authorization by a secret ballot vote pass a **Council Resolution** authorizing the court application.

21.4 Effective Date of Amendment or Dissolution. A change in the **Trust** under Article 21.2 shall take effect only after all appeals are exhausted or the time for filing them has expired.

21.5 Compliance. Upon being served with an order of the court dissolving the **Trust**, the **Trustees** shall, subject to Article 21.4 immediately comply with the court order.

## **PART EIGHT: ACKNOWLEDGEMENT AND RELEASE**

### **22.0 ARTICLE 22: ACKNOWLEDGEMENT AND RELEASE**

22.1 Acknowledgement. **York Factory** acknowledges that the arrangements in this **Indenture** provide decision making and management authority, disclosure and accountability by, to and within, **York Factory**; and that none of **Manitoba, Hydro, or Canada** shall be responsible for the effectiveness or operation of these arrangements. **York Factory** further acknowledges that there is no sanction or warranty, either express or implied, by any of **Manitoba, Hydro, or Canada**, that the arrangements in this **Indenture** or the **Agreement** will attain the development or other purposes of **York Factory**. Article 22.1 does not alter or qualify the obligations of **Canada, Manitoba or Hydro** pursuant to the **Agreement**.

22.2 Release. **York Factory** releases and forever discharges **Canada, 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 **York Factory** has had, now has, or hereafter can, shall or may have, for, or in respect of obligations of **Canada, Manitoba, or Hydro**



to **York Factory** for anything done or omitted to be done by **Canada, Manitoba, or Hydro** to and from the date of this **Indenture**, with respect to any of the matters or arrangements provided for in this **Indenture** including the substitution of these **Trust** arrangements for the provisions of the Indian Act (Canada) pertaining to Indian moneys. Article 22.2 does not limit the obligations assumed by **Canada, Manitoba, and Hydro** pursuant to the **Agreement** . Nothing in Article 22.2 shall relieve **Canada, 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.

## **PART NINE: GENERAL PROVISIONS**

### **23.0**

#### **ARTICLE 23: GENERAL PROVISIONS**

23.1 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.

23.2 Assignment. This **Indenture** and the rights and obligations under it may not be assigned.

23.3 Enurement. This **Indenture** shall enure to the benefit of and be binding upon the **Parties**, the beneficiaries, and the heirs, executors, administrators, and successors

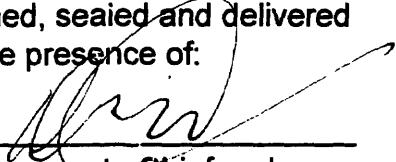
of all of them.

23.4 **Hydro Ceasing to be Agent.** If **Hydro** should cease to be an agent of Her Majesty in Right of Manitoba, all of its rights under this **Indenture** shall devolve upon **Manitoba**.

23.5 **Entire Agreement.** This **Indenture** and the **Agreement** constitute the entire agreement between the **Parties**, 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**.

23.6 **Indexing.** Except as otherwise provided, limits on any dollar amounts specified in this **Indenture** may be adjusted annually by the **Trustees**, based upon the **Consumer Price Index**.

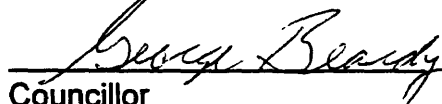
Signed, sealed and delivered  
in the presence of:

  
\_\_\_\_\_  
Witness as to Chief and  
Councillors

**York Factory First Nation  
as Settlor**

  
\_\_\_\_\_  
Chief

  
\_\_\_\_\_  
Councillor

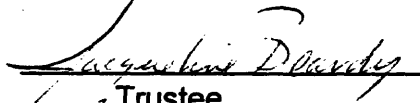
  
\_\_\_\_\_  
Councillor

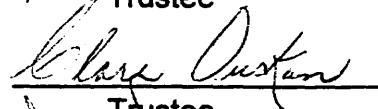
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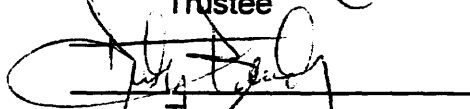
on the 24<sup>th</sup> day of Dec., 1995.


**York Factory Trustees**

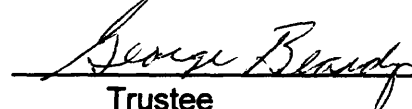
  
\_\_\_\_\_  
Trustee

  
\_\_\_\_\_  
Trustee

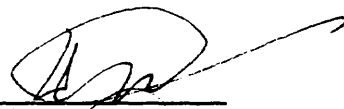
  
\_\_\_\_\_  
Trustee


  
\_\_\_\_\_  
Trustee


  
\_\_\_\_\_  
Trustee


  
\_\_\_\_\_  
Trustee

on the 24<sup>th</sup> day of Dec., 1995.


  
\_\_\_\_\_  
Witness

  
\_\_\_\_\_  
Witness

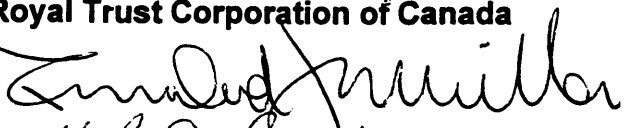
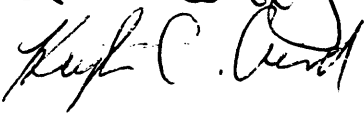
  
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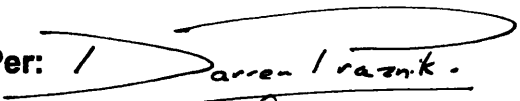
  
\_\_\_\_\_  
Witness

**The Royal Trust Corporation of Canada**

Per:   
Per: 

on the ~~5<sup>th</sup>~~ day of Dec, 1995.

**Her Majesty the Queen in the Right of the Province of Manitoba**

Per: 


on the ~~5<sup>th</sup>~~ day of Dec, 1995.

**The Manitoba Hydro Electric Board**

Per:   
Per: 

*Effective* on the 8<sup>th</sup> day of Decmber, 1995.

**Her Majesty the Queen in The Right of Canada**

Per:   
on the 11 day of Jan, 1995

Schedule 1

**KITCHE-WASKAHIGAN TRUST**

**Undertaking and Acceptance of Chief or Councillor**

I, \_\_\_\_\_, Chief/Councillor of the York Factory First Nation  
elected to that office \_\_\_\_\_, 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 1995 Trust Indenture establishing the Kitche-Waskahigan Trust, with particular reference to the duties, responsibilities and liabilities of members of Chief and Council in the administration of the Trust, the Community Approval Process and the expenditure of and accounting for Trust moneys 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 liabilities of a member of Chief and Council under the Kitche-Waskahigan Trust during my term of office.

DATED AT York Landing on the      day of      ,      .

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Chief/Councillor

Schedule 2

**KITCHE-WASKAHIGAN TRUST**

**Undertaking and Acceptance of York Factory Trustee**

I, \_\_\_\_\_, (elected at a Meeting of Members/appointed by)  
Chief and Council of the York Factory First Nation as a York Factory Trustee on  
\_\_\_\_\_ state and undertake as follows:  
(date of election/appointment)

1. I have read or I have had explained to me the terms of the 1995 Trust Indenture establishing the Kitche-Waskahigan Trust, with particular reference to the responsibilities and liabilities of York Factory Trustees in the administration of the Trust, the Community Approval Process and the disbursement of and accounting for assets and moneys of the Trust 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 liabilities of a York Factory Trustee under the Kitche-Waskahigan Trust during my term in that office.

DATED AT York Landing on the      day of      , .

\_\_\_\_\_  
Witness

\_\_\_\_\_  
York Factory Trustee

Schedule 3

**KITCHE-WASKAHIGAN TRUST**

**Undertaking and Acceptance of Corporate Trustee**

For two dollars (\$2.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, \_\_\_\_\_ ("the Company")  
(name of the Trust Company)  
undertakes and certifies as follows:

1. The Company is authorized under all applicable laws to carry on the business of a trust company in Manitoba;
2. The Company is a member in good standing of the Canada Deposit Insurance Corporation; and
3. The Company agrees to accept and perform all the duties and responsibilities of a Corporate Trustee under the 1995 Trust Indenture establishing the Kitche-Waskahigan Trust and to be bound by that Indenture as though it were an original signatory thereto.

DATED AT York Landing on the      day of      ,      .

\_\_\_\_\_  
Witness

\_\_\_\_\_  
for (Trust Company)

\_\_\_\_\_  
Witness

\_\_\_\_\_  
for (Trust Company)

Schedule 4

**KITCHE-WASKAHIGAN TRUST**

**Resolution of Chief and Council  
Certificate of Disclosure and  
Budget Approval by Community Approval Process**

TO: Corporate Trustee, Trustees of the Kitche-Waskahigan Trust

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 Article 8.3, and if applicable Articles 4.5, 8.6 and 8.8 of the 1995 Trust Indenture, with respect to all amounts in that budget and as evidenced by copies of the notices and other documents attached hereto;
2. \_\_\_\_\_ considered at a Meeting of Members called in accordance with the requirements of Article 8.2 of the Trust Indenture; and
3. \_\_\_\_\_ approved by Chief and Council as evidenced by the attached Council Resolution.

DATED AT York Landing on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Chief

\_\_\_\_\_  
Councillor

\_\_\_\_\_  
Councillor

\_\_\_\_\_  
Councillor

\_\_\_\_\_  
Witness



Schedule 5

**KITCHE-WASKAHIGAN TRUST**

**Resolution of Chief and Council  
Certificate of Disclosure and  
Budget Approval by Community Approval Process for  
Investment Heritage Account**

TO: Corporate Trustee, Trustees of the Kitche-Waskahigan Trust

This is to certify that the proposed expenditure plan attached hereto for the Investment and Heritage Account of the Kitche-Waskahigan Trust was:

1. to the best of our information and belief the subject of true disclosure in full compliance with the disclosure requirements of Article 8.3 and if applicable Articles 4.5, 8.6 and 8.8 of the Trust Indenture, with respect to all amounts in that budget;
2. considered at a Meeting of Members called in accordance with the requirements of Article 8.2 of the 1995 Trust Indenture; and
3. approved by Majority Vote in accordance with the provisions of Article 8.10 of the Trust Indenture or by a two-thirds (2/3) vote of the Members over the age of 18 years who voted at that meeting, where Article 8.11 applies.

DATED AT York Landing on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Chief

\_\_\_\_\_  
Councillor

\_\_\_\_\_  
Councillor

\_\_\_\_\_  
Councillor

\_\_\_\_\_  
Witness

Schedule 6

**KITCHE-WASKAHIGAN TRUST**

**Acknowledgment and Receipt of**

**Parent, Guardian or Legal Representative**

I, \_\_\_\_\_, of \_\_\_\_\_, in the Province of \_\_\_\_\_  
am the \_\_\_\_\_  
(indicate whether parent/guardian/lawfully appointed legal representative)

of \_\_\_\_\_, in the Province of \_\_\_\_\_, satisfactory evidence  
of which has been provided to \_\_\_\_\_  
(indicate whether York Factory Chief and Council or  
Trustees of the Kitche-Waskahigan Trust)

have received from \_\_\_\_\_  
(indicate whether York Factory Chief and Council or the Trustees of  
the Kitche-Waskahigan 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 York Landing on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Parent/Guardian/Legal Representative

## ARTICLE 2

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## ARTICLE 2

### 2.0 PROJECT OPERATIONS AND OPERATING WATER REGIME

#### 2.1 INTRODUCTION

2.1.1 Introduction. Article 2 establishes the **Compensated Range** settled by this **Agreement** and sets out a payment schedule for compensation for damages payable by **Hydro** to **York Factory** when **Hydro** operates the **Project** outside the **Compensated Range**. Article 2 also establishes transportation programs associated with the water regime.

#### 2.2 RECORDS

2.2.1 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. 7 which, for the purposes of this **Agreement**, is at an elevation of 168.682 m (553.42 ft.) **ASL**. **Manitoba** certifies that all of the **Controlling Bench Marks**, including the referencing B.M. No. 7, 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, to the satisfaction

of the Surveyor General of Canada, 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**. **Manitoba, York Factory** and **Hydro** release **Canada** from all liability with respect to the definition, selection or determination of the **Controlling Bench Marks** and **ASL Local Datum**.

2.2.2 Operation of Gauging Station. At the **Date of this Agreement**, **Canada** operates the **Split Lake Gauge** in accordance with the Canada - Manitoba Water Quantity Surveys Agreement dated April 1, 1975. **Canada** will give not less than one hundred eighty (180) days notice to the other **Parties** if it intends to cease operating the **Split Lake Gauge**. The **Parties** agree that if **Canada** ceases such operation **Hydro** shall forthwith assume such duties. If it becomes necessary to replace or re-locate the **Split Lake Gauge**, 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 Gauge** 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 Gauge**, the design and location shall be approved by **York Factory, Hydro**, and at its option **Canada**, as represented by the Inland Waters Directorate of Environment Canada or its successor, but **Canada** shall be exposed to no liability under this **Agreement** for a failure to exercise such option.

2.2.3 Records. From and after the **Date of this Agreement**, **Hydro** will maintain a record of the water levels recorded by the **Split Lake Gauge** 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 Gauge**.

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

## 2.3 OPERATION OF THE PROJECT

2.3.1 No Restraint on Operations. Except as expressly set out in Article 9.4.7(a) or the **Easement Agreement**, nothing in this **Agreement** shall impose, or be read or construed to impose, any restraint on the lawful operation of the

**Project by Hydro.****2.4 COMPENSATED RANGE**

2.4.1 **Compensated Range.** The parameters of the **Compensated Range** are shown graphically on Schedules 2.3, 2.4 and 2.5 and shall be described by **Daily Average Water Levels** and **Rates of Change** as follows:

**(a) Daily Average Water Levels**

Time Period	Maximum		Minimum	
January	168.097m	(551.50ft)	166.726m	(547.00ft)
February 1-15	168.097m	(551.50ft)	166.726m	(547.00ft)
February 16-28(29)	167.975m	(551.10ft)	166.726m	(547.00ft)
March 1-15	167.853m	(550.70ft)	166.573m	(546.50ft)
March 16-31	167.640m	(550.00ft)	166.421m	(546.00ft)
April 1-15	167.640m	(550.00ft)	166.116m	(545.00ft)
April 16-30	167.640m	(550.00ft)	165.964m	(544.50ft)
May	167.640m	(550.00ft)	165.811m	(544.00ft)
June	167.640m	(550.00ft)	165.811m	(544.00ft)
July	167.640m	(550.00ft)	165.811m	(544.00ft)
August	167.640m	(550.00ft)	165.811m	(544.00ft)
September	167.640m	(550.00ft)	165.811m	(544.00ft)
October 1-15	167.640m	(550.00ft)	165.811m	(544.00ft)
October 16-31	167.640m	(550.00ft)	165.964m	(544.50ft)
November 1-10	167.640m	(550.00ft)	166.116m	(545.00ft)
November 11-15	167.792m	(550.50ft)	166.116m	(545.00ft)
November 16-30	167.792m	(550.50ft)	166.268m	(545.50ft)
December 1-15	168.006m	(551.20ft)	166.573m	(546.50ft)
December 16-31	168.128m	(551.60ft)	166.726m	(547.00ft)

(b) a **Rate of Change**, which does not exceed:



<u>Relevant Period</u>	<u>Increase</u>	<u>Decrease</u>
(i) 7-day	0.640 m (2.10 ft.)	0.488 m (1.60 ft.)
(ii) 31-day	0.914 m (3.00 ft.)	1.067 m (3.50 ft.)

## 2.5 PREDETERMINED COMPENSATION

2.5.1 Schedule of Predetermined Compensation. If **Daily Average Water Levels** or **Rates of Change** outside of the parameters of the **Compensated Range** occur after the **Date of this Agreement**, **Hydro** shall pay compensation to **York Factory** in accordance with Schedule 2.2.

2.5.2 Reasonable Assessment of Damages. Schedule 2.2 represents the reasonable assessment by **Hydro** and **York Factory** of damages which **York Factory** will suffer if **Hydro** operates the **Project** so as to create **Daily Average Water Levels** or **Rates of Change** outside the parameters of the **Compensated Range**. These damages are not in relation to any past or future taking or using of **Reserve Lands** and do not authorize any breach of the **Easement Agreement** nor constitute compensation for the taking or using of **Easement Lands** or other **Reserve Lands**. The issue of compensation for the taking or using of **Easement Lands** is fully addressed by the **Easement Agreement**, **Compensation Lands** to be transferred from **Manitoba** and other arrangements set forth in this **Agreement**.

2.5.3 Remedy for Encroachment. Where, through the fault of **Hydro**, there is a taking or using of **Reserve Lands** not permitted by the **Easement Agreement** the court shall not, in determining reasonable redress for **York Factory** consider the provisions for, or payment of, pre-determined compensation under Schedule 2.2 as compensation for such taking or using but with respect thereto, may give judgement for damages or equitable relief available in such cases.

2.5.4 Calculation and Payment. In each annual period running from April 1 to the next March 31, **Hydro** shall, not later than January 15 for each day from the preceding April 1 to October 31, and not later than June 15 for each day from the preceding November 1 to the following March 31:

- (a) determine the **Daily Average Water Level**;
- (b) as illustrated in Schedule 2.6, calculate the seven (7) and thirty-one (31) day **Rate of Change** as follows:
  - (i) the seven (7) day **Rate of Change** shall be the difference between the highest **Daily Average Water Level** and the lowest **Daily Average Water Level**, whether a decrease or increase, within a seven (7) day period which includes the day for which **Rate of Change** is being calculated and the three (3) days immediately before and after that day;
  - (ii) the thirty-one (31) day **Rate of Change** shall be the

difference between the highest **Daily Average Water Level** and the lowest **Daily Average Water Level** whether a decrease or increase within a thirty-one (31) day period which includes the day for which **Rate of Change** is being calculated and the fifteen (15) days immediately before and after that day;

- (c) applying the sample formulae set forth in Schedule 2.7, determine the compensation, if any, payable under Schedule 2.2;
- (d) provide **York Factory** with a written report summarizing the data and compensation calculations in a form similar to the Summary of Pre-determined Compensation in Schedule 2.8; and
- (e) pay the compensation due to the **Corporate Trustee** for deposit to the **Trust**.

2.5.5 Dispute. If **York Factory** disagrees with the report, the accuracy of the data, the calculations, or the compensation paid pursuant to Article 2.5.4 and Schedule 2.2, it shall give written notice with reasons to **Hydro** within one hundred twenty (120) days of its receipt of the report. If **York Factory** fails to give such notice of dispute within the time period specified, it shall conclusively be deemed to have accepted the report including the data, the calculations and the compensation, as accurate.

2.5.6 Notice to Amend Schedule 2.2. Where a fundamental change of a long-term nature which is not the result of **Future Development**, causes **Daily Average Water Levels** or **Rates of Change** consistently, but not necessarily constantly, outside of the parameters of the **Compensated Range**, or where **York Factory** and **Hydro** reasonably anticipate the occurrence of such a fundamental change, either **York Factory** or **Hydro** may give notice to the other, that it considers the compensation set forth in Schedule 2.2 to be inordinately high or inordinately low given the circumstances of the fundamental change, or the anticipated fundamental change, and that it wishes to amend Schedule 2.2. Changes which are the result of **Future Development** are to be dealt with under Article 9.

2.5.7 Process. If **York Factory** and **Hydro** agree that there is, or there is likely to be, a fundamental change referred to in Article 2.5.6 or if such a determination is made by the **Arbitrator**, **York Factory** and **Hydro** shall:

- (a) identify and review any positive and negative effects on **York Factory** and **Members** which have resulted, or which it is anticipated would result, from the fundamental change, including without limitation any opportunities for on-the-job training, employment or business for **York Factory** or **Members**;
- (b) undertake such studies and investigations as are necessary to obtain a reasonable assessment and understanding of such potential effects which have been identified;

- (c) consider methods which could eliminate or alleviate any **Adverse Effects** which have been identified;
- (d) identify, design and cost any mitigatory and remedial works which are reasonable to eliminate or alleviate any **Adverse Effects**;
- (e) determine appropriate compensation for any **Adverse Effects** which cannot reasonably be eliminated or alleviated;
- (f) on the basis of the foregoing, assess whether, as a consequence of the fundamental change, the compensation resulting from determinations under Schedule 2.2 is inordinately high or inordinately low; and
- (g) if appropriate, by agreement, amend Schedule 2.2.

2.5.8 Joint Studies. Whenever a study or investigation of an issue is required to conclude the process outlined in Article 2.5.7, **York Factory** and **Hydro** agree that, if reasonable, such study or investigation, including the establishment of the terms of reference for same, shall be undertaken by them jointly.

2.5.9 Budget. **Hydro** and **York Factory** shall jointly prepare a budget for the reasonable costs of **York Factory** to review and investigate information provided or required under Articles 2.5.7 and 2.5.8. **Hydro** agrees to pay such costs provided that:

- (a) the actual invoice reflects the budget or a revised budget; and

- (b) the work done accords with the work outlined in the budget or revised budget.

2.5.10 **Arbitrator's Authority.** Notwithstanding Article 10.7.6, if a dispute arises between **York Factory** and **Hydro** under Articles 2.5.6, 2.5.7, 2.5.8 or 2.5.9 the **Arbitrator** shall have the authority to resolve such dispute, including authority to amend Schedule 2.2 so that the level of compensation is neither inordinately high nor inordinately low, but the **Arbitrator** shall not have authority to terminate Schedule 2.2.

2.5.11 **Proof of Allegation.** In any arbitration under Article 2.5.10 the onus shall be on the **Party** alleging that:

- (a) a fundamental change of a long-term nature will cause **Daily Average Water Levels** or **Rates of Change** consistently, but not necessarily constantly, outside the parameters of the **Compensated Range**; and
- (b) the compensation set forth in Schedule 2.2, as may be amended from time to time, is inordinately high or inordinately low;

to prove such allegations. In the absence of such fundamental change, except as set forth in Article 2.5.13, the reasonableness of the pre-determined compensation in relation to occurrences outside of the **Compensated Range** shall not be open to dispute.

2.5.12 Continuation of Payments. Schedule 2.2 shall continue in effect until amended by agreement between **York Factory** and **Hydro**, or by order of the **Arbitrator**.

2.5.13 Additional Compensation. Notwithstanding the limit on compensation payable under Article 1.3 of Schedule 2.2, in extraordinary circumstances in any year, **York Factory** may request additional compensation over such limit where the damage arising from **Daily Average Water Levels** and **Rates of Change** in excess of the **Compensated Range** is greater than the amount payable under such limit. If **York Factory** and **Hydro** are unable to resolve the matter, either may refer the dispute to the **Arbitrator** who may award additional compensation if it is determined that the maximum compensation as limited by Article 1.3 of Schedule 2.2 is too low for the year in which the extraordinary circumstances arose. The onus of establishing that such limited compensation is inadequate to address the damages arising from such extraordinary circumstances will be on **York Factory**.

2.5.14 Onus. Where a matter is referred to arbitration under Articles 2.5.10 or 2.5.13, the onus of proving the alleged damage shall be on the **Party** alleging such damage, but the onus shall always be on **Hydro** to establish that the **Project** did not cause, or contribute to, any such alleged damage or to an alleged **Adverse Effect**.

2.5.15 Past Period. A sample form of summary table for pre-determined compensation is shown on Schedule 2.8.

## 2.6 FORECASTS

2.6.1 Winter Water Projection. **Hydro** shall, prior to November 1 of each year, provide a graph indicating its estimate of anticipated wind eliminated water levels at the **Split Lake Gauge**, on an average monthly basis, for the seasonal period from November 1 to the following March 31. Since the level of Split Lake varies for reasons outside of the control of **Hydro**, the estimate will be only a rough guide based on many assumptions. **Hydro** shall not be liable for the accuracy of these estimates and may set forth any additional qualifications as to accuracy as may be appropriate in the circumstances.

2.6.2 Anticipated Water Levels. Once every calendar month, **Hydro** shall give a written report to **York Factory** of the anticipated wind eliminated water levels at the **Split Lake Gauge** for that month and the next succeeding month. The wind eliminated water levels mentioned in such forecast shall be based on **ASL Local Datum**. The written forecast shall include:

- (a) a narrative indicating whether or not the wind eliminated water levels are expected to change during the relevant period and the estimated amount of such change; and



- (b) a graph depicting the anticipated wind eliminated water levels for the month in which the forecast is made and the next succeeding month.

2.6.3 Revised Forecasts. If **Hydro** anticipates that there will be a variation of more than 0.213m (0.70 ft) between the actual wind eliminated levels and the wind eliminated levels forecast under Article 2.6.2, **Hydro** shall promptly provide a revised forecast to **York Factory**.

2.6.4 Notification. **Hydro** shall make reasonable efforts to broadcast in both Cree and English the narrative portion of the monthly or revised forecasts contemplated by Articles 2.6.2 and 2.6.3, over a radio station providing service in the area of York Landing or by some other reasonable alternative method, if no such radio station exists. Such broadcasts shall, in the event of a revision to a forecast, begin forthwith upon the revision being made and continue for three (3) successive days or such longer period as may be necessary in the circumstances.

2.6.5 Missi Spill Notice. **Hydro** shall forthwith provide **York Factory** with written notice whenever it anticipates that in excess of ten thousand (10,000) cfs will be spilled from the Missi Control Structure down the lower Churchill River. To the extent reasonably feasible and subject to any appropriate qualification, such notice will include **Hydro's** estimate of the magnitude and duration of such a spill. **Hydro** will provide such notice to **York Factory**, by tele-facsimile and broadcast the notice

over a radio station providing service in or around the L.G.D. of Churchill or by some other reasonable alternative method, if no such radio station exists.

2.6.6 Amendment. The procedures and requirement for forecasts and estimates in Article 2.6 may be amended by agreement, in writing, between **York Factory and Hydro**.

## 2.7 TRANSPORTATION MEASURES

2.7.1 Transportation Measures. From the **Date of this Agreement**, **Hydro** shall implement or continue the transportation measures specified in Articles 2.7.2 and 2.7.3 in the locations shown on Schedule 2.1.

2.7.2 Program Implementation. **Hydro** shall, in consultation with **York Factory**, implement, at **Hydro's** expense, the following transportation measures:

- (a) annually prepare, mark and maintain ice crossings and main trails on the ice for use by snowmobiles and pedestrians in the locations shown on Schedule 2.1;
- (b) monitor the safety of ice crossings and main trails on the ice for use by snowmobiles and pedestrians when reasonably required in the winter period;
- (c) post notices with respect to changing ice conditions and load limits on

- any snowmobile and pedestrian ice crossing;
- (d) conduct annual public meetings to provide information to **Members** on safe use of ice crossings;
  - (e) remove debris at shoreline locations where winter ice trails intersect the shoreline and a hazard to access exists;
  - (f) as navigational aids for **York Factory** and **Members**, annually supply, install and maintain reef markers not in breach of applicable governmental regulations, where reasonably required on those water bodies shown on Schedule 2.1; and
  - (g) maintain 4 ft. x 8 ft. signs upstream and downstream of Kelsey Generating Station warning that Kelsey Generating Station is ahead.

2.7.3 Procedure. If, taking into consideration changes in technology and any other relevant factors, **York Factory** or **Hydro**, concludes that upgrading of, or additional, transportation measures of the kind set out in Article 2.7.2, may be reasonably required to address transportation concerns in the areas shown on Schedule 2.1 arising out of, or attributable to the operation of the **Project**, that **Party** shall promptly notify the other following which, **York Factory** and **Hydro** shall attempt to reach agreement about such transportation measures and reasonable funding arrangements for same.

2.7.4 Employment Opportunities. **Hydro** shall endeavour to employ

**Members** to carry out the work referred to in Article 2.7.2 and work that may arise pursuant to Article 2.7.3 unless, in the circumstances, it is not practical, reasonable or feasible to do so.

2.7.5        Changes.    If, taking into consideration changes in technology or any other relevant factors, **York Factory** or **Hydro** concludes that any transportation measure in place pursuant to this **Agreement** is no longer required to address concerns arising out of, or attributable to, the operation of the **Project**, **York Factory** or **Hydro** may give not less than one (1) year notice to the other that it wishes to review such transportation measures, or funding arrangements for such measures, in place pursuant to this **Agreement**. Following such notice, **York Factory** and **Hydro** shall attempt to reach agreement about which, if any, transportation measures may be discontinued on the basis that they are no longer required to address transportation concerns arising out of, or attributable to, the operation of the **Project**.

## 2.8            CONTINUATION OF NFA PROVISIONS

2.8.1        Continuing Right.    Until the **Easements** are granted pursuant to this **Agreement**, **Hydro** shall, notwithstanding any release granted by the **Agreement**, be subject to the easement provisions of Article 3 of the **NFA** with respect to the **Reserve**.

2.8.2            Subject to Easement.        The provisions of Article 2 are subject to the terms of the **Easement Agreement** and do not alter the **Easement**.

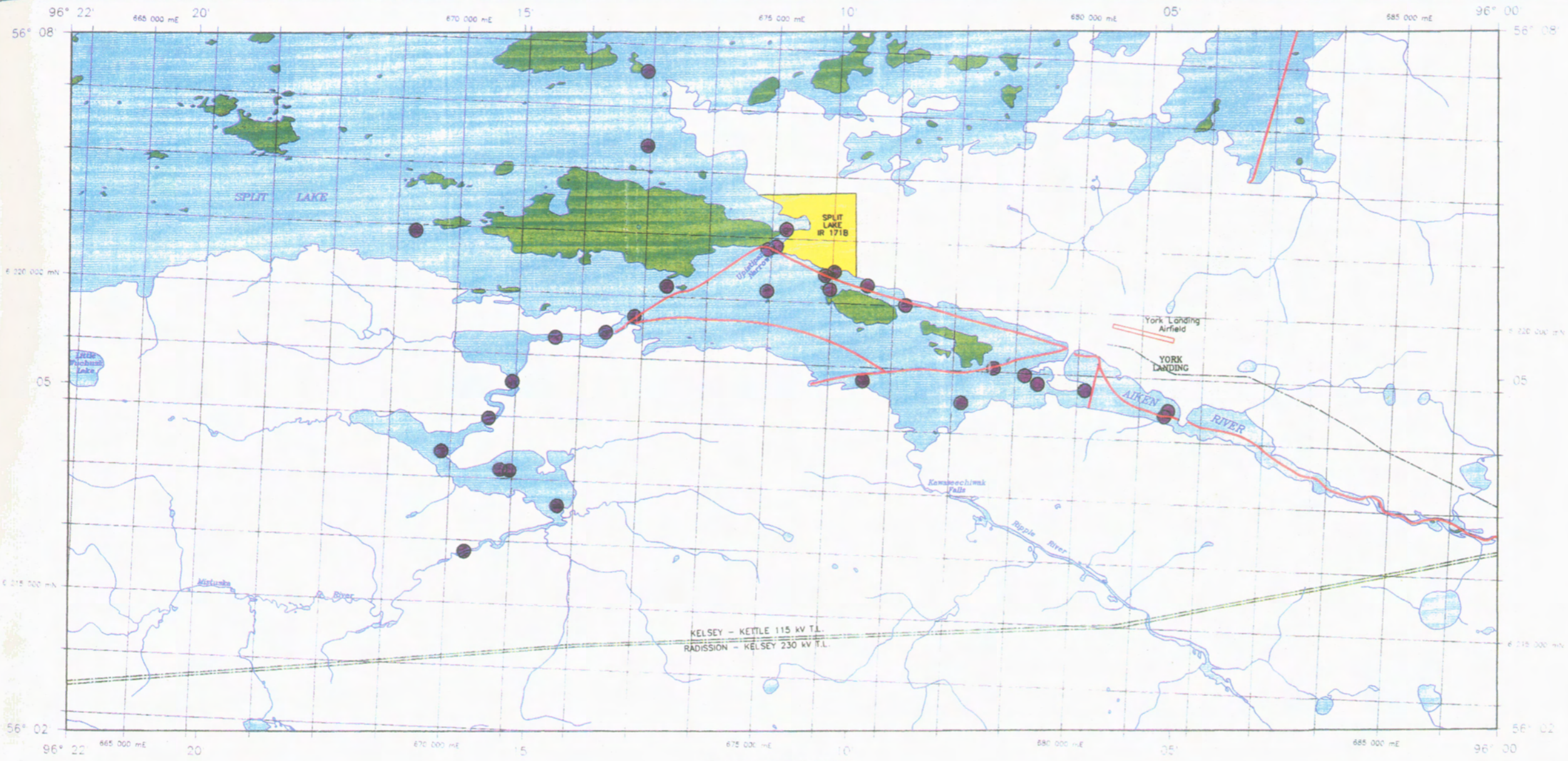
## 2.9                **END OF PROJECT**


2.9.1            Maintenance of Water Ranges.    If, in the future, the **Project** is no longer utilized for the production of hydro-electric power, **Hydro**, or **Manitoba** if the circumstances to which Article 13.13.6 apply, covenants and agrees to continue to operate and maintain all such works, structures and improvements, within its legal authority and control, as may be necessary to avoid, to the extent reasonably possible, changes from the parameters of the **Compensated Range** or such other **Daily Average Water Levels** and **Rates of Change** as may be agreed upon in writing by **York Factory**, and for the purposes of Article 2.9.1 only, **Canada**.

## SCHEDULE 2.1

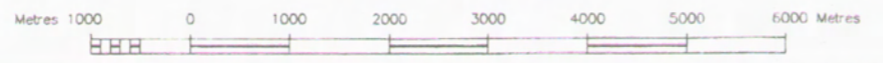
### MAP OF LOCATION OF TRANSPORTATION MEASURES

**Map of Location of Transportation Measures** is attached to and forms part of this Schedule.



- LEGEND :**
-  Transmission Line
  -  Marker Buoys
  -  Ice Trails

Scale 1:50,000



**YORK FACTORY  
COMPREHENSIVE AGREEMENT  
SCHEDULE 2.1**

This map is based on information taken from the National Topographic System map sheet numbers 5441. Her Majesty the Queen in Right of Canada with permission of Energy, Mines and Resources Canada.  
Map produced by Reute Engineering, Transmission and Civil Department.

SCHEDULE 2.2

**PREDETERMINED COMPENSATION**

1.0 PREDETERMINED COMPENSATION

1.1 Determination. Should **Daily Average Water Levels** or **Rates of Change** fall outside of the **Compensated Range**, Hydro shall pay the **Corporate Trustee** on behalf of the **Trustees** for deposit to the **Investment and Heritage Account** the following:

Daily Average Water Level Compensation:

- (a) two hundred fifty (\$250.00) dollars per foot for each day that the **Daily Average Water Level** exceeds the maximum **Daily Average Water Level** constituting the upper boundary of the **Compensated Range** as set forth in Article 2.4.1(a) but falls on or below the following limits for the time periods shown:

Time Period	Maximum
February 16 - April 30	168.097m (551.50ft)
May 1 - August 31	168.615m (553.20ft)
September 1 - December 15	168.097m (551.50ft)

- (b) two hundred fifty (\$250.00) dollars per foot for each day that the **Daily Average Water Level** falls below the minimum **Daily Average Water Level** constituting the lower boundary of the **Compensated Range** set forth in Article 2.4.1(a) but falls on or above the following limits for the time periods shown:

Time Period	Minimum
May 1 - October 15	165.689 (543.60ft)

- (c) one thousand (\$1000.00) dollars per foot for each day that the **Daily Average Water Level** exceeds the following limits for the time periods shown:

Time Period	Maximum
January 1 - April 30	168.097m (551.50ft)
May 1 - August 31	168.615m (553.20ft)
September 1 - December 15	168.097m (551.50ft)
December 16-31	168.128m (551.60ft)



- (d) one thousand (\$1000.00) dollars per foot for each day that the **Daily Average Water Level** falls below the following limits for the time period shown:

Time Period	Minimum	
January 1-February 28(29)	166.726m	(547.00ft)
March 1-March 15	166.573m	(546.50ft)
March 16-31	166.421m	(546.00ft)
April 1-15	166.116m	(545.00ft)
April 16-30	165.964m	(544.50ft)
May1-October 15	165.689m	(543.60ft)
October 16-31	165.964m	(544.50ft)
November 1-15	166.116m	(545.00ft)
November 16-30	166.268m	(545.50ft)
December 1-15	166.573m	(546.50ft)
December 16-31	166.726m	(547.00ft)

**Rate of Change Compensation:**

- (e) one hundred twenty-five (\$125.00) dollars per foot for each day that the 31 day **Rate of Change** is an increase which falls between 0.914m (3.00ft) and 1.524m (5.00ft).
- (f) one hundred twenty-five (\$125.00) dollars per foot for each day that the 31 day **Rate of Change** is a decrease which falls between 1.067m (3.50ft) and 1.737m (5.70ft).
- (g) five hundred (\$500.00) dollars per foot for each day that the 7 day **Rate of Change** is an increase which exceeds 0.640m (2.10ft).
- (h) five hundred (\$500.00) dollars per foot for each day that the 7 day **Rate of Change** is a decrease which exceeds 0.488m (1.60 ft).
- (i) five hundred (\$500.00) dollars per foot for each day that the 31 day **Rate of Change** is an increase which exceeds 1.524m ( 5.00ft).
- (j) five hundred (\$500.00) dollars per foot for each day that the 31 day **Rate of Change** is a decrease which exceeds 1.737m (5.70 ft).

1.2 Proportionate payment. Payments of compensation for variations of part of a foot shall be pro-rated accordingly.

1.3 Limit on Compensation. Subject to Articles 2.5.7(g), 2.5.10 and 2.5.13 of the **Agreement**, in no event shall the aggregate compensation payable pursuant to Article 1.1 of Schedule 2.2 exceed the sum of three hundred thousand (\$300,000.00) dollars in any calendar year, subject to the adjustment for CPI as set out below.

1.4 CPI Adjustment. Starting April 1, 1997, the rates of predetermined compensation payable pursuant to Schedule 2.2 shall be adjusted on the basis of a fiscal year running from April 1 to March 31 by applying a factor calculated from the monthly increases or decreases in the **Consumer Price Index** in the previous April 1 to March 31 fiscal year.

1.5 Example Calculation. Predetermined compensation shall be calculated in a manner consistent with the sample formulae in Schedule 2.7.

**SCHEDULE 2.3**

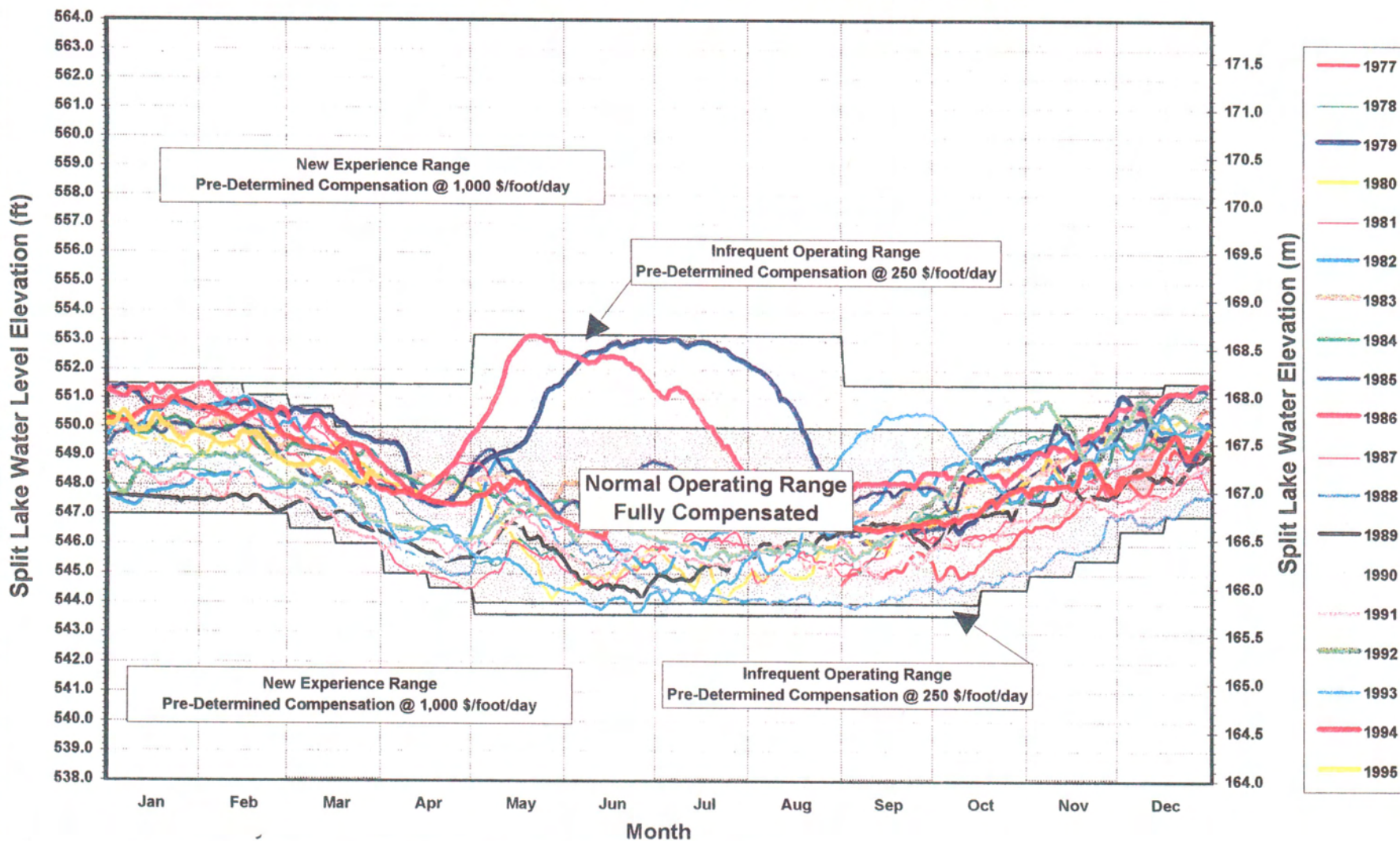
**COMPENSATED RANGE DAILY AVERAGE WATER LEVEL**

As described in the attached Chart No.00195-07651-Schedule 2.3:

York Factory Water Regime

Split Lake Water Levels for September 1977 to March 1995  
Compensated Range and Predetermined Compensation Rates

# SCHEDULE 2.3 YORK FACTORY WATER REGIME



Split Lake Water Levels for September 1977 to March 1995  
Compensated Range and Pre-Determined Compensation Rates

**SCHEDULE 2.4**

**COMPENSATED RANGE 7 DAY RATE OF CHANGE**

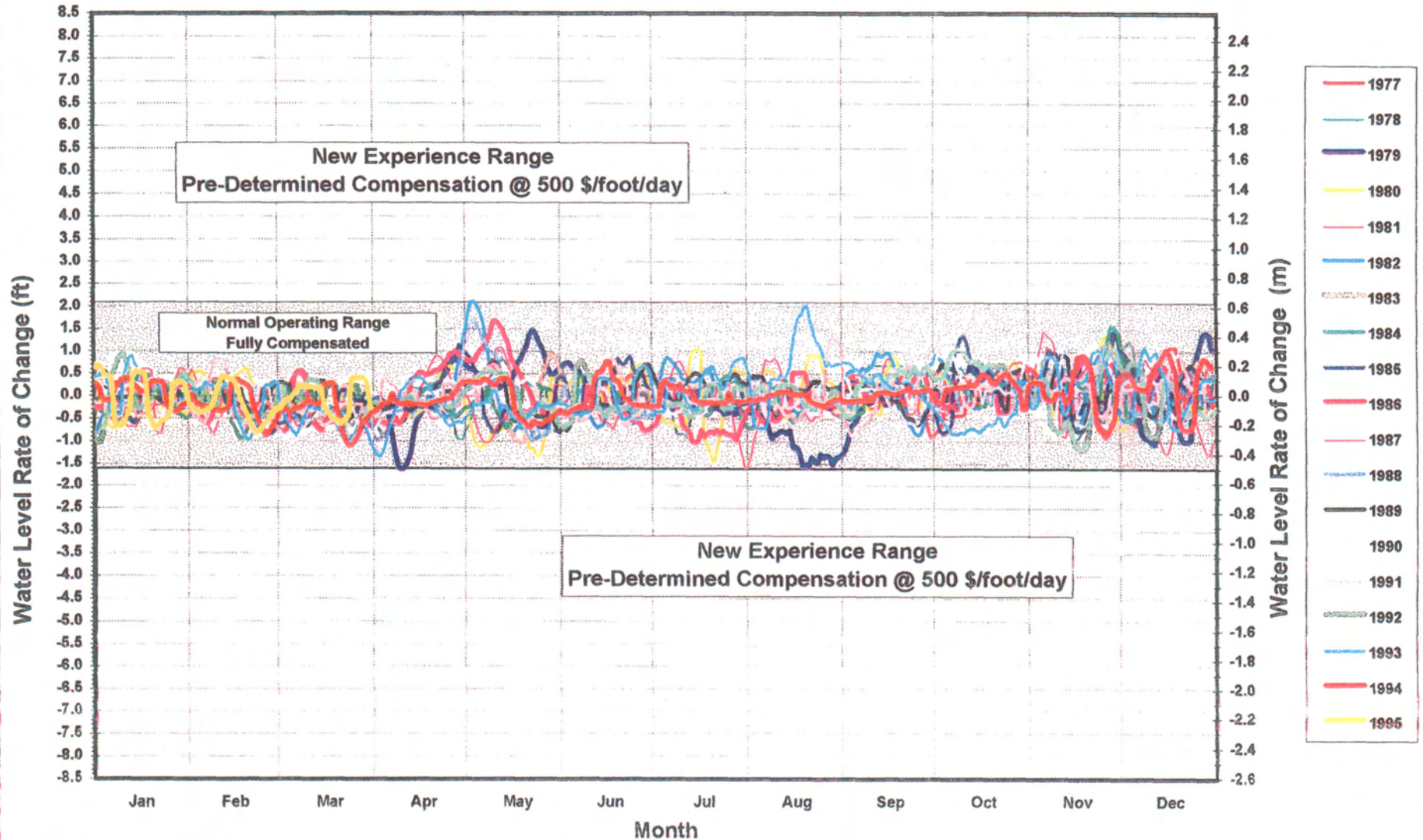
As described in the attached Chart No.00195-07651-Schedule 2.4:

York Factory 7 Day Rate of Change

York Factory Maximum Rate of Change in a 7 Day Period for September 1977 to March  
1995

Compensated Range and Predetermined Compensation Rates

# SCHEDULE 2.4 YORK FACTORY 7 DAY RATE OF CHANGE



York Factory Maximum Rate of Change in a 7 Day Period for September 1977 to March 1995  
Compensated Range and Pre-Determined Compensation Rates

SCHEDULE 2.5

**COMPENSATED RANGE 31 DAY RATE OF CHANGE**

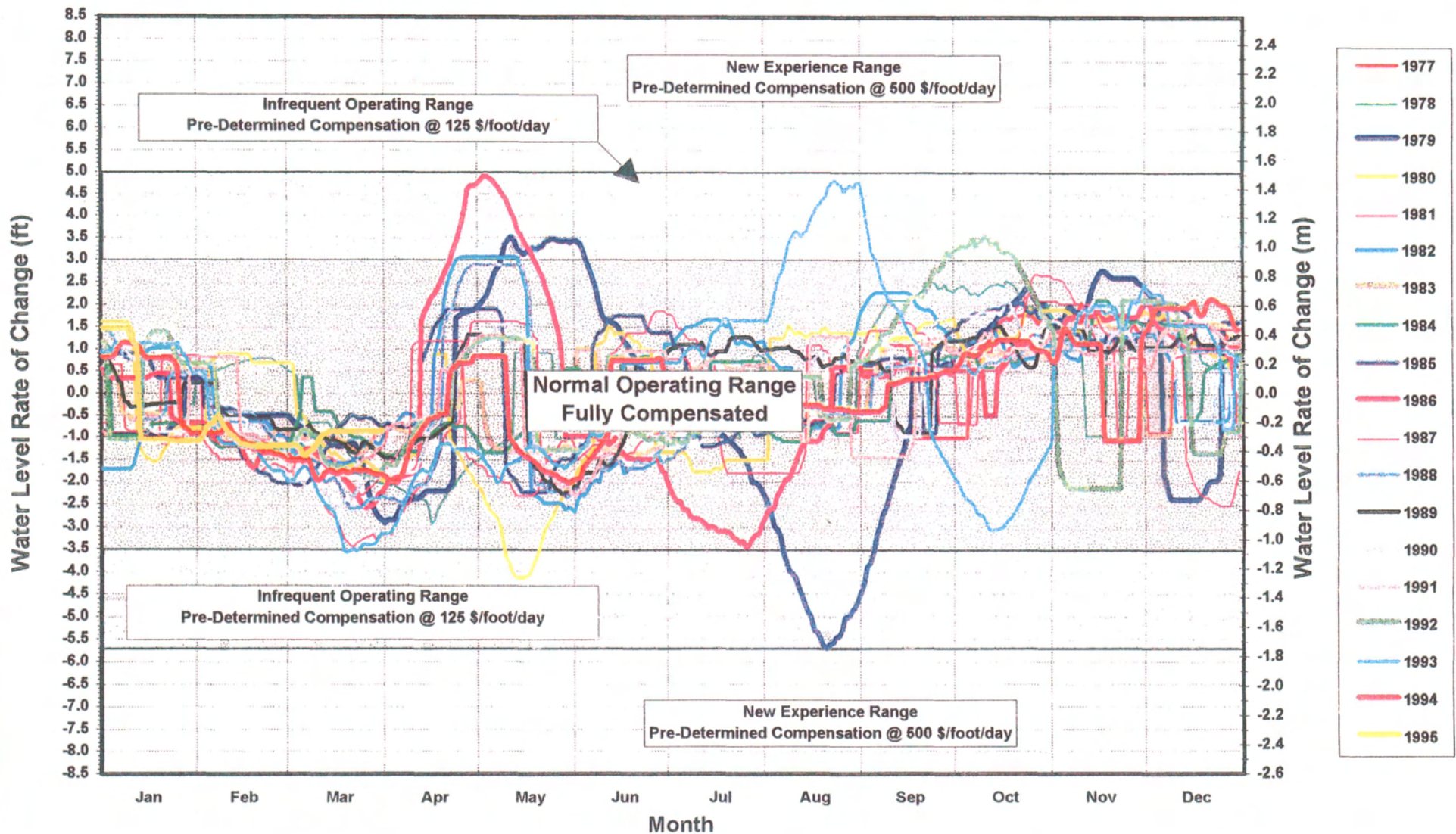
As described in the attached Chart No.00195-07651-Schedule 2.5:

York Factory 31 Day Rate of Change

York Factory Maximum Rate of Change in 31 Day Period for September 1977 to March  
1995

Compensated Range and Predetermined Compensation Rates

# SCHEDULE 2.5 YORK FACTORY 31 DAY RATE OF CHANGE



**York Factory Maximum Rate of Change in a 31 Day Period for September 1977 to March 1995  
Compensated Range and Pre-Determined Compensation Rates**



**SCHEDULE 2.6**

**CALCULATION WINDOW FOR 7 AND 31 DAY PERIODS**

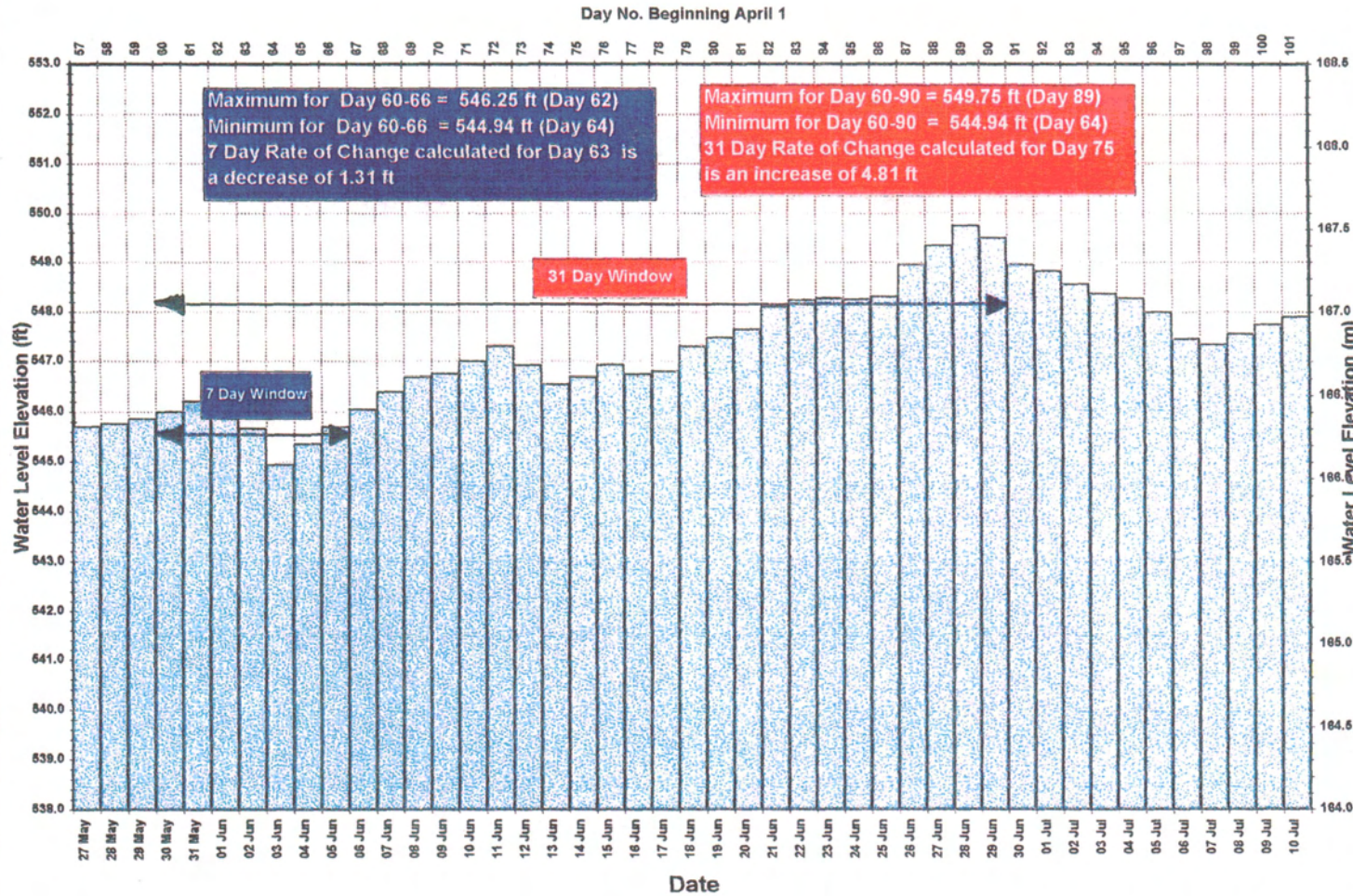
As described in the attached Chart No. 00198-07651-schedule 2.6:

Normal Calculation: Water Level Rate of Change,  
Calculation for 7 day and 31 day periods.

# SCHEULE 2.6

## Normal Calculation

Water Level Rate of Change  
Calculation for 7 day and 31 day periods



Sample Calculation

Day No.	Date	Water Level Elevation (ft)	7 Day Rate of Change (ft)	31 Day Rate of Change (ft)
57	27 May	546.70	-	-
58	28 May	546.76	-	-
59	29 May	545.86	-	-
60	30 May	546.00	-0.68	2.36
61	31 May	546.21	-1.31	2.36
62	01 Jun	546.25	-1.31	2.36
63	02 Jun	546.67	-1.31	2.36
64	03 Jun	544.94	-1.31	2.36
65	04 Jun	546.36	1.46	2.63
66	06 Jun	546.70	1.76	2.70
67	06 Jun	546.06	1.81	3.16
68	07 Jun	546.40	1.64	3.31
69	08 Jun	546.70	1.60	3.34
70	09 Jun	546.75	1.25	3.34
71	10 Jun	547.00	0.90	3.38
72	11 Jun	547.30	-0.76	4.02
73	12 Jun	548.92	-0.76	4.40
74	13 Jun	546.65	-0.76	4.81
75	14 Jun	546.70	-0.76	4.81
76	15 Jun	546.93	0.76	4.81
77	16 Jun	546.74	0.92	4.81
78	17 Jun	546.80	0.94	4.81
79	18 Jun	547.30	1.36	4.81
80	19 Jun	547.47	1.61	4.39
81	20 Jun	547.64	1.48	4.05
82	21 Jun	548.10	0.98	3.70
83	22 Jun	548.25	0.86	3.36
84	23 Jun	548.28	1.32	3.20
85	24 Jun	548.26	1.24	3.20
86	26 Jun	548.32	1.60	3.20
87	26 Jun	548.96	1.49	3.20
88	27 Jun	549.34	1.49	3.20
89	28 Jun	549.75	1.43	3.20
90	29 Jun	549.60	-1.19	3.05
91	30 Jun	548.95	-1.38	3.01
92	01 Jul	548.83	-1.47	3.01
93	02 Jul	548.66	-1.60	2.96
94	03 Jul	548.37	-1.60	2.46
95	04 Jul	548.28	-1.48	-2.40
96	05 Jul	548.00	-1.21	-2.40
97	06 Jul	547.46	-1.02	-2.40
98	07 Jul	547.35	-0.93	-2.40
99	08 Jul	547.66	.	.
100	09 Jul	547.75	.	.
101	10 Jul	547.90	.	.
102	.	.	.	.
103	.	.	.	.
104	.	.	.	.

## SCHEDULE 2.7

### SAMPLE FORMULAE FOR PREDETERMINED COMPENSATION

The following are sample formulae for each of the conditions described in Schedule 2.2.

- (a) If **Daily Average Water Level (DAWL)** during the month of June falls between 550.00 ft and 553.20 ft.  
For example if DAWL = 552.45 ft.  
then Predetermined Compensation (PDC) would be the following;  
 $PDC = (552.45 - 550.00) * 250 \text{ \$/ft/day} = \underline{\$612.50}$  for the day.
- (b) If **Daily Average Water Level (DAWL)** during the month of July falls between 543.60 ft. and 544.00 ft.  
For example if DAWL = 543.75 ft.  
then Predetermined Compensation (PDC) would be the following;  
 $PDC = (544.00 - 543.75) * 250 \text{ \$/ft/day} = \underline{62.50}$  for the day.
- (c) If **Daily Average Water Level (DAWL)** during the month of August exceeds 553.20 ft.  
For example if DAWL = 554.20 ft.  
then Predetermined Compensation (PDC) would be the following;  
 $PDC = [(554.20 - 553.20) * 1000 \text{ \$/ft/day}] + [(553.20 - 550.00) * 250 \text{ \$/ft/day}]$   
 $= \underline{\$1800.00}$  for the day.
- (d) If **Daily Average Water Level (DAWL)** during the month of September falls below 543.60 ft.  
For example if DAWL = 543.00 ft.  
then Predetermined Compensation (PDC) would be the following;  
 $PDC = [(543.60 - 543.00) * 1000 \text{ \$/ft/day}] + [(544.00 - 543.60) * 250 \text{ \$/ft/day}]$   
 $= \underline{\$700.00}$  for the day.
- (e) If **31 Day Rate of Change (31DROC)** (increase) falls between 3.0 ft and 5.0 ft  
For example if 31DROC = 3.5 ft increase  
then Predetermined Compensation (PDC) would be the following;  
 $PDC = (3.5 - 3.0) * 125 \text{ \$/ft/day} = \underline{\$62.50}$  for the day.
- (f) If **31 Day Rate of Change (31DROC)** (decrease) falls between 3.5 ft and 5.70 ft  
For example if 31DROC = 4.5 ft decrease  
then Predetermined Compensation (PDC) would be the following;  
 $PDC = (4.5 - 3.5) * 125 \text{ \$/ft/day} = \underline{\$125.00}$  for the day.

- (g) **If 7 Day Rate of Change (7DROC) (increase) exceeds 2.1 ft**  
For example if 7DROC = 2.6 ft increase  
then Predetermined Compensation (PDC) would be the following;  
 $PDC = (2.6 - 2.1) * 500 \text{ \$/ft/day} = \underline{\$250.00}$  for the day.
- (h) **If 7 Day Rate of Change (7DROC) (decrease) exceeds 1.6 ft**  
For example if 7DROC = 1.9 ft decrease  
then Predetermined Compensation (PDC) would be the following;  
 $PDC = (1.9 - 1.6) * 500 \text{ \$/ft/day} = \underline{\$150.00}$  for the day.
- (i) **If 31 Day Rate of Change (31DROC) (increase) exceeds 5.0 ft**  
For example if 31DROC = 5.5 ft increase  
then Predetermined Compensation (PDC) would be the following;  
 $PDC = [(5.5 - 5.0) * 500 \text{ \$/ft/day}] + [(5.0 - 3.0) * 125 \text{ \$/ft/day}] = \underline{\$500.00}$  for the day.
- (j) **If 31 Day Rate of Change (31DROC) (decrease) exceeds 5.70 ft**  
For example if 31DROC = 6.0 ft decrease  
then Predetermined Compensation (PDC) would be the following;  
 $PDC = [(6.0 - 5.70) * 500 \text{ \$/ft/day}] + [(5.70 - 3.5) * 125 \text{ \$/ft/day}] = \underline{\$425.00}$  for the day.

## ARTICLE 3

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## ARTICLE 3

### 3.0 COMPENSATION LANDS AND EASEMENT LANDS

#### 3.1 COMPENSATION LANDS

3.1.1 Boundaries. The **Compensation Lands**, the administration and control of which is to be transferred by **Manitoba** to **Canada** and which are to be set apart by **Canada** as **Reserve Lands** for **York Factory**, are those provincial Crown lands within the boundaries described in Schedule 3.1.

3.1.2 Written Description and Plans. In the event of conflict between written descriptions of **Compensation Lands** and sketch plans attached to or referred to in Schedule 3.1, the written descriptions shall prevail.

#### 3.2 CONDITIONS OF TRANSFER

3.2.1 Lands Transferred Free of Encumbrance. The administration and control of the **Compensation Lands** shall be transferred by **Manitoba** to **Canada** free and clear of all encumbrances, reservations, caveats, estates, rights and interests in favour of any person other than **Canada**, or whose interest is claimed through **Canada**. For greater certainty, rights in mines and minerals, both precious

and base, rights in Crown timber and other user rights shall be transferred with the **Compensation Lands**. No reservations to the Crown in right of **Manitoba** under subsection 4(1) of The Crown Lands Act (Manitoba) shall apply to the **Compensation Lands**.

3.2.2 Minerals. Should **Manitoba** receive any mineral royalties after the **Date of this Agreement** on account of any **Compensation Lands** established or to be established as **Reserve** pursuant to this **Agreement**, **Manitoba** will promptly remit such royalties to **York Factory**.

3.2.3 Easement Lands The **Easement Lands** are legally described in Schedule 3.4.

### 3.3 SURVEYS

3.3.1 Surveys. Legal surveys of the boundaries of the **Compensation Lands** will be completed by, and at the expense of **Manitoba**, in accordance with the survey instructions in Schedule 3.2.

3.3.2 Completion of Surveys by Manitoba. **Manitoba** shall, within ninety (90) days following the **Date of this Agreement**, or as soon thereafter as is reasonably possible having regard to field conditions, commence, or cause to be



commenced, legal surveys of the **Compensation Lands**, in accordance with Schedule 3.2 and subject only to any delay which may be caused by:

- (a) a change in survey instructions under Article 3.3.3;
- (b) any dispute which may arise with respect to **Compensation Lands**;
- or
- (c) any other cause outside the control of **Manitoba**; and

make reasonable efforts to complete, or cause to be completed, all legal surveys to be done by **Manitoba**, within eighteen (18) months of the **Date of this Agreement** or the approval of a change in survey instructions, if any, or the date of the final resolution of disputes, if any, arising with respect to **Compensation Lands**.

3.3.3 Change in Survey Instructions. The survey instructions in Schedule 3.2 may only be changed with the approval of each of **York Factory, Manitoba** and **Canada**, and any additional expense incurred as a result of such change shall be borne by the **Party** requesting it.

3.3.4 Plans and Descriptions Supplied by Manitoba. **Manitoba** shall provide to **York Factory** and **Canada**:

- (a) plans of the boundaries of the **Compensation Lands**; and
- (b) a legal description of the **Compensation Lands**;

satisfactory to the Surveyor General of Canada.

3.3.5 Affirmation. **York Factory** shall, upon receipt of the plans and legal descriptions referred to in Article 3.3.4, affirm that the lands described therein:

- (a) are those described in Schedule 3.1;
- (b) have no environmental conditions which do not comply with acceptable standards under Article 3.5.3; and
- (c) have not been subject to fundamental change contemplated by Article 3.5.8.

Following such affirmation, **York Factory** shall confirm by **Council Resolution** that the described lands are accepted by **York Factory**, as the **Compensation Lands** and provide to **Manitoba, Canada** and **Hydro** an original copy of the **Council Resolution**, and to **Manitoba** five (5) copies of the **Easement Agreement** duly executed on behalf of **York Factory**.

3.3.6 Execution. **Manitoba** shall forward the five (5) copies of the **Easement Agreement** which has been executed by **York Factory** to **Hydro**, which will execute the copies and return them to **Manitoba** for execution.

3.3.7 Re-establishment of Bench Marks. **Manitoba** or a qualified land surveyor acceptable to the Surveyor General of Canada shall, within 24 months of the **Date of the Agreement** or before the **Easement** is granted pursuant to Article 3.4.5, whichever is earlier, re-establish a minimum of three (3) appropriate existing provincial bench marks (BM) in and around the community of York Landing and

establish a fourth BM in a secure location within the community of York Landing. The BM's will be established or re-established in consultation with **Chief and Council**, the Surveyor General of Canada and **Hydro** at third order specifications and from Geodetic Canada's First Order Vertical Datum network in accordance with revision 1 dated May, 1970, Quad 56096. All BM's will be located above the **Static Inundation Level** of 169.469 m (556.0 ft.) **A.S.L.** specified in Article 7.1 of the **Easement Agreement**. The BM's established or re-established pursuant to Article 3.3.7 will be the **Reference Bench Marks** for the purposes of the **Agreement** and the **Easement**. **Hydro** will pay for or reimburse **Manitoba** for the cost of establishing and re-establishing the **Reference Bench Marks**.

### 3.4 ADMINISTRATION OF LANDS

3.4.1 Transfer Documents. Upon receipt of:

- (a) the affirmation required by Article 3.3.5;
- (b) the copies of the **Easement Agreement** duly executed by **York Factory** and **Hydro**; and
- (c) confirmation that the plans and legal descriptions referred to in Article 3.3.4 are acceptable to the Surveyor General of Canada;

**Manitoba** will execute the **Easement Agreement** and consult with **Canada** and **York Factory** on the form of Order in Council transferring administration and control

of the **Compensation Lands to Canada** to be set apart as **Reserve Lands** for **York Factory**. Thereafter, **Manitoba** shall by Order in Council, conditional upon **Canada's** acceptance as provided for in Article 3.4.3 , transfer administration and control of the **Compensation Lands to Canada** and forward the Order in Council and the copies of the **Easement Agreement to Canada**. **Manitoba** shall provide a copy of such Order in Council to **York Factory** and **Hydro**.

3.4.2        Request for Reserve Status.        Upon receipt of a copy of the Order in Council referred to in Article 3.4.1, **York Factory** shall by **Council Resolution** request that **Canada** set aside the **Compensation Lands**, referenced in the Order in Council as **Reserve Lands** for **York Factory**.

3.4.3        Designation of Reserve Lands.        Upon receipt of the **Council Resolution** referred to in Article 3.4.2 and subject to compliance with Article 3.5.13, **Canada** shall, by instrument under the Federal Real Property Act (Canada), accept the transfer of administration and control of the **Compensation Lands**, conditional on setting them apart as **Reserve Lands**, and provide notice of such acceptance to **York Factory, Manitoba** and **Hydro**. Thereafter, **Canada** shall recommend to the Governor in Council the setting apart of the lands for the use and benefit of **York Factory**. **Canada** shall provide a copy of the resulting Order in Council to the other **Parties**.

3.4.4 Registry of Plans, Grant of Easements and Designation as Reserve Lands. Upon acceptance of administration and control of all of the **Compensation Lands** and their designation as **Reserve Lands** in accordance with Article 3.4.3, **Canada** shall:

- (a) record the plans referred to in Article 3.3.4 in accordance with the Canada Lands Surveys Act (Canada);
- (b) grant **Easements** in accordance with Schedule 3.3 on all of the **Easement Lands**;
- (c) transfer partial administration and control to **Manitoba**, on the same terms and conditions as contained in the **Easement Agreement** in respect of all of the **Easement Lands**;
- (d) execute all copies of the **Easement Agreement**;
- (e) file the **Easement Agreement** granting the **Easements** in accordance with the Indian Act (Canada); and
- (f) return a fully executed copy of the **Easement Agreement** to each of **Manitoba, York Factory and Hydro**.

3.4.5 Completion of Process. **Canada** shall make reasonable efforts to complete the process outlined in Articles 3.4.3 within twelve (12) months of **Canada's** receipt of a **Council Resolution** referred to in Article 3.4.2 as such processes relate to the **Compensation Lands** referred to in such **Council Resolution**. **Canada** shall make reasonable efforts to complete the processes

under Article 3.4.4 within twelve (12) months after **Canada** has received **Council Resolutions** under Article 3.4.2 for all of the **Compensation Lands**.

3.4.6        Disposition and Use of Lands.        **Manitoba** has, in anticipation of the conclusion of this **Agreement**, withheld from any disposition, by way of sale, sale agreement, lease or permit, the lands described as the **Compensation Lands**. Following the **Date of this Agreement** and prior to transfer of administration and control of the **Compensation Lands** to **Canada**, **Manitoba** will, at no expense to **York Factory**, grant to **York Factory** a Land Use Permit, on terms satisfactory to **Manitoba** and **York Factory**, for the **Compensation Lands**. Any such Land Use Permit shall terminate upon acceptance by **Canada** of the transfer of administration and control of the **Compensation Lands** to **Canada**. Notwithstanding the granting of the Land Use Permit, the **Compensation Lands** shall not be deemed to be **Reserve Lands** until designated as such pursuant to this **Agreement**.

3.4.7        On the Ground Surveys.        Whether the **Easement Agreement** has been granted by **Canada** under Article 3.4.4 or not, where **Setback Lines** have not been the subject of an on the ground survey and installation of monuments, **Hydro** shall, upon reasonable notice from **Chief and Council** or **Canada**, use its best efforts to expeditiously, and in any event, within twelve (12) months of such notice, survey and install monuments in accordance with survey instructions issued by the Surveyor General of Canada.

### 3.5 CONDITION OF LANDS

3.5.1 Warranty. **Manitoba** warrants, on the basis of available records, that no authorized use or damaging unauthorized use is being or has been made of the **Compensation Lands**. No active mining, processing or shipment of ore on or from the lands has occurred, mineral exploration has been limited and no mineral claims are in effect. No timber permits, leases or licences are in effect for the said lands and any timber removed has been for domestic use and shelter. No major wildfires have occurred within the **Compensation Lands** during the three (3) years preceding the **Date of this Agreement**. No hazardous wastes or deleterious substances have been authorized to be stored on or placed on the lands by **Manitoba**, and no evidence is available to **Manitoba** to suggest that such storage or placement exists up to the **Date of this Agreement**.

3.5.2 Environmental Reports. The **Parties** shall, on a without prejudice basis, provide to each other copies of any environmental studies, reports and audits in their possession related to the **Compensation Lands** and shall continue to provide such reports to the date the land is set apart by **Canada** as **Reserve Lands**.

3.5.3 Environmental Conditions. If an environmental condition is discovered

on or in the **Compensation Lands** prior to the acceptance by **Canada** of transfer of administration and control of the lands under Article 3.4.3, which environmental condition was not created by **York Factory**, or by the sufferance, connivance, abetment or willful allowance of **York Factory**, and **York Factory** provides an environmental report or like evidence alleging that the environmental condition does not meet acceptable environmental standards, **York Factory** may give notice to **Manitoba** and **Canada** that it rejects the portion of **Compensation Lands** that is damaged or injuriously affected by the condition.

3.5.4 Response by **Manitoba**. Upon receipt of notice of rejection by **York Factory** under 3.5.3, or **Canada** under 3.5.14, **Manitoba** shall, within sixty (60) days or so soon thereafter as is reasonably possible having regard to field conditions, do one of the following:

- (a) reject the environmental report or other like evidence of **York Factory** under Article 3.5.3 or the notice from **Canada** under Article 3.5.14; or
- (b) commission an environmental study of the rejected land to determine:
  - (i) if the environmental conditions exist as alleged, or
  - (ii) if the environmental condition exists, whether it meets acceptable environmental standards,and upon receipt of the environmental study, **Manitoba** may reject the rejection of **York Factory** under Article 3.5.3 or **Canada** under 3.5.14; or



- (c) accept the rejection by **York Factory** or **Canada** and advise whether:
  - (i) it will remedy the environmental condition at **Manitoba's** expense, or
  - (ii) provide alternate replacement lands, which meet the requirements of Article 3.5.10 and which are of comparable size and quality to replace that which is damaged or injuriously affected by the environmental condition; or
- (d) reject the notice on the basis that, under Article 3.5.3, **York Factory** is responsible for the environmental condition.

3.5.5 **York Factory** responsibilities. Where, under Article 3.5.3 **York Factory** is responsible for an environmental condition on any parcel of **Compensation Lands** which fails to meet acceptable environmental standards, **York Factory**, within twelve (12) months of such determination or such longer time as **Manitoba** may accept or the Arbitrator by order allow, may:

- (a) at its expense remedy the environmental condition;
- (b) request **Manitoba** to provide alternate **Compensation Lands**, and **Manitoba** may, but will be under no obligation, to provide such alternate **Compensation Lands**, but if it agrees to do so, Articles 3.5.7, 3.5.10, 3.5.12 and 3.5.13 will apply; or
- (c) have the affected lands transferred to the **Corporate Trustee** or to a corporation wholly owned and controlled by **York Factory** in fee

simple title, in which event the relevant provisions of Article 11 will apply mutatis mutandis.

If **York Factory** decides not to remedy the environmental condition as provided in Article 3.5.5 (a), the parcel of land or the portion severed under Article 3.5.16 shall cease to be **Compensation Lands**.

3.5.6 Study. Where **Manitoba** elects to proceed under 3.5.4 (b) it shall commission the study promptly and see to the completion of the study on a timely basis; and within sixty (60) days following receipt of its report it shall provide **York Factory** and **Canada** with a copy and advise if it accepts the rejection under Article 3.5.3 or 3.5.14 and, if applicable, its option under 3.5.4(c)(i) or (ii); or that it rejects the notice under Article 3.5.4(b) or (d).

3.5.7 Opt to Negotiate. Where **Manitoba** opts to proceed under 3.5.4(c)(ii) or Article 3.5.9(b)(ii), it will negotiate with **York Factory** to identify the replacement land. Such negotiation shall recognize and be consistent with any fiduciary duties of **Canada** existing in relation to such matters.

3.5.8 Fundamental Change. If a change occurs to the condition of the **Compensation Lands** after the **Date of this Agreement** but prior to the acceptance of the transfer of administration and control of the land by **Canada**, which was not created by **York Factory** or did not occur as a result of the

sufferance, connivance, abetment or wilful allowance of **York Factory** and which **York Factory** alleges is a fundamental change rendering the land unfit for the use of **York Factory**, **York Factory** shall notify **Manitoba** and **Canada** of the change. The onus is on **York Factory** to prove that a change has occurred and that the change is a fundamental change.

3.5.9 Response by **Manitoba**. Upon receipt of notice of rejection under Article 3.5.8, **Manitoba** shall, within sixty (60) days or so soon thereafter as is reasonably possible having regard to field conditions, do one of the following:

- (a) advise **York Factory** that:
  - (i) no change has occurred,
  - (ii) that any change is not a fundamental change, or
  - (iii) **York Factory** under Article 3.5.8, is responsible for the fundamental change, or
- (b) accept the rejection of the land and advise whether it will:
  - (i) correct the condition causing the fundamental change, or
  - (ii) provide alternate replacement lands which meet the requirements of Article 3.5.10 and which are of comparable size and quality to replace that which was damaged or injuriously affected.

3.5.10 Replacement Land. Lands which are not available for

disposition under the Water Power Act (Manitoba) shall not be selected under Article 3.5.4(c)(ii) or Article 3.5.9 (b)(ii). Determinations by the Minister under The Water Power Act (Manitoba) under Article 3.5.10 are discretionary and are not subject to arbitration under this **Agreement**. The replacement lands selected shall not abut upon or be adjacent to waterways which are, or may be, influenced by the **Project**.

3.5.11 Arbitration. Without in any way limiting the generality of Article 10.2.2, where disputes arise as to:

- (a) the nature and extent of the environmental condition and its relation to acceptable standards under Articles 3.5.3 and 3.5.13;
- (b) the quantity of land damaged or injuriously affected by the environmental condition or fundamental change;
- (c) whether the environmental condition or fundamental change is attributable to **York Factory** under Article 3.5.3, Article 3.5.5 or Article 3.5.8;
- (d) the reasonableness of **Manitoba's** election under Article 3.5.4 or Article 3.5.9;
- (e) the promptness of any of **Manitoba's** actions under Article 3.5;
- (f) the appropriate size and quality of land needed to replace under Article 3.5.4(c)(ii) or Article 3.5.9(b)(ii); or
- (g) whether a change has occurred to the land which is a fundamental

change rendering the land unfit for the use of **York Factory** as contemplated in Article 3.5.8, such dispute may be referred to arbitration under Article 10.4.

3.5.12 Continuation of **Manitoba's** Jurisdiction. **Manitoba's** jurisdiction with respect to any parcel of **Compensation Lands** will not change until transfer of administration and control of those lands is accepted by **Canada** under Article 3.4.3.

3.5.13 Acceptability. **Canada's** acceptance of the transfer of administration and control of the **Compensation Lands** under Article 3.4.3 shall be conditional upon the environmental condition of the land being satisfactory to **Canada**.

3.5.14 Rejection by **Canada**. Where **Canada** proposes to reject a parcel of the **Compensation Lands** on the grounds that **Canada** is not satisfied with the environmental condition of any part of such parcel, **Canada** shall forthwith notify **York Factory** and **Manitoba** and provide its reasons for such rejection.

3.5.15 Negotiate Boundaries. Where **Canada** has given notice under Article 3.5.14 and rejected a parcel of **Compensation Lands** under Article 3.5.13, **Canada**, **Manitoba** and **York Factory** will immediately meet and endeavour to

agree upon the boundaries of the portion of the parcel which is not acceptable to **Canada**.

3.5.16 Severance. If the description of the affected parcel under Articles 3.5.13 and 3.5.14 can be agreed upon by **Canada, Manitoba and York Factory**, under Article 3.5.15, that portion shall be surveyed and severed from the balance and administration and control of such balance of the **Compensation Lands** will be promptly accepted by **Canada**.

3.5.17 Alternative. If, under Article 3.4.13, **Canada** will not accept administration and control over the **Compensation Lands**, any parcel of **Compensation Lands** or any portion of a parcel of **Compensation Lands** on the basis that the environmental condition of the said lands fails to meet acceptable environmental standards, Article 3.5.4, and thereafter the provisions of Articles 3.5.5 to 3.5.11, both inclusive, shall apply.

3.5.18 Arbitration. Subject to the right to appeal, if the **Arbitrator** finds that the rejection of the **Compensation Lands**, any parcel of **Compensation Lands** or any portion of a parcel of **Compensation Lands** by **York Factory**, under Articles 3.5.3 or 3.5.8 or **Canada** under Article 3.5.13, was not warranted, the transfer of administration and control of the rejected lands shall no longer be delayed.

3.5.19 No Delay. A dispute in relation to any portion of **Compensation Lands** under Article 3.5 shall not hinder or delay the transfer of administration and control to **Canada** of the portions not affected by the dispute and Article 3.4.5 shall apply.

3.5.20 Warranty. **York Factory** warrants that it has, with professional and technical advice of its own choosing, selected and accepted the **Compensation Lands** based on its familiarity with and traditional use of those lands; that the lands have been inspected on behalf of **York Factory** by persons designated by **Chief and Council** and found acceptable; and that **Chief and Council** have caused inquiries to be made among **York Factory** resource harvesters and elders as to any environmental conditions within their knowledge which might render the lands unacceptable to **York Factory** as **Reserve Lands**, and no such conditions have been found.

3.5.21 Amendment - The Real Property Act (Manitoba). **Manitoba** shall recommend to the Legislature that Subsection 111(1) of The Real Property Act (Manitoba) be amended to extend its application to easements to inundate and store water.

### 3.6 SURVEYS OF REPLACEMENT COMPENSATION LANDS

3.6.1 Surveys. Where any replacement **Compensation Lands** are chosen under Articles 3.5.4 or 3.5.9, legal surveys of the boundaries of such replacement **Compensation Lands**, and the boundaries of any exclusions required for public purposes, will be completed by, and at the expense of **Manitoba** to the satisfaction of the **Parties** and the Surveyor General of Canada.

3.6.2 Legal Descriptions. Where replacement **Compensation Lands** have been agreed upon under Articles 3.5.4 and 3.5.9, or where lands cease to be **Compensation Lands** under Article 3.5.5 or Article 3.5.16, the legal description of the **Compensation Lands** in Article 3 and Schedules 3.1 and 3.2 will be amended accordingly.



**SCHEDULE 3.1**

**BOUNDARIES OF COMPENSATION LANDS**

**Parcel A, French Creek**

per approximate general location shown on Plan No. 3.1 and the following description:

Boundary Description

Commencing at the intersection of UTM 6° Grid Line 6,316,000<sup>m</sup> N and UTM 6° Grid Line 549,000<sup>m</sup> E, thence northerly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 6,318,500<sup>m</sup> N, thence westerly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 548,000<sup>m</sup> E, thence northerly along the last mentioned Grid Line to the **OHWM** of the Hayes River, thence westerly and southerly along the **OHWM** of the Hayes River to the intersection with UTM 6° Grid Line 546,800<sup>m</sup> E, thence southerly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 6,316,000<sup>m</sup> N, thence easterly along the last mentioned Grid Line to the point of commencement.

Exclusions:

The bed of French Creek.

**Parcel B, Machichi River**

per approximate general location shown on Plan No. 3.1 and the following description:

Boundary Description

Commencing at the intersection of UTM 6° Grid Line 6,296,000<sup>m</sup> N and UTM 6° Grid Line 562,000<sup>m</sup> E, thence northerly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 6,298,000<sup>m</sup> N, thence westerly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 561,000<sup>m</sup> E, thence northerly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 6,300,000<sup>m</sup> N, thence westerly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 559,000<sup>m</sup> E, thence northerly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 6,302,000<sup>m</sup> N, thence westerly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 558,000<sup>m</sup> E, thence northerly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 6,303,000<sup>m</sup> N, thence westerly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 557,000<sup>m</sup> E, thence northerly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 6,307,000<sup>m</sup> N, thence westerly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 556,000<sup>m</sup> E, thence northerly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 6,312,000<sup>m</sup> N, thence westerly along the last

mentioned Grid Line to the intersection with UTM 6° Grid Line 554,000<sup>m</sup> E, thence northerly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 6,320,000<sup>m</sup> N, thence easterly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 555,000<sup>m</sup> E, thence northerly along the last mentioned Grid Line to the **OHWM** of the Hudson Bay or of the Machichi River as determined by field survey, thence westerly along the **OHWM** of said Bay, the mouth of the Machichi River and the **OHWM** of said Bay and of the Hayes River to the intersection with UTM 6° Grid Line 553,000<sup>m</sup> E, thence southerly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 6,320,000<sup>m</sup> N, thence westerly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 552,000<sup>m</sup> E, thence southerly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 6,310,000<sup>m</sup> N, thence easterly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 553,000<sup>m</sup> E, thence southerly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 6,307,000<sup>m</sup> N, thence easterly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 554,000<sup>m</sup> E, thence southerly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 6,304,000<sup>m</sup> N, thence easterly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 555,000<sup>m</sup> E, thence southerly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 6,302,000<sup>m</sup> N, thence easterly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 556,000<sup>m</sup> E, thence southerly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 6,300,000<sup>m</sup> N, thence easterly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 558,000<sup>m</sup> E, thence southerly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 6,298,000<sup>m</sup> N, thence easterly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 559,000<sup>m</sup> E, thence southerly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 6,296,000<sup>m</sup> N, thence easterly along the last mentioned Grid Line to the point of commencement.

Exclusions:

The bed of the Machichi River.

## SCHEDULE 3.2

### LEGAL SURVEY INSTRUCTIONS

#### COMPENSATION LANDS

##### General:

- A. To conduct surveys and prepare plans of the described areas in accordance with Land Titles Office guidelines.
- B. Prepare Parcel Plans of the areas at an appropriate scale that ensures clarity of detail of the field survey.
- C. Survey of the parcel(s) as follows:

##### **Parcel A, French Creek**

per approximate general location shown on Plan No. 3.1 and the following description:

##### Boundary Description

Commencing at the intersection of UTM 6° Grid Line 6,316,000<sup>m</sup> N and UTM 6° Grid Line 549,000<sup>m</sup> E, thence northerly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 6,318,500<sup>m</sup> N, thence westerly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 548,000<sup>m</sup> E, thence northerly along the last mentioned Grid Line to the **OHWM** of the Hayes River, thence westerly and southerly along the **OHWM** of the Hayes River to the intersection with UTM 6° Grid Line 546,800<sup>m</sup> E, thence southerly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 6,316,000<sup>m</sup> N, thence easterly along the last mentioned Grid Line to the point of commencement.

##### Exclusions:

The bed of French Creek.

##### **Parcel B, Machichi River**

per approximate general location shown on Plan No. 3.1 and the following description:

Boundary Description

Commencing at the intersection of UTM 6° Grid Line 6,296,000<sup>m</sup> N and UTM 6° Grid Line 562,000<sup>m</sup> E, thence northerly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 6,298,000<sup>m</sup> N, thence westerly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 561,000<sup>m</sup> E, thence northerly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 6,300,000<sup>m</sup> N, thence westerly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 559,000<sup>m</sup> E, thence northerly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 6,302,000<sup>m</sup> N, thence westerly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 558,000<sup>m</sup> E, thence northerly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 6,303,000<sup>m</sup> N, thence westerly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 557,000<sup>m</sup> E, thence northerly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 6,307,000<sup>m</sup> N, thence westerly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 556,000<sup>m</sup> E, thence northerly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 6,312,000<sup>m</sup> N, thence westerly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 554,000<sup>m</sup> E, thence northerly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 6,320,000<sup>m</sup> N, thence easterly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 555,000<sup>m</sup> E, thence northerly along the last mentioned Grid Line to the **OHWM** of the Hayes River, thence westerly along the **OHWM** of the Hayes River to the intersection with UTM 6° Grid Line 553,000<sup>m</sup> E, thence southerly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 6,320,000<sup>m</sup> N, thence westerly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 552,000<sup>m</sup> E, thence southerly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 6,310,000<sup>m</sup> N, thence easterly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 553,000<sup>m</sup> E, thence southerly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 6,307,000<sup>m</sup> N, thence easterly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 554,000<sup>m</sup> E, thence southerly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 6,304,000<sup>m</sup> N, thence easterly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 555,000<sup>m</sup> E, thence southerly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 6,302,000<sup>m</sup> N, thence easterly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 556,000<sup>m</sup> E, thence southerly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 6,300,000<sup>m</sup> N, thence easterly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 558,000<sup>m</sup> E, thence southerly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 6,298,000<sup>m</sup> N, thence easterly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 559,000<sup>m</sup> E, thence southerly along the last mentioned Grid Line to the intersection with UTM 6° Grid Line 6,296,000<sup>m</sup> N, thence easterly along the last mentioned Grid Line to the point of commencement.

**Exclusions:**

The bed of the Machichi River

**General Provisions**

Bearings:

Bearings will be derived from the control and referenced to the Central Meridian of U.T.M. Zone 15. Bearings not angles, will show on all surveyed boundaries.

Monuments:

Monuments along surveyed boundaries will be intervisible and where possible be placed in solid ground or rock. The maximum distance between each monument will be 1 km. The monuments will be 0.025<sup>m</sup> x 0.025<sup>m</sup> x 0.914<sup>m</sup> minimum to ensure stability or Short Rock Posts. Ties will be shown to all pertinent waterbodies along surveyed lines.

Cut Lines:

The inland boundary shall be surveyed on true line and the surveyed line cut to ensure a visible skyline (a minimum 3<sup>m</sup> width).

Control:

Global Positioning System control will be expanded along as required to accommodate plotting the **OHWM** of pertinent waterbodies and to provide additional co-ordinate control. These monuments and values will be shown on the Plan. The G.P.S. process shall exceed third order accuracies in accordance with recognized standards by a competent authority.

OHWM:

The **OHWM** of pertinent waterbodies may be plotted from aerial photography in accordance with Land Titles Office guidelines.

Waterbodies:

The beds of all waterbodies contained within the bounds of **Compensation Lands**, excepting those specifically excluded herein, shall form part of the **Compensation Lands**.  
Road Allowance

All surveyed or theoretical road allowances contained within the bounds of **Compensation Lands** as above described, form part of the **Compensation Lands**.

Theoretical Section Lines

The survey plan(s) will show adjacent theoretical section lines along surveyed boundaries as dashed lines, outside the **Compensation Lands** only.



Schedule 3.2 - 5

**Bench Marks:**

Bench Marks will be identified in the Notes with supporting B.M.§ placed at suitable locations and shown on the Plan.

Plans

3.1 York Factory First Nation Compensation Lands

Scale  
as shown



SCHEDULE 3.3

EASEMENT AGREEMENT

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## EASEMENT AGREEMENT

THIS AGREEMENT made the        day of        , 19

AMONG:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA, as represented by The Minister of Indian Affairs and Northern Development,

(hereinafter referred to as "**Canada**"),

OF THE FIRST PART,

HER MAJESTY THE QUEEN IN RIGHT OF MANITOBA, as represented by The Minister of Northern Affairs,

(hereinafter referred to as "**Manitoba**"),

OF THE SECOND PART,

THE YORK FACTORY FIRST NATION, as represented by Chief and Council,

(hereinafter referred to as "**York Factory**"),

OF THE THIRD PART,

THE MANITOBA HYDRO-ELECTRIC BOARD,

(hereinafter referred to as "**Hydro**"),

OF THE FOURTH PART.

WHEREAS:

1                    The Indian Reserve of **York Factory** at York Landing, Manitoba as shown on Parcel A Plan No. 69635 C.L.S.R., and Parcels B and C, Plan No. 69636

C.L.S.R., is a **Reserve**.

2           The **NFA** was entered into among **Manitoba, Hydro, the NFC,** negotiating on behalf of the Cross Lake, Nelson House, Norway House, Split Lake and **York Factory** Indian bands, and **Canada**.

3           The **NFA** was ratified by each of the bands.

4           The **NFA** provides, among other provisions, for compensation for **Reserve Lands, and Adverse Effects on York Factory and Members**.

5           The **NFA** also provides that each of the said bands will facilitate, and **Canada** will grant to **Hydro** certain **Easements**, for purposes of the **Project**.

6           **Hydro** is an agent of the Crown in right of Manitoba, and **Manitoba** will assume certain rights and obligations of **Hydro** as set forth in this **Easement Agreement**.

7           **Hydro** is empowered pursuant to The Manitoba Hydro Act (Manitoba) to take or use lands without the consent of the owner thereof; but in lieu of the exercise of powers of expropriation, the Governor in Council has, by Orders in Council 1977-2276 and 1978-594, approving the **NFA** pursuant to Section 35 of

the Indian Act (Canada), agreed to grant an **Easement to Hydro** with respect to the lands described in this **Easement Agreement**; and, subject to the terms and conditions hereinafter set forth, **Canada** has agreed that the **Easement** provided for in this **Easement Agreement** be granted to **Hydro** and that an instrument transferring partial administration and control of the said lands be issued in favour of **Manitoba**, in accordance with this **Easement Agreement**.

8                   **Chief and Council** has, by **Council Resolution**, agreed to the grant of the **Easement** on and over certain **Reserve Lands** described in, and upon the terms and conditions set out in, this **Easement Agreement**.

9                   **York Factory** has, by referendum, ratified the **Agreement** among **York Factory, Canada, Manitoba** and **Hydro** and has authorized **Chief and Council** to enter into this **Easement Agreement** on behalf of **York Factory**.

10                   The Minister of Indian Affairs and Northern Development, Canada, has been authorized to enter into this **Easement Agreement** on behalf of **Canada**.

11                   The Minister of Northern Affairs, Manitoba, has been authorized to enter into this **Easement Agreement** on behalf of **Manitoba**.

12.                   The appropriate officers of **Hydro** have been authorized by the

Manitoba Hydro-Electric Board to enter into this **Easement Agreement** on behalf of **Hydro**.

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

1.0 Article 1. Definitions

1.1 In this **Easement Agreement**;

1.2 **Agreement** means the agreement dated [Date of the Agreement] among **York Factory, Canada, Manitoba and Hydro**.

1.3 **A.S.L.** means above sea level as established by Geodetic Survey of Canada in accordance with Revision No. 1, dated May, 1970, Quad 56096.

1.4 **Canada** means Her Majesty the Queen in Right of Canada who, for the purposes of this **Easement Agreement**, is represented by the Minister of Indian Affairs and Northern Development.

1.5 **Chief and Council** means the Council of **York Factory**.

1.6 **Council Resolution** means a resolution approved by **Chief and Council**.

1.7            **Date of the Agreement** means the date the **Agreement** has been executed by all **Parties**.

1.8            **Easement** means the interest in the **Easement Lands** to be granted by **Canada** to **Hydro** and **Manitoba**.

1.9            **Easement Agreement** means this agreement.

1.10          **Easement Lands** means the lands which are subject to the **Easement** and which are described in Article 2.1 of this **Easement Agreement**.

1.11          **Existing Development** means all those physical works related to hydro-electric development on the Churchill, Nelson, Rat and Burntwood River systems and the development of the Lake Winnipeg Regulation System north of the 53rd parallel, to the extent such works have been physically developed and constructed by or on behalf of **Hydro** to the **Date of the 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.

1.12            **Hydro** means the Manitoba Hydro-Electric Board.

1.13            **Manitoba** means Her Majesty the Queen in Right of Manitoba who, for the purposes of this **Easement Agreement**, is represented by the Minister of Northern Affairs.

1.14            **NFA** means the agreement dated December 16, 1977, between **Manitoba, Hydro, NFC and Canada**, including all schedules annexed thereto, and shall include the Economic Development Agreement between the same parties and dated the 1st day of September, 1977.

- 1.15            **NFC** means the Northern Flood Committee, Inc.
- 1.16            **Party** means any of **Canada, Manitoba, York Factory** and **Hydro**.
- 1.17            **Project** means and includes all **Existing Development** and all future hydro-electric development or redevelopment by **Hydro** on the Churchill, Nelson, Rat and Burntwood River Systems and includes all development or redevelopment by **Hydro** of the Lake Winnipeg Regulation System north of the 53 (fifty-third) parallel.
- 1.18            **Reference Bench Marks** means the Bench Marks to be established in and around York Landing as provided in Article 3.3.7 of the **Agreement**.
- 1.19            **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 **York Factory**.
- 1.20            **Reserve Lands** means lands within the **Reserve**.
- 1.21            **Resource Management Area** means the area described and shown in Schedule 4.1 of the **Agreement** and includes the rivers and lakes and any **Reserve Lands** therein, subject to changes that may be made in accordance with



Article 4 of the **Agreement**.

1.22           **Setback Lines** means the lines marking the upper boundary of the **Easement Lands** comprising the severance lines on **Reserves** shown on plans deposited in the Canada Lands Surveys Records as further described in Schedule 3.4 of the **Agreement**.

1.23           **Split Lake Gauge** means the Government of Canada Gauging Station No. 05UF003 at Split Lake operated by **Canada**, and any replacement gauge installed and operated in accordance with Article 2.2.2 of the **Agreement**.

1.24           **Static Inundation Level** means the inundation level with wind effects eliminated.

1.25           **York Factory** means York Factory First Nation, a "band" within the meaning of the Indian Act (Canada).

2.0           Article 2. **Easement Lands**

2.1           **Canada** shall:

- (a) grant to **Hydro** the right, liberty, privilege and **Easement** in accordance with the terms and conditions in this **Easement**

**Agreement;** and

- (b) by order of Governor in Council, transfer to **Manitoba** such administration and control as is required to assure **Manitoba** receives the right, liberty, privilege and **Easement** in accordance with the terms and conditions in this **Easement Agreement**;

with respect to all of the **Easement Lands** described as:

In the Province of Manitoba, in Unsurveyed Townships 81 and 82, Ranges 9 and 10 East of the Principal Meridian, all those parcels of land being more particularly described under Firstly to Fourthly as follows:

**FIRSTLY:** All those portions of York Landing Indian Reserve shown as Parcels NFA-1 and NFA-2 on a plan of survey of part of York Landing Settlement recorded in the Canada Lands Surveys Records as No. 72529, a copy of which is filed in the Portage la Prairie Land Titles Office as No. 24723: said Parcels containing 22.37 ha. (55.3 Acs.), more or less

**SECONDLY:** All that portion of York Landing Indian Reserve shown as Parcel NFA-3 on a plan recorded said Records as No. 77083; said Parcel containing 30.9 ha. (76.4 Acs.); more or less

**THIRDLY:** All those portions of York Landing Indian Reserve shown as Parcels NFA-4 and NFA-5 on a plan recorded in said Records as No. 77084, said Parcels containing 21.6 ha. (53.4 Acs.); more or less, and

**FOURTHLY:** All that portion of York Landing Indian Reserve shown as Parcel NFA-6 on a plan recorded in said Records as No. 77085, said Parcel containing 36.06 ha (89.10 Acs.); more or less.

### 3.0 Article 3. Scope of **Easement**

3.1 **Hydro and Manitoba** shall have the right and privilege during the currency

of the **Easement** to inundate and store water on the **Easement Lands** in accordance with, and subject to, the provisions of this **Easement Agreement**; and shall and may peaceably hold and enjoy the rights, privileges and **Easements** hereby granted without obstruction, hindrance, molestation or interruption on the part of **Canada, York Factory**, or any person claiming by, through, or under **Canada or York Factory**.

3.2 The **Easement** granted in this **Easement Agreement**, to inundate and store water on the **Easement Lands**, in accordance with the provisions of this **Easement Agreement**, is solely for the purposes related and ancillary to the **Project**.

3.3 **Hydro** and **Manitoba** shall not be liable to **Canada** or **York Factory** for any loss or damage to persons or property by virtue of their use of the **Easement Lands** for inundation and storage of water within the terms and conditions prescribed in this **Easement Agreement**; but **Hydro** shall be liable for any loss, damage or injury to persons or property arising from the breach by **Hydro**, its agents, employees, contractors and sub-contractors of any provisions of this **Easement Agreement**; and where **Manitoba** has, pursuant to this **Easement Agreement**, assumed the rights and obligations of **Hydro** or any successor of **Hydro**, **Manitoba** shall be liable for any loss, damage or injury to persons or property arising from the breach of any provision of this **Easement Agreement** by

**Hydro** or its successor as operator of the works comprising the **Project**.

3.4 This **Easement Agreement** grants to **Hydro** and **Manitoba** no rights to, or to the use of, the **Easement Lands**, other than those expressly set forth in this **Easement Agreement**; and the **Easement Lands** remain **Reserve Lands** under the Indian Act (Canada); and **York Factory** may continue any and all uses of the **Easement Lands** which are not inconsistent with the provisions of the **Easement**. The **Easement** is made solely for the purposes stated in this **Easement Agreement** and does not create any additional rights of tenancy, or any possessory rights of exclusive use or occupation by implication. No actions of **Hydro**, **Manitoba**, **York Factory** or **Canada**, pursuant to this **Easement Agreement**, shall be deemed to create any additional rights or privileges in favour of **Hydro** or **Manitoba** in the **Easement Lands**, beyond those expressly set forth in this **Easement Agreement**.

3.5 If **Hydro** ceases:

- (a) to be an agent of Her Majesty the Queen in Right 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 on a waterbody within the **Resource Management Area**;

then **Manitoba** shall:

- (d) in the circumstances to which Articles 3.5(a) or 3.5(b) applies, assume all of the rights and obligations of **Hydro** under this **Easement Agreement**; and
- (e) in the circumstances to which Article 3.5(c) applies, assume the rights and obligations of **Hydro** under this **Easement Agreement**, as such rights and obligations relate to the works or structures over which **Hydro** no longer has effective authority and control.

In all such events, the provisions of this **Easement Agreement** shall be read with the necessary changes to reflect the assumption by **Manitoba** of rights and obligations of **Hydro** under this **Easement Agreement**, but such assumption shall not relieve **Hydro**, or any successor of **Hydro**, of its obligations under this **Easement Agreement**.

3.6 If **Manitoba** disputes that it has assumed the rights and obligations of **Hydro** under Article 3.5, that dispute may only be referred to arbitration or to court by a **Party**.

3.7 Unless **Manitoba** has assumed the rights and obligations of **Hydro** under Article 3.5, no arbitration or court proceeding shall be brought against **Manitoba** under Article 3.5 for any alleged misfeasance, malfeasance or non-feasance of **Hydro**, except by a **Party**.

3.8 In the circumstances to which Article 3.5 applies, **York Factory** shall make reasonable efforts (but shall not be obliged to incur excessive or unusual costs) to have any dispute or matter resolved by **Hydro**, or its successor before having recourse to **Manitoba**, in accordance with the obligations which **Manitoba** will have assumed under this **Easement Agreement**.

3.9 The grant of **Easement** to **Manitoba** in the form of a transfer of partial administration and control does not express or imply any other or additional transfer of property or authority to **Manitoba** in respect of **York Factory** or **Reserve Lands** or any diminution of aboriginal and treaty rights recognized and affirmed by the Constitution Act, 1982.

3.10 **Hydro** may use and enjoy the rights under this **Easement** which are within the scope of the existing or subsequent licences or approvals duly obtained, providing that no such licence or approval shall be deemed to amend this **Easement Agreement** in any way. Except to the extent expressed, the granting of this **Easement**, and the provisions of this **Easement Agreement**, do not constitute approval or acceptance by **Canada** or **York Factory**, of the **Project**, or of any application or authorization which **Hydro** may make or obtain.

3.11 Except as expressly set forth in this **Easement Agreement**, the

**Easement** shall not amend, alter, grant relief from, or substitute for, any obligations imposed upon **Hydro** by, or pursuant to, any law of **Canada** or **Manitoba**.

4.0 Article 4. Bank and **Setback Line** Protection, Maintenance and Related Matters

4.1 **Hydro** and **York Factory** may inspect, protect and maintain, at their own expense, the banks and shorelines forming part of the **Easement Lands**.

4.2 **Hydro** shall periodically, inspect and maintain the banks and shorelines within the **Easement Lands**, to ensure that **Reserve Lands** above the **Setback Lines**, and not forming part of the **Easement Lands**, are not damaged or impaired by erosion, slumping or other adverse impacts due to the use of the **Easement Lands** for the purposes of the **Project**.

4.3 Where bank protection, shoreline work or maintenance work is required on **Easement Lands** to prevent inundation beyond the **Easement Lands** or otherwise to protect the **Easement**, such work shall be the right and responsibility of **Hydro** to perform at its own expense.

4.4 Where bank protection, shoreline work or maintenance work is required to protect any development on **Easement Lands**, permitted by **York**

**Factory** pursuant to this **Easement Agreement**, such work shall be the right and responsibility of **York Factory** to perform at its own expense.

4.5 All bank protection, shoreline or maintenance work on **Easement Lands** performed under this **Easement Agreement**, shall be done in a skilful fashion in accordance with applicable engineering standards.

4.6 Except while work permitted by this **Easement Agreement** is in progress, **Hydro**, its agents, employees, contractors and sub-contractors shall not leave, park or store any vehicles, equipment or other chattels on the **Easement Lands**.

4.7 Except as provided in Articles 6.8 and 4.10, where damage is done on **Reserve Lands** to any works, buildings, crops, fences, livestock, goods and chattels of **York Factory** or **Canada**, or any person claiming through or under **Canada** or **York Factory**, and the damage is caused by **Hydro**, its agents, employees, contractors or sub-contractors, **Hydro** shall compensate **Canada**, **York Factory** or any such person in respect of such damage.

4.8 Where damage is caused to bank protection put in place by **Hydro**, or like works constructed or placed by **Hydro** on the **Easement Lands**, which damage **Chief and Council** on behalf of **York Factory** ought reasonably to have



prevented, **Chief and Council** shall, at the expense of **York Factory**, restore such works to the reasonable satisfaction of **Hydro**.

4.9 Subject to the provisions of Articles 6.2 to 6.8, **Hydro** shall indemnify and save harmless **York Factory** and **Canada**, from and against any claims of any kind for loss, injury or damage to persons or property as a result of the presence or operation of vehicles, equipment or chattels of **Hydro**, its agents, employees, contractors or sub-contractors, on the **Easement Lands** or access routes thereto; except that **Hydro** shall not be responsible where work permitted by this **Easement** is performed on its behalf by **Members** under the direction and supervision of **Chief and Council**.

4.10 **Hydro** shall not be liable under either Article 4.7 or Article 4.9, to the extent that the damage results from the negligence of the person who has suffered the loss, or from a use, by that person, of the **Easement Lands** which is not authorized or permitted by this **Easement Agreement**.

4.11 **Hydro**, its employees, agents, contractors and sub-contractors may fell, cut, trim, or remove any trees or parts thereof, on or from the **Easement Lands** below the relevant maximum permissible **Static Inundation Level** under Article 7.1. Above that level, **Hydro** may request permission of **Canada** and **York Factory** to cut or remove trees or timber, pursuant to the provisions of the Indian Act (Canada)

and the Indian Reserve Timber Regulations or any successor legislation; and such consent on the part of **Chief and Council** and **Canada** shall not be unreasonably withheld.

4.12 Except as otherwise provided in this **Easement Agreement**, **Hydro**, its agents, employees, contractors and sub-contractors shall not commit or permit the commission of any waste, spoilage or destruction, or dump any rubbish or any other matter of an offensive nature anywhere on the **Reserve**, except in such places and at such times as may have been previously designated by **Chief and Council**, or **Canada**. Inundation and storage of water permitted by this **Easement Agreement** shall not be a contravention of Article 4.12.

4.13 **Hydro** shall promptly, and, in any event, not later than seven (7) days after receipt of a written request to do so from **Chief and Council**, remove debris or waste material placed or caused to be placed on the **Easement Lands** by **Hydro** works or operations, other than debris or waste resulting from the inundation and storage of water as permitted under this **Easement Agreement**.

4.14 **Hydro** shall dispose of any material excavated or removed from the **Easement Lands** as may reasonably be directed, in writing, by **Chief and Council**. In an emergency or if no such direction is provided within seven (7) days of a request for direction such material may be disposed of off **Reserve**. Any such

direction or disposal shall be in compliance with all applicable laws and regulations.

4.15 If required, so that construction or other activities within or near the **Setback Lines** can be appropriately located, **Hydro** shall, if requested and reasonably required by **Chief and Council** or **Canada**, restore the **Setback Lines**, and cut lines associated therewith, and replace any missing survey monuments to the satisfaction of the Surveyor General of Canada.

4.16 **Hydro** shall ensure that all legal or control survey monuments are protected and not disturbed, damaged or destroyed in the course of any of its activities pursuant to this **Easement Agreement**. Where any monuments have been or are disturbed, damaged or destroyed as a result of **Hydro** activities or works related to the **Project**, including **Project** operations, **Hydro** shall at its expense, and in a timely fashion, have such monuments replaced by a qualified Land Surveyor to the satisfaction of the Surveyor General of Canada. This section does not apply to legal or control monuments which are lawfully inundated.

4.17 Where survey monuments are disturbed as a result of willful, deliberate or negligent actions of the agents, servants or employees of **York Factory** or **Canada**, it shall be the responsibility of that **Party** to restore or replace such monuments in a timely fashion and in a manner satisfactory to the Surveyor General of Canada.

4.18 Where **Setback Lines** have not been the subject of an on-the-ground survey and installation of monuments, **Hydro** shall, upon reasonable notice from **Chief and Council** or **Canada**, use its best efforts expeditiously, and in any event within twelve (12) months of such notice, to survey and install monuments in accordance with the survey instructions issued by the Surveyor General of Canada.

4.19 **Hydro** shall, in so far as it is reasonably practical to do so, conduct all work under Article 4 of this **Easement Agreement**, so as not to interfere with the ordinary use of the **Easement Lands** or **Reserve Lands** adjacent to the **Easement Lands**.

5.0 Article 5. Access to **Easement Lands**

5.1 Subject to the terms set forth in this **Easement Agreement**, **Canada** and **York Factory** grant to **Hydro**, its servants, employees and agents, a licence, without charge, for access to and from the **Easement Lands** over and upon the **Reserve**, and over and upon any other lands which do not now but which may in the future form part of the **Reserve**, with or without vehicles, machinery and equipment, for such inspections, bank protection, maintenance and other purposes authorized by this **Easement Agreement**, as **Hydro** at any time deems necessary or expedient.

5.2 Notice requirements for access shall be as follows:

- (a) Except in the case of an emergency, **Hydro** shall give **Chief and Council** and **Canada** not less than thirty (30) days written notice of the nature of bank protection, maintenance or other work to be done on the **Easement Lands** and not less than ten (10) days written notice of inspections on **Easement Lands** or such other periods of notice as may be agreed upon by **Hydro** and **Chief and Council** in writing; and
- (b) In the event of an emergency, **Hydro** shall, as soon as possible after the need is identified, give **Chief and Council** and **Canada** notice by telephone and facsimile of the nature of the work involved.

5.3 Where, in the opinion of **Hydro**, it is impractical to enter upon or exit from the **Easement Lands** for valid purposes under this **Easement Agreement** except across **Reserve Lands**, **Hydro**, except in the case of an emergency, shall so notify **Chief and Council** and **Canada** in writing at least thirty (30) days (or at least ten (10) days when the purpose is for inspections) in advance of such proposed entry or exit across the **Reserve Lands**. Such notice shall:

- (a) include the nature, number, dimensions and gross weight of any vehicles, equipment or materials to be transported to or on the

**Easement Lands;**

- (b) set forth the reasons why other means of entry or exit are impractical in the circumstances; and
- (c) set forth the approximate number of persons involved; the proposed route; and the earliest contemplated entry date and the estimated exit date.

In the event of an emergency, **Hydro** shall give notice by telephone and facsimile to **Chief and Council** and **Canada** as soon as the circumstances of the emergency are known to **Hydro**.

5.4 Access across **Reserve Lands** shall be by means of **Reserve** roads, except where that is demonstrably impractical.

5.5 **Chief and Council** or **Canada** may, within seven (7) days of receipt of a notice under Article 5.3 object to the proposed access or route of access by notifying **Hydro** in writing, of its objections. Promptly after receipt of such a notice by **Hydro**, **Chief and Council** and **Hydro** shall use their best efforts to resolve their differences. If those differences cannot, in the opinion of either **Chief and Council** or **Hydro**, be resolved within a reasonable time, either **Party** or **Canada** may have recourse to court to resolve the dispute; and, except in an emergency, **Hydro** shall refrain from use of the proposed access until the dispute is conclusively disposed of by such court.

5.6 In the event of an emergency, **Hydro** may use the proposed access. If there is a dispute as to whether or not an emergency exists, a court may find that an emergency does not exist, and order **Hydro** to cease use of the access.

5.7 **York Factory** covenants that it will assist **Hydro**, and take all reasonable steps to enable **Hydro**, to exercise its rights of entry and exit as provided for in this **Easement Agreement**, without hindrance or interference.

5.8 **Hydro** will repair any damage caused to **Reserve Lands** as a result of its exercising this right of ingress and egress, to the extent reasonably practicable, to the condition it was in prior to the damage.

6.0 Article 6. Buildings and Structures on **Easement Lands**

6.1 **Hydro** shall not construct any permanent works, buildings, structures or improvements on the **Easement Lands** other than works in the nature of bank protection and shoreline maintenance or related work, without the prior written consent of **York Factory** and **Canada**.

6.2 Except for **Hydro's** right to construct works in the nature of bank

protection and shoreline maintenance or related works, which right is hereby granted, no person shall develop, improve or build a structure of any kind on the **Easement Lands** without prior approval from **Chief and Council**, and any other approvals required under the Indian Act (Canada).

6.3 Subject to the provisions of Article 6, **Chief and Council** may permit a structure, development or improvement upon **Easement Lands** which are, or are not, inundated.

6.4 **Chief and Council** shall give **Hydro** and **Canada** not less than thirty (30) days notice of any Council meeting where a proposal, to which Articles 6.2 or 6.3 apply, will be considered. Such notice shall include:

- (a) a description of the nature and location on the **Easement Lands** of the proposed structure, development or improvement; and
- (b) the date, time and place of the Council meeting at which the proposal is to be considered.

**Hydro** may enter the **Reserve** to appear at such meeting and make representations to **Chief and Council**.

6.5 **Chief and Council** will grant permission, under Article 6.3 only where:

- (a) the structure, development or improvement is, in its judgment,



necessary for the economic and social well-being of **York Factory**;  
and

(b) the structure, development or improvement can reasonably be expected not to materially interfere with, or adversely affect, **Hydro's** rights under this **Easement Agreement**, including, **Hydro's** right to:

- (i) inundate and store water on the **Easement Lands** as provided for in this **Easement Agreement**,
- (ii) access the **Easement Lands** in accordance with the entry and exit provisions of this **Easement Agreement**,  
or
- (iii) carry out bank protection, shoreline maintenance and related works on the **Easement Lands** necessary for **Hydro** operations in accordance with the provisions of this **Easement Agreement**.

6.6 Where it appears to **Hydro** that a structure or improvement on the **Easement Lands**, other than its own, is causing or is likely to materially interfere with or adversely affect **Hydro's** rights as described in Article 6.5(b), **Hydro** shall so notify **Chief and Council** and **Canada** in writing and indicate:

- (a) that **Hydro** proposes to alter or remove the structure or improvement at its own expense and, subject to the provisions of

Article 6.7, without liability therefor on a date not sooner than twenty-one (21) days from the date notice is received by **Chief and Council**; or

- (b) that **Hydro** requests that **Chief and Council** arrange for removal of the structure or improvement, whereupon **Chief and Council** will arrange for the structure or improvement to be removed at the expense of **York Factory**.

6.7 **Chief and Council** may, within fourteen (14) days of receipt of a notice under Article 6.6, object to the course of action by notifying **Hydro** and **Canada** in writing of the nature of its objections. Promptly after receipt of any such notice, **Chief and Council** and **Hydro** shall use their best efforts to resolve their differences. If those differences cannot be resolved within a reasonable time, either **Party** or **Canada** may proceed to court to resolve the dispute. Any action taken by **Hydro** to remove such structure or improvement shall be at **Hydro's** risk, until the dispute has been finally resolved by the courts.

6.8 **Hydro** is not liable under this **Easement Agreement** for any damage to any improvements, structures, works, buildings, crops, fences, livestock, goods and chattels which are on the **Easement Lands**, which damage is incidental to the exercise by **Hydro** of its rights under this **Easement**, or which is caused by the inundation and storage of water on **Easement Lands**, except where such

damage occurs as a result of negligence or breach of the provisions of this **Easement Agreement** by **Hydro**, its agents, employees or servants.

7.0 Article 7. Additional Easement Terms

7.1 The granting of the **Easement** by **Canada** is subject to the conditions that **Hydro** shall:

- (a) to the extent it is possible to do so and is within the control and authority of **Hydro**, control the flow of water on the regulated waterways so as to ensure that the **Static Inundation Level** on Split Lake adjacent to the **Reserve** does not exceed elevation 169.47m (556.0 ft) **A.S.L.**; and
- (b) use all practical means, including adjustment of flows through control structures, to prevent any inundation of **Reserve Lands** lying between a **Static Inundation Level** 169.47m (556.0 ft) **A.S.L.** and the **Setback Lines**.

7.2 Nothing in this **Easement Agreement** shall be deemed:

- (a) to vest in **Hydro** any title to the casual revenues of the Federal Crown, or to any mines, ores, metals, coal, slate, oil, gas, hydrocarbons, aggregate or other minerals in or under the land comprising the **Easement Lands**; or

- (b) to prevent the exploitation of such minerals by or with the permission of **York Factory** in accordance with the Indian Act (Canada) provided such exploitation does not interfere with or derogate from **Hydro's** rights and privileges of access to the **Easement Lands** to inundate and store water on the **Easement Lands** and to carry out bank protection and shoreline maintenance and related works on the **Easement Lands** in accordance with the provisions of this **Easement Agreement**.

Article 7.2 does not derogate from **Hydro's** right and privilege to access the **Easement Lands** to inundate and store water on the **Easement Lands** and to carry out bank protection, shoreline maintenance and related works on **Easement Lands**, in accordance with the provisions of this **Easement Agreement**.

7.3 Subject to Article 3.5 of this **Easement Agreement**, **Hydro** may assign or encumber the rights granted by this **Easement Agreement**. Promptly upon any such assignment, **Hydro** shall give written notice to **Canada** and **York Factory**.

7.4 **Manitoba** may assign or encumber its rights or assign its obligations, under this **Easement Agreement**. Promptly upon any such assignment or encumbrance, **Manitoba** shall give written notice to **Canada** and **York Factory**. **Manitoba** shall remain liable for the performance of all of **Manitoba's** covenants in

the event of such assignment or encumbrance, including those obligations of **Hydro** it is required to assume pursuant to this **Easement Agreement**.

7.5 Neither **Canada** nor **York Factory** shall dispose of or alienate their respective interests in the **Easement Lands**, except subject to the terms of this **Easement Agreement**. No alienation of the **Easement Lands** shall be permitted unless there are reservations in favour of **Manitoba** and **Hydro** of all of the rights and privileges to which **Manitoba** and **Hydro** are entitled under this **Easement**, including the provision of Article 7.5 in a form which binds assignees and successors.

7.6 For the purpose of this **Easement Agreement** water levels on Split Lake shall be measured at and by the **Split Lake Gauge**.

7.7 **Reference Bench Marks** shall be used as may be required in the survey and determination of **Setback Lines**, the determination of **A.S.L.** and other purposes requisite to the administration of the **Easement**.

8.0 Article 8. Taxes, Levies and Charges

8.1 **Hydro** may exercise the **Easement** without charge, rate, levy, assessment, licence, fee or tax exigible by or payable to **Canada** or **York Factory**

in respect thereof, including taxes, levies or charges levied, or purported to be levied, by means of by-laws pursuant to the Indian Act (Canada), or any successor legislation; and Article 8.1 shall be a full and sufficient exemption from any such charges.

8.2 Article 8.1 shall not exempt **Hydro** from any applicable excise tax, income tax, goods and services tax or any other tax not covered by Article 8.1.

8.3 **Hydro** shall be responsible for, and shall indemnify **Canada** and **York Factory** for any levies, taxes or charges assessed against the interest of **Hydro** in the **Easement Lands**, or related to the use of the **Easement Lands** by **Hydro**, its agents, employees, contractors and sub-contractors, where any such levies, taxes or charges are assessed pursuant to the laws of the Province of Manitoba, or are not within the scope of the provisions of Article 8.1.

9.0 Article 9. Warranties of Power and Authority

9.1 **Canada** warrants that it has the full power and authority to grant to **Hydro** and **Manitoba** the rights, privileges and the **Easement** granted in this **Easement Agreement**, and to be bound by this **Easement Agreement**.

9.2 **Hydro** warrants that it has full power and authority to enter into and be bound by this **Easement Agreement**, and that it is in compliance with all statutory requirements and **Hydro** by-laws related to its execution.

9.3 **Manitoba** warrants that it has full power and authority to enter into and be bound by this **Easement Agreement**.

9.4 **York Factory** warrants that it has full power and authority to enter into and be bound by this **Easement Agreement**.

9.5 It is expressly understood by **Hydro** and **Manitoba** that **Canada** does not in any way warrant, control, guarantee or assume any liability, of any kind whatsoever, with respect to any actions of **York Factory** or **Chief and Council** in connection with the **Easement** or this **Easement Agreement**.

9.6 **York Factory** and **Chief and Council** warrant that they have been

independently advised by legal and technical counsel and advisors of their choice before entering into this **Easement Agreement**.

10.0 Article 10. Waiver, Indemnification and Correction of Breach

10.1 **Hydro** will save **Canada** and **York Factory** harmless, and keep **Canada** and **York Factory** indemnified from and against, all actions, claims, and demands which may be made against **Canada** and **York Factory** by reason of any act or omission of **Hydro** in the exercise or purported exercise of the rights granted by this **Easement Agreement**, or occasioned by or attributable to anything done or omitted to be done by **Hydro**, its agents, employees, contractors or sub-contractors in the exercise or purported exercise of the rights granted by this **Easement Agreement**.

10.2 **Hydro** shall indemnify and save harmless **Canada** and **York Factory** in respect of any actual or purported liens, encumbrances or charges which may attach to the **Easement Lands** under the laws of Manitoba or Canada, where such liens, encumbrances or charges arise from the acts or omissions of **Hydro**, its agents, employees, contractors or sub-contractors. This indemnity and the Indemnity under Article 10.1 are conditional upon the identified **Party**, forthwith giving notice to **Hydro** of any such action, claim or demand, actively and diligently resisting any such action, claim or demand and supporting any application by **Hydro**



to be named as a party to any such action.

10.3 No waiver of any breach, by or on behalf of **Canada**, shall take place or be binding unless the waiver is in writing signed by the Minister, Deputy Minister or Assistant Deputy Minister responsible under the laws of Canada and any such waiver shall apply only to the particular breach to which such waiver specifically relates, and shall not be deemed to be a general waiver, or to limit or affect the rights of **Canada** with respect to any future or other breach.

10.4 No waiver of any breach, by or on behalf of **York Factory**, shall take place or be binding unless authorized in a resolution passed by **Chief and Council**, and any such waiver shall apply only to the particular breach to which such waiver specifically relates, and shall not be deemed to be a general waiver, or to limit or affect the rights of **York Factory** with respect to any future or other breach.

10.5 No waiver of any breach, by or on behalf of **Hydro**, shall take place or be binding unless the same be expressed in writing over the signature of the Chairman, President or Vice President of **Hydro**, and any such waiver shall apply only to the particular breach to which such waiver specifically relates, and shall not be deemed to be a general waiver, or to limit or affect the rights of **Hydro** with respect to any future or other breach.

10.6 No waiver of any breach, by or on behalf of **Manitoba**, shall take place or be binding unless the same be expressed in writing over the signature of the Minister of the Government of Manitoba responsible for **Hydro** or Northern Affairs, and any such waiver shall apply only to the particular breach to which such waiver specifically relates, and shall not be deemed to be a general waiver, or to limit or affect the rights of **Manitoba** with respect to any future or other breach.

10.7 **York Factory** hereby releases and forever discharges **Canada**, **Hydro** and **Manitoba** of and from any and all actions, causes of action, suits, claims, demands, losses or damages of any kind or nature whatsoever, at law or in equity, which **York Factory** or **York Factory** on behalf of any **Member**, their respective successors, assigns, heirs, executors or administrators, now have or hereafter can, shall or may have, for, or by reason of, any cause, matter or thing whatsoever, in relation to the granting of this **Easement** and the arrangements or matters specifically provided for in this **Easement Agreement**. Nothing in this section shall relieve **Canada**, **Hydro** or **Manitoba** of liability for breaches of the **Easement** or the **Easement Agreement**, future negligent acts or omissions or wilful misconduct, on its own part, or on the part of those for whom it is responsible at law.

10.8 **Manitoba**, **York Factory** and **Hydro** release **Canada** from all

liability with respect to the definition, selection or determination of the **Reference Bench Marks, A.S.L.**, or the selection and use of the **Split Lake Gauge** to measure water levels for the purposes of this **Easement Agreement**.

11.0 Article 11. General Provisions

11.1 The preamble is inserted solely for historical purposes and may not be used or referred to in interpreting any part of this **Easement Agreement**.

11.2 The division of this **Easement Agreement** into articles, and the article headings are for convenience of reference only, and shall not affect the construction or interpretation of this **Easement Agreement**. Headings used in this **Easement Agreement** are for general guidance only and do not have substantive meaning so as to modify the provisions of this **Easement Agreement** or alter or modify the **Easement**.

11.3 Words importing the singular number include the plural and vice versa.

11.4 Except where the original data, document 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 **Easement Agreement** shall be 1 foot equals 0.3048 meters and 1 meter equals 3.28084 feet.

11.5 Each of the **Parties** to this **Easement Agreement** will deliver such instruments of transfer, conveyance and assignment, and take such further action as may be required to effectively complete any matter provided for in this **Easement Agreement**.

11.6 This **Easement Agreement** constitutes the entire agreement between the **Parties** and, except as expressly provided, supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, between and among the **Parties** with respect to the subject matter of this **Easement**. There are no representations, warranties, collateral agreements or conditions pertaining to the subject of the **Easement**, except as expressed in this **Easement Agreement**. Article 11.6 does not apply to the **Agreement** or to agreements or arrangements, if any, between **Manitoba** and **Hydro**, provided that any such agreements or arrangements do not affect or purport to affect **Canada** or **York Factory** or their respective rights or obligations pursuant to this **Easement Agreement**.

11.7 The provisions of this **Easement Agreement** are without prejudice to the interpretation or application of the **NFA** by any of the **Parties** to this

**Easement Agreement** as it relates to Norway House, Split Lake, Nelson House, Cross Lake or the **NFC**.

11.8           The **Easement** and this **Easement Agreement** shall enure to the benefit of, and be binding upon, the **Parties** to this **Easement Agreement** their respective heirs, successors and assigns.

11.9           No part of the **Easement** or this **Easement Agreement** may be assigned or otherwise transferred except as expressly provided for in this **Easement Agreement**.

11.10          No member of Parliament or of the Legislative Assembly of Manitoba may share in any part of this **Easement Agreement**.

11.11          Where in this **Easement Agreement** notice or demand must be given it shall be given or served in writing and forwarded by registered mail or transmitted by tele-facsimile, charges pre-paid and confirmed by telephone as follows:

**To Canada:**

The Regional Director General  
The Department of Indian Affairs and Northern Development  
Suite 1100, 275 Portage Avenue  
Winnipeg, Manitoba  
R3B 3A3

**To York Factory:**

Chief and Council  
**York Factory** First Nation  
General Delivery  
York Landing, Manitoba  
R0B 2B0

**To Hydro:**

Manitoba Hydro  
General Counsel  
3rd Floor, 810 Taylor Ave.  
Winnipeg, Manitoba  
R3C 2P4

**To Manitoba:**

Deputy Minister of Northern Affairs  
Legislative Bldg.  
Winnipeg, Manitoba  
R3C 0V8

11.12            A **Party** whose address or facsimile number changes shall promptly  
notify each other **Party** of such change.

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

Signed, sealed and delivered )  
in the presence of: )

**York Factory First Nation**

\_\_\_\_\_  
Chief

\_\_\_\_\_  
Councillor

\_\_\_\_\_  
Councillor

\_\_\_\_\_  
Councillor

on the      day of                      , 1995

**Her Majesty the Queen in Right of the  
Province of Manitoba**

**Per:**

on the      day of                      , 1995

**The Manitoba Hydro-Electric Board**

**Per:**

**Per:**

on the      day of                      , 1995

**Her Majesty the Queen in Right of  
Canada**

**Per:**

on the      day of                      , 1995

SCHEDULE 3.4

**Easement Lands within York Landing Indian Reserve.**

In the Province of Manitoba, in Unsurveyed Townships 81 and 82, Ranges 9 and 10 East of the Principal Meridian, all those parcels of land being more particularly described under Firstly to Fourthly as follows;

**Firstly:** All those portions of York Landing Indian Reserve shown as Parcels NFA-1 and NFA-2 on a plan of survey of part of York Landing Settlement recorded in the Canada Lands Surveys Records as No. 72529, a copy of which is filed in the Portage la Prairie Land Titles Office as No. 24723; said Parcels containing 22.37 ha. ( 55.3 Acs. ), more or less

**Secondly:** All that portion of York Landing Indian Reserve shown as Parcel NFA-3 on a plan recorded in said Records as No. 77083; said Parcel containing 30.9 ha. ( 76.4 Acs.); more or less

**Thirdly:** All those portions of York Landing Indian Reserve shown as Parcels NFA-4 and NFA-5 on a plan recorded in said Records as No. 77084, said Parcels containing 21.6 ha. ( 53.4 Acs. ); more or less, and

**Fourthly:** All that portion of York Landing Indian Reserve shown as Parcel NFA-6 on a plan recorded in said Records as No. 77085, said Parcel containing 36.06 ha. ( 89.10 Acs.); more or less.

Approved by

A handwritten signature in black ink, appearing to read 'Alex E. Gauer', with a horizontal line extending to the right.

Alex E. Gauer, MLS, CLS



## ARTICLE 4

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Schedule 4.1: **York Factory Resource Management Area**

## ARTICLE 4

### 4.0 RESOURCE MANAGEMENT

#### 4.1 INTRODUCTION

4.1.1 Introduction. Article 4 sets out the procedures for establishing and operating a Resource Management Board consisting of representatives of **Manitoba** and **York Factory**.

#### 4.2 RESOURCE MANAGEMENT AREA

4.2.1 Designation of Area. **York Factory** and **Manitoba** shall each, within their respective authority and powers, designate the areas described in Schedule 4.1, as the **Resource Management Area**.

4.2.2 Amendment of Area. The **Resource Management Area** may be amended by agreement between **York Factory** and **Manitoba**.

#### 4.3 RESOURCE MANAGEMENT BOARD

4.3.1 Establishment. Within ninety (90) days following the **Date of this Agreement**, **Manitoba** and **York Factory** shall each appoint two (2) persons for a

four (4) year term and two (2) persons for a three (3) year term to constitute the Resource Management Board ("the Board"). All subsequent appointments shall each be for a term of four (4) years.

4.3.2 Board Meetings. The inaugural Board shall meet at the **Reserve** not later than thirty (30) days following the appointment of its last member. The Board shall meet at least four (4) times a year at York Landing.

4.3.3 Change in Members. **York Factory** and **Manitoba** may change the number of Board members provided that there will always be an equal number of members appointed by each.

4.3.4 Alternate Members. If any Board member is unable or unwilling to complete that member's term of appointment, **York Factory** and **Manitoba** shall, as the case may be, appoint an alternate member for the balance of such term.

4.3.5 Replacing Members. **York Factory** and **Manitoba** shall, at least thirty (30) days before the expiration of the term of a member appointed by it, either reappoint that member or appoint a new member and so advise the other party.

4.3.6 Rules and Appointment of Chair. The Board shall establish its rules and procedures. A chair shall be selected from among the Board members, and the

member so selected shall continue to have a vote as a member but shall have no additional or deciding vote as the chair.

4.3.7 Quorum. A quorum shall be at least three (3) members of each of **Manitoba** and **York Factory**.

4.3.8 Decisions. Decisions of the Board shall be made by consensus unless a member requests and a majority agrees that a decision be made by vote. Equal numbers of members appointed by **York Factory** and **Manitoba** shall participate in any vote.

#### 4.4 PROGRAMS AND BUDGETS

4.4.1 Annual Program and Budget. The Board shall, on or before September 1 in any year, submit an annual program and budget for the next fiscal year to **York Factory** and **Manitoba** for approval. Within ninety (90) days of receipt of the budget, each such **Party** shall advise the Board whether it accepts or rejects all or part of the annual program and budget.

4.4.2 Budget Components. The budget:

(a) may include anticipated requirements for:

(i) staff, facilities, equipment and administration,

- (ii) public meetings, consultations and hearings,
  - (iii) research, publications and public education,
  - (iv) technical assistance, and
  - (v) other programs or activities determined by the Board;
- (b) will identify how the budget will be funded including the proportions to be paid by **York Factory** and **Manitoba**; and
- (c) will include, where under Article 4.7.1 public meetings are to be conducted on the Shamattawa or Fox Lake Reserves, the costs of such meetings including the reasonable transportation expenses of the Board members.

4.4.3 Sharing of Costs. **York Factory** and **Manitoba** shall pay the costs of their representatives on the Board, not covered by normal programs. Other budgeted costs will be shared by **York Factory** and **Manitoba** in the proportions determined under Article 4.4.2(b), however, any costs under Article 4.4.2(c) shall be paid by **Manitoba**.

4.4.4 Technical Support. Technical support and programs for land use planning and material resource management available from **Manitoba**, will be made available to and co-ordinated with programs of the Board without charge. However, in those instances where a set fee or charge has been established, it will be levied unless otherwise waived by **Manitoba**.

4.4.5 Fiscal Year. The fiscal year of the Board shall commence on April 1 in any year unless changed by agreement between **Manitoba** and **York Factory**.

4.4.6 Reports. The Board:

- (a) may publish reports or other materials; and
- (b) shall within ninety (90) days after the end of the fiscal year provide **York Factory, Manitoba** and **Canada** with a written report which:
  - (i) describes the activities carried out during the year, and
  - (ii) evaluates the success or failure of the activities undertaken, and the reasons therefore.

## 4.5 **BOARD FUNCTIONS**

4.5.1 Board Activities. The Board may:

- (a) investigate **Resources**, their use, and any influences on them;
- (b) monitor activities within the **Resource Management Area**;
- (c) propose subjects for research;
- (d) prepare information and communication strategies;

- (e) hold meetings and workshops or otherwise consult publicly or privately with any person;
- (f) develop and recommend Resource Management Plans in accordance with Article 4.5.2 and 4.5.3;
- (g) develop and recommend Land Use Plans in accordance with Article 4.5.4 and 4.5.5; and
- (h) carry out other duties jointly assigned to it by **York Factory** and **Manitoba**.

4.5.2 Resource Management Plans. The Board may develop and recommend Resource Management Plans which, without limitation thereto may include provision for:

- (a) total allowable harvesting levels;
- (b) species enhancement;
- (c) methods of harvesting;
- (d) health and safety considerations;
- (e) procedures for the assignment or re-assignment of new, vacant or under-utilized traplines, fishery quotas and wild rice leases;
- (f) enforcement considerations;
- (g) protecting and enhancing **Resources** and their environment;
- (h) prescribing and monitoring levels of use;



- (i) establishing priorities and allocations for domestic, commercial and recreational uses of **Resources** by lease, permit, quota or otherwise;
- (j) resolving conflicts related to the use of **Resources**;
- (k) protecting and conserving **Resources**; and
- (l) sustainable development of **Resources**.

4.5.3 Application of Resource Management Plans. Notwithstanding Article 4.5.2 and subject to applicable legislation, a Resource Management Plan shall apply within a **Municipality** only insofar as it does not conflict with the provisions of a **Development Plan** or **Basic Planning Statement** or **Planning Scheme** for the **Municipality** or any part thereof.

4.5.4 Land Use Plans. The Board may develop and recommend Land Use Plans, which without limitation may include provision for:

- (a) zoning lands;
- (b) prescribing areas of land or bodies of waters for purposes of regulating use;
- (c) prescribing and regulating land uses;
- (d) establishing administrative arrangements for the construction or occupation of cabins or shelters;

- (e) recognizing and preserving areas of ecological, cultural or historical significance; and
- (f) resolving conflicting uses of land.

4.5.5 Application of Land Use Plans. Notwithstanding Article 4.5.4 and subject to applicable legislation, Land Use Plans shall not apply within a **Municipality** in which a **Development Plan** or a **Basic Planning Statement** or **Planning Scheme** comes into effect for the **Municipality**.

#### 4.6 APPROVAL OF PLANS

4.6.1 Reference. The Board shall forward Land Use Plans, Resource Management Plans or recommendations to **York Factory, Manitoba** and **Hydro** accompanied by evidence of the Board compliance with Articles 4.7.1, 4.7.2 and 4.7.3 and written reasons for supporting the plan or recommendation.

4.6.2 Responding to Plans. Within ninety (90) days of receiving a plan or recommendation, **York Factory** and **Manitoba** shall notify the Board in writing, with a copy to each other, whether they accept or reject the plan or recommendation.

4.6.3 Resubmission. The Board may, within sixty (60) days of receipt of notice under Article 4.6.2, that a plan or recommendation is not acceptable, resubmit to **York Factory and Manitoba**:

- (a) a revised plan or recommendation; or
- (b) a request that the rejected plan or recommendation be reconsidered, including such additional information as the Board may consider relevant.

4.6.4 Final Decision. **York Factory and Manitoba** may, within sixty (60) days of a resubmission by the Board under Article 4.6.3, advise the Board and each other in writing of their final decision on the matter. No further resubmission under Article 4.6.3 may be made without the approval of any dissenting party.

4.6.5 Extensions. Time limits set forth in Articles 4.6.2, 4.6.3, and 4.6.4 may be extended by agreement of **York Factory and Manitoba**.

4.6.6 Adopting Plans. Where **York Factory and Manitoba** both advise the Board that a plan is acceptable for adoption, each shall promptly take all appropriate steps within their respective jurisdictions to give the plan full effect and shall promptly provide the Board with documentation giving the plan such effect.

4.6.7 Withdrawal of Plans. In the absence of approval and implementation by both **York Factory** and **Manitoba**, no Resource Management Plan, Land Use Plan developed by the Board, or recommendation of the Board will have any force or effect.

4.6.8 Updating Plans. The Board shall conduct a regular review of all approved plans and recommendations and, where it is considered necessary, propose amendments to **York Factory** and **Manitoba** along with supporting reasons. The procedures outlined in Articles 4.6.2 to 4.6.7, both inclusive, shall apply to any proposed amendments.

4.6.9 Resource Allocations. Pending approval of any Land Use Plan or Resource Management Plan with respect to the lands and **Resources** within the **Resource Management Area, Manitoba** and **York Factory** shall refer requests for resource allocations and applications for Land Use Permits to the Board. Within forty-five (45) days of receiving such referral, the Board may submit recommendations on the allocations or land uses in accordance with Article 4.6. Requests for resource allocations and applications for Land Use Permits received prior to the establishment of the Board will be deferred pending its establishment and will then be referred to the Board for consideration hereunder.

## 4.7 CONSULTATION

4.7.1 Consulting the Public. Before recommending that a Land Use Plan or Resource Management Plan be adopted, the Board will:

- (a) hold one or more public meetings in such manner as it determines to be appropriate, to obtain the view of, and provide information to, interested parties; and
- (b) give at least thirty (30) days written notice of such meeting under Article 4.7.1(a) to **Hydro**, Shamattawa First Nation, Fox Lake First Nation and any municipal authority within the **Resource Management Area** and provide them with a copy of any proposed plan.

4.7.2 Giving Notice. In addition to any other notice, the Board shall bring public meetings to the attention of, and invite thereto, any local associations of **Resource** users within the **Resource Management Area** known to have an interest in the subject matter.

4.7.3 Consultation with Fisheries and Oceans. Before any recommendation concerning fish or marine mammals in estuaries of rivers or creeks flowing into, or along the shore of Hudson's Bay is forwarded to **York Factory** or **Manitoba**, the Board will provide copies of the proposed recommendation, with the supporting information available to the Board, to the Federal Department of

Fisheries and Oceans (Canada) and solicit their views, consider alternatives proposed, and provide copies of any final recommendation and supporting materials.

4.7.4        Requesting Information.    **York Factory** and **Manitoba** shall each, upon written request of the Board and subject to payment unless waived of any prescribed fee, provide the Board with information within their control about matters being dealt with by the Board except where such information is privileged or confidential.

4.7.5        Requesting Assistance.    **York Factory** and **Manitoba** shall each, upon written request of the Board, provide to the Board:

- (a)    information concerning the application of existing laws, policies, procedures and plans affecting management or use of **Resources** in the **Resource Management Area**; and
- (b)    assistance in drafting any recommendation or plan, provided that this shall not imply that **Manitoba** or **York Factory** will adopt the recommendation or plan.

#### 4.8 GENERAL

4.8.1 Transitional Measure. From the **Date of this Agreement** to the date the Board first meets, **York Factory** and **Manitoba** shall defer pending and new applications for **Resource** allocations and land use permits within the **Resource Management Area**. The Board shall provide recommendations on these applications within forty-five (45) days of its first meeting.

4.8.2 No Derogation. Nothing in Article 4 shall derogate from any authority of **York Factory**, **Manitoba** or **Canada** within their respective jurisdiction over the lands and **Resources** in the **Resource Management Area**.

4.8.3 Federal Impediments. Actions taken pursuant to Article 4 may be applicable to **Reserve Lands** but no action taken pursuant to Article 4 shall impose restrictions or impediments on any lands which **Canada** may acquire by any means within its jurisdiction or which are acquired by, transferred to or transferable to **Canada** for any purposes.

4.8.4 No Federal Powers. Article 4 does not contemplate the exercise of powers by **Canada** under federal statutes or regulations other than the Indian Act (Canada).

4.8.5        Access to Lands.     Article 4 does not restrict the right of any person to enter on provincial Crown lands for any lawful purpose.

4.8.6        Existing Rights.     Nothing in Article 4 shall affect any licences, permits or leases issued by **York Factory** or **Manitoba** prior to the **Date of this Agreement** or affect any right or privilege granted, or any responsibility acquired, under a licence, permit, lease or administrative policy of **York Factory** or **Manitoba**.

Notwithstanding the foregoing:

- (a)     **Manitoba** will give written notice to Akjuit Aerospace Inc. that it must give sixty (60) days written notice to **York Factory** of any proposed rocket firings in the area leased by Akjuit Aerospace Inc. from **Manitoba** under the lease dated July 18, 1994; and
- (b)     Following receipt of the notice under Article 4.8.6(a), **York Factory** may, with fourteen (14) days notice, convene a meeting of the Board to consider the matter following which the Board may make a report to **York Factory** and **Manitoba** with any objections or recommendations on the proposed firings.

4.8.7        Conflicts with Laws.     **York Factory** and **Manitoba** shall each take reasonable measures to ensure that their actions pursuant to Article 4 do not conflict with any federal or provincial laws in force in Manitoba.



4.8.8            Statutory Requirements.    Nothing in Article 4 alters any statutory requirement or confers any statutory approval.

4.8.9            Discontinuance.    **York Factory** and **Manitoba** may jointly decide to discontinue the Board and its activities or assign the functions of the Board under Article 4 to other entities, provided that any such assignment shall include the provisions of Articles 4.7.1, 4.7.2 and 4.7.3 in a form which binds successors and assignees.

4.8.10          No Revenue Sharing.    The purposes of the Board do not extend to consideration of royalties, income or other revenue derived from or attributable to **Resources**, and, subject to Article 3.2.2, nothing in this **Agreement** entitles **Manitoba** or **York Factory** to share in the royalties, income or other revenue derived from **Resources** within the other's jurisdiction, ownership or administration and control.

4.8.11          Amendment.            Except for Articles 4.7.1, 4.7.2, 4.7.3 and 4.8, **Manitoba** and **York Factory** may amend the procedures in Article 4, provided any such amendment is consistent with the **Agreement** and not prejudicial to **Canada** and **Hydro**.

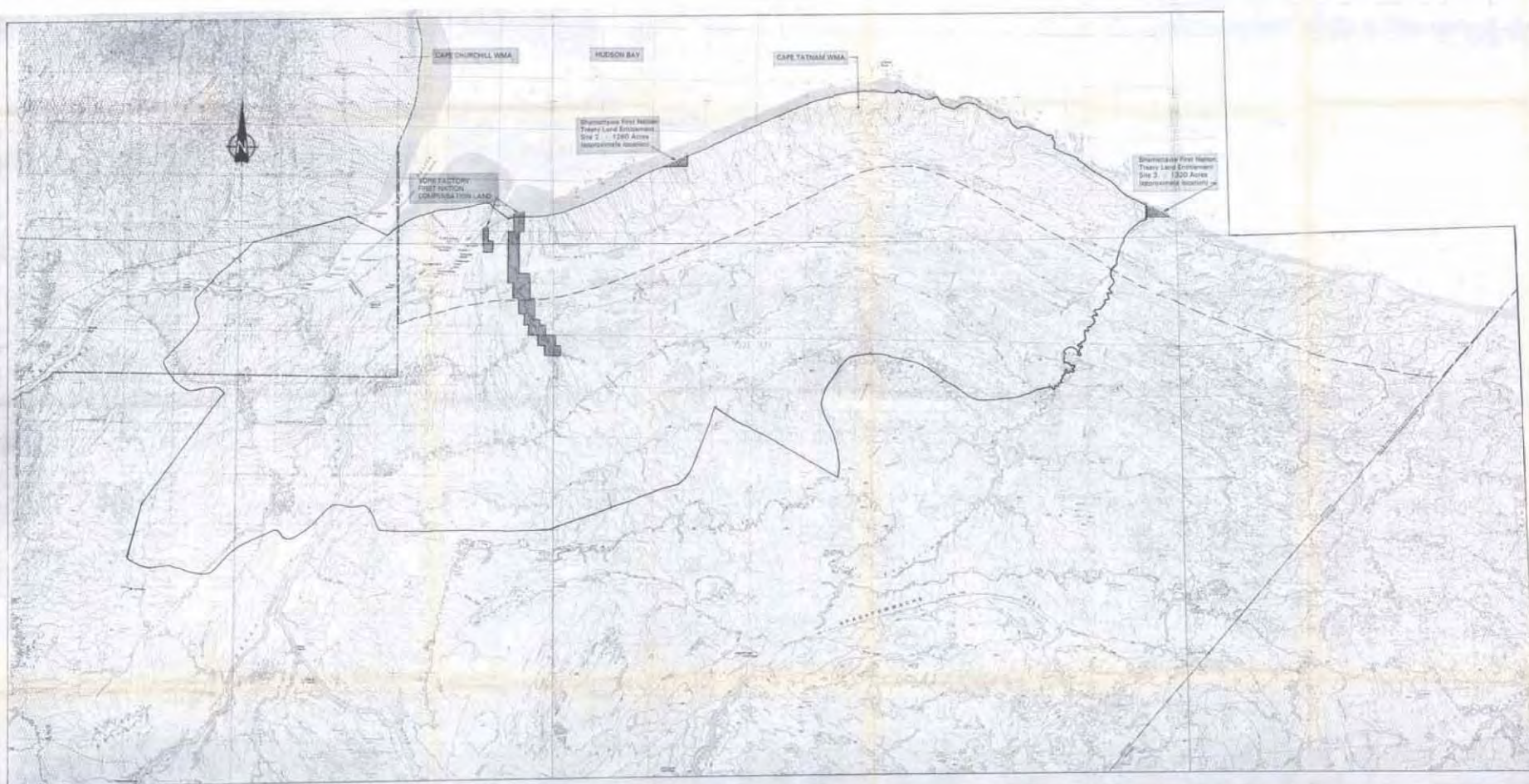
4.8.12 No Obligation Assumed. By executing this **Agreement, Canada** has assumed no obligation of any other **Party** in relation to consultation requirements.

## SCHEDULE 4.1

### THE YORK FACTORY RESOURCE MANAGEMENT AREA

All lands and waters shown on Plans 4.1 and 4.2 are included within the **Resource Management Area** except that, for the purposes of Articles 4.5.4 and 4.5.5:





- (a) lands within a **Municipality** designated or occupied, from time to time, for residential, commercial, industrial or associated purposes; and
  - (b) areas of **Reserve Lands** designated or occupied, from time to time, for residential, commercial, industrial or associated purposes;
- are exempted.



**YORK FACTORY  
RESOURCE MANAGEMENT AREA**  
JULY 88

Scale 1:250,000

**LEGEND:**

-  Registered Township
-  Resource Management Area Boundary
-  Island Boundary Cape Tatnam WMA
-  Boundary Cape Churchill WMA

Plan No. 6.1 Attached to and forming part of the Agreement between Canada, Manitoba, York Factory First Nation, and Hudson Bay

## ARTICLE 5

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Schedule 5.1: Claim for Compensation

Schedule 5.2: Notice of Receipt of Claim for Compensation

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- Schedule 5.5: Referral to Arbitration
- Schedule 5.6: List of Claims which will Continue to be Advanced Against **Hydro**

## ARTICLE 5

### 5.0 COMPENSATION FOR CLAIMS

#### 5.1 INTRODUCTION

5.1.1 Introduction. Article 5 specifies claims which may be advanced, and the procedure for advancing them against the **Claims Account** and their relationship to other programs funded by **Trust Moneys**.

5.1.2 Claims. A claim may be advanced against the **Claims Account** for compensation sufficient to indemnify the **Claimant** for loss or damages suffered by that **Claimant** due to **Adverse Effects** but no claim may be advanced by:

- (a) a person who was not a **Member** at the time the **Adverse Effect** occurred; or
- (b) an insurer by way of subrogation.

Notwithstanding the releases and indemnities in Article 12, the individual claims against **Hydro** listed in Schedule 5.6 will continue to be dealt with by **Hydro** and shall not become the responsibility of **York Factory**. **Hydro** will not be responsible under Schedule 5.6 for any portion of the claim which is broader than the interest of the specified individual making the claim and nothing herein should be read or construed as an admission of liability by **Hydro** in relation to such claims.

5.1.3 Limitation. A right to claim under Article 5.1.2 shall expire four (4) years from the date the loss or damage became evident to the **Claimant**.

5.1.4 Programs. From **Trust Moneys** approved for such purposes under the **Community Approval Process, York Factory** shall, as it considers appropriate, continue, establish or discontinue programs to address **Adverse Effects** on **Members**. Nothing in Article 5.1.4 authorizes **York Factory** or **Chief and Council** to amend or discontinue the provisions of Article 5.

## 5.2 CLAIMS PROCEDURE

5.2.1 Form of Claims. Claims shall be filed with **Chief and Council** and shall contain the information set out in Schedule 5.1.

5.2.2 Investigation Process. Upon receipt of a claim, **Chief and Council** shall:

- (a) post a copy of the claim and a completed notice under Schedule 5.2 in the Band Office or in some other public place on **Reserve** that is frequented by **Members**; and
- (b) retain a copy and forward the original to the **York Factory Trustees**.



5.2.3 Notice Period. Prior to a decision being made under Article 5.2.7, the notice under Article 5.2.2(a) shall be posted and available to public view for not less than:

- (a) three (3) business days for a claim of one thousand (\$1,000.00) dollars or less; and
- (b) ten (10) business days for a claim over one thousand (\$1,000.00) dollars.

5.2.4 Action by York Factory Trustees. Upon receipt of the claim, the **York Factory Trustees** shall refer the claim, for investigation and decision, to one (1) **York Factory Trustee**, if the claim is for one thousand (\$1,000.00) dollars or less, or to a panel of not less than three (3) **York Factory Trustees** if the claim is over one thousand (\$1,000.00) dollars.

5.2.5 Conflict. No **York Factory Trustee** who has an interest in a claim that could affect that **York Factory Trustee's** impartiality may take part in deliberations or decisions with respect to that claim.

5.2.6 Investigation. The **York Factory Trustee** or panel of **York Factory Trustees** shall conduct, or cause to be conducted, such investigation as they consider appropriate, including inquiries directed to **York Factory** or **Hydro** to

determine if the **Claimant** received compensation or benefits from programs in relation to the subject matter of the claim.

5.2.7 Preliminary Decision of York Factory Trustees. Upon completion of the investigation carried out pursuant to Article 5.2.6, and after considering any comments from **Members**, the **York Factory Trustee** or panel of **York Factory Trustees** shall decide if:

- (a) the applicant meets the criteria of a **Claimant**;
- (b) the person advancing the claim was a **Member** at the time the **Adverse Effect** occurred;
- (c) the claim is being brought by an insurer by way of subrogation;
- (d) the claim, or a portion of the claim, must be advanced against **Hydro** under Article 12.4.1 and, if so, provide a copy of such decision and the claim to **Hydro**; and
- (e) the claim has been brought within the time limit imposed under Article 5.1.3.

5.2.8 Hydro Action. **Hydro** may dispute the decision under Article 5.2.7(d) by referring it to arbitration under Article 10.5 within, but not later than, thirty (30) days of its receipt of such decision.

5.2.9 Further Decision Process. If, the claim is not one referable to **Hydro** under Article 12.4.1; the applicant meets the criteria of a **Claimant** in Article 1.2.1; the application has been brought within the time specified in Article 5.1.3; and it is determined under Article 5.2.7 that the claim meets the requirements of Article 5.1.2; the **York Factory Trustee** or panel of **York Factory Trustees** shall:

- (a) decide if the claim should be paid;
- (b) assess the amount of compensation taking into account any prior benefit received by, or compensation or insurance proceeds paid or payable to, the **Claimant**, or any other benefit received by the **Claimant** under the **Agreement**, or under any other agreement with a **Party**, or under the **NFA**;
- (c) deliver a decision in a Schedule 5.3 form, to **Chief and Council**, the **Claimant** and any **Member** who provided comments; and
- (d) upon request, or if they determine it is appropriate, deliver the information set out in Schedule 5.3 orally in a language spoken by the **Claimant** and any **Member** who provided comments.

5.2.10 Payment Following York Factory Trustees' Decision. If compensation is awarded under Article 5.2.9 or 5.3.4, **Chief and Council** shall, upon its receipt of an acceptance and release in a Schedule 5.4 form duly signed by the **Claimant**, promptly pay such compensation and any costs awarded, with **Trust Moneys** advanced from the **Claims Account**.

5.2.11 Rejection of Claim by Delay Except where the preliminary decision under Article 5.2.7 is to refer the claim to **Hydro**, if a decision is not delivered within thirty (30) days of the date the claim is filed with **Chief and Council**, that claim shall be deemed to be rejected and the **Claimant** may refer the claim to arbitration pursuant to Article 10.3 as provided in Article 5.3.

5.2.12 Liability of Chief and Council and the York Factory Trustees. Members of **Chief and Council** and the **York Factory Trustees** shall be responsible for the fair, prudent and impartial administration of the claims procedures set out in Article 5 and provided they act in good faith they shall incur no liability arising out of their administration of such claims.

5.2.13 Reimbursement. Forthwith, upon receipt of an invoice and all relevant supporting material, **Hydro** will reimburse **York Factory** and the **Trust** for their reasonable expenses incurred in investigating and reaching a preliminary decision under Article 5.2.7 with respect to a matter for which **Hydro** has continuing liability under Article 12.4.1.

### 5.3 CLAIMS ARBITRATION

5.3.1 Referral to Arbitration. Where a **Claimant** or **Chief and Council** disputes the decision under Article 5.2, other than a decision under Article 5.2.7(d) that the claim should be advanced against **Hydro**, either may, not later than thirty (30) days following their receipt of the decision, refer that dispute to arbitration by serving upon the other a Referral to Arbitration in a Schedule 5.5 form. Upon receiving or serving a Referral to Arbitration, **Chief and Council** shall forthwith provide to the **Claimant** the list of potential arbitrators referred to in Article 10.3.1 and refer the matter to arbitration in accordance with Article 10.3.

5.3.2 Substantial Compliance. No claim shall be dismissed for failure on the part of the **Claimant** to use a specified form or procedure, and no reports, notices, decisions, releases or undertakings contemplated in Schedules 5.1 to 5.5 inclusive shall be invalid for failure to follow or be in the specified form, provided there has been substantial compliance and no prejudice results therefrom.

5.3.3 Role of Chief and Council in Arbitration. **Chief and Council** may, on notice to the **Arbitrator** selected, appear as an interested party in any arbitration under Article 5.3.

5.3.4 Considerations of Arbitrator. The **Arbitrator** shall make the determinations required in Article 5.2.7 and Articles 5.2.9 (a) and (b) in the manner and within the times specified in Article 10.3.9. Failure to render a decision within the specified time may result in a loss of jurisdiction and the appointment of a new **Arbitrator** pursuant to Article 10.6.2. Where there is a dispute as to who is, or is not a **Member**, the **Arbitrator** shall resolve such dispute consistent with the rules applicable under the Indian Act (Canada).

5.3.5 Arbitrator's Decision. The **Arbitrator** shall forward the decision to the **Claimant, Chief and Council, the York Factory Trustees, and any Member** who appeared and made representations to the **Arbitrator**.

5.3.6 Decisions Available for Public Viewing. All decisions concerning claims for compensation from the **Claims Account** shall be made available by **Chief and Council**, for review by **Members** during normal business hours.

5.3.7 Amend Forms. Provided any such amendment is not prejudicial to the other **Parties** and is consistent with the **Agreement**, the forms appended as Schedules 5.1 to 5.5, all inclusive, may be amended by **Chief and Council**.

## 5.4 LEGISLATION

5.4.1 Recommendation. **Canada** and **Manitoba** shall recommend the enactment of legislation providing that a claim for compensation which may be made under both the **NFA** and this **Agreement** shall be exercised only in accordance with this **Agreement**.

5.4.2 Hydro Indemnity. If, as a result of enacting and proclaiming the legislation contemplated in Article 5.4.1, **Canada** or **Manitoba** become liable to pay compensation arising from an **Adverse Effect** to any **Claimant**, **Hydro** shall indemnify **Canada** and **Manitoba** for such compensation. This indemnity does not cover the costs of the indemnified **Party** in resisting such claim and is conditional upon the indemnified **Party**:

- (a) forthwith, upon becoming aware of such claim, giving notice to **Hydro** and **York Factory**;
- (b) actively and diligently resisting any such claim; and
- (c) supporting any application by **Hydro** or **York Factory** to be named as a party thereto.

5.4.3 Hydro Action. If **Hydro** is required to make any payment to **Canada** or **Manitoba** pursuant to Article 5.4.2, **York Factory** will indemnify **Hydro** for such payment. If **York Factory** fails to indemnify **Hydro** for such payment from **Funds**

**Available** within three (3) years of the date of such payment by **Hydro** under Article 5.4.2 then, **Hydro** may, after giving **Chief and Council** thirty (30) days written notice of its intention to do so:

- (a) reduce the face value of the **Hydro Bond**, if it has not then been delivered to the **Trust** or to **Canada**, by an amount sufficient to cover the amount paid by **Hydro** to **Canada** or **Manitoba** pursuant to the indemnity under Article 5.4.2; or
- (b) if **Hydro** has delivered the **Hydro Bond** to the **Trust**, demand that the **Trustees** return the **Hydro Bond** to **Hydro** to be cancelled. In such event, a new bond, less the amount paid by **Hydro** to **Canada** or **Manitoba** pursuant to the indemnity under Article 5.4.2, will be issued by **Hydro** and delivered to the **Trust**; or
- (c) if the **Hydro Bond** has been delivered to the **Trust** and has matured or been redeemed, request the **Trustees** repay **Hydro** from the unexpended proceeds from the **Hydro Bond** an amount equivalent to the amount paid by **Hydro** to **Canada** or **Manitoba** pursuant to the indemnity under Article 5.4.2; or
- (d) if the **Hydro Bond** has been delivered to **Canada**, request that, subject to the provisions of the Indian Act (Canada), **Canada** return the **Hydro Bond** to **Hydro** to be cancelled. If the bond is returned, a new bond, less the amount paid by **Hydro** to **Canada** or **Manitoba** pursuant to the



indemnity under Article 5.4.2, will be issued by **Hydro** and delivered to **Canada**; or

- (e) if the **Hydro Bond** has been delivered to **Canada** and has matured or been redeemed, request that, subject to the provisions of the Indian Act (Canada), **Canada** repay **Hydro** from the unexpended proceeds from the **Hydro Bond** an amount equivalent to the amount paid by **Hydro** to **Canada** or **Manitoba** pursuant to the indemnity under Article 5.4.2.

5.4.4 Arbitration. If **Chief and Council** dispute **Hydro's** right to set off against the **Hydro Bond** or the funds realized therefrom under Article 5.4.3, it may within thirty (30) days of receiving notice under Article 5.4.3, refer the dispute to arbitration under Article 10.4 by serving a Notice of Referral to Arbitration in a Schedule 10.1 form on **Hydro** and if relevant **Canada** or the **Corporate Trustee**. If the **Arbitrator** decides in **Hydro's** favour, and **Canada** is in possession of the **Hydro Bond**, unexpended proceeds from the **Hydro Bond** or proceeds of settlement, **Chief and Council** will favourably consider requesting **Canada**, subject to the provisions of the Indian Act (Canada), to honour the indemnity obligations from such funds as provided in Articles 5.4.3(c) and (d) and 5.4.5.

5.4.5 Repayment. Where **Hydro** has made a payment under Article 5.4.2 and **Chief and Council** does not dispute **Hydro's** right of set off, or the **Arbitrator**

has ruled in favour of **Hydro** then upon request by **Hydro**, and, upon **Chief and Council's** request and, where relevant, receipt of the decision of the **Arbitrator** to such effect, **Canada** will, subject to approval under clause 64(1)(k) of the Indian Act (Canada) return the **Hydro Bond** pursuant to Article 5.4.3(c) or repay the amount to the extent provided by Article 5.4.3(d) .

SCHEDULE 5.1

**CLAIM FOR COMPENSATION**

**CLAIMANT**

Name:  
Address:  
City/Town:  
Commercial Fishing Licence No. (If applicable)  
Commercial Trapping Licence No. (If applicable)

**DETAILS OF CLAIM**

Date & Time of Injury/Loss/Damage:  
Activity at time of Injury/Loss/Damage:  
Cause of Injury/Loss/Damage:  
Compensation Claimed:  
Nature of Injury:  
Goods or Property Lost or Damaged:

General Description  
Make  
Model  
Serial No.  
Year Manufactured  
Year Purchased  
Purchase Price

Location where Injury/ Loss/ Damage occurred (Attach Sketch or Map):

Names of Witnesses to Injury/Loss/ Damage:

Is the claim covered by insurance in whole or in part: Yes?\_\_\_\_\_, No?\_\_\_\_\_.  
If yes, give particulars:

If yes, has a claim been made under the insurance policy? Yes?\_\_\_\_, No?\_\_\_\_\_.

Give particulars:

**CLAIMANT'S STATEMENT:**

I believe the injury, loss or damage described above was caused by Manitoba Hydro's Project because:

**INSERT DETAILS**

I hereby certify that the above information is correct.

(Signature of Claimant)

(date)

SCHEDULE 5.2

**NOTICE OF RECEIPT OF  
CLAIM FOR COMPENSATION**

THE YORK FACTORY TRUSTEES ARE CURRENTLY INVESTIGATING THE ATTACHED CLAIM FOR COMPENSATION, AND WILL MAKE A DECISION ON THIS MATTER ON OR AFTER \_\_\_\_\_. ANY PERSON WHO WISHES TO COMMENT ON THIS CLAIM SHOULD DIRECT THEIR COMMENTS TO THE YORK FACTORY TRUSTEES BEFORE THAT DATE.

## SCHEDULE 5.3

### REPORT, DECISION AND RIGHT TO APPEAL

A Claim for Compensation from the Claims Account of Kitche-Waskahigan Trust was filed by NAME, on \_\_\_\_\_, \_\_\_\_\_:

I, a York Factory Trustee, or we, a panel of York Factory Trustees, Report and Decide as follows:

1. From our investigation of the Claim:
  - (a)  the applicant meets the criteria of a Claimant;  
 the applicant does not meet the criteria of a Claimant.
  - (b)  the applicant was a Member at the time the Adverse Effect occurred;  
 the applicant was not a Member at the time the Adverse Effect occurred.
  - (c)  the applicant is not an insurer claiming by way of subrogation;  
 the applicant is an insurer claiming by way of subrogation.
  - (d)  the claim has been brought within 4 years of the date the loss or damage became evident to the Claimant;  
 the claim has not been brought within 4 years of the date the loss or damage became evident to the Claimant.
  - (e)  all of the loss or damage is the result of or attributable to an Adverse Effect of the Project;  
 part of the loss or damage is the result of or attributable to an Adverse Effect of the Project;  
 none of the loss or damage is the result of or attributable to an Adverse Effect of the Project.
  - (f)  the loss or damage is compensable in full from the Claims Account of the Kitche-Waskahigan Trust;  
 the loss or damage is compensable in part from the Claims Account of the Kitche-Waskahigan Trust;  
 the loss or damage is not compensable from the Claims Account of the Kitche-Waskahigan Trust.
  - (g)  the loss or damage is not compensable from the Claims Account of the Kitche-Waskahigan Trust because the claim appears to be one that should be dealt with as an ongoing liability of Hydro, under Article 12.4.1 of the 1995 York Factory NFA Implementation

Agreement and a copy of this claim has been forwarded to Manitoba Hydro;

- the loss or damage is not compensable in part from the Claims Account of the Kitche-Waskahigan Trust because the claim appears to be one that in part should be dealt with as an ongoing liability of Hydro, under Article 12.4.1 of the 1995 York Factory NFA Implementation Agreement and a copy of this claim has been forwarded to Manitoba Hydro;
- the loss or damage is not compensable from the Claims Account of the Kitche-Waskahigan Trust because the claimant otherwise has been fully compensated.
- the loss or damage is not compensable in full from the Claims Account of the Kitche-Waskahigan Trust because the claimant otherwise has been partially compensated by \_\_\_\_\_.

(h) the reasonable compensation payable from the Kitche-Waskahigan Trust is \$\_\_\_\_\_.

Additional Reasons:

The following York Factory Trustee did not take part in this decision, due to an interest in this claim which could have affected their impartiality:

Signed at York Landing, Manitoba, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
York Factory Trustee

\_\_\_\_\_  
York Factory Trustee

\_\_\_\_\_  
York Factory Trustee

NOTICE: THE CLAIMANT MAY APPEAL THIS DECISION TO AN ARBITRATOR BY MAKING A WRITTEN REQUEST IN THE FOLLOWING FORM TO CHIEF AND COUNCIL WITHIN THIRTY (30) DAYS OF THE DELIVERY OF THIS DECISION.

**NOTICE OF REFERRAL**

TO: Chief & Council  
Band Office  
York Landing, Manitoba

TAKE NOTICE that the decision of York Factory Trustees under Article 5 of the 1995 York Factory NFA Implementation Agreement, is not acceptable to the undersigned and is referred to the Arbitrator under Article 10 of such Agreement.  
DATED at York Landing the      day of      , .

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SCHEDULE 5.4

**CLAIMANT ACCEPTANCE AND RELEASE  
FOR COMPENSATION FOR ADVERSE EFFECTS**

I, \_\_\_\_\_ (name of Claimant, or "on behalf of \_\_\_\_\_ Association or Corporation") \_\_\_\_\_, filed a claim dated \_\_\_\_\_, under Article 5 of the 1995 York Factory NFA Implementation Agreement, in respect of damage or loss that I was aware of at the date of filing the claim, arising from an Adverse Effect caused by the development or operation of works by Manitoba Hydro.

A decision on the claim was made by (York Factory Trustees or the Arbitrator appointed under the York Factory Implementation Agreement, or the Manitoba Court of Appeal), 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 amount \_\_\_\_\_, I hereby fully and finally release the York Factory First Nation, Chief and Council, the Kitche-Waskahigan Trust and the York Factory Trustees with respect to this claim, and I will bring no further claim for the same damage or loss against any other person.

I have been advised by \_\_\_\_\_, a member of Chief and Council, that I have the right to obtain legal counsel in connection with the execution of this release.

(I have obtained) or (I hereby waive my right to) the advice of legal counsel in connection with this release.

Dated at \_\_\_\_\_, Manitoba this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Claimant

SCHEDULE 5.5

**REFERRAL TO ARBITRATION**

To: Chief and Council  
Band Office  
York Landing, Manitoba

Take Notice that the decision of the York Factory Trustee, or panel of York Factory Trustees dated \_\_\_\_\_ under Article 5 of the 1995 York Factory NFA Implementation Agreement is not acceptable to the undersigned and is appealed to the Arbitrator under Article 10 of such Agreement.

DATED at \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, . . .

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Schedule 5.6

**LIST OF CLAIMS WHICH WILL CONTINUE TO BE  
ADVANCED AGAINST HYDRO**

1. Claim by Donald Saunders for damage to a snowmobile.
2. Claim by Archie Redhead for damage to a snowmobile.

## ARTICLE 6

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## ARTICLE 6

### 6.0 ENVIRONMENTAL MONITORING AND INVESTIGATION

#### 6.1 INTRODUCTION

6.1.1 Introduction. Article 6 establishes and describes arrangements to coordinate environmental monitoring and share the information developed.

6.1.2 Monitoring by York Factory. If approved by the **Community Approval Process**, **York Factory** will undertake environmental monitoring in the **Resource Management Area**.

6.1.3 Legislation. Nothing in Article 6 requires any **Party** to take any action in relation to environmental monitoring not otherwise provided for in this **Agreement** or required by statute or regulation, and further does not modify or exempt any **Party** from any requirement related to environmental monitoring arising under this **Agreement** or imposed by statute or regulation.

#### 6.2 FOUR PARTY ARRANGEMENTS

6.2.1 Responsibility. **Canada** shall be responsible for scheduling and convening meetings in accordance with Article 6.2.

6.2.2 Meetings. Unless otherwise agreed, representatives of the **Parties** shall meet at least once a year.

6.2.3 Representatives of the Parties. The **Parties** will arrange for their respective representatives to attend such meetings.

6.2.4 Convenor of Meetings. Not later than sixty (60) days in advance of each meeting **Canada** will coordinate the date, time, place, and agenda and arrange for the exchange of pertinent documents and requests for information.

6.2.5 Expenses. Each **Party** will bear its own costs in connection with the provisions of Article 6.2.

6.2.6 Purposes. The purposes of the meetings, and associated exchanges of information, are to:

- (a) provide such disclosure of non-privileged information of contemporary relevance to the **Resource Management Area**, as is reasonable and practicable to provide;
- (b) discuss plans of any **Party** to conduct investigations of environmental conditions in or near the **Resource Management Area**;
- (c) discuss contemplated environmental monitoring or investigations of

any **Party** in or near the **Resource Management Area**, pursuant to provisions of this **Agreement** or any statute or regulation;

- (d) consider whether, and to what extent, it is practical to adjust any activities under Articles 6.2.6 (b) or (c), to accommodate the environmental assessment interests of the other **Parties**, without prejudicing the interests of the **Party** conducting the activities; and
- (e) discuss whether and to what extent, the results of any environmental audit, impact statement or impact assessment may be made available to other persons.

6.2.7 No Arbitration. Notwithstanding Article 10, the purposes of Article 6.2.6 are consensual in nature and disagreements or disputes under Article 6.2.6 are not referable to arbitration or court.

6.2.8 Determination. The four (4) **Party** arrangement contemplated by Article 6 may be held in abeyance or terminated by the mutual agreement of all **Parties**, and shall, unless agreed, terminate at the end of the **Project**. If the representative of **York Factory** fails to attend meetings in two (2) successive years, without being excused or without reasonable cause, the provisions of Article 6 shall terminate.

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## ARTICLE 7

### 7.0 INDIAN MONEYS

#### 7.1 INTRODUCTION

7.1.1 Introduction. The purpose of Article 7 is to describe arrangements for those portions of the **Financial Proceeds** which may be subject to subsection 35(4) of the Indian Act (Canada).

#### 7.2 EXEMPTIONS FROM INDIAN MONEYS REQUIREMENTS

7.2.1 Legislation. **Canada** will recommend legislation to Parliament to provide that subsection 35(4) of the Indian Act (Canada) does not apply to this **Agreement** or to the **Financial Proceeds**.

7.2.2 Alternative to Specific Legislation. If the legislation contemplated by Article 7.2.1 has not been previously enacted and proclaimed, then, if other legislation has been enacted and proclaimed which authorizes the transfer and administration of Indian Moneys, as defined in the Indian Act (Canada), to trust arrangements of the kind set forth in the **Indenture**, then each **Party** shall take the steps pursuant to that legislation to accomplish the transfer and administration of all **Financial Proceeds** to and under the trust arrangements set forth in the **Indenture**.

### 7.3 PAYMENT OF INTEREST TO THE TRUST

7.3.1 Amounts. If the legislation contemplated in Articles 7.2.1 or 7.2.2 is not proclaimed prior to August 1, 1998, then the fourteen million (\$14,000,000.00) dollars **Hydro Bond** which would otherwise have been delivered on that date to **York Factory** for settlement on the **Trust** shall be divided and as soon as reasonably possible, bonds issued as of and dated August 1, 1998 in the aggregate amount of eight million (\$8,000,000.00) dollars, shall be issued in the name of Her Majesty the Queen in Right of Canada for the use and benefit of **York Factory** and delivered to **Canada**, and bonds issued as of and dated August 1, 1998, in the aggregate amount of six million (\$6,000,000.00) dollars, shall be issued in the name of the **Trust**. When legislation permits, the **Hydro Bond** shall be returned by **Canada** to **Hydro** together with the requisite transfer documents and **Hydro** shall issue a replacement bond in the name of the **Trust**; or, if the **Hydro Bond** has matured or been redeemed, any **Financial Proceeds** held by **Canada** shall be paid or delivered to the **Trust**.

7.3.2 Transfer of Interest to the Trust. On or before receipt by **Canada** of the **Hydro Bond**, as contemplated by Article 7.3.1, **Canada** will make an order under section 69 of the Indian Act (Canada) providing that the interest on the **Hydro Bond** held by **Canada** shall be transferred to the **Trust**.

#### 7.4 SUBSEQUENT LEGISLATION

7.4.1 Subsequent Article 7.2.1 Legislation. If it appears the legislation referred to in Article 7.2.1 will not be enacted and proclaimed prior to August 1, 1998, **Canada** shall recommend legislation to Parliament to provide for the transfer to the **Trust** of all **Financial Proceeds**, if any, held by **Canada**.

7.4.2 Subsequent Article 7.2.2 Legislation. If legislation of the kind referred to in Article 7.2.2 or 7.4.1 is proclaimed on or after August 1, 1998, each **Party** shall take the steps necessary pursuant to the proclaimed legislation to transfer to the **Trust** all **Financial Proceeds**, if any, held by **Canada**.

7.4.3 Maturity of Hydro Bonds Held by Canada. If no legislation of the kind contemplated by Articles 7.2.1 or 7.2.2 has been enacted and proclaimed prior to January 1, 2013, and any **Financial Proceeds** paid or payable by **Hydro** or **Manitoba** are held by **Canada** for the use and benefit of **York Factory, York Factory** and **Canada** will immediately enter into negotiations with a view to prompt transfer of those **Financial Proceeds** to the **Trust** in accordance with applicable law.

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## ARTICLE 8

### 8.0 FINANCIAL PROCEEDS AND FEDERAL AND PROVINCIAL FUNDING AND PROGRAMMING

#### 8.1 INTRODUCTION

8.1.1 Introduction. Article 8 describes standards and procedures to govern the relationship between the use of **Financial Proceeds** by **York Factory**, and the provision of **Normal Funding and Programming** to **York Factory** by **Canada** and **Manitoba**.

#### 8.2 PROVISIONS APPLICABLE TO CANADA

8.2.1 Programs of Canada. The application or disbursement of **Financial Proceeds** by **York Factory**, in accordance with this **Agreement** and the provisions of the **Indenture** shall not be substitutes for **Normal Funding and Programming** which may otherwise be made available by **Canada**.

8.2.2 Standards for Decisions. Decisions on such **Normal Funding and Programming** by departments of the government of **Canada** shall be in accordance with the standards set forth in the following paragraphs:

- (a) where **Normal Funding and Programming** are based on assessments

of the financial needs of First Nations, their members, or their members ordinarily resident on reserve, a reduction of **York Factory** need shall not reduce the quantum of such **Normal Funding and Programming** to the extent that such a reduction of need is reasonably attributable to, or results from, the expenditure of **Financial Proceeds**;

- (b) where **Normal Funding and Programming** are based on applications to be submitted, it shall be the applicant's responsibility to make application in an appropriate form on a timely basis. In appraising the merits of, and making decisions on, such applications, departments of the government of **Canada** shall not reject applications based on the availability or expenditure of **Financial Proceeds**. However, the availability or expenditure of **Financial Proceeds** may be taken into account where such availability or expenditure would make the decision more favourable to **York Factory** or the applicant, such as, without limiting the generality of the foregoing, where the provision or investment of equity or matching or qualifying funds is required or permitted in connection with the application process;
- (c) where **Normal Funding and Programming** is based on quantitative formulae reflecting statistical measures of demographic and other characteristics of First Nations, such formulae shall not be designed, developed or applied so as to substitute the availability, or expenditure, of **Financial Proceeds** for **Normal Funding and Programming** which,

in the absence of those **Financial Proceeds**, would be, or would have been, available;

- (d) where **Normal Funding and Programming** are administered by a board, panel or other entity appointed by **Canada**, but with independent decision making authority with respect to the provision of funding or the application or administration of the program, the program design shall provide to **York Factory, Chief and Council**, any **Member**, group of **Members** or **Controlled Institution**, treatment which is the same as or similar to that provided to other First Nations or their members in comparable circumstances; and
- (e) where **Financial Proceeds** are expended to construct **Capital Works** on **Reserve**, it shall be the responsibility of **York Factory** to provide or obtain funding for the **Operations and Maintenance** of such **Capital Works**. **Canada** shall not be obliged to, but may, in its discretion, provide funding for **Operations and Maintenance** of such **Capital Works**. **Operations and Maintenance** funding shall be available to **York Factory** to the same extent it is available to other First Nations who fund capital works and infrastructure out of sources other than **Normal Funding and Programming**.

8.2.3 Disclosure. **York Factory** shall provide **Canada** on a timely basis with all information reasonably requested by **Canada** to meet the requirements of the

**Normal Funding and Programming** to which the provisions of Articles 8.2 and 8.5 apply. Either **Canada** or **York Factory** may request a meeting to review the adequacy or reasonableness of the information requested or provided, and a meeting for that purpose shall be held.

8.2.4 Assignment. If the Minister should determine that there is a substantial degree of agreement among the First Nations of Manitoba that some or all **Normal Funding and Programming** would more appropriately be provided by an entity or agency not forming part of the Government of Canada, the provisions of Article 8.2 respecting **Canada** may be assigned to that entity or agency. However, no such assignment shall be permitted unless there are reservations in favour of **York Factory** of all of the rights, privileges and responsibilities under Article 8.2 applicable to **Canada**, including this provision in a form which binds assignees and successors in interest.

8.2.5 Notice. **York Factory** shall provide notification to **Canada** and to any assignee pursuant to Article 8.2.4 as soon as it becomes evident that the allocation of **Normal Programming and Funding** may be or may have been affected by the expenditure of **Financial Proceeds** contrary to the provisions of Articles 8.2 and 8.5. If any dispute is not resolved between **York Factory** and **Canada** or its assignee within a reasonable period of time, it shall be the responsibility of either **Canada**, its assignee, or **York Factory**, to submit the matter to arbitration and



advance the resolution of the dispute on a timely basis.

8.2.6 Emergencies. The procedures set out above will not preclude or prejudice consideration of any application by **York Factory** for assistance in the event of emergencies. Articles 8.2 and 8.5. shall not be construed to mean that such emergency funding is or will be available.

8.2.7 Compensation Lands. It is understood, as between **Canada** and **York Factory**, that **Normal Funding and Programming** allocations to **York Factory** will be neither restricted from application to the **Compensation Lands**, nor increased by reason of the **Compensation Lands** other than as may result from the fair application of general **Normal Funding and Programming** policies of **Canada** unless **Canada** and **York Factory** otherwise agree in the future.

8.2.8 Changes. Subject to Article 8.2.1, it is understood as between **Canada** and **York Factory** that federal policy changes may, from time to time, have an impact on the allocation of **Normal Funding and Programming**. **Canada** will provide notice of policy changes to **York Factory** within the same time frames and in the same manner as the information is made available to other First Nations.

### 8.3 PROVISIONS APPLICABLE TO MANITOBA

8.3.1 **Manitoba Programs.** **Financial Proceeds** shall not be considered substitutes for **Normal Funding and Programming** available to communities, residents, or groups of residents of Manitoba, under the normal program criteria of **Manitoba** in effect from time to time.

8.3.2 **Considerations.** In considering requests for **Normal Funding and Programming, Manitoba** shall:

- (a) consider all requests in accordance with program criteria in existence from time to time; and
- (b) provide **Normal Funding and Programming**, subject to there being unexpended moneys within the existing budget of the relevant program, without reduction in the amounts which would be available in the absence of **Financial Proceeds**.

#### **8.4 FINANCIAL PROCEEDS AND HYDRO POLICIES**

8.4.1 **Hydro Policies.** Neither the **Financial Proceeds**, nor the release given by **York Factory** in favour of **Hydro** is intended to disentitle or disadvantage **York Factory** or **Members** from the opportunity to participate in, or receive, the full benefit of any general business opportunity, employment or training policies of **Hydro** in force from time to time relating to aboriginal peoples in Northern Manitoba. **Hydro**

and **York Factory** agree to meet at York Landing at least once every year to identify opportunities, if any, for **Members** to apply or compete for, or participate in **Hydro** related business, employment and training opportunities.

## **8.5 GENERAL PROVISIONS**

8.5.1 No Requirement. Except for the purpose of compliance with the standards set out in Article 8.2 in respect of **Canada**, and Article 8.3 in respect of **Manitoba**, nothing in Article 8 shall, or shall be deemed to, require the provision of any **Normal Funding and Programming** by the governments of **Canada** or of **Manitoba**. Nothing in Article 8 shall require the maintenance or continuation of any **Normal Funding and Programming**, or require that any particular terms or form of **Normal Funding and Programming** be established or maintained.

8.5.2 Exclusion. If **Canada**, **Manitoba** or **Hydro** should establish a program of compensation, and the program by its terms and conditions excludes a class or classes of First Nations, communities or persons who have previously received compensation, with respect to those matters for which such program is established, and **York Factory** or any **Member** is within the scope or definition of such a class or classes which are excluded from, or not included in the program, the provisions of Articles 8.2, 8.3 or 8.4 shall not apply to that program.

8.5.3 Potable Water. **York Factory** is entitled to **Normal Funding and Programming** in relation to the provision of potable water and sewer services as set out in the agreement among **Canada**, the Northern Flood Capital Reconstruction Authority Inc., the **NFC**, and the Cross Lake, Nelson House, Norway House, Split Lake and York Factory Bands pursuant to Article 6.1 of the **NFA** and dated May 10, 1988. Nothing in Article 8 shall change that agreement.

8.5.4 Termination. If the **Trust** is wound up or has **Assets** of less than one hundred thousand (\$100,000.00) dollars, the provisions of Article 8 applicable to **Canada** shall be terminated for subsequent periods of **Normal Funding and Programming**. Such termination shall not affect the rights of **York Factory** or **Canada** or its assignee in connection with disputes regarding the provision of **Normal Funding and Programming** with respect to periods prior to such termination.

8.5.5 Manitoba. If the **Trust** is wound up or has **Assets** of less than one hundred thousand (\$100,000.00) dollars, the provisions of Article 8 applicable to **Manitoba** shall be terminated for subsequent periods of **Normal Funding and Programming**. Such termination shall not affect the rights of **York Factory** or **Manitoba** or its assignee in connection with disputes regarding the provision of **Normal Funding and Programming** with respect to periods prior to such termination.

## ARTICLE 9

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## ARTICLE 9

### 9.0 FUTURE DEVELOPMENT

#### 9.1 INTRODUCTION

9.1.1 Introduction. Article 9 sets forth planning principles and processes in relation to **Future Development**.

#### 9.2 FUTURE PROJECT DEVELOPMENT

9.2.1 No Implied Concurrence. Nothing in Article 9 shall imply concurrence with or approval by **York Factory** or **Canada** of any **Existing Development** or **Future Development** or operation of any portion of the **Project** affecting **York Factory**, the **Reserve**, **Members**, or the **Resource Management Area**.

9.2.2 Future Development. **Hydro** and **York Factory** acknowledge that **Hydro** may, within the foreseeable future, undertake **Future Development** and initiate further preparatory and other work related to such **Future Development**.

9.2.3 Documents. On or before December 31, 1995, **Hydro** will provide to **York Factory** indexes listing all planning, engineering, environmental and other like reports which have been finalized by **Hydro** in relation to **Future Development** and

agrees to provide to **York Factory**, in a timely fashion:

- (a) copies of any such finalized report, which is current and relevant to an option for **Future Development** being considered by **Hydro**; and
- (b) relevant supporting data which **York Factory** may reasonably require;

and which would be subject to disclosure under The Freedom of Information Act (Manitoba).

### **9.3 PLANNING PROCESS**

9.3.1 Annual Meetings. **Hydro** agrees annually to convene in Thompson, 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** in relation to **Future Development** since the last annual meeting under Article 9.3.1;
- (b) to review any physical works related to **Future Development** which **Hydro** intends to construct in the coming year;
- (c) to review the draft work plan prepared by **Hydro** under Article 9.3.4;  
and
- (d) to discuss issues and concerns relevant to **Future Development**.

Prior to such annual meeting, **Hydro** shall provide **York Factory** with a copy of its proposed work plan and **Hydro** and **York Factory** shall exchange copies of any planning, engineering or environmental report or study in relation to **Future**

**Development** which have been finalized since the last annual meeting and which would be subject to disclosure under The Freedom of Information Act (Manitoba).

9.3.2 Process. Prior to making its final selection of its option for **Future Development**, **Hydro** shall:

- (a) with respect to each option for **Future Development** being considered by **Hydro**, provide to **York Factory**:
  - (i) maps showing potential sites,
  - (ii) detailed descriptions of each option for development including anticipated impacts on levels and rates of change in water levels of Split Lake and other water bodies in the **Resource Management Area**,
  - (iii) maps showing the extent of inundation, and
  - (iv) an outline of anticipated positive and negative effects on water bodies in the **Resource Management Area**,and as changes are made, up-date such maps, descriptions and outlines and provide same to **York Factory**;
- (b) advise **York Factory** and **Canada** which options for **Future Development**, if any, could not proceed without an arrangement for the taking or using of **Reserve Lands**, an amendment to the **Easement** or the granting of a new easement on **Reserve Lands**;
- (c) in consultation with **York Factory**, identify any issues of particular



- concern or importance to **York Factory and Members**;
- (d) in consultation with **York Factory**, identify and review potential positive and negative effects on **York Factory and Members** which would result from each option for **Future Development**;
  - (e) undertake such studies and investigations as are necessary to obtain a reasonable assessment and understanding of such potential effects which have been identified and after consultation with **York Factory**, consider reasonable design modifications which could eliminate or alleviate any identified **Adverse Effects**;
  - (f) after consultation with **York Factory**, identify, design and cost mitigatory and remedial works which are reasonable to alleviate anticipated **Adverse Effects** which cannot be eliminated by design modifications;
  - (g) in consultation with **York Factory**, consider practical and reasonable ways in which **York Factory** can benefit from such **Future Development**;
  - (h) consult with **York Factory** to determine which option for **Future Development**, if any, is preferred by **York Factory**;
  - (i) if an amendment to the **Easement** or an new easement or some other arrangement is required for the taking or using of **Reserve Lands** to accommodate such **Future Development**, obtain from **York Factory and Canada** agreement to provide such arrangement, new

- easement or amendment to the **Easement**;
- (j) pursuant to Article 9.4, in consultation with **York Factory**, develop a proposal to compensate **York Factory** for **Adverse Effects** which are not off-set by benefits of the **Future Development** and which cannot reasonably be eliminated or alleviated; and
  - (k) identify in a reasonably timely manner:
    - (i) any employment opportunities related to Future Development which may be available for **Members** including any pre-requisite education or training,
    - (ii) any business opportunities related to Future Development which may be available to **York Factory** and **Members** in the **Resource Management Area**, and
  - (l) consult with **York Factory** about any other relevant matter related to selecting an option for **Future Development**.

9.3.3 Joint Studies. Whenever a study or investigation of an issue of particular concern or importance to **York Factory** and **Members** is required under Article 9.3.2, **York Factory** and **Hydro** agree that, if practicable and reasonable, such study or investigation, including the establishment of terms of reference for same, shall subject to Article 9.3.4 be undertaken by them jointly and with others who may also be affected.

9.3.4 Work Plan and Budget. At least annually **Hydro** shall prepare a work plan outlining the nature and scope of any work, including any consultation, study or investigation which it anticipates it will undertake to meet the process obligations under Article 9.3.2 during the coming year, and **York Factory**, in consultation with **Hydro**, shall prepare, and where appropriate revise, a budget for the reasonable costs which **York Factory** anticipates it will incur in order to participate in the work plan. If **Hydro** approves such budget, or it is approved by the **Arbitrator**, **Hydro** agrees to pay such costs in a timely manner, provided that:

- (a) the actual invoice reflects the budget; and
- (b) the work done accords with the work outlined in the budget.

**Hydro** shall not be required under Article 9.3.4 to pay or re-imburse **York Factory** for:

- (c) any salary, honorariums, fees, per diems or other similar costs, except reasonable expenses necessarily incurred, for the participation or involvement of any **Members**, including **Members** who are representatives of **York Factory**, at any meetings or in any of the processes under Article 9, except where such **Member** has been retained as a qualified expert; and
- (d) any costs in relation to the arbitration of a dispute.

Article 9.3.4 will not preclude an award of costs under Article 10.4.

9.3.5 York Factory Co-operation. Subject to Article 9.3.7, **York Factory** will co-operate with **Hydro** on a timely basis as contemplated in Articles, 9.3.1, 9.3.2 and 9.3.3 including the annual meetings, consultations, joint studies and planning processes. **York Factory** will also co-operate with **Hydro** to:

- (a) identify areas of concern and importance to **York Factory** and **Members**;
- (b) facilitate the gathering of information from **Members** in relation to the **Reserve** and the **Resource Management Area**;
- (c) facilitate communication between **Hydro** and **Members**; and
- (d) if applicable, inform **Hydro** and **Canada**, in writing, whether it is prepared to have to have the **Easement** amended or a new easement granted or other arrangements for the taking and using of **Reserve Lands** granted, if required, to accommodate **Future Development**.

9.3.6 Hydro decisions **Hydro** maintains its discretion to:

- (a) determine under Article 9.3.4 its annual work plan and the extent, scope and timing of work required to meet its obligations under Article 9.3.2;
- (b) determine options for consideration and select the option for **Future Development** with which it will proceed;
- (c) adopt, amend or terminate its on-the-job employment and

- business opportunities policies;
- (d) design any works, structure or development forming any part of **Future Development**; and
  - (e) subject to applicable laws, initiate federal or provincial regulatory review processes in relation to such **Future Development**.

Accordingly, subject to any requirement in relation to the taking or using of **Reserve Lands**, and without in any way limiting or restricting the undertaking of **Hydro** in Article 9.4.7 or the requirement to act in good faith and, notwithstanding the provisions of Article 10, no dispute under Article 9 respecting any decision of **Hydro** relating to those matters outlined in Articles 9.3.6 (a), (b), (c), (d) and (e) is referable to arbitration or otherwise justiciable under this **Agreement**. Notwithstanding the foregoing, disputes under Article 9.3.4, in relation to the reasonable costs for **York Factory** to participate in the work plan and, where the work plan proposes a study which under Article 9.3.3 is to be undertaken by **York Factory** and **Hydro** jointly, disputes in relation to the terms of reference for same, are referable to arbitration under Article 10.4.

9.3.7 Reconsideration. Prior to proceeding with any joint study, survey, referendum or other process under Article 9 requiring the participation of, or otherwise involving, **Members** generally, **York Factory** may, and at the request of **Hydro** will:

- (a) hold a public meeting of **Members** to determine if the **Members** will co-operate in such process; and
- (b) advise **Hydro** of the results of such public meeting of **Members** and if **York Factory** will co-operate as contemplated under Articles 9.3.5, 9.4.2 and 9.4.3.

9.3.8 Hydro Relieved. If **York Factory** advises **Hydro** that it is no longer prepared to co-operate as contemplated under Articles 9.3.5, 9.4.2 and 9.4.3, as the result of a determination under Article 9.3.7 or otherwise, or if **York Factory** fails to participate in studies, consult with **Hydro**, attend annual meetings, identify concerns, communicate, provide information or otherwise fails to co-operate as contemplated in Articles 9.3.5, 9.4.2 and 9.4.3, **Hydro** may apply to the **Arbitrator**, for an order relieving it from any obligations, under Article 9.4.7(a) and any other obligation which cannot be met without such cooperation. However, the **Arbitrator** shall have no authority to relieve **Hydro** from its obligations under the **Easement** or to obtain an amendment to the **Easement**, a new easement or any arrangement for the taking or using of **Reserve Lands**.

#### 9.4 FUTURE DEVELOPMENT COMPENSATION

9.4.1 Compensation Proposal. In selecting an option for **Future Development**, the impacts upon **York Factory** and the cost and methods for

compensating **York Factory** and **Members** for **Adverse Effects**, are relevant considerations to be addressed as early in the process as feasible.

9.4.2 Consultation and Study. To address compensation issues, **York Factory** and **Hydro** will work together to fully assess any benefit to **York Factory**, and the cost and methods of compensating **York Factory** and **Members** for **Adverse Effects** of **Future Development**. In relation to such matters, and the acceptability of any compensation proposals, **York Factory** shall:

- (a) participate in compiling and providing data and information within the knowledge of **York Factory** and **Members**;
- (b) participate in community surveys;
- (c) participate in joint studies;
- (d) conduct polls or referenda of **Members**; and
- (e) participate in the design, implementation and analysis of compensation cost-benefit studies to ensure that such studies give appropriate weight and are sensitive to issues of concern to **York Factory** and **Members**.

9.4.3 Pre-Approval. It is in the best interests of **York Factory** and **Hydro** to fully assess and finalize compensation issues, prior to formal commencement of any federal or provincial environmental review and licensing process and, accordingly:

- (a) **York Factory** agrees to work with **Hydro** under Article 9.3.2(j) in its effort to prepare as detailed and complete a compensation proposal as possible to address compensation for **York Factory** and **Members** for the known and foreseeable **Adverse Effects of Future Development**;
- (b) a consideration of Schedule 2.2 shall be included in the preparation of the compensation proposal;
- (c) if **Hydro** and **York Factory** are unable to jointly develop and agree upon a compensation proposal **Hydro** shall finalize a compensation proposal and submit it to **York Factory** for its consideration;
- (d) **York Factory** shall review the compensation proposal submitted by **Hydro** and within six (6) months advise **Hydro** if it accepts or rejects the compensation proposal;
- (e) if **York Factory** rejects the compensation proposal submitted by **Hydro**, and **York Factory** and **Hydro** are unable to agree upon an acceptable compensation proposal , then either or both **Parties** may, in accordance with the procedures in Article 10.4, submit a compensation proposal to the **Arbitrator** for approval under Article 9.4.4;
- (f) the **Arbitrator** shall, within the time periods established by Article 10.3.9, fix the date for a hearing at which **York Factory** and **Hydro** will have the opportunity to submit evidence and arguments in support



of or against any compensation proposal submitted under Article 9.4.3(e);

- (g) at the request of **Hydro and York Factory** the **Arbitrator** shall waive the holding of a hearing under Article 9.4.3(f) and proceed to consider any proposals submitted under Article 9.4.3(e);
- (h) the **Arbitrator** may adjourn the hearing under Article 9.4.3(f) at any time with the consent of **Hydro and York Factory** or without the consent of **Hydro and York Factory**, on not more than one occasion and for not more than thirty (30) days, where, in the opinion of the **Arbitrator**, the **Parties** could agree upon a compensation proposal within that time;
- (i) hearings under Article 9.4.3 shall be held in camera provided that the **Party** initiating the hearing process shall give notice of the hearing to **Canada** and **Manitoba** who may, but are not obliged to, appear at, participate in or be added as intervenors at such hearings; and
- (j) information obtained from evidence given or from documents submitted to the **Arbitrator**, at or for a hearing under Article 9.4.3, shall not be made public.

9.4.4 **Arbitrator's Power.** Based upon a review of any compensation proposals submitted under Article 9.4.3(e) and any evidence presented, including relevant information obtained and compiled pursuant to Article 9.4.2, the **Arbitrator**

shall:

- (a) approve a compensation proposal submitted under Article 9.4.3(e); or
- (b) reject and make recommendations for modifying such compensation proposals.

The **Arbitrator** shall have no power to amend any compensation proposal submitted under Article 9.4.3(e) or to determine compensation for the taking or using of **Reserve Land**. If the proposed **Future Development** proceeds, the compensation proposal approved by the **Arbitrator** under Article 9.4.4, including any amendment to Schedule 2.2, shall, subject to Article 9.4.6 be binding upon **Hydro** and **York Factory** unless otherwise agreed to in writing by **Hydro** and **York Factory**.

9.4.5 Re-submission. If no compensation proposal submitted under Article 9.4.3(e) is approved by the **Arbitrator**, either **York Factory** or **Hydro** may, at any time or times thereafter, submit new or amended compensation proposals to the same **Arbitrator**, or, if the **Arbitrator** is no longer willing or able to act, to a new **Arbitrator** selected as herein provided, and the provisions of Articles 9.4.3 (f), (g), (h), (i) and 9.4.4 shall apply to such new compensation proposal.

9.4.6 Modifications. Either **York Factory** or **Hydro** may request that a compensation proposal agreed upon under Article 9.4.3 or approved under Article 9.4.4 be reviewed and modified, as may be required, to accommodate changes in

the proposed **Future Development** resulting from federal or provincial environmental review and licensing processes. Notwithstanding such review and modification, to which process the provisions of Article 9 shall to the extent relevant apply, or notwithstanding any appeal of the decision of the **Arbitrator**, **Hydro** may proceed at any time with the proposed **Future Development** whether or not a modified compensation proposal has been agreed upon or approved or the appeal heard and determined. Where it so proceeds **Hydro** shall be bound by the original compensation proposal agreed to under Article 9.4.3, or approved under Article 9.4.4, unless and until a modified compensation proposal has been agreed upon or approved under Article 9.4.6.

9.4.7 **Hydro Undertaking.** Subject to Article 9.3.8, **Hydro** undertakes not to proceed with physical construction of any permanent dam or generating facility constituting part of **Future Development** until:

- (a) **Hydro** and **York Factory** have agreed upon a compensation proposal or the **Arbitrator** has approved a compensation proposal;
- and
- (b) if required, amended or additional easements or other arrangements for the taking or using of **Reserve Lands**, have been agreed to by **York Factory** and, if applicable, **Canada**.

Subject to **Hydro's** obtaining all required federal and provincial licenses and approvals for such preliminary works, the undertaking of **Hydro** under Article 9.4.7

shall not prevent **Hydro** from proceeding with all of its preliminary works including, without limitation, the construction of infrastructure such as access roads, construction camps, dikes, clearing and supply of power necessary to support and further the construction of such **Future Development**.

## 9.5 GENERAL

9.5.1 Without Prejudice. Any process under Article 9 is without prejudice to **Canada** or **Manitoba**, except to the extent that **Canada** or **Manitoba** may specifically concur. Nothing in Article 9 relieves against statutory requirements.

9.5.2 Subject to Easement. The provisions of Article 9 are subject to the terms of, and do not alter or amend, the **Easement Agreement** or the **Easement** and nothing herein shall be construed as permitting or requiring any amendment without the approval of **York Factory** and if required, **Canada**.

9.5.3 No Compulsion. Nothing in this **Agreement** shall compel **York Factory** or **Canada** to agree to amend the **Easement** or the **Easement Agreement** or to grant a new easement.

9.5.4 Relocation. Nothing in Article 9 shall compel **York Factory** to relocate the community of York Landing in order to escape the impacts of the

**Project.**

9.5.5 Amendment. With the consent of **Canada**, which consent shall not be withheld unreasonably, the processes outlined in Articles 9.3 and 9.4, except those relating to easements, or arrangements for the taking or using of **Reserve Lands**, may be amended by **York Factory and Hydro**.

## ARTICLE 10

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## ARTICLE 10

### 10.0 ARBITRATION

#### 10.1 INTRODUCTION

10.1.1 Introduction. Article 10 establishes procedures for arbitrating disputes under this **Agreement**, in relation to any matter:

- (a) involving **Members of York Factory, Chief and Council**, members of **Chief and Council**, beneficiaries of the **Trust**, **Claimants**, the **York Factory Trustees** or the **Corporate Trustee** which matters shall proceed as prescribed under Article 10.3;
- (b) involving the **Parties** which matters shall proceed as prescribed under Article 10.4; and
- (c) involving the potential liability of **Hydro** under Article 12.4.1, arising out of claims for compensation by beneficiaries of the **Trust** which matters shall proceed as prescribed under Article 10.5.



## 10.2 ARBITRATION

10.2.1 York Factory Disputes. Any decision referred to arbitration under Article 5.3.1 and any dispute which involves the interpretation or administration of the **Agreement** or the **Indenture**, or which involves the use or administration of **Assets** or **Trust Moneys**, and which involves only **Members, York Factory, Chief and Council**, members of **Chief and Council**, beneficiaries of the **Trust**, **Claimants**, the **York Factory Trustees**, or the **Corporate Trustee** may be referred to arbitration in accordance with Article 10.3.

10.2.2 Disputes Involving the Parties. Subject to Articles 6.2.7, 9.3.6 and 10.2.3, any dispute or difference between the **Parties** as to the meaning, application, implementation or breach of any part of this **Agreement** may be referred to arbitration by any of the **Parties** to that dispute in accordance with the terms of this **Agreement** and Article 10.4. Except for claims proceeding under Article 10.5 against **Hydro**, only a **Party** may refer to arbitration a matter which involves **Canada, Manitoba, or Hydro**.

10.2.3 Easement Resolution. Unless the **Easement Agreement** otherwise provides, a dispute relating to the **Easement Agreement** and involving **York Factory** may, at the sole option of **York Factory**, be referred to arbitration under Article 10.4. Notwithstanding the foregoing, if **Canada** and either **Manitoba**

or **Hydro** is a party to such dispute and it concerns an interest in land, the dispute shall be referred to court.

10.2.4 Arbitration Act Applies. The Arbitration Act (Manitoba) shall govern any arbitration under this **Agreement**, except where that Act conflicts with any express term of this **Agreement**, in which case the provisions of this **Agreement** shall prevail.

10.2.5 Reference to Courts. Any constitutional issue arising out of, or in respect to, this **Agreement**, or the matters implemented or settled by this **Agreement**, shall be referred to a court and not arbitration under Article 10.

10.2.6 No Substantive Rights. Nothing in Article 10 grants any substantive rights to any person except the right to refer and have matters arbitrated under Article 10.

### 10.3 YORK FACTORY ARBITRATION

10.3.1 List of Arbitrators. After consultation with persons it considers advisable, **Chief and Council** shall establish and maintain an up-dated list of not more than ten (10), or fewer than five (5), persons who have qualities and experience suitable to be an arbitrator appointed in relation to any matter under Article 10.3, and who are willing to so act. **Chief and Council** shall make the list available to any person, referring a matter to arbitration under Article 10.3 and on request, any person to whom the provisions of Article 10.3 apply.

10.3.2 Referral to Arbitration. Disputes may be referred to arbitration under Article 10.3:

- (a) by a **Claimant**, or by **Chief and Council**, serving a referral to arbitration pursuant to Article 5.3.1; or
- (b) by a **Member, York Factory, Chief and Council, the Corporate Trustee, the York Factory Trustees, a member of Chief and Council**, or a beneficiary of the **Trust**, which involve the interpretation of the **Indenture** or use or administration of **Assets** or **Trust Moneys**, but which does not involve **Canada, Manitoba** or **Hydro**, by serving a written referral to arbitration, in a Schedule 5.5 or 10.1 form, upon any person against whom any relief, remedy, redress or order may be sought under Article 5.3.

10.3.3 Notification. **Chief and Council** shall, upon receipt of a notice under Article 10.3.2, forthwith:

- (a) provide a copy to the **York Factory Trustees** and the **Corporate Trustee**; and
- (b) provide a list of potential arbitrators to the **Claimant**.

10.3.4 Appointment of Arbitrator. Subject to approval of any named respondent, a person referring a matter to arbitration under Article 10.3 may select an **Arbitrator** from the current list of arbitrators. A respondent who objects to an appointment must do so in writing delivered to the **Chief and Council** within fourteen (14) days of receipt of the notice of referral to arbitration. No person shall accept appointment or act as the **Arbitrator** in relation to any matter being arbitrated in which such person has a personal, pecuniary or other conflict of interest which could affect their impartiality with respect to the matter. If none of the persons named on the list of arbitrators is acceptable or able to act, and the person referring the matter, **Chief and Council** and any respondent are unable otherwise to agree on an acceptable **Arbitrator**, any one of them may request the **Arbitrator** be appointed by a Judge of the Court of Queen's Bench of Manitoba in accordance with the provisions of The Arbitration Act (Manitoba).

10.3.5 Jurisdiction and Powers. From the date of acceptance of the appointment, the **Arbitrator** shall have jurisdiction over the conduct of the

proceedings and may make such orders as are necessary to ensure that the dispute is dealt with fairly and expeditiously, with regard to the real substance of the matter in dispute. Subject to the **Agreement**, the **Arbitrator** shall have power to:

- (a) resolve any dispute as to facts;
- (b) decide whether any **Claimant** is entitled to receive compensation pursuant to this **Agreement**;
- (c) award compensation which will place the **Claimant** in no worse position than the **Claimant** would have been in, in the absence of the **Adverse Effect**;
- (d) interpret this **Agreement**;
- (e) declare the rights and obligations of **York Factory, Chief and Council**, the **York Factory Trustees**, a member of **Chief and Council**, a beneficiary of the **Trust**, the **Corporate Trustee**, a **Claimant** or any **Member** under this **Agreement**;
- (f) cause an audit to be undertaken;
- (g) conduct a **Meeting of Members**;
- (h) award compensation from the **Claims Account**;
- (i) award damages or restitution in relation to the use and administration of **Assets** or **Trust Moneys**;
- (j) award interest; and
- (k) subject to Articles 10.3.6, 10.3.15 and 10.3.16, award costs, including costs from the **Claims Account**.

10.3.6 Costs. Any award of costs under Article 10.3.5(k) may include reasonable fees, travelling allowances and other ancillary expenses for lawyers, consultants, experts or other witnesses participating in such arbitration as well as the reasonable fees of the **Arbitrator** under Article 10.3.15.

10.3.7 Finality. Any person referring a matter to arbitration under Article 10.3 may apply in writing to the **Arbitrator**, within thirty (30) days after the receipt of the decision, to amend or vary it in respect of anything that was raised before the **Arbitrator** or in the application or interpretation of such decision. Thereafter the **Arbitrator** shall have no jurisdiction with respect to the matter that was the subject of the arbitration.

10.3.8 Onus. Any party to an arbitration under Article 10.3 taking the position that the **Project** did not cause or contribute to any loss or damage suffered by a potential **Claimant** or person who makes a claim bears the onus of proof on that issue.

10.3.9 Expedited Arbitrations. The **Arbitrator** shall fix the date on which the matter will be considered, which shall fall within twenty-eight (28) days of the date the appointment is accepted. A decision, in written form, shall be delivered within twenty-eight (28) days of the receipt of all evidence and final argument. Where requested to do so by all parties to the arbitration, the **Arbitrator** shall issue an oral

decision within one (1) day after conclusion of the hearing with written reasons to follow within the twenty-eight (28) day period.

10.3.10 Practice and Procedure. Subject to the rules of natural justice, the **Arbitrator** shall establish the practice and procedure for conducting the arbitration. The **Arbitrator** shall determine the matter based on a hearing, unless all of the parties to the arbitration under Article 10.3 request a determination on documentary evidence and written referrals only, in which case the **Arbitrator** may direct a hearing or proceed as requested.

10.3.11 Representation by Counsel. Any person involved in an arbitration under Article 10.3 may be represented by counsel and the **Arbitrator** may order that payment for counsel of the **Claimant's** choice be made from the **Claims Account**.

10.3.12 Evidence. Evidence may be presented in writing or orally. The **Arbitrator** shall not be bound by the strict rules of evidence and may accept hearsay and any other evidence considered relevant.

10.3.13 Transcripts. If a hearing is held, the **Arbitrator** shall maintain a record of the proceedings. A party may request that the proceedings be transcribed, in which case a transcript shall be provided upon such terms as the

**Arbitrator** may impose, including, without limitation, the costs thereof.

10.3.14 Hearing Location. Any hearing shall be held on the **Reserve** unless the parties to the dispute consent to it being held elsewhere in Manitoba.

10.3.15 Arbitrator's Fees. The **Arbitrator** shall not be restricted to the fee schedule appended to The Arbitration Act (Manitoba) but shall be paid a reasonable fee and expenses from the **Claims Account**, unless the **Arbitrator** orders a party to the arbitration to pay all or part of same. Any reasonable fees of the **Arbitrator** which are not, pursuant to the award, to be paid by a party are to be paid by **Chief and Council** from **Trust Moneys** advanced from the **Claims Account**.

10.3.16 Interim Orders. The **Arbitrator** shall have the right to make interim orders, including orders for compensation and costs, prior to the final determination of any dispute.

10.3.17 Relationship between Mitigatory Measures and Claimant Compensation. The **Parties** recognize that mitigatory or remedial measures are more likely to have a lasting, beneficial effect on the viability of a community or on individual residents, than monetary compensation. Accordingly, any evidence that such measures which have been implemented on a group or community basis, in relation to the matters claimed and their mitigatory effect when they have been



implemented, shall be considered by the **Arbitrator**, as provided in Article 5.3.4, in assessing the quantum of compensation to which any **Claimant** shall be entitled from the **Claims Account**.

10.3.18 Liability to Compensate. When a matter has been referred to arbitration pursuant to Article 5, the **Arbitrator** shall deal with the matter on the basis that the liability to compensate may be solely and exclusively funded from the **Trust**.

#### 10.4 PARTIES' ARBITRATION

10.4.1 Referral to Arbitration. Disputes may be referred to arbitration by any **Party** serving upon the other **Parties**, a written referral to arbitration, which shall contain the following:

- (a) the names of the respondents;
- (b) the nature of the dispute; and
- (c) the relief, remedy, redress or declaratory order sought.

10.4.2 Participation by Parties to the Agreement. Any **Party** whether named as a respondent or not has the right to participate by notifying the participating **Parties** within twenty-one (21) days of receiving the referral. Any **Party** not identified as a respondent, and who elects not to participate, may not participate in

choosing the **Arbitrator**. Notwithstanding that a **Party** elects not to participate, such **Party** may, at any subsequent time, with leave of, and subject to any conditions imposed by the **Arbitrator**, including an award of costs, be added as a party to the arbitration on its own application.

10.4.3 Appointment of Arbitrator. An **Arbitrator** agreed upon by the **Parties** to a dispute shall be appointed to adjudicate the dispute, using the following procedure:

- (a) The **Party** referring the issue to arbitration shall, with service of the written submission, also refer the names, addresses and occupations of not more than three (3) individuals, any one of whom may be selected by the participants to act as **Arbitrator**;
- (b) each **Party** identified as a respondent or which has indicated it will participate in the arbitration shall, within twenty-one (21) days of the receipt of the list of proposed arbitrators:
  - (i) select one (1) or more of the persons named on the list, or
  - (ii) reject all of the persons named on the list and so advise the other **Parties** in writing.

If a **Party** identified as a respondent, or which has requested to participate, does not respond to the list of proposed arbitrators within the twenty-one (21) days, it shall be deemed to have accepted any selection made by the other **Parties** involved in the dispute; and

- (c) if any one (1) of the persons on the list of proposed Arbitrators is acceptable to all **Parties** and is willing and able to act as the **Arbitrator**, then that person shall be appointed as the **Arbitrator** forthwith. If more than one (1) person is unanimously selected, the **Arbitrator** shall be chosen from those persons by the **Party** referring the issue to arbitration within seven (7) days of receiving the responses referred to in Article 10.4.3(b), and the person chosen, if willing and able to act, shall be appointed the **Arbitrator** forthwith.

10.4.4 Application to Judge. If the **Parties** involved in the dispute cannot agree upon a person to act as **Arbitrator**, any **Party** to the dispute may request that the **Arbitrator** be appointed by a Judge of the Court of Queen's Bench of Manitoba by applying within fourteen (14) days of the expiration of the time set out in Article 10.4.3(b). For the purposes of Subsection 6(2) of The Arbitration Act (Manitoba), the procedures set forth in Articles 10.4.4 and 10.4.5 shall govern and are in lieu of the procedures in Subsection 6(1) of that Act.

10.4.5 Jurisdiction. From the date of appointment, the **Arbitrator** shall have jurisdiction over the conduct of the proceedings and may make such orders as are necessary to ensure that the dispute is dealt with fairly and expeditiously, with regard to the real substance of the matter in dispute. Subject to the **Agreement**, the **Arbitrator** shall have the power to:

- (a) determine any dispute as to facts and the application of this **Agreement** thereto;
- (b) interpret all provisions of this **Agreement**;
- (c) declare the rights or obligations under the **Agreement** of any **Party**;
- (d) award damages, restitution or other compensation;
- (e) award interest;
- (f) award costs subject to the provisions set forth in Articles 10.4.13 and 10.4.14; and
- (g) carry out duties specifically assigned to the **Arbitrator** by the **Agreement** or the **Indenture**, including the authority to:
  - (i) amend Schedule 2.2 pursuant to Article 2.5.10 or as part of an approved compensation proposal under Article 9,
  - (ii) award additional compensation in extraordinary circumstances pursuant to Article 2.5.13,
  - (iii) review and revise transportation measures under Articles 2.7.3 and 2.7.5,
  - (iv) determine disputes as to whether **Normal Programming and Funding** has been affected by the expenditure of **Financial Proceeds** pursuant to Article 8,
  - (v) relieve **Hydro** from its obligations and undertaking

under Article 9.3.8, and

- (vi) make recommendations and select a compensation proposal for **Future Development** pursuant to Articles 9.4.3, 9.4.4, 9.4.5 and 9.4.6.

10.4.6 Procedure. Subject to the provisions of this **Agreement** and the rules of natural justice, the **Arbitrator** may establish the procedure for conducting the arbitration and may decide the matter based on a written record unless any **Party** involved in the dispute requests a hearing.

10.4.7 Representation by Counsel. Any **Party** involved in an arbitration may be represented by counsel.

10.4.8 Evidence. Evidence submitted in an arbitration may be presented in writing or orally. Subject to Articles 10.4.12 and 10.7.5, the **Arbitrator** and any **Party** may request relevant information from any of the **Parties**. The **Arbitrator** shall not be bound by the strict rules of evidence and may accept hearsay and any other evidence considered relevant.

10.4.9 Transcripts. If a hearing is held, the **Arbitrator** shall maintain a record of the proceedings. A party may request that the proceedings be transcribed in which case a transcript shall be provided upon such terms as the **Arbitrator** may

impose, including, without limitation, the costs thereof.

10.4.10 Hearing Location. A hearing shall be held in Winnipeg unless the parties to the dispute consent to a site elsewhere in Manitoba.

10.4.11 Arbitrator's Fees. The **Arbitrator** shall not be restricted to the fee schedule appended to The Arbitration Act (Manitoba) but shall be paid a reasonable fee and each party to the arbitration will bear the costs of the **Arbitrator's** remuneration and expenses equally unless the **Arbitrator** orders otherwise.

10.4.12 Disclosure and Distribution. Subject to Article 10.7.5, each **Party** to the arbitration agrees that it shall disclose and produce any documents or information which may be reasonably required by the **Arbitrator** or any **Party**, except such documents as would not be compellable if the action were brought in a court of law. All documents or information supplied to the **Arbitrator** by any **Party** shall concurrently be provided to every **Party** participating in the arbitration. All such documents so disclosed shall be treated as though disclosed on discovery in a matter before the Court of Queen's Bench.

10.4.13 Costs. The **Arbitrator** shall award the costs of the arbitration on a fair and equitable basis. In the absence of an order as to costs, each **Party** to the dispute shall pay its own.

10.4.14 Inclusions. Any award of costs may include reasonable fees, travelling allowances and other ancillary expenses for not more than one (1) representative of any **Party** to the arbitration and for lawyers, consultants, experts or other witnesses participating in the arbitration.

## 10.5 DISPUTES UNDER ARTICLE 12.4.1

10.5.1 Disputes with York Factory alone. If in the absence of a claim under Article 5, a dispute arises as to the continuing liability of **Hydro** under Article 12.4.1, that dispute shall be resolved as a dispute between **Parties** other than **Canada** and **Manitoba** pursuant to the provisions of Article 10.4.

10.5.2 Disputes involving claims by Members. If, pursuant to Article 5.2.8, **Hydro** disputes a preliminary decision under Article 5.2.7(d), that dispute shall be resolved pursuant to Article 10.5.

10.5.3 Appointment of Arbitrator. The **Arbitrator** shall be selected in the same manner as set forth in Articles 10.4.3 and 10.4.4 except that, for the purposes of Article 10.5.3, **York Factory** shall be required to provide the initial list of persons to act as **Arbitrator** as contemplated under Article 10.4.3(a) and the term **Party**, as it is used in Articles 10.4.3 and 10.4.4 shall include a **Claimant** under

## Article 5.

10.5.4 Arbitration Process. The preliminary issue of the continuing liability of **Hydro** under Article 12.4.1 in relation to the claim or part of the claim shall be decided by the **Arbitrator** as if it were a dispute between the **Parties** other than **Canada** and **Manitoba** and the process and provisions set forth in Articles 10.4.5 to and including 10.4.14 shall apply to such determination. In such an arbitration the onus shall be on **Hydro** to establish that the **Project** or the operation of the **Project** by **Hydro** did not cause or contribute to any loss or damage suffered by a potential **Claimant**.

10.5.5 NFA Process. If the **Arbitrator** or, if the decision of the **Arbitrator** is appealed, the Court of Appeal, determines that **Hydro** has continuing liability under Article 12.4.1 in relation to the claim or part of the claim, the **Arbitrator** shall proceed to resolve the claim or part thereof, applying the definitions, procedures, onus and other relevant provisions of Articles 1, 23 and 24 of the **NFA**.

10.5.6 Referral back. If the **Arbitrator** or, if the decision of the **Arbitrator** is appealed, the Court of Appeal, determines that **Hydro** has no continuing liability under Article 12.4.1 in relation to any part of the claim, then the claim shall be referred back for determination under Article 5.2.9.



## 10.6 REVIEW AND APPEAL OF DECISIONS

10.6.1 Finality of Decision. Subject to Article 10.3.7, the decision of the **Arbitrator** under Articles 10.3, 10.4 or 10.5 shall be final and binding on all of the parties to the dispute subject to the right to appeal on a point of law or jurisdiction, within thirty (30) days of the appealing party's receipt of the **Arbitrator's** decision, to the Court of Appeal for Manitoba. Following delivery of an award, the **Arbitrator** shall be functus officio on the issue decided which issue shall be res judicata between the parties to the arbitration. By agreement, confirmed in writing by all parties to the arbitration, the **Arbitrator** may retain jurisdiction to resolve outstanding issues arising from the matter in dispute.

10.6.2 Remedy for late Decisions. Where an **Arbitrator** fails to issue the decision within the time prescribed in Articles 10.3, 10.4 or 10.5 any party to such arbitration may proceed to have a new arbitrator appointed, in the same manner as the original arbitrator was appointed, and upon appointment of the new arbitrator the original arbitrator shall lose jurisdiction to proceed and all entitlement to fees and the new arbitrator shall resume the arbitration as the **Arbitrator**.

10.6.3 Valid decision. Notwithstanding Article 10.6.2, until a new arbitrator is appointed the jurisdiction of the **Arbitrator** is not affected and if the **Arbitrator** renders the decision prior to the appointment of the new arbitrator, that decision is

valid and binding and the process to choose the new arbitrator shall cease.

## **10.7 GENERAL PROVISIONS**

10.7.1 Applicability. The provisions of Article 10.7 are applicable to arbitrations under Articles 10.3, 10.4 and 10.5.

10.7.2 Undertaking. Upon appointment every **Arbitrator** shall swear or affirm an undertaking in a Schedule 10.2 form.

10.7.3 Vacancy. Where a vacancy occurs in the office of the **Arbitrator** after the commencement of proceedings, the proceedings need not re-commence but may, with the unanimous consent of the parties to that arbitration, continue before a replacement arbitrator. In the absence of such unanimous consent, the arbitration must re-commence as if it were a new matter before a new arbitrator.

10.7.4 Amendments. Upon notice to all **Parties**, a referral may be amended at any time prior to the conclusion of the arbitration on such terms as the **Arbitrator** considers just.

10.7.5 Public Hearings. If the **Arbitrator** decides to hold a hearing, it shall be open to the public. The **Arbitrator** may hold the hearing or a portion thereof in

private if sensitive financial or other like information is to be disclosed and the legitimate interest in avoiding disclosure of that information outweighs the principle that hearings be open to the public. No arbitration arising out of Article 9 shall be open to the public and all documents, information and evidence provided in connection with such arbitration shall be treated as confidential by the party receiving same.

10.7.6 No Amendment. Except where otherwise expressly provided, the **Arbitrator** shall not have the authority or jurisdiction to change, alter, or amend this **Agreement** or the **Indenture**, or any term or provision contained therein.

10.7.7 Relief. The **Arbitrator** may relieve, on just and equitable terms, against breach of time limits or other procedural requirements set out in this **Agreement** or the **Indenture** provided no prejudice results therefrom.

10.7.8 Disqualification. No person who has a personal or pecuniary interest in a matter referred to arbitration or is otherwise in a conflict of interest which could affect that person's impartiality with respect to such matter, shall act, or continue to act as the **Arbitrator** in relation to that matter.

10.7.9 No Derogation. The provisions of Article 10 do not apply to actions of the Governor in Council or Lieutenant Governor in Council, Ministers or other

servants of Her Majesty in Right of Canada or of Manitoba, where such actions are taken specifically pursuant to federal or provincial statute, but remedies or judicial review available at law shall not be affected. Nothing in Article 10 shall derogate from specific obligations of **Canada** and **Manitoba** pursuant to this **Agreement**.

10.7.10 Canada. Notwithstanding section 2 of The Arbitration Act, (Manitoba), that Act does not, by its own force, apply to **Canada**, but **Canada** shall recommend to the Parliament of **Canada**, legislation providing that the legislation of Manitoba in relation to arbitration shall apply to any dispute among the **Parties** which is submitted to arbitration under the terms of this **Agreement**. Unless or until such legislation is enacted, arbitration involving **Canada** will, as it relates to **Canada**, be governed by common law rules.

SCHEDULE 10.1

**REFERRAL TO ARBITRATION**

To: (names of respondents)

Take Notice that the following matter is being referred to arbitration under Article 10 of the 1995 York Factory NFA Implementation Agreement :

(describe matter in dispute)

Further take notice that the following relief, remedy, redress or order is being sought:

(describe relief, remedy, redress or order sought)

Further take notice that the following person from the list prepared by Chief and Council under Article 10.3.1 of such Agreement has been selected to act as **Arbitrator**:

(name of person selected)

If you have any objection to the person selected you must advise in writing within 14 days of your receipt of this referral to arbitration.

DATED at York Landing the      of      , . .

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SCHEDULE 10.2

**UNDERTAKING OF ARBITRATOR**

I, \_\_\_\_\_ do swear or affirm that I will well and truly try the matters referred to me as provided for by the 1995 York Factory NFA Implementation Agreement and the Arbitration Act (Manitoba) in the matter of:

(State particulars of the matter)

and make a true and impartial award, according to the evidence and my skill and knowledge.

DATED this        day of        , . .

\_\_\_\_\_

Sworn or Affirmed before

A Commissioner, Notary, etc.

at

this    day of        , . .

## ARTICLE 11

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## ARTICLE 11

### 11.0 FEE SIMPLE LANDS

#### 11.1 INTRODUCTION

11.1.1 Introduction. Article 11 and the **Indenture** set out the procedures for dealing with **Fee Simple Lands** which may be transferrable from **Manitoba** to the **Corporate Trustee** or a corporation wholly owned and controlled by **York Factory** in fee simple title pursuant to this **Agreement**. The **Fee Simple Lands** in Schedule 11.1 are not **Compensation Lands** and are not provided pursuant to this **Agreement** as compensation for the taking or using of **Easement Lands**.

#### 11.2 LANDS TO BE GRANTED

11.2.1 Description. **Fee Simple Lands** identified at the **Date of this Agreement** are described in Schedule 11.1.

11.2.2 Warranty. **York Factory** has inspected the **Fee Simple Lands** and for the purposes of Article 11 the **Fee Simple Lands** are acceptable to **York Factory**. **Manitoba** needs no warranty as to the environmental condition of the **Fee Simple Lands** and shall be under no obligation under this **Agreement** in relation



thereto.

### **11.3 TRANSFER OF TITLE**

11.3.1 Legislation by Canada. If necessary, **Canada** shall recommend the enactment of legislation to provide that section 36 of the Indian Act does not apply to the **Fee Simple Lands**, and when enacted shall proclaim such legislation in force.

11.3.2 Lands Not Converted to Reserve. The **Fee Simple Lands** shall, subject to proclamation of the legislation contemplated in Article 11.3.1, be transferred by **Manitoba** to the **Corporate Trustee**, in trust for the use and benefit of **York Factory**, or a corporation wholly owned and controlled by **York Factory**, free and clear of all encumbrances, reservations, caveats, estates, rights and interests in favour of any person other than **York Factory** or those whose interest is claimed through **York Factory**, save and except for the following:

- (a) a caveat to be registered by **Manitoba** giving notice of the covenant in Article 11.3.3 that any subsequent transfer of such **Fee Simple Lands** to **Canada** to be set apart as **Reserve Land** is prohibited without the consent of **Manitoba**; and
- (b) reservations to the Crown in Right of Manitoba under Section 4.1 of The Crown Lands Act, (Manitoba).

11.3.3 Caveat. The **Fee Simple Lands** which are transferred to the **Corporate Trustee** under Article 11.3.2 shall not subsequently be transferred to **Canada** to be set apart as **Reserve Land** without the prior written consent of **Manitoba**, and the caveat under Article 11.3.2(a) shall be registered against the title by **Manitoba** evidencing the terms of Article 11.3.3 prior to the transfer to the **Corporate Trustee** or a corporation wholly owned and controlled by **York Factory** under Article 11.3.2.

11.3.4 Costs of Transfers. **Manitoba** shall, at its expense including the payment of any land transfer tax, complete all transfers and registrations of title for the **Fee Simple Lands** under Article 11.3.2, including Registration Detail Applications and forms of Request. At the time of registration of title, Registration Detail Applications, together with forms of Request, shall be completed for filing in the appropriate Land Titles Office requesting a separate duplicate title for the **Fee Simple Lands**.

#### 11.4 **LAND USE PERMITS**

11.4.1 Issuance. Until such time as title to the **Fee Simple Lands** has been transferred to the **Corporate Trustee** in trust for **York Factory**, or a corporation wholly owned and controlled by **York Factory** under Article 11.3.2, **Manitoba** shall, within three (3) months of receiving a request by **Council**

**Resolution**, issue a Land Use Permit for the **Fee Simple Lands** on terms and conditions satisfactory to **York Factory** and **Manitoba** at no charge to **York Factory**. Any Land Use Permit shall terminate upon the transfer of title to the **Fee Simple Lands** to the **Corporate Trustee** or a corporation wholly owned and controlled by **York Factory** under Article 11.3.2.

11.4.2            Waiver of Fees and Charges.        **Manitoba** shall waive any fees or charges for the issuance and continuance of the Land Use Permit acquired and renewed under this **Agreement**.

11.4.3            Not Reserve.        Notwithstanding the granting of the Land Use Permit in favour of **York Factory**, the **Fee Simple Lands** shall not be deemed to be **Reserve Lands** unless designated as such by **Canada** with the approval of **York Factory** and **Manitoba**.

## 11.5                **GENERAL CONDITIONS**

11.5.1            Expropriation.        Subject to the agreement of **Manitoba** and **York Factory**, and subject to compliance with the Water Power Act (Manitoba) and the provisions of The Crown Lands Act (Manitoba), if any part of the **Fee Simple Lands**, while the fee simple title is held by the **Corporate Trustee** or a corporation wholly owned and controlled by **York Factory**, is expropriated under the legislative

authority of **Manitoba, York Factory** shall have the right, as part of the compensation for, but not as a condition of, such expropriation, to acquire replacement lands within the **Resource Management Area**, or in or around the Local Government District of Churchill.

11.5.2 Environmental Reports. Until the **Fee Simple Lands** are transferred to the **Corporate Trustee** or a corporation wholly owned and controlled by **York Factory, Hydro, Manitoba** and **York Factory** shall, on a without prejudice basis, provide to each other copies of any non-confidential environmental studies, reports or audits related to the **Fee Simple Lands** which are, or come into, in their possession.

11.5.3 Registration. Where **York Factory, Hydro** or the **Corporate Trustee** or a corporation wholly owned and control by **York Factory** wishes to register a land titles document in series with the transfer of land conveying fee simple title referred to in Article 11.3.2, notice thereof shall be given to **Manitoba** within sixty (60) days of the **Date of this Agreement**.

11.5.4 Subsequent Transactions. **Chief and Council** will ensure compliance with the **Community Approval Process** in Article 8 of the **Indenture** for subsequent transactions in **Fee Simple Lands** held by a corporation wholly owned and controlled by **York Factory**.

SCHEDULE 11.1

FEE SIMPLE LANDS

"Parcel "E", Plan 6091 PLTO, (N. Div.), in Twp. 112, Rge. 20 EPM, excepting thereout Firstly: Plan No. 6404 PLTO, (N. Div.), Secondly: Plan No. 2420 PLTO and Thirdly: All that portion of the above described land lying to the East of the straight production Northerly of the most Western limit of Lot 1, Block 1, Plan 6104 PLTO, (N. Div.)."

## ARTICLE 12

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## ARTICLE 12

### 12.0 RECIPROCITY

### 12.1 INTRODUCTION

12.1.1 Introduction. Article 12 sets forth the general releases and indemnities, and the exceptions to both the general and specific releases, contained in this **Agreement**.

### 12.2 RELEASES

12.2.1 Release - Canada. **York Factory** hereby releases and forever discharges **Canada** of and from 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 **York Factory**, or **York Factory** on behalf of any **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 **Existing Development** or arising out of, or under, the **NFA**, save and except as set forth in this **Agreement**; and including claims, if any, of a fiduciary nature which may have arisen in respect of **Canada's** obligations to **York Factory** for anything done or omitted to be done by **Canada** to the **Date of this Agreement**.

12.2.2 Release - Manitoba. **York Factory** hereby releases and forever discharges **Manitoba** of and from 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 **York Factory**, or **York Factory** on behalf of any **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 **Existing Development** or arising out of, or under, the **NFA**, save and except as set forth in this **Agreement**; and including claims, if any, of a fiduciary nature which may have arisen in respect of **Manitoba's** obligations to **York Factory**, for anything done or omitted to be done by **Manitoba** to the **Date of this Agreement**.

12.2.3 Release - Hydro. **York Factory** hereby releases and forever discharges **Hydro** of and from 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 **York Factory**, or **York Factory** on behalf of any **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 **Existing Development** or arising out of, or under, the **NFA**, save and except as set forth in this **Agreement**; and including claims, if any, of a fiduciary nature which may have arisen in respect of **Hydro's**



obligations to **York Factory** for anything done or omitted to be done by **Hydro** to the **Date of this Agreement**.

12.2.4 Satisfaction. Except as otherwise specifically provided in this **Agreement**, all existing and future rights of action and claims of **York Factory**, and of **York Factory** on behalf of each and every past, present and future **Claimant** and their respective estates, and of **York Factory** on behalf of any other person whose action or claim arises from the participation of **York Factory** in the **NFA**, in respect of any claims or causes of action relating to or arising out of the **Existing Development** or the **NFA**, as against **Canada, Manitoba** and **Hydro** are fully and finally satisfied and concluded.

12.2.5 Covenant. **York Factory** covenants and agrees not to commence or prosecute any action, claim, demand or proceeding on its own behalf or on behalf of any other person or entity against any or all of **Canada, Hydro** or **Manitoba** with respect to any action, cause of action, suit, claim, demand, loss or damage which has been fully and finally concluded or with respect to which **York Factory** has released or indemnified **Canada, Hydro** or **Manitoba**.

### 12.3 INDEMNITIES

12.3.1 Indemnity. Except as set out in Article 12.3.2, **York Factory** hereby

undertakes and agrees to indemnify and save harmless **Manitoba, Canada** and **Hydro** in respect of any and all actions, causes of action, suits, claims, demands, losses or damages of any nature or kind whatsoever, at law or in equity, brought or instituted, directly or indirectly, by any **Claimant** or **Member** by reason of any cause, matter or thing whatsoever attributable to **Existing Development** or arising out of, or under, the **NFA**. This indemnity does not cover the costs of the indemnified **Party** in resisting such claim and is conditional upon the indemnified **Party**:

- (a) forthwith, upon becoming aware of such claim, giving notice to **York Factory**; and
- (b) supporting any application by **York Factory** to be named as a party thereto.

12.3.2 Exceptions. Nothing in this **Agreement** shall require **York Factory** to indemnify **Canada, Manitoba** or **Hydro** for:

- (a) an amount, in aggregate, greater than the face value of the portion of the **Financial Proceeds** paid by the **Party** demanding indemnity;
- (b) matters for which **Hydro** remains liable under Article 12.4.1;
- (c) obligations related to Article 6 of the **NFA** as referred to in Article 12.5.2;
- (d) breaches of this **Agreement** or future wrongful acts or omissions;
- (f) that portion of any settlement made in respect of claims referred to in

Article 12.3.1, without the consent of **York Factory**, which is unreasonable or excessive in the circumstances of the case; or

- (g) claims or actions settled by the **Party** seeking indemnity prior to the **Date of this Agreement**.

## **12.4 CONTINUING LIABILITY OF HYDRO**

12.4.1 Liability. It is understood and agreed that **York Factory** does not waive, release, or indemnify **Hydro** with respect to the following:

- (a) liability and claims for personal injury and death, past and future, caused by or attributable to the **Project**;
- (b) liability and claims for **Adverse Effects** of the **Project**, as further defined by Article 12.4.2, that were, at the **Date of this Agreement**, unknown or unforeseen and not discernible or foreseeable with the exercise of due diligence;
- (c) liability and claims for human disabilities, illness or death resulting from the ingestion of methyl mercury caused by or attributable to the **Project**; or
- (d) liability and claims for the recovery and re-interment of human remains disinterred by flooding or shoreline deterioration caused by or attributable to the **Project**.

12.4.2 Limitation. The **Adverse Effects** referred to in Article 12.4.1(b) are further limited to chemical, biological, and physical impacts causing material damage to the adversely affected person, and attributable to the **Project**. Alleged socio-economic damages to the adversely affected person, if any, are understood to be compensable only to the extent that they are caused by or attributable to such chemical, biological, and physical impacts.

12.4.3 Notice. **York Factory** shall give prompt notice of any occurrence which is alleged to have caused an **Adverse Effect** as referred to in Article 12.4.1(b), together with all particulars and evidence in support of such occurrence and of any damages which are alleged to have resulted therefrom.

12.4.4 Disputes. If there is a dispute as to whether **Hydro** continues to be liable under Article 12.4.1, with respect to any particular occurrence, that dispute shall be resolved as a preliminary jurisdictional issue under Articles 10.4 and 10.5.

## 12.5 ADDITIONAL PROVISIONS

12.5.1 Inter Party Release. Except as otherwise provided in this **Agreement**, each of **Canada, Manitoba and Hydro** hereby releases and forever discharges each other, of and from 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 any one or more of **Canada, Manitoba** or **Hydro** have had, now have or hereafter can, shall or may have against one or more of the other, for, or by reason of, any cause, matter or thing whatsoever, up to the **Date of this Agreement**, or at any future time, attributable to **Existing Development** or arising out of, or under, the **NFA**, to the extent such actions, causes of action, suits, claims, demands, losses or damages of any nature or kind whatsoever relate to **York Factory**.

12.5.2 **Agreement Not to Affect NFA Article 6.** Nothing in this **Agreement** shall settle or amend, or be deemed to settle or amend, any claim or obligation arising under Article 6 of the **NFA** or the agreement dated May 10, 1988 to which **Canada, York Factory**, the **NFC**, the Northern Flood Capital Reconstruction Committee Inc. and others are parties.

12.5.3 **Future Acts or Omissions.** Nothing in this **Agreement** shall relieve any **Party** of liability for breaches of this **Agreement**, future breaches of fiduciary obligations, future negligent or unlawful acts or omissions, or future wilful misconduct, on their own part, or on the part of those for whom they are responsible at law.

12.5.4 **Liability for Acts or Omissions of Other Parties.** Except as expressly set forth in this **Agreement**, no **Party** shall be liable or responsible for

things done or omitted to be done by any other **Party**.

12.5.5 Prior Settlements. This **Agreement** subsumes all compensation agreements including those which are the subject of orders of the Arbitrator under the **NFA** and all orders of the Arbitrator under the **NFA** for payment to the extent such agreements and orders pertain to **York Factory** and relate to **Existing Development**, or arise out of, or under, the **NFA** except any agreement related to Article 6 of the **NFA**. Subject to this exception, this **Agreement** releases and discharges any action, cause of action or claim arising under any such agreement or order. Nothing in this **Agreement** shall affect any agreement between **Canada** and **York Factory** for the provision of financial resources.

12.5.6 Order. The **Parties** agree that within one hundred and eighty days (180) days following the **Date of this Agreement**, application will be made jointly by all of the **Parties**, to the arbitrator under the **NFA**, for a final order dismissing all outstanding claims and without limitation, those claims detailed in Schedule 12.1 to this **Agreement**, as those claims relate to **York Factory**. The **Parties** will apply for, consent to and take all necessary steps to obtain an order which will render the matters involved in such claims res judicata among the **Parties**. No **Party** shall thereafter have standing to bring a claim to which such order applies.

12.5.7 Other Agreements. Nothing in this **Agreement** shall release or

discharge any action, cause of action or claim arising from any agreement unrelated to **Existing Development** and not arising out of, or under, the **NFA**.

**SCHEDULE 12.1**

**YORK FACTORY**

**LIST OF NFA CLAIMS TO BE RELEASED**

Claim No.

Issues

Claim No.	Issues
12	Compensation from Mercury contamination except to the extent such claim relates to the liability of Hydro for human disabilities, illness or death resulting from the ingestion of methyl mercury caused by or attributable to the Project.
18	Failure to submit reports to LWC and NR study board and to analyze ongoing socio-economic changes
19	Fund for maintenance and replacement of remedial and permanent works on the Reserves
23	Article 3 provisions for determination of severance lines
27	Training residents to become conservation officers
28	NFC administrative funding
32	Adverse effects on community traplines



34	Opportunities for education and employment in the Project
36	Adverse effects on traplines and recreation, deterioration of traditional way of life
38	Community development plans
38b	Community development plans (revised claim 38)
41	Community liaison committee, discussion of future development plans and their effects
43	Article 3 - land transfer, hold areas, exclusive use permits
93	Wildlife Advisory Planning Board - expenses, resources, and information
98	LWC and NR management board - comprehensive management plan
99	Damage to native cultural heritage
106	Adverse effects upon recreation
110	Compensation for adverse effects on fishing

113	Plans for Rat, Burntwood, Lower Churchill and Nelson rivers, Burntwood River power plants
114	Maps for effected lands, static inundation levels
115	Failure to consult and to fund engineering advice and construction in respect of shoreline restoration etc.
116	Coordination of programs and activities; training opportunities; comprehensive development plans; study board recommendations; trapline program review; fisheries negotiations
126	Clearing inundated trees; effects on shorelines
129	Requirements for decision-making and problem solving, lack of technical assistance
130	Loss of land use and value; shoreline deterioration
131	Maps, loss of personal property; costs of alternative travel; clearing debris impeding navigation; debris control programs; life insurance policy
132	Resource areas; destruction of wildlife; Cross Lake control structure; Article 17 study board recommendation

133	Residual Claims
133a	Anxiety and stress re: NFA benefits
133b	Federal Underfunding
135	Implementing Articles 3 and 4
136	Community development assistance and plans
137	Steps necessary to implement all provisions of NFA
139	Capitalizing funding for remedial works, maintenance and depreciation
144	Breach of certain NFA provisions
146	Housing upgrading program
150	Costs for technical, consulting and legal services
165	Costs of technical, consulting and legal services

## ARTICLE 13

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## ARTICLE 13

### 13.0 GENERAL PROVISIONS

#### 13.1 INTRODUCTION

13.1.1 Introduction. Article 13 contains provisions of a general nature relating to this **Agreement**.

#### 13.2 INTERPRETATION

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

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

13.2.3 Metric Measure. Subject to any legislative requirement, in the event of a conflict between metric and Imperial measure, metric measure shall prevail, except, where the original document, data or measuring device was in Imperial. The

**Parties** agree that the metric conversion rate to be used for purposes of this **Agreement** shall be 1 foot equals 0.3048 meters and 1 meter equals 3.28084 feet.

13.2.4 Interpretation Aids. In any interpretation of this **Agreement**, only the **Agreement** itself shall be considered and no other documents, notes, memoranda, electronic record, et cetera shall be referred to or considered as evidence of the agreement among the **Parties**.

### 13.3 PRESUMPTIONS

13.3.1 No Presumptions. The **Parties** have endeavoured to ensure that the terms of this **Agreement** are as clear as possible and in interpreting this **Agreement** and, except where expressly provided, there shall be no presumption in favour of or against any **Party**.

#### 13.4 VALIDITY OF PROVISIONS

13.4.1 Powers and Prerogatives. Nothing in this **Agreement** shall be deemed to bind or infringe upon the powers and prerogatives of the Parliament of Canada or the Legislative Assembly of Manitoba or any legislative powers of **Chief and Council**.

13.4.2 Statutory Requirements. Nothing in this **Agreement** shall require any **Party** to take any actions not otherwise provided for in this **Agreement**, or required by statute or regulation, or exempt any **Party** from, or be deemed to modify, any requirement arising under statute or regulation.

13.4.3 No Contingency. No portion of the **Financial Proceeds** shall be used to pay a contingency fee or bonus to any member of **Chief and Council**, or to any advisor or legal counsel acting on behalf of **York Factory** in relation to, or as payment for, work done in negotiating, finalizing or documenting this **Agreement**.



## 13.5 PARTIES

13.5.1 Binding on Parties. This **Agreement** shall be binding upon and enure to the benefit of the **Parties** and their respective successors and permitted assigns. Except for **Members** in their capacity as beneficiaries of the **Trust**, nothing in this **Agreement** is intended to confer upon any person not a **Party** to this **Agreement** nor a party to the **Indenture** any rights or remedies under or by reason of this **Agreement** or the **Indenture**.

13.5.2 Not to Share. No member of the House of Commons of Canada or the Legislative Assembly of Manitoba, and no employee or servant of **Canada** or **Manitoba** may share, in any part of this **Agreement**, or in any contract or agreement made pursuant to this **Agreement**, or in any benefit which may arise from this **Agreement**, except as permitted by law and where such an employee or servant is a **Member** and then only to the extent of a benefit which is available to **Members**, or a group of **Members**, generally.

## 13.6 NOTICE

13.6.1 Notices. All notices and other communications provided for in this **Agreement** shall be in writing, and shall be given by personal delivery or sent by registered mail, or tele-facsimile, charges pre-paid and confirmed by telephone, to

the applicable addresses set out in Article 13.6.1, or to addresses or a tele-facsimile number which a **Party** may from time to time designate to the other **Parties**. Any communication shall 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 shall be deemed to have been validly and effectively given on the business day next following such date of delivery. The addresses for the **Parties** are:

**To Canada:**

The Regional Director General  
The Department of Indian Affairs and Northern Development  
Suite 1100, 275 Portage Avenue  
Winnipeg, Manitoba  
R3B 3A3

**To York Factory:**

Chief and Council  
York Factory First Nation  
York Landing, Manitoba  
R0B 2B0

**To Hydro:**

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

**To Manitoba:**

Deputy Minister of Northern Affairs  
Room 327, Legislative Bldg.  
Winnipeg, Manitoba  
R3C 0V8

**13.7 ENTIRE AGREEMENT**

13.7.1 **Agreement Supersedes.** This **Agreement** constitutes the entire agreement between the **Parties** and, except for any prior agreements or arrangements between **Hydro** and **Manitoba** that do not affect the rights of any other **Party** under this **Agreement**, supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, between the **Parties** in relation to the matters dealt with herein. There are no representations, warranties, collateral agreements or conditions to this **Agreement** except as expressly stated in this **Agreement**.

13.7.2 **No Merger.** Except as expressly provided in this **Agreement** or in any other agreement between the **Parties**, no provisions of any other agreement

shall merge with this **Agreement**.

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

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

## 13.8 GOVERNING LAW

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

13.8.2 Citations. Any reference to legislation shall include amendments thereto or successor legislation, except where the statute or regulation is identified in this **Agreement** as that in force at the **Date of this Agreement**.

13.8.3 Enforceable by Parties. This **Agreement** may only be enforced by

a **Party**, however, **Members** shall have the right of enforcement established by the **Indenture**. No claim under this **Agreement** or the **Indenture** may be brought against **Canada, Manitoba** or **Hydro** except by a **Party**.

13.8.4 Licences. Nothing in this **Agreement** is intended to detract from, or relieve any **Party** from, obligations incurred pursuant to any legislation, approvals, licences or authorities under which such **Party** operates. Each **Party** expressly reserves the right to raise any issue relating to such licences or authorities.

13.8.5 Federal Licences. Nothing in this **Agreement** is intended to qualify or amend approvals, licences or permits of any kind, granted by **Canada** pursuant to any statute other than the Indian Act (Canada).

**13.9 NFA**

13.9.1 No Precedent. Neither this **Agreement** nor any provision of this **Agreement**, shall constitute a precedent for interpreting the rights and obligations, or identifying the intention of any **Party** in relation to any matter involving any person who is not a party to this **Agreement** or a beneficiary of the **Indenture** or an agent of **Chief and Council** or a person claiming through, under or by **York Factory**.

13.9.2 No Admission. Nothing in this **Agreement** shall constitute an admission of liability on the part of any of the **Parties**.

13.9.3 Without Prejudice. This **Agreement** is without prejudice to the position of any **Party** with respect to the provisions of the **NFA**, as those provisions may apply to any person who is not a party to this **Agreement**.

**13.10 WARRANTY**

13.10.1 Independent Advice. In addition to the representations and warranties contained in the Community Consultation Report attached as Schedule 13.1 to this **Agreement**, **York Factory** warrants that, throughout the negotiations leading to this **Agreement**:

- (a) it has been independently advised by 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 of the **Parties**, and duly authorized **York Factory** representatives have participated fully in the preparation of this **Agreement**; and
- (c) as set forth in the Community Consultation Report attached as Schedule 13.1, it has caused the nature and significance of all major aspects of this **Agreement** to be explained at community meetings, which were open to all **Members**, in order that all **Members** could have the opportunity to discuss all relevant matters under negotiation and thereafter make an informed decision at ratification.

13.10.2 Acknowledgment. The **Parties** acknowledge that there has been extensive information gathered and exchanged between the **Parties** regarding the impacts of the **Project** and the implementation of the provisions of the **NFA**. This has included information gathered or commissioned by each of the **Parties**; information jointly obtained by two (2) or more **Parties**; information obtained by or on behalf of **York Factory** but funded by another **Party**; and information obtained by **York Factory** for its own purposes in the conduct of these negotiations. The **Parties** acknowledge that additional information could have been gathered; but that the gathering of additional information should not further delay the implementation

of the **NFA** and other measures provided for in this **Agreement**; and each of the **Parties**, based on the information available to them, has independently determined that it is sufficiently informed to conclude this **Agreement**.

13.10.3 Disclosure - Canada. Based upon information received from inquiries made in or about April, 1995 to the Assistant Deputy Ministers of the departments of the government of **Canada** listed in Schedule 13.2, **Canada** warrants that none of the said departments of the government of **Canada** have made a decision to withhold information or documentation from **York Factory**, which information or documentation a department could reasonably have known was material to the implementation of the **NFA** for the benefit of **York Factory**, except such information or documentation as would not be accessible under the Access to Information Act (Canada).

13.10.4 Disclosure - Manitoba. Based upon information received from inquiries made in or about September, 1995 to the Assistant Deputy Ministers of the departments of the government of **Manitoba** listed in Schedule 13.3, **Manitoba** warrants that none of the said departments of the government of **Manitoba** have made a decision to withhold information or documentation from **York Factory**, which information or documentation a department could reasonably have known was material to the implementation of the **NFA** for the benefit of **York Factory**, except such information or documentation as would not be accessible under The



Freedom of Information Act (Manitoba).

13.10.5 Disclosure - Hydro. **Hydro** warrants that it has not, at any time made a decision to withhold information or documentation from **York Factory**, which information or documentation **Hydro** could reasonably have known was material to the implementation of the **NFA** for the benefit of **York Factory**, except such information or documentation as would not be accessible under The Freedom of Information Act (Manitoba).

13.10.6 Disclosure - York Factory. **York Factory** warrants that it has not, at any time, made a decision to withhold information or documentation from **Canada, Manitoba or Hydro**, which information or documentation **York Factory** could reasonably have known would have been material to the decision of the other **Parties** in entering into this **Agreement**, except such information or documentation as is, or was, of a privileged or confidential character, or is, or was, prepared for the purposes of presenting recommendations to **Chief and Council**.

**13.11 INDEPENDENT LEGAL ADVICE**

13.11.1 Independent Legal Advice. This **Agreement** shall be accompanied by an executed certificate of independent legal advice in the form and content of Schedule 13.4.

**13.12**        **APPROPRIATION**

13.12.1        Appropriation.        The amounts payable by **Canada** and **Manitoba** pursuant to this **Agreement** are subject to appropriation by the Parliament of Canada and the Legislative Assembly of the Province of Manitoba, respectively.

**13.13**        **SUNDRY**

13.13.1        Amendment. This **Agreement** may be amended:

- (a)    by the **Parties** acting unanimously;
- (b)    where expressly provided, by two (2) or more of the **Parties**; or
- (c)    with respect to Schedule 2.2, by the **Arbitrator**.

13.13.2        Acknowledgment.    **York Factory** acknowledges that except as specifically provided in this **Agreement**, none of **Manitoba**, **Hydro** or **Canada** shall be responsible for the effectiveness of the implementation arrangements in this **Agreement**, and **York Factory** acknowledges that there is no representation or warranty, either express or implied, by any of **Manitoba**, **Hydro**, or **Canada**, that the arrangements in this **Agreement** will result in the attainment of the goals of **York Factory**.

13.13.3 Treaty Rights. Nothing in this **Agreement** is intended to alter aboriginal or treaty rights of **York Factory** or other aboriginal peoples recognized and affirmed under section 35 of the Constitution Act, 1982. The **Parties** are, pursuant to the terms of this **Agreement**, implementing the **NFA** by compensating and making provision for future compensation:

- (a) in cash or kind; and
- (b) through the implementation of compensatory and mitigatory arrangements to address **Adverse Effects** on **York Factory**, any **Member**, or group of **Members**, their respective property, resources, assets and exercise of their rights.

13.13.4 Rights of Other First Nations Not Affected. Nothing in this **Agreement** affects any rights or obligations of any First Nation other than **York Factory**.

13.13.5 Warranty. **York Factory** warrants that from at least March 31, 1993, up to and including the **Date of this Agreement**, the **NFC** has not been for any purpose, the agent or representative of **York Factory** in relation to the **NFA**, or any claim thereunder, except for Claims 38, 38B, 159, and 165, and that such agency in relation to those claims shall not affect the validity of the releases given by **York Factory** in this **Agreement** with respect to those claims.

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

- (a) to be an agent of Her Majesty the Queen in Right 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 on Split Lake;

then **Manitoba** shall:

- (d) in the circumstances to which Article 13.13.6(a) or 13.13.6(b) applies, assume all of the rights and obligations of **Hydro** under this **Agreement**; and,
- (e) in the circumstances to which Article 13.13.6(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 effective authority and control.

In all such events, the provisions of this **Agreement** shall be read with the necessary changes to reflect the assumption by **Manitoba** of rights and obligations of **Hydro** under this Agreement, but such assumption shall not relieve **Hydro**, or any successor of **Hydro**, of its obligations under this **Agreement**.

13.13.7 Dispute. If **Manitoba** disputes that it has assumed the rights and obligations of **Hydro** under Article 13.13.6, that dispute may only be referred to

arbitration or to court by a **Party**.

13.13.8 Limitation. Unless **Manitoba** has assumed the rights and obligations of **Hydro** under Article 13.3.6, no arbitration or court proceeding shall be brought against **Manitoba** under Article 13.13.6 for any alleged misfeasance, malfeasance or non-feasance of **Hydro**, except by a **Party**.

13.13.9 Reasonable Efforts. In the circumstances to which Article 13.13.6 applies, **York Factory** shall make reasonable efforts (but shall not be obliged to incur excessive or unusual costs) to have any dispute or matter resolved by **Hydro**, or its successor before having recourse to **Manitoba**, in accordance with the obligations which **Manitoba** will have assumed under this **Easement Agreement**.

13.13.10 Four Party Meeting. Any **Party** may, at any time, convene a meeting 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.

13.13.11 Indexing. Except for amounts set out in the **Financial Schedule**, where any amount of money is specified in dollars in this **Agreement** it will where appropriate in the context be read as if it had been adjusted annually over time from

the **Date of the Agreement** based upon the **Consumer Price Index**.

## COMMUNITY CONSULTATION REPORT

### INTRODUCTION

The York Factory First Nation, along with the other NFC Bands, except for the Split Lake Cree decided to suspend global negotiations in late August, 1990. In the spring of 1993, the York Factory leadership conducted a door-to-door poll in York Landing and following this poll, decided to pursue a comprehensive negotiation process to implement the Northern Flood Agreement.

On June 24, 1993, York Factory, along with Manitoba and Hydro, entered into a Memorandum of Understanding, which was endorsed by Canada by way of a letter. This Memorandum of Understanding formally began the comprehensive negotiations process to implement the Northern Flood Agreement.

It was followed by an Agreement in Principle on April 26, 1994, and an Advance Agreement on May 24, 1994. Negotiations with respect to an additional Advance Agreement were conducted in the spring of 1995, with this Advance Agreement being signed in July 21, 1995. Chief and Council wanted Members to be actively involved in the negotiation process. This was accomplished through a variety of methods. For instance, Members of the community were hired to work as community liaison workers who communicated the concerns of the general membership to Chief and Council and the negotiating team. A series of community workshops were conducted at York Landing as well as off-reserve in Churchill, Thompson and Winnipeg. Explanatory written material was provided in the various centres on and off reserve. At York Landing, these written materials, designed to explain the Agreement in clear and straightforward language, were taken door to door.

Community meetings focused on particular issues arising out of the negotiation process. In addition, the concerns of specific segments of the membership were specifically addressed through meetings organized for the elders, resource harvesters, women and students.

At the same time that the community meetings were being conducted, Chief and Council and the negotiating team continued to meet with representatives of Canada, Manitoba and Hydro, to work out an agreement on all outstanding issues related to the implementation of the NFA. Some of the more contentious issues included water regime and land for the Churchill members. The negotiations were also delayed somewhat by an election which was called in the spring of 1995.

## **CONSULTATION PROCESS:**

Commencing in 1993, a series of community workshops were held, facilitated by Chief and Council and the negotiating team and open to the general membership. The purpose of the workshops was to discuss issues such as Compensation Land, the proposed financial settlement, the Trust, individual Claims and water regime, and to obtain the views of the members on these important matters.

## **COMMUNITY WORKSHOPS:**

The community workshop process was generally an effective method of assessing community knowledge of the settlement proceedings and gathering input into the needs and priorities of the York Factory members. What follows is a summary of the community workshops held at York Landing and off-reserve. Because of the large number of meetings held, detailed notes of each of these meetings have not been included.

### **YORK LANDING:**

**September 16, 1993**

Approximately 25 members were in attendance along with Chief and Council, the negotiating team, legal counsel and Jim Thomas, a professional land planner with the firm Hilderman Witty Crosby and Associates Landscape Architects and Planners. Mr Thomas made a presentation describing the difference between treaty land entitlement and Hydro Compensation Land and the amount of land to which the First Nation was entitled under both types of entitlement. Mr Thomas also reviewed the parcels of land already identified as being desirable to the First Nation by way of a slide presentation. The purpose of the meeting was to assist the members in making their land selections.

**February 10, 1994**

Felix Walker, General Manager of the Nelson House Development Corporation and a consultant with Nisichawasihk Consultants, provided a workshop on economic development and the establishment of a development corporation. The agenda included the following:

- implementation structures
- resource programs
- recreation programs
- housing
- economic development
- per capita distribution



Mr Walker provided options for an implementation mechanism setting out various organizational structures with varying responsibilities and decision-making authority. He also explained in layperson's language the concept of a trust and the relationship between the trustees, Chief and Council and the development corporation board. Priorities for development of the community were discussed under various headings such as resource programming and economic development. As an example of the guidelines generated by the workshop, those in attendance identified that under the heading of recreation, the construction of a new arena would be the first priority followed by the establishment of a recreation committee, recreation programs for all segments of the population, the upgrading of existing facilities, funding community events and local teams. With respect to housing, priorities identified included the construction of new housing units and upgrading the existing housing. Through this process, the allocation of funds to be received through the Advance Agreement was made.

March 4, 1994

Cam MacInnes and Gordon Spafford, engineers with the firm of Unies Limited made a presentation on water regime. Frequency charts and other graphic evidence was presented to demonstrate what has happened at York Landing since the construction of Hydro Projects in the mid-1970's. The changes in seasonal water levels and flows were identified. Issues such as the location of the water intake pipes and water quality at York Landing were discussed. It was noted that in summer the maximum levels are several feet greater than they would have been without the Project. Similarly, the high winter levels are 3 to 4 feet greater in some years than what would have occurred naturally. The Churchill River Division has had more impact of water levels than the construction of dams like Kettle and Limestone.

The purpose of this introductory meeting was for Unies to obtain any additional information from community members which would assist them in developing background information about the impacts suffered by York Factory as a result of the Project. Through this process, the water regime proposal of York Factory began to take shape.

April 6, 1994

A similar community meeting took place at York Landing with Chief and Council, the negotiating team, approximately 20 members of the community and legal counsel. In the afternoon, members of the negotiating team and legal counsel conducted door-to-door visits to answer any questions and to distribute written materials prepared to provide information to the community about the Agreement-in-Principle and the negotiations.

April 14, 1994

Approximately 60 members of the community attended along with Chief and Council, the

negotiating team and legal counsel. Chief Saunders addressed the members about the purpose of conducting community meetings and provided a brief history of the negotiations surrounding the AIP and Advance Agreement. Valerie Matthews Lemieux, legal counsel, explained the agreements in place to those present and answered questions. The proceedings were translated into Cree by a member of the First Nation. The following issues were discussed:

- the relationship between the AIP and a final settlement document
- Compensation Land
- the re-establishment of a Resource Management Area
- the proposed financial settlement
- the Community Approval Process

In addition, the concepts of a Corporate Trustee and a development corporation were discussed, although it was difficult for the translator to translate such concepts into Cree. It was explained that a budget had been identified for the purpose of the allocation of the Advance Agreement funds. The per capita distribution was also discussed in detail, including the amount allocated per person and the criteria which had been established through negotiations with the three parties in order for a member to qualify for the payment.

Questions were raised about the cost of the negotiating process, the rights of off-reserve members, and the location of the proposed Resource Management Area. Chief Saunders indicated that the negotiating team would be going door-to-door among the community to seek approval to sign the Agreement-in-Principle and Advance Agreement (on April 26, 1994), and to ensure that members understood the issues being discussed and had an opportunity to provide input before completing the final settlement.

May 18 and 19, 1994

Presentations were made to Chief and Council, the negotiating team, and the newly appointed members of the Seepastik Development Corporation Board on various topics. For instance, Brian Threadkell, a consultant for Akjuit Inc. made a presentation regarding spaceport and its potential impact on the proposed York Factory Resource Management Area as well as the employment opportunities which might arise out of this project for York Factory members.

Presentations were made by Royal Trust and the Toronto-Dominion Bank/Trust about the duties of the corporate trustee, the fees involved and the services which could be provided to the community in relation to the proposed Agreement and the advance of the funds.

June 16, 1994

The purpose of the morning meeting was for the negotiating team, Chief and Council and legal counsel to meet with resource users in the community. Valerie Matthews Lemieux provided information to those who attended (approximately 6) about the proposed Resource Management Area, the resource users' rights under the NFA and the proposed Agreement. The history of the First Nation's rights under Treaty 5, the Natural Resource Transfer Agreement of 1930 and the NFA as well as the provisions in the proposed Agreement which would allow for the co-management of resources and non-interference with treaty and aboriginal rights.

Input was sought from those present to ensure that their existing and primary traditional areas traplines were properly included within the proposed Resource Management Area. There was also discussion about negotiations with neighbouring First Nations such as Fox Lake and Shamattawa regarding the boundaries of the proposed Resource Management Area. The issue of a resource management board was also discussed, including the type of representation the resource users would recommend to the province.

Concerns were raised by the resource users in connection with the current development of Marsh Point, interference by provincial game wardens, the interference with aboriginal and treaty rights such as through the use of quotas imposed by provincial and federal governments and the appropriate use of and delineation of the Resource Management Area. A trip into the Resource Management Area for the fall of 1994 was planned. This trip was intended to allow the resource users and other community members to view the proposed sites around French Creek and Machichi River.

In the afternoon, the proposed Kitche-Waskahigan Trust was reviewed. The Community Approval Process was outlined, as were the separate accounts which would be established under the Trust, the provisions in the Trust Indenture for investments and the process involved in releasing money from the Trust to the implementation arm of Chief and Council was reviewed. The issue of ongoing per capita distributions was also discussed and different options suggested.

July 28, 1994

Approximately 20 Band staff members and Seepastik Board members and staff met with the negotiating team, Chief and Council and legal counsel. Many questions arose concerning the Compensation Lands and the proposed Resource Management Area. Particular concerns were raised about hunting and fishing rights and the impact of provincial and federal wildlife legislation in relation to the Resource Management Board. In connection with water regime, water quality and transportation were discussed. Alternatives for a winter or all-weather road were examined as well. A summary of the Agreement, which outlines all of the proposed Articles, was reviewed, with questions and discussions occurring throughout.

**July 28, 1994**

**An evening meeting was conducted by the negotiating team, Chief and Council and legal counsel in order to address the same material as in the afternoon session for those persons employed during the day. Those in attendance demonstrated their interest by asking numerous questions about the negotiation issues.**

**July 29, 1994**

**A community workshop was conducted to specifically address the concerns of elders. Approximately 12 elders attended and the proceedings were translated into Cree by the key communicator. One of the issues which arose was the difficulty translating some of the concepts and legal terms contained in the Agreement into the Cree language. Many of the problems resulting from the Project were raised including the difficulties with winter fishing when the water levels drop, the difficulties connected with spring fishing when fishing holes fills up as the ice drops, and also the constant difficulties with slush conditions. A summary of the Agreement to that point was also again reviewed in detail with translation occurring.**

**October 18, 1994**

**A community workshop was held to deal specifically with individual claims. Claim forms were provided in order to familiarize members with how they should be completed. In addition, common fact situations had been prepared ahead of time through consultation with the negotiating team and the community consultants. These fact situations were reviewed in order to illustrate in what type of situation a claim for individual compensation might be awarded. The process of preparing the claim was reviewed as well as the criteria for determining if the claim should be granted and if so, how much compensation would be awarded. Related issues were also discussed such as safety measures including marking and clearing of trails and who would be responsible for O & M for docks. Two of the York Factory Trustees elected by the community acted as the decision makers for purposes of the workshop and to obtain experience in how to make such decisions.**

**October 25, 1994**

**A community workshop was conducted to review the role of the Kitche-Waskahigan Trust in connection with the proposed Agreement. Members of the Chief and Council, negotiating team and approximately 10 people from the community, as well as legal counsel were present. An overview of the trust, the role of trustees and the inter-relationship between the trustees, Seepastik Development Corporation and Chief and Council were also discussed. The responsibility of the community to make decisions about spending the financial proceeds through the Community Approval Process was**

emphasized. The flow of money through the trust into the implementation vehicle of Chief and Council was outlined. Numerous questions were also answered such as who gives final approval for the budget, how are members of the community involved, and how do the financial proceeds relate to normal programming.

**May 3, 1995**

Approximately 20 community members were in attendance. Sam Saunders explained the background to the NFA and the various types of negotiations that had taken place over time. A written overview of the NFA was circulated and discussed. Questions were raised about how the per capita payments would be applied and what benefits would be available under the Agreement for off-reserve members. The importance of job opportunities was also raised. An Overview was handed out and reviewed by members of the Negotiating Team and advisors. (The Overview is described in more detail later).

**May 18, 1995**

Approximately 13 community members were in attendance at this workshop. The agenda for future workshops on and off-reserve was outlined and questions were raised about the ratification process, the redemption of bonds and other issues. The Overview was again reviewed with those present.

**June 1, 1995**

Approximately 25 members attended a community workshop. Specific issues discussed included the financial proceeds and their value in the future, problems related to water quality and transportation such as the ferry landing and the need for a road. The Overview was again reviewed, as was the current status of negotiations, including the proposed Advance Agreement.

**OFF-RESERVE:**

**July 19, 1994, Churchill**

Approximately 25 York Factory members residing at Churchill attended a community meeting. Sam Saunders of the negotiating team provided information on how the negotiations had proceeded so far and indicated that it was important to the negotiating team to be informed of the concerns of its Churchill members. The proceedings were translated into Cree. Ms Matthews Lemieux reviewed the history of the NFA and the implementation process. Information was provided by Churchill members about claims which had been brought against Hydro by various segments of the Churchill community, including the Trappers' Association and the Churchill LGD. The members' interest in land in the area of Churchill was raised and a number of sites were suggested including

Akudlik, Dene Village and the River Flats. Explanation was provided about the creation of a Resource Management Area under the Implementation Agreement, how individual claims would be processed and the distribution of per capita payments. The Churchill members were concerned about how they would fit into the process and how they would benefit by the final Agreement. The issue of Band status for the unrecognized Kischikamee Band was also raised.

#### **November 29, 1994, Churchill**

Approximately 28 York Factory members residing in Churchill attended a community meeting with members of Chief and Council, the negotiating team and legal counsel for York Factory. Issues raised at previous meetings were discussed, particularly the negotiations underway to obtain reserve land in the area of Churchill. Following a review of the status of the negotiations, the discussion focused on the following issues:

1. Churchill members indicated their desire to obtain benefits under the Agreement including reserve land. Potential locations in the Churchill area were identified.
2. The claim of the trapper's association involving Churchill members was discussed. The Churchill members advised that Hydro had retained a consultant to prepare a study assessing how the Churchill River diversion had impacted upon the population residing in the Churchill area, particularly in relation to treaty and aboriginal rights.
3. The per capita distribution was raised as an issue. Churchill members voiced their concern about their rights under the Advance Agreement to such a payment and the inequity in the payments.
4. The Churchill members expressed their desire to obtain employment and business opportunities under programs established through the proposed Agreement.
5. Churchill members also expressed an interest in receiving other benefits under the Agreement such as for economic opportunity, money for housing repairs and improvement of the water regime at Churchill

#### **March 3, 1995, Thompson**

Approximately 13 members residing in Thompson attended a meeting with members of Chief and Council, the negotiating team and legal counsel. The Thompson members requested additional written information such as newsletters to inform members residing in Thompson about the status of the negotiations. In particular, members expressed an interest in the rights of off-reserve members through the implementation process. Specifically, funds were requested to allow a member from Thompson to attend future negotiation meetings. It was decided that the community consultants would visit the

elders in Thompson before the Agreement was concluded to specifically inform them of the issues and to obtain their input.

**May 3, 1995**

Approximately 40 members living in Winnipeg attended a meeting with members of the Negotiating Team and advisors. A major issue was the inequity of per capita payments. Members were told an Advance Agreement was being negotiated to address the concerns. The Overview was then reviewed in detail with those present.

**May 18, 1995**

At a meeting in Thompson, approximately 18 Members attended including 3 from The Pas who saw the newspaper advertisements and drove to the meeting. The Overview was reviewed in detail and discussion occurred throughout. Advisors were in attendance and also provided an update on the ongoing water regime negotiations with Hydro.

**June 19, 1995**

Approximately 25 people attended this meeting in Churchill with Chief and Council, the Negotiating Team and advisors. The Overview was again reviewed, as was the status of the Churchill land selection, the recently concluded water regime and the new Advance Agreement. Questions and answers occurred throughout the meeting, where matters were also translated into Cree.

#### **COMMUNITY CONSULTANTS:**

Four community consultants were hired at various stages of the negotiation process to assist with providing information to community members and obtaining input. The members hired were chosen as being representative of the various segments of the population so that the group included a female member, an elder and two of the younger members of the community.

The consultants were particularly helpful in giving advice on what type of written information would be appropriate and useful for the community. From time to time they went door to door to answer questions and to provide written and oral explanation of the negotiation process. They also attended numerous meetings with the negotiating team and legal counsel in order to obtain a clear knowledge of the contents of the agreement and the issues raised. They also provided the questions which formed the basis for the

Guidebook described below.

## **PUBLICATIONS**

Explanatory written information in a variety of formats was prepared throughout the negotiation process in order to increase awareness among members of the details of the negotiations.

## **GUIDEBOOK:**

A comprehensive guidebook to the proposed Agreement was prepared in a question and answer format based on questions received from the community consultants from their work in the community and their own reading of the drafts of the Agreement. An updated guidebook was prepared in August-September, 1995.

## **NEWSLETTERS:**

A series of newsletters were distributed at York Landing and off-reserve at Thompson and Churchill. The newsletters covered the following topics:

November 16, 1994	Overview From the Negotiators
November 22, 1994	York Factory Aboriginal & Treaty Rights
November 29, 1994	Kitche-Waskahigan Trust
December 6, 1994	Financial Proceeds & Community Approval Process
February 24, 1995	Federal and Provincial Funding & Programming
March 10, 1995	Land
March 13, 1995	Future Development & Environmental Monitoring
March 20, 1995	Releases and Indemnities
March 23, 1995	NFA
April 5, 1995	Resource Management
May 15, 1995	Ratification Vote
May 17, 1995	Individual Claims

The newsletters were intended to provide a summary of the articles of the proposed Agreement, an update of the negotiations and to encourage members to ask questions of, and to communicate directly with the community consultants. The newsletters were produced in English and Cree.



**OVERVIEW:**

This report covered highlights of the Agreement. It was intended to summarize the proposed Agreement by putting it into simple every-day language so that it could be understood by all York Factory members. It also formed the basis for more indepth explanation and discussion. It covered the following topics:

- **Key Benefits**
- **What York Factory gives for the Benefits**
- **Monetary Issues**
- **Water Regime Issues under Negotiation**
- **Land and Easements**
- **Land Use and Resource Management**
- **Environmental Monitoring and Investigation**
- **Compensation for Claims**
- **Indian Moneys**
- **Settlement Proceeds and Normal Funding and Programming**
- **Future Development**
- **Arbitration**
- **Reciprocity**
- **General Provisions, including no impact on treaty rights**
- **Ratification and Execution**
- **Trust**

An updated Overview was prepared in August and will be completed once the Agreement is frozen for use in the Referendum meetings in the fall of 1995.

**SPECIAL RESOURCE MANAGEMENT AREA MEETINGS**

As it was very important to York Factory Members that a resource area be re-established for our use, meetings were held with the Chief and members of the Council and community of Shamattawa regarding this matter. The following meetings were held at the locations indicated:

1. **June 27, 1994 - Gillam, MB - Recreation Centre  
Shamattawa/York Factory First Nation**
2. **November 10, 1994 - Shamattawa, MB - Band Hall  
Shamattawa/York Factory First Nation**
3. **February 15, 1995 - Shamattawa, MB - Band Hall  
Shamattawa/York Factory First Nation**

4. **May 16, 1995 - Gillam, MB - Recreation Centre  
Shamattawa/Fox Lake/York Factory First Nation**
5. **June 9, 1995 - Gillam, MB - Recreation Centre  
Shamattawa/Fox Lake/York Factory First Nation  
Province of Manitoba Reps.**

**The above meetings were held during 1994 and 1995 with the York Factory Chief and Council, and Representatives from York Factory, Fox Lake, Shamattawa First Nations and one with Provincial Representatives present.**

**The focus was mainly on the Resource Management Area at York Factory, Manitoba. The status of a resource area and its functions and a general overview on the NFA was explained.**

**The role of First Nations in co-management agreements and the need for financing meetings was reviewed at these meetings.**

**Shamattawa expressed concerns about activities in their resource area and why they are not being informed. Although meetings were held in Shamattawa, the information was not being passed from prior councils to the people of Shamattawa.**

**Shamattawa asked to be on the York Factory Co-management Board. This was not acceptable to York Factory although York Factory agreed to have the Board meet with them about their concerns and proposed an observer status for one person. Shamattawa never responded to this proposal.**

**Fox Lake only asked for a map on the Resource Area, outlining the trapline in question.**

**There was no response to the status of T.L.E. Claim by Shamattawa at Mistikogan River.**

**An afternoon meeting was held on June 9, 1995, with Chief and Council of Shamattawa First Nation, Province of Manitoba Representative, Chief and Council, and Negotiating Team for York Factory First Nation. The main issue was the traplines around the York Factory Resource Area. Shamattawa was informed that this was our sixth meeting dealing specifically with the Resource Area in York Factory. And with the time frame that York Factory First Nation has for concluding the NFA Implementation Agreement they would have to come up with a solution very soon. A general overview on the NFA Negotiations was explained, as was the roles of the First Nations and the Province of Manitoba in the co-management of the Area. The need for finances to be part of the co-management agreement was also reviewed.**

Shamattawa has stated that information on activities within their resource area is not getting to them, and are concerned their rights as a First Nations could be put in jeopardy. Also, they have asked to sit on the York Factory/Province Co-management Board. As of August, 1995, the understanding was that Manitoba would pay the reasonable costs for one observer from Shamattawa to attend Board meetings in York Landing.

The Chief of the York Factory First Nation stated that the concerns of the Shamattawa members would be considered very carefully. There will be no decision made until after the upcoming York Factory Band elections.

#### 1995 COMMUNITY APPROVAL PROCESS MEETINGS

Chief and Council are responsible for administering the community approval process. In anticipation of the Agreement being signed, the process had commenced with Chief and Council, with the assistance of the negotiating team, facilitating a series of community meetings. The membership were encouraged to attend these meetings. The purpose of the meetings were focused on the community approval process and other issues arising out of the negotiations. Meetings on occasion along with the general membership were held specifically for the Elders and youth. It has been emphasized that it is very important that the community make the decisions on how the moneys should be spent through the community approval process.

February 15, 1994

Attended by 47 First Nation members.

- Along with other things on the agenda, there was a wish-list developed by the people concerning various projects. Meetings were held in the afternoon and evening.

October 25, 1994

Attended by 13 members.

- The community approval process was discussed and explained. The goal is to make certain that the community is involved in making decisions about how the money should be spent. There was discussion about the wish list, prioritizing and developing budgets.

December 6, 1994

- A Negotiation Newsletter in both English and Cree was circulated in the community.

May 5, 1995

Attended by 26 members.

- Focus of the meeting was on the community approval process, 1995-96 budget, wish list and prioritizing. Those present took part in prioritizing. The feeling at the meeting was to have more people participate in prioritizing and to put out a community survey.

May 8, 1995

- Brief information and survey was delivered to community members. Wish lists from February 1994 and May 1995 were attached for their use. Twenty-two surveys were returned by the specified date.

July 13, 1995

Attended by 22 members.

- Proposed budget and projects had been developed and discussed.

July 14, 1995 (Elders)

Attended by 18 members.


- There was discussion of proposed budget and projects.


July 17, 1995 (Youth)

Attended by 26 members.

- Proposed budget and projects were discussed.

SIGNED on the 12 day of September, 1995 by the members  
of the York Factory Negotiating Team.

  
Wayne Redhead

  
Sam Saunders

  
Gordon Wastesicoot

**SCHEDULE 13.2**

**LIST OF FEDERAL DEPARTMENTS CONSULTED**

Department of Indian Affairs & Northern Development

Department of Transport

Department of the Environment

Department of Fisheries & Oceans

Department of Health & Welfare

## SCHEDULE 13.3

### **LIST OF PROVINCIAL DEPARTMENTS CONSULTED**

Department of Highways and Transportation

Department of Natural Resources

Department of Environment

Department of Finance

Department of Energy and Mines

Department of Urban Affairs

Department of Industry Trade and Tourism

Department of Health

Clerk of the Executive Council

SCHEDULE 13.4

**CERTIFICATE OF INDEPENDENT LEGAL ADVICE**

In June of 1993 the York Factory First Nation retained the services of Myers Weinberg Kussin Weinstein Bryk to provide legal advice to the York Factory First Nation and its advisors.

Myers Weinberg Kussin Weinstein Bryk, as represented by the writer, certifies as follows:

1. All members of Myers Weinberg Kussin Weinstein Bryk are members in good standing of the Law Society of Manitoba;
2. Myers Weinberg Kussin Weinstein Bryk has been retained by the York Factory First Nation for the purpose of providing legal advice with respect to the 1995 York Factory NFA Implementation Agreement;
3. We have received and reviewed and contributed to the various drafts of the **Agreement** since our engagement in June 1993, and have thoroughly reviewed same;
4. We have caused the nature and significance of all major aspects of this **Agreement** to be explained at community meetings, which were open to all **Members**, in order that all **Members** could have the opportunity to discuss all relevant matters under negotiation and thereafter make an informed decision at ratification;
5. We have explained the legal implications of the **Agreement** to **Chief and Council**, members of the **York Factory** Negotiating Team (Sam Saunders, Wayne Redhead and Gordon Wasteicoot), the inaugural **York Factory Trustees** and attended and responded to questions from **Members** who attended membership meetings as convened by **Chief and Council** in accordance with the provisions of the **Agreement**.

DATED at Winnipeg this        day of        , 1995.

**MYERS WEINBERG KUSSIN WEINSTEIN BRYK**

Per:

**VALERIE MATTHEWS LEMIEUX**

**ARTICLE 14**

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## ARTICLE 14

### 14.0 RATIFICATION AND EXECUTION

### 14.1 INTRODUCTION

14.1.1 Introduction. Article 14 sets forth the ratification and execution process for this **Agreement**.

### 14.2 RATIFICATION AND EXECUTION

14.2.1 Condition Precedent. The ratification and execution process required as a condition precedent to the execution of this **Agreement** is set out below.

- (a) Prior to the advance poll referenced in Article 14.2.1(e)(iii), **York Factory** shall:
  - (i) make available at the meetings referred to in Article 14.2.1(a)(ii) and at the Band office on the **Reserve**, the Local Government District office in Churchill, the Keewatin Tribal Council in Thompson and the offices of the Department of Indian Affairs and Northern Development in Winnipeg, a reasonable number of copies of the **Agreement** as **Chief and Council** reasonably

anticipate may be required,

- (ii) conduct at least one (1) public meeting of **Members** on **Reserve**, in Churchill, in Thompson and in Winnipeg, and at each such meeting fully explain the nature and significance of this **Agreement**, and
  - (iii) have its principal consultants and legal advisors present at the meetings specified in Article 14.2.1(a)(ii).
- (b) Notice of each meeting shall be posted in not fewer than five (5) prominent public locations on **Reserve**, including the Band office for meetings on **Reserve**, and announced at least once per week in each of the weeks prior to the meeting, in the following media:
- i) The Winnipeg Free Press,
  - ii) The Winnipeg Sun,
  - iii) The Thompson Citizen, and
  - iv) The Thompson Nickel Belt.
- (c) In each notice **York Factory** shall:
- i) in each of the notices under Article 14.2.1(b), give notice of the time, date and place of each meeting,
  - ii) advise where **Members** can review or obtain copies of this **Agreement** and related information, and
  - iii) advise **Members** of the time, date and polling places for the referendum and the advance poll.

- (d) Notice of the time, date and place of the advance poll and the referendum shall be announced at least once per week in each of the weeks prior to the advance poll and the referendum, in the following media:
- i) McTaggart's Cable and CBC Radio in Churchill, Manitoba, or any replacement program on radio and television, and
  - ii) Native Communications Inc., Mikisew Morning and CBC North Radio or any replacement programs on radio and television.
- (e) Seven (7) days prior to the date of the Referendum, **Chief and Council** shall provide to the Ratification Officer, **Canada, Manitoba and Hydro** a **Council Resolution** with a copy of the newspaper notices attached, certifying that the provisions of Article 14.2.1(a) to 14.2.1(d) have been fulfilled.
- (e) If any irregularity in the notices is disclosed in the **Council Resolution, York Factory** may provide further notice in consultation with the Ratification Officer.
- (f) A Referendum shall be conducted on **Reserve** with other polls for voting at the Department of Indian Affairs and Northern Development in Winnipeg, at the Local Government District Council Chambers in Churchill, and at the Mystery Lake Hotel Conference Room in Thompson, in accordance with the secret ballot procedures prescribed by sections 4 to 20 of the Indian Referendum Regulations, C.R.C. 1978, c.957, (the "Referendum"), excepting that:
- i) the term "elector" as used in that Regulation shall be read as "**Member**" over the age of eighteen (18) years,

- ii) the date of the Referendum shall be deemed to be "the date of the voting" for the purpose of subsection 4(1) of the said Regulations,
  - (iii) the polls and advance polls shall be open for voting from 10:00 a.m. until 8:00 p.m.,
  - iv) there shall be an advance poll held on **Reserve** at least two (2) weeks prior to the date of the Referendum,
  - v) the day of the advance poll shall be set forth in the notice posted by the electoral officer under subsection 4(1) of the said Regulations,
  - vi) the advance poll shall be conducted substantially in accordance with the procedures for voting on the date of the Referendum with such modifications as may be reasonably necessary, and
  - vi) mail in ballot shall be conducted provided that to be valid, ballots must be received no later than 8:00 p.m. on the day of the referendum.
- (g) All **Members** eighteen (18) years of age or older shall be entitled to vote in the Referendum. A list of "electors" within the meaning of the Indian Act (Canada) shall be compiled separately from the list of other **Members** over the age of eighteen (18) years, and the votes of each list of voters shall be separately tabulated and reported.
- (h) This **Agreement** shall be approved by the Referendum if:

- i) a majority of those **Members** eligible to vote, vote,
- ii) a majority of votes cast approve this **Agreement**, and
- iii) a majority of the electors ordinarily resident on **Reserve** approve this **Agreement**.

- (i) The Referendum shall be conducted by **Canada**, who shall provide to **York Factory, Manitoba** and **Hydro** a statement in a form similar to that required under Section 19 of the Indian Referendum Regulations, C.R.C. 1978, c.957, with the votes of each list of voters separately tabulated and reported.
- (j) Any appeals associated with the Referendum shall be dealt with in accordance with Sections 31 and 32 of the Indian Referendum Regulations, C.R.C. 1978, c.957.

14.2.2 **Agreement of No Force and Effect.** This **Agreement** shall be without force and effect and without prejudice to any of the **Parties**, unless and until it has been duly ratified and executed by all of the **Parties**, and the **Indenture**, which is to be concurrently executed, has been likewise executed.

14.2.3 **Immaterial Irregularities.** Notwithstanding Articles 14.2.1 and 14.2.2, irregularities in the notice and procedural requirements of Article 14.2.1 will not affect the validity of the referendum unless such irregularities could have affected the results of the referendum.

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

Signed, sealed and delivered )  
in the presence of: )

**York Factory First Nation**

*Leslie Saunders*  
Chief

*Frank Wortschick*  
Councillor

*Donna Beaudy*  
Councillor

\_\_\_\_\_  
Councillor

on the *8th* day of *Dec*, 1995

**Her Majesty the Queen in Right of the Province of Manitoba**

Per: *David Trezick*

on the *8th* day of *December*, 1995

**The Manitoba Hydro-Electric Board**

Per: *R. Bunnar*

Per: *Donna*

*effective* on the *8th* day of *December*, 1995

Her Majesty the Queen in Right of  
Canada

Per:

A handwritten signature in black ink, appearing to be "A. Shuman", written over the printed text "Per:". The signature is cursive and somewhat stylized.

on the // day of Jan, 1995<sup>6</sup>