

# Split Lake Agreement

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## Article 1

### 1.0 Agreement and Definitions

#### 1.1 Preamble

##### 1.1.1 Preamble Excluded

The preamble sets forth certain undisputed historical facts as a reference for this Agreement, but is not intended to and does not form part of this Agreement. The preamble should not be used or referred to in interpreting any part of this Agreement.

### 1.2 Agreement

#### 1.2.1 Contents

This Agreement shall consist of this document comprised of Articles 1 to 18, both inclusive, and the following schedules which are attached and form part of this Agreement:

<b>Schedule No.</b>	<b>Title</b>
Schedule 1.1	Financial Schedule and form of Hydro Bond
<a href="#">Schedule 2.1</a>	Trust Indenture
<a href="#">Schedule 3.1</a>	Boundaries of Compensation Lands
<a href="#">Schedule 3.2</a>	Legal Survey Instructions
<a href="#">Schedule 3.3</a>	Exclusions for Public Purposes within Compensation Lands
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Schedule 4.1	Permit Lands and Fee Simple Lands
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Schedule 4.3	Pledge Agreement
Schedule 5.1	The Split Lake Resource Management Area
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Schedule 18.1	Community Consultation Report
Schedule 18.2	List of federal departments consulted
Schedule 18.3	List of provincial departments consulted
Schedule 18.4	Release and Certificate of Independent Legal Advice

### 1.3 Interpretation

### 1.3.1 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 this Article:

**Account** shall mean an account established under [Section 2.1 of the Indenture](#) and under Articles [6](#), [7](#), [8](#), [9](#) and [10](#) of this Agreement.

Acting Chief shall mean a Member who has been appointed by Council Resolution to perform the duties of the Chief, in the absence or incapacity of the Chief to perform said duties.

**Adverse Effects** shall mean the negative consequences of the Project, either direct or indirect, which impact or change the physical, chemical or biological quality of the environment of any part of the Resource Area, and includes, without limitation, risks or injuries to the health, safety, wellbeing, comfort or enjoyment of Split Lake Cree or Members, and impacts on interests in lands, pursuits, activities, opportunities, lifestyles and assets of Split Lake Cree and Members.

**Agreement** shall mean this agreement as more particularly described in section 1.2 of this Agreement.

Appropriate Uses shall mean those uses of Trust Funds which are set out in the Articles [6](#), [7](#), [8](#), [9](#) and [10](#) of this Agreement, for which the Trustees are permitted to make disbursements from the Tataskweyak Trust to Eligible Beneficiaries and Eligible Compensation Beneficiaries, subject to applicable tests and terms and conditions, as set out in the Indenture and in this Agreement.

**ASL** shall mean above sea level.

Asset Damage Compensation shall mean compensation payable to any Member in accordance with [Article 9](#) of this Agreement with respect to damage caused by Adverse Effects to Split Lake Cree Assets in which such Member has an individual interest.

Asset Damage Reserve shall mean a reserve of funds equal to fifty thousand dollars (\$50 000.00) which shall be funded initially from Settlement Proceeds and thereafter maintained from money allocated annually from the Income earned on the Remedial Works and Measures Account, excluding that Income earned on the O & M Reserve or the Asset Replacement Reserve.

Asset Replacement Reserve shall mean a reserve of funds to be accumulated from Income generated by the O & M Reserve for the purpose of funding Replacement Remedial Works.

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

Canada shall mean 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 shall mean, subject to [section 11.10 of the Indenture](#), the amount settled upon the Trustees by the Settlor from time to time, plus any unallocated, unpaid or unappropriated Income of the Tataskweyak Trust which has not been appropriated, allocated or paid by the Trustees within six (6) months, next following the conclusion of the fiscal year, and is not then the subject of a dispute between the Trustees and Chief and Council, plus the principal portion of the Settlement Proceeds, if any, paid or delivered to and held by Canada in trust for the use and benefit of Split Lake Cree.

**Chief** shall mean the Chief of Split Lake Cree elected and in office, pursuant to the Indian Act (Canada).

**Chief and Council** shall mean the Chief and Council of Split Lake Cree elected and in office, pursuant to the Indian Act (Canada).

Commercial Fisherman shall mean any Member who is, or has been, and who continues to be or, in the absence of Adverse Effects, would have continued to be, or who, in the future, becomes engaged in the vocation of fishing primarily for the purpose of financial gain or for wages.

**Community** shall mean and include an incorporated community and shall have the same meaning as the meaning ascribed to those terms in The Northern Affairs Act (Manitoba).

**Compensation Lands** shall mean the provincial Crown lands within the boundaries described in [Schedule 3.1](#) of this Agreement to be transferred by Manitoba to Canada for designation as Reserve Lands, excluding those lands required for public purposes described in [Schedule 3.3](#) of this Agreement.

Continuing Nominal Capital Amounts shall mean, subject to [Article 11](#) of this Agreement, the minimum Net Value of the Accounts, as set out in the Financial Schedule, that must be achieved in the sixth year, upon receipt of Settlement Proceeds, and that must be maintained thereafter during the life of the Trust.

Controlled Institution shall mean any entity, association or group, a majority of whose board of directors or other governing body is directly or indirectly chosen by any of

- Members,
- Elders or other leaders chosen in accordance with Split Lake Cree custom,
- the Chief in his capacity as Chief, or
- Chief and Council.

**Controlling Bench Marks** shall mean any and all of

- B.M. #8 -----  
Water Survey of Canada brass cap in rock approximately 150 m 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. 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 have been established as provided in [subsection 2.2.1](#) of this Agreement or any similarly located replacement markers established in the same manner.

**Corporate Trustee** shall mean the trustee in office in accordance with [Article 8 of the Indenture](#).

**Council Resolution** shall mean a resolution of Chief and Council.

**Daily Average Water Level** shall mean the average of all water levels, measured hourly, in a 24 hour period (midnight to midnight), at each respective gauge referred to in [Article 2](#) of this Agreement and, if required, converted to Local Datum.

**Date of this Agreement** shall mean the date of execution of this Agreement by the last Party to execute this Agreement following ratification.

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

Dispute Resolution Mechanism shall mean the appropriate arbitration provisions set out in [Article 16](#) of this Agreement.

Distribution Company shall mean the corporation to be incorporated under the laws of Manitoba by Split Lake Cree to acquire Hydro's electrical distribution system assets on the Reserve, and to own and operate the electrical distribution system on Reserve, as contemplated in [Article 14](#) of this Agreement.

Distribution Date shall mean such date as the Trustees shall select as the Distribution Date, consistent with the provisions of [Article 16](#) and section 17.2 of the Indenture.

Domestic User shall mean any Member who uses Resources for his personal or family use.

**Easement** shall mean an interest in land and other provisions of an easement agreement in the form and content set out in [Schedule 3.4](#) of this Agreement, when granted by Canada to Hydro and Manitoba as contemplated by this Agreement.

**Easement Lands** shall mean the lands which are the subject of the Easements to be described in [section 2.1 of the Easements](#).

Economic and Social Development Account shall mean that Account established by [section 2.2 of the Indenture](#), and under [Article 7](#) of this Agreement.

**Elder** shall mean any Member who is fifty (50) years of age or older as of the Date of this Agreement.

**Eligible Beneficiary** shall mean Split Lake Cree and all Members, in the capacity of income beneficiary, capital beneficiary and residual capital beneficiary.

**Eligible Compensation Beneficiary** shall mean any individual Member receiving compensation for Adverse Effects pursuant to Articles [7](#), [8](#), and(or) [9](#), respectively, of this Agreement.

**Environmental Monitoring Account** shall mean that Account established by [section 2.2 of the Indenture](#), and under [Article 6](#) of this Agreement.

**Executive Implementation Committee** shall mean that committee established pursuant to [section 10.8](#) of this Agreement.

**Existing Development** shall mean all those physical works related to the Project which have been fully or partially constructed, by or on behalf of Hydro to the Date of this Agreement; and, without limitation to the generality of the foregoing, will include specifically all dams, dikes, channels, control structures, excavations, generating stations, roads, transmission lines and other works forming part of, or related to, all aspects of the Project including

- Lake Winnipeg Regulation,
- Churchill River Diversion,
- 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 Land** shall mean any tract of land, the legal and beneficial title to which is acquired by the Land Corporation in accordance with [Article 4](#) of this Agreement.

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**Fee Simple Title** shall mean title to land issued in accordance with the provisions of *The Real Property Act* (Manitoba).

**Financial Schedule** shall mean Schedule 1.1 annexed to this Agreement, setting forth all payments, and the dates of all payments made and to be made pursuant to this Agreement.

**Fish** shall mean fish as defined in the *Fisheries Act* (Canada).

**Funding and Programming** shall mean the moneys or services provided, by the Government of Canada or the Government of Manitoba, on a discretionary basis pursuant to appropriation acts of the Parliament of Canada or of the Legislative Assembly of Manitoba, to persons, entities or groups in Canada, and which are at the relevant time available or potentially or conditionally available to Split Lake Cree, Chief and Council, Members, or a Controlled Institution.

**Future Development** shall mean the construction of any portion or portions of the Project that have not been physically constructed to the Date of this Agreement, and all major redevelopment or reconstruction of any Existing Development.

**Generally Accepted Accounting Principles** shall mean the principles of accounting established by the Canadian Institute of Chartered Accountants in their publication known as the "CICA Handbook" as amended from time to time, applied on a consistent basis.

**Hourly Average Water Level** shall mean the average of all water levels measured, in reasonably uniform intervals, in a one (1) hour period at each respective gauge referred to in [Article 2](#) of this Agreement and, if required, converted to Local Datum.

**Hydro** shall mean the Manitoba Hydro-Electric Board.

**Impacting Future Development** shall mean any Future Development which would, or could, physically or biophysically affect the Reserve or the waters within or adjacent to the Reserve or the waters within the Resource Area.

**Implementation Account** shall mean that Account established by [section 2.2 of the Indenture](#), and under [Article 10](#) of this Agreement.

**Income** shall mean all of the income derived from the Trust Funds, including any income from reinvested Capital and income arising from the reinvestment of Income, which has fallen into, and become part of, the Capital of the Tataskweyak Trust, less the aggregate of:

- a. any and all expenses incurred or payable in respect of, or to protect, the Trust Funds, or incurred, or payable in connection with, the management and administration of the Trusts subject to [subsection 15.1.9 of the Indenture](#), and as determined by the Corporate Trustee to be chargeable to income;
- b. such further or other sums in each year or other period as the Corporate Trustee considers to be proper allowances, reserves, deductions, disbursements and(or) outgoings in accordance with Generally Accepted Accounting Principles; and,
- c. without limiting the generality of the foregoing, but without hereby conferring on the Corporate Trustee any authority to make expenditures without the approval of the Split Lake Cree Trustees or otherwise not in accordance with the Indenture, such sum in each

year or other period as the Corporate Trustee shall consider necessary and advisable, from time to time, to reflect depletion, or depreciation of any of the assets of the Tataskweyak Trust.

**Indenture** shall mean the Tataskweyak Trust Agreement annexed as [Schedule 2.1](#) of this Agreement.

Indian Moneys shall mean those moneys identified as such in [Article 11](#) of this Agreement.

Integrated Land Use and Resource Management shall mean the joint management of lands and resources in the Resource Management Area under provincial authority and powers and the authority and powers of Split Lake Cree, in their respective jurisdictions.

**Land Corporation** shall mean a corporation, incorporated pursuant to [Article 4](#) of this Agreement.

**Land Use Permit** shall mean any permit issued under the authority of *The Crown Lands Act* (Manitoba) for the purposes of this Agreement.

**Local Datum** shall mean the elevation established for all purposes of this Agreement based upon and referenced to the Controlling Bench Marks.

**Manitoba** shall mean 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.

**Member** shall mean any individual person who is, from time to time, a member of Split Lake Cree pursuant to the Indian Act (Canada).

**Minimum Nominal Capital Amounts** shall mean, subject to [Article 11](#) of this Agreement, the minimum Net Value of each of the Accounts, as set out in the Financial Schedules, that must be achieved in the year specified upon receipt of Settlement Proceeds in that year, and that must be maintained during each of the first five (5) years of this Agreement.

**Minister** shall mean the Minister, federal or provincial, charged by legislation with the responsibility of the exercise of powers in relation to the matter in question.

**Municipality** shall mean a city, town, village, rural municipality, local government district or other like municipal organization.

**Net Value** shall mean the realizable value, being the lower of cost or market value, of the assets of the Accounts, or any one of them, at valuation date, less the aggregate of liabilities, all in accordance with Generally Accepted Accounting Principles. Notwithstanding this valuation methodology, when determining Net Value for the purpose of establishing Income, pursuant to [subsection 11.6.1 of the Indenture](#), those bonds that are issued by Hydro in satisfaction of financial obligations pursuant to this Agreement, shall be valued at their face value but, for the

purposes of valuations in accordance with sections [9.5](#), [10.5](#) and [11.12](#) and [subsection 15.1.7](#) of the Indenture, such bonds will be valued at the lower of face and market value.

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

**NFC** shall mean the Northern Flood Committee, Inc.

**Non-Impacting Future Development** shall mean any Future Development which would not, or could not, physically or biophysically affect the Reserve or the waters within or adjacent to the Reserve or the waters within the Resource Area.

**O & M Reserve** shall mean that Reserve Account established under [Section 2.2 of the Indenture](#) and [Article 9](#) of this Agreement, being that portion of the Capital of the Remedial Works and Measures Account required to be allocated and reserved to cover all Operation and Maintenance costs with respect to each Remedial Work funded by the Remedial Works and Measures Account.

**Operations and Maintenance** shall mean works, administration, management and activities reasonably necessary for the ongoing operation, preservation and repair of Remedial Works for the benefit of Split Lake Cree.

**Ordinary High Water Mark (OHWM)** shall mean a line defined by the normal high water mark determined by plant growth and soil conditions observed in the field.

**Party** shall mean any of Canada, Manitoba, Split Lake Cree and Hydro.

**Permit Land** shall mean any tract of land under Land Use Permit.

**Post-Project Water Regime** shall mean, subject to amendment pursuant to paragraph [2.8.1\(h\)](#) of this Agreement, the levels and flows, including the fluctuations and the timing thereof, with respect to the Project Influenced Waterways (excepting the Aiken River) as such levels and flows occur within the Resource Area and have been observed since September 1, 1977 to the Date of this Agreement, or based thereon are reasonably anticipated to occur in the future, in accordance with the detailed considerations set forth in sections [2.3](#) and [2.4](#) of this Agreement.

**Prerequisite Training** shall mean instruction and preparation of Members, including employability support measures related thereto, to provide opportunities for Members

- to participate in training with respect to the Project,
- to obtain employment with respect to the Project, and
- to take advantage of business opportunities with respect to the Project through Split Lake Cree Based Businesses.



**Program Initiative** shall mean a defined set of activities, managed by Chief and Council, or its agents as set out in [subsection 10.5.2](#) of this Agreement, to accomplish specified goals consistent with the Appropriate Uses, which activities will include the planning, financing, and implementation of Specific Projects, and(or) the creation and delivery of services.

**Project Influenced Waterways** shall mean and include all rivers, streams, creeks, lakes and other waterways and bodies of water within, or flowing through or into the Reserve or the Resource Area, the natural regime of which has been affected by the Project.

**Project** shall mean and include all Existing Development and all past, present and future hydro-electric development or redevelopment on the Churchill, Burntwood and Nelson River Systems, and shall include all development or redevelopment of the Lake Winnipeg Regulation System north of the 53rd parallel, and shall also include the operation thereof by Hydro.

**Remedial Works** shall mean all remedial and mitigatory measures and works which are required, advisable or desirable, in the judgment of Split Lake Cree, as expressed through the approvals required under the Indenture, as a result of the Project, for the protection, restoration, or adjustment, in relation to the Post Project Water Regime, of Split Lake Cree community infrastructure, shorelines and(or) property of Members within the Reserve and the Resource Area, and all engineering, and project management advice and assistance required by Split Lake Cree for the effective planning, development, management and control of such Remedial Works.

**Remedial Works and Measures Account** shall mean that portion of the Trust Fund allocated for the purposes of Remedial Works and Asset Damage Compensation pursuant to [Article 9](#) of this Agreement, including the related Reserve Accounts.

**Replacement Remedial Work** shall mean a Remedial Work being constructed or erected to Remedial Work previously provided and now being replaced.

**Reserve Accounts** shall mean those reserves established by [section 2.2 of the Indenture](#), and under Articles [8](#) and [9](#) of this Agreement.

**Reserve** shall mean and have the same meaning as contained in the Indian Act, (Canada) but shall be restricted in this Agreement to that reserve or those reserves set apart for the use and benefit of Split Lake Cree.

**Reserve Land** shall mean the land contained within a Reserve.

**Resolution Process for Deviations** shall mean the process set forth in [Article 2](#) of this Agreement.

**Resolution Process to Amend Easements** shall mean the process set forth in [Article 2](#) of this Agreement.

**Resource Area** shall mean the Resource Management Area and the rivers and lakes which are traditionally available to and used by Split Lake Cree as a source of food supply, income-in-kind and income.

**Resource Beneficiary** shall mean any Member, who has suffered loss or damages up to the Date of this Agreement, or at any future time, related to Adverse Effects on Resources.

**Resource Compensation Fund** shall mean collectively, the commercial fishing compensation Account, the domestic resource compensation Account, the fur trapping compensation Account and the related Reserve Accounts, being that portion of the Tataskweyak Trust allocated for the purposes of Resource compensation pursuant to [Article 8](#) of this Agreement.

**Resource Management Area** shall mean the area described in and shown on Schedule 5.1 of this Agreement, and includes the rivers and lakes therein, and the Reserve Lands which, from time to time, may be included in the area.

**Resources** shall mean Fish, Wildlife, forests, plant and forest products, within the Resource Area.

Selected Lands shall mean those parcels of land chosen as Permit Lands and(or) Fee Simple Lands as identified more precisely in [Schedule 4.1](#) of this Agreement.

**Setback Lines** shall mean the Severance Line on I.R. Nos. 171, 171A and 171B, shown on plans filed in the Portage la Prairie Land Titles Office as Nos. 24689 to 24706 inclusive, and the lines to be established on those portions of the Compensation Lands described as Parcels B and C on Schedules [3.1](#) and [3.2](#) to this Agreement, which have been and are to be established based on the process and methodology employed for geotechnical studies pursuant to the Canada-Manitoba Northland Agreement (1976–1981), and reflect the margin of the effect of flooding, erosion, ice conditions, wind setup, and wave up-rush above the static inundation level, as that term is defined in the Easements.

**Settlement Proceeds** shall mean the principal amounts paid pursuant to this Agreement, and shall include any Income or Capital appreciation derived therefrom.

**Settlor** shall mean Split Lake Cree in its capacity as settlor of the Tataskweyak Trust.

**Specific Project** shall mean a planned undertaking, consistent with an Appropriate Use, by Split Lake Cree, any Member, Split Lake Cree Based Business, or Controlled Institution, whether directly or indirectly as set out in [subsections 10.5.2](#) and [subsections 10.5.3](#) of this Agreement, which will be designed and implemented in a manner that will produce a set of intended results, using a separate and distinct allocation of financial and human resources, and will be undertaken within a specific time frame.

**Split Lake Cree** shall mean Split Lake Cree First Nation, a "band" within the meaning of the Indian Act (Canada);

**Split Lake Cree Arbitrator** shall mean the arbitrator selected pursuant to [section 16.6](#) of this Agreement.

**Split Lake Cree Assets** shall mean all property, including both real and personal property, and all assets and all interests therein of every kind and nature including usufructuary interests, held or enjoyed by Split Lake Cree, any Member, Split Lake Cree Based Business, or Controlled Institution, and also including rights existing at law to use water for navigation and transportation.

**Split Lake Cree Based Business** shall mean any business owned and controlled directly or indirectly by any Member, or business owned, in part only, by any Member, but which is controlled by aboriginal people whose normal place of residence is north of the 53rd parallel in Manitoba.

**Split Lake Cree Trustees** shall mean the trustees in office in accordance with [Article 7 of the Indenture](#).

**Split Lake Gauging Station** shall mean the Government of Canada Measuring Station No. 05UF003 used for measuring water levels at Split Lake, or any replacement gauge installed and operated in accordance with [Article 2](#) of this Agreement.

**Static Water Level** shall mean the wind eliminated water level approximated by a five (5) day moving mean of the Daily Average Water Level, with the five (5) days being the day in question and the two (2) days immediately prior and immediately after the day in question.

**Tataskweyak Trust** shall mean the trust created by and embodied in [Schedule 2.1](#) of this Agreement.

**Third Party** shall mean any person or entity not a Party to this Agreement.

**Trapper** shall mean any Member who is, or has been, and who continues to be or, in the absence of Adverse Effects, would have continued to be, or who, in the future, becomes engaged in the vocation of trapping for the purpose of financial gain.

**Tribunal** shall mean a tribunal of not less than three (3) or more than five (5) independent, unbiased Members who are, in accordance with Split Lake Cree custom, considered to be elders and who are not members of Chief and Council, established pursuant to [Article 8](#) of this Agreement.

**Trust** shall mean the Tataskweyak Trust.

**Trust Funds** shall mean all property and assets of any nature or kind whatsoever, of which the Trustees in their capacities as Trustees may from time to time become possessed; all of which, including the books and records, are to be held upon the trusts and with, and subject to, the powers and provisions of this Agreement.

**Trustees** shall mean, collectively, the Split Lake Cree Trustees and the Corporate Trustee.

**Water Power Licence** shall mean a licence issued under The Water Power Act (Manitoba).

**Water Power Reserve** shall mean a reserve established under The Water Power Act (Manitoba).

**Wildlife** shall mean wildlife, as defined in The Wildlife Act (Manitoba), within the jurisdiction of Manitoba.

### 1.3.2 Purposes

These definitions are intended only for the purposes of this Agreement and are not to be used for any other purpose. Except when used in this Agreement these definitions are without prejudice to and are not binding upon any of the Parties. In certain Articles additional defined terms may be initially identified by brackets and subsequently capitalized. Such definition shall only be applicable when the word is used in that Article and is capitalized.

### 1.3.3 Gerunds

Where the defined word is a gerund and it is used as a verb, if it is capitalized and set out in bold type as a defined word, the definition outlined in this Article will be applicable, but with such modification as necessary to reflect its use as a verb.

## **Article 2**

### **2.0 Project Operations and Operating Water Regime**

#### **2.1 Introduction**

##### 2.1.1 Introduction

This Article identifies and describes, as the case may be, relevant records of the Post Project Water Regime, standards for deviations from that regime, and processes to resolve issues related to the water regime and Project operation.

#### **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. Manitoba, Split Lake Cree and Hydro release Canada from all liability with respect to the definition, selection or determination of the Controlling Bench Marks, or Local Datum, for the purposes of this Agreement.

##### 2.2.2 Data

At present, Canada is operating the Split Lake Gauging Station in accordance with the terms of the memorandum of agreement on water quantity surveys between Canada and Manitoba dated April 1, 1975. Prior to any decision by Canada or Manitoba to redesignate the Split Lake Gauging Station, in accordance with the above memorandum or any successor agreement, or to relocate or cease operating the Split Lake Gauging Station, Canada or Manitoba shall give both Hydro and Split Lake Cree one (1) year written notice. Other than the express requirement for Canada or Manitoba to give a one (1) year notice prior to redesignation, relocation or ceasing operation of the Split Lake Gauging Station, subsection 2.2.2 of this Article is not intended to impose upon Canada or Manitoba any liability that either does not have in the absence of subsection 2.2.2 of this Article.

##### 2.2.3 Records

From and after the Date of this Agreement, for so long as either Canada or Manitoba operates the Split Lake Gauging Station, Canada and Manitoba agree, during their respective operation thereof, to maintain a record of the recorded water levels at the Split Lake Gauging Station, and, when required for the purposes of this Agreement, to provide such records to any of the Parties requesting same. Nothing in subsection 2.2.3 of this Article shall be interpreted to impose upon

Canada or Manitoba any liability with respect to such data and records, that Canada and Manitoba do not have in the absence of subsection 2.2.3 of this Article.

#### 2.2.4 Continuance of Gauging Station

Hydro and Split Lake Cree agree that if, for any reason, Canada and Manitoba cease to operate the Split Lake Gauging Station, then Hydro shall forthwith re-activate, restore or replace the Split Lake Gauging Station and operate or cause same to be operated as required for the purposes of this Article and this Agreement.

#### 2.2.5 Post Project Water Regime

The Post-Project Water Regime has been monitored at certain locations and the data obtained from that monitoring, to the Date of this Agreement, has been used to establish guidelines for determining and measuring deviations from the Post Project Water Regime. The monitored data is recorded in a document entitled "Post Project Water Regime Data", which document is dated the same date as this Agreement and is identified by the signatures of the appropriate representatives of Split Lake Cree and Hydro. The "Post Project Water Regime Data" document, and its use by Hydro and Split Lake Cree, are without prejudice to Canada and Manitoba. The data contained in the document entitled "Post Project Water Regime Data" has been obtained by Hydro from its own records and from Water Survey of Canada records, and is generally accurate, but may contain occasional errors, arising from both the collecting and recording of such data. If Split Lake Cree and Hydro agree, or, failing to agree, it is determined by the Dispute Resolution Mechanism, that an error exists, the erroneous data shall be deleted from the "Post Project Water Regime Data" document. Neither the existence of such errors nor the deletion of such erroneous data shall in any way affect the validity or enforceability of this Agreement.

#### 2.2.6 Hydro Obligations

From and after the Date of this Agreement, Hydro shall continue to monitor, obtain and record raw data in substantially the same manner, and with substantially the same degree of exactitude, as recorded in the document entitled "Post Project Water Regime Data", and shall, when required for the purposes of this Agreement, provide such data, within a reasonable time, to any of the Parties requesting same.

### **2.3 Post Project Water Regime**

#### 2.3.1 Effects of the Project

The most significant effect of the Project on the water regime at Split Lake has been a reversal of the high water levels on Split Lake from summer to winter. The predominant characteristic of the Post Project Water Regime and related Hydro operations is a seasonal cycle with maximum water levels and flows generally in the winter and minimum water levels and flows generally in the summer. From time to time, summer levels higher than the winter levels have occurred as the result of factors beyond the control of Hydro.

### 2.3.2 Flood and Drought Conditions

Infrequent events such as the high summer water levels experienced in 1979 and 1986 are anticipated to recur from time to time in the future. Such events, although resulting in conditions at variance with the predominant, recorded characteristics of the Post Project Water Regime, nonetheless were, and shall be, part of the Post Project Water Regime. In addition, it is anticipated that floods and droughts similar in severity to the flood of 1966 and the drought of 1940–41 will recur, and other floods and droughts of varying severity will occur, from time to time, in the future. Notwithstanding that such floods or droughts are likely to result in conditions at variance with the predominant, recorded characteristics of the Post Project Water Regime, they shall nonetheless be part of the Post Project Water Regime.

### 2.3.3 Update of Water Regime

The "Post Project Water Regime Data" document may, as more information becomes available, be updated and amended by agreement between Split Lake Cree and Hydro, without prejudice to Canada and Manitoba.

## **2.4 Deviations**

### 2.4.1 Levels and Flows

It is acknowledged that in the future, the levels and flows, including fluctuations and timing thereof, of the Project Influenced Waterways within the Resource Area shall, from time to time, exceed the maximum and fall below the minimum levels and flows, and shall vary from the fluctuation and timing experienced or anticipated in the Post Project Water Regime. To the extent such occurrences are caused by, or attributable to the Project, they shall be considered to be deviations from the Post Project Water Regime.

### 2.4.2 Operation Causing Deviation

Subject to the provisions of the Easements to be granted by Split Lake Cree and Canada to Hydro and Manitoba with respect to Reserve Lands, nothing in this Agreement is intended to prohibit or prevent the Project from causing or resulting in deviations from the Post Project Water Regime. Nonetheless, to the extent such deviations are caused by, or attributable to the Project, and result in Adverse Effects to Split Lake Cree, any Member, or Controlled Institution, Hydro shall have a continuing liability under the NFA with respect to such Adverse Effects.

### 2.4.3 Continuing Right

Until, but only 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.

### 2.4.4 Non-Deviation Operations

Without limiting the scope of the Post Project Water Regime, it is agreed that Hydro shall not have deviated from the Post Project Water Regime if, at the relevant time, the parameters set out below apply.

- a. The Daily Average Water Levels on Split Lake, measured at the Split Lake Gauging Station, do not exceed the maximum monthly levels, or fall below the minimum monthly levels set out below in both metres and feet ASL Local Datum:

<b>MONTH</b>	<b>MAXIMUM</b>	<b>MINIMUM</b>
January	168.20 m (551.8 ft.)	166.70 m (546.9 ft.)
February	168.20 m (551.8 ft.)	166.40 m (545.9 ft.)
March	167.90 m (550.9 ft.)	166.20 m (545.3 ft.)
April	167.70 m (550.2 ft.)	165.90 m (544.3 ft.)
May	167.50 m (549.5 ft.)	165.80 m (544.0 ft.)
June	167.40 m (549.2 ft.)	165.70 m (543.6 ft.)
July	167.30 m (548.9 ft.)	165.70 m (543.6 ft.)
August	167.40 m (549.2 ft.)	165.70 m (543.6 ft.)
September	167.50 m (549.5 ft.)	165.70 m (543.6 ft.)
October	167.70 m (550.2 ft.)	165.80 m (544.0 ft.)
November	168.00 m (551.2 ft.)	166.10 m (545.0 ft.)
December	168.20 m (551.8 ft.)	166.30 m (545.6 ft.)

- b. The maximum change in the Daily Average Water Level on Split Lake, measured at the Split Lake Gauging Station, does not exceed on a daily basis or on a weekly basis:

	<b>UPWARD</b>	<b>DOWNWARD</b>
DAILY	0.20 m (0.7 ft.)	0.20 m (0.7 ft.)
WEEKLY	0.65 m (2.1 ft.)	0.50 m (1.6 ft.)

- c. For the relevant year (which for these purposes shall be a year running from March 1 of one calendar year to February 28 or 29 of the next following calendar year) the mean water levels at Split Lake during the period of November 1 to February 28 are higher than the mean water levels at Split Lake during the period June 1 to August 31 of the same year.
- d. The sum of the absolute values of the Daily Average Water Level fluctuations on Split Lake, measured at the Split Lake Gauging Station, for any calendar month do not exceed 1.83 m (6.0 ft.). To determine the sum, the difference in the Daily Average Water Level between succeeding days, whether up or down, shall be added for each day in the calendar month being considered. In doing the addition, the downward movement shall be a positive, not a negative number.
- e. The Daily Average Water Level on the Burntwood River, measured at the gauging station at the Thompson Pumphouse, located in the City of Thompson, does not exceed 189.89 m (623.0 ft.) ASL Local Datum or fall below 185.94 m (610.0 ft.) ASL Local Datum.



- f. The Daily Average Water Level on the Kelsey forebay does not fall below 182.0 m (597.1 ft.) ASL Local Datum.
- g. The Daily Average Water Level on the Kettle forebay does not fall below 137.50 m (451.1 ft.) ASL Local Datum.
- h. The flow releases from the Missi Control Structure do not fall below 42.5 m<sup>3</sup>/s (1500 cfs) in the months of January, November and December, and below 14.2 m<sup>3</sup>/s (500 cfs) in the balance of the year.

## **2.5 Limitation**

### **2.5.1 Limitation on Liability**

Subject to the provisions of the Easements, Hydro shall not be liable to Split Lake Cree for deviations from the Post Project Water Regime if such deviations are beyond Hydro's control, or are not caused by, or attributable, in whole or in part, to the Project. In any event, Hydro shall only be liable to Split Lake Cree for such part of the deviation caused by, or attributable to the Project.

## **2.6 Forecasts**

### **2.6.1 Anticipated Water Levels**

Once every calendar month, Hydro shall give a written forecast to Split Lake Cree of the anticipated Static Water Level at the Split Lake Gauging Station, the Kettle Generating Station, and the Kelsey Generating Station, for that month and the next succeeding month. The daily Static Water Levels mentioned in such forecast shall be based on Local Datum. The written forecast shall include:

- a. a narrative indicating whether or not the Static Water Level is expected to change during the relevant period and the estimated amount of such change; and,
- b. a graph depicting the anticipated Static Water Level for the month in which the forecast is made and the next succeeding month.

### **2.6.2 Revised Forecasts**

If Hydro concludes that the Static Water Level, during the period in respect of which a forecast was made, will at any time be more than 0.20 m (0.7 ft.) higher or 0.20 m (0.7 ft.) lower than forecast, then Hydro shall forthwith revise its forecast and give notice to Split Lake Cree of its revised forecast for the balance of the relevant forecast period.

### **2.6.3 Notification**

In an effort to notify Members, Hydro agrees to make reasonable efforts to broadcast the narrative portion of such monthly forecasts, or any revised forecast, over a radio station providing service in the area of Split Lake, or by some other reasonable alternative method, if no such station exists at any given time.

## 2.6.4 Limitation of Forecasts

It is acknowledged that:

- a. the information supplied by Hydro, in its forecasts pursuant to this section, is based on Hydro's best estimation, using due diligence, of anticipated daily Static Water Levels;
- b. in the absence of negligence or deliberate misconduct on the part of Hydro, or those for whom it is at law responsible, Hydro shall not be liable if any estimate is incorrect;
- c. Hydro's ability to determine when a revised forecast is warranted is limited to detecting unanticipated changes in the data that Hydro collects and monitors as part of its operations; and,
- d. in the absence of negligence or deliberate misconduct on the part of Hydro, or those for whom it is at law responsible, Hydro shall not be liable if a forecast, or a revised forecast, is delayed.

## 2.7 Future Developments

### 2.7.1 Notice

Hydro shall give reasonable written notice to Split Lake Cree and to Canada respecting any Future Development, which written notice shall in no event be less than at least six (6) weeks prior to each of:

- a. Hydro's arranging or tendering for any on the ground exploratory work related to such Future Development, including, without limitation, drilling or surveying within the Resource Area;
- b. Hydro's finalizing the terms of reference necessary to commission any environmental impact study relating to such Future Development;
- c. Hydro's making application for any federal or provincial, environmental licence or other required governmental authorization (including any approval required from the Public Utilities Board of Manitoba or the National Energy Board)
  - i. to dam, divert, impound or channel water,
  - ii. to construct a high voltage transmission line,
  - iii. to construct a road or rail line,
  - iv. to construct booms or any other structure which would interfere with navigation,

related to such Future Development;

- d. Hydro's retaining a consultant to undertake an environmental impact study related to such Future Development; and,
- e. Hydro's making application for any federal or provincial authorization to alter or amend the operating conditions governing the Project at the time of the application, where the alteration or amendment could reasonably be expected to result in a material change to the Post Project Water Regime.

### 2.7.2 Conawapa

For greater certainty, it is acknowledged that Hydro has made application for licences and has commenced an environmental impact study with respect to the proposed Conawapa generating station. In addition, Hydro has commenced work to obtain base line data and other geological and hydrological data with respect to Future Development of numerous sites, including but not limited to:

- a. First Rapids;
- b. Birthday Rapids; and,
- c. Gull Rapids.

### 2.7.3 Covenant as to Levels

Manitoba and Hydro covenant that, prior to the proclamation of such legislation as may be required to permit the transfer of Parcels B and C of the Compensation Lands contemplated in [subsection 3.3.3](#) of this Agreement, Hydro shall not develop, and Manitoba shall not permit Future Development that would have the effect of raising the Daily Average Water Levels on Split Lake, adjacent to the Reserve, above the relevant maximum level permitted in paragraph [2.4.4\(a\)](#) without the express written approval and consent of both Canada and Split Lake Cree.

### 2.7.3 No Implied Approval

Nothing in this Agreement is intended to mean that Split Lake Cree, Canada, or Manitoba has agreed or consented to any Future Development in any respect.

### 2.7.4 Dispute

In the event of a dispute as to whether or not a Future Development is an Impacting Future Development or Non-Impacting Future Development, such dispute shall be resolved in accordance with the Dispute Resolution Mechanism.

## **2.8 Resolution of Deviations**

### 2.8.1 Resolution Process

If a deviation from the Post Project Water Regime occurs or is anticipated, Hydro and Split Lake Cree shall enter into the Resolution Process for Deviations in connection with any anticipated, apprehended, or actual Adverse Effect incurred, or anticipated to be incurred, by Split Lake Cree and(or) any Member as a consequence of such deviation or anticipated deviation. The Resolution Process for Deviations shall be as set out below.

- a. Hydro, directly or upon request of Split Lake Cree, shall provide details with respect to the actual, alleged or anticipated deviation from the Post Project Water Regime including
  - i. the extent of the deviation,
  - ii. the time period during which the deviation occurred, or is anticipated to occur,
  - iii. whether the deviation is a permanent or recurring deviation, or is anticipated to be a permanent or recurring deviation, and

- iv. if such deviation is permanent or recurring, the purpose or reason for such deviation.
- b. If the deviation has occurred, Hydro and Split Lake Cree shall endeavour to identify or forecast all actual or apprehended Adverse Effects, if any, arising from such deviation.
- c. Such studies as may reasonably be required to assess fully the actual, anticipated and apprehended Adverse Effects of such deviation on Split Lake Cree and Members shall be undertaken by Hydro, and, if possible, jointly, by both Hydro and Split Lake Cree.
- d. Mitigatory and remedial works required to eliminate, or alleviate, actual or anticipated Adverse Effects of the deviation shall be identified, designed and costed. In the event of a dispute as to what mitigatory and remedial works are required to eliminate or alleviate the Adverse Effects, that dispute may, with the agreement of Split Lake Cree and Hydro, be resolved in accordance with the Dispute Resolution Mechanism or, failing such agreement, shall be left for determination under the NFA.
- e. To the extent Adverse Effects from such deviation cannot be eliminated or alleviated, they shall be assessed, and a good faith effort shall be made to determine reasonable compensation or compensatory programs for all such foreseeable Adverse Effects.
- f. If compensation or a compensatory program is agreed upon, Hydro shall carry out such compensatory program or pay such compensation, and Split Lake Cree shall provide all appropriate releases and indemnifications, with respect to all foreseen and reasonably foreseeable Adverse Effects, from such deviations which have been compensated.
- g. If compensation or a compensatory program cannot be agreed upon, the issue may, with the agreement of Split Lake Cree and Hydro, be referred for resolution to the Dispute Resolution Mechanism or, failing such agreement, shall be left for determination under the NFA.
- h. Following completion of the process set out in paragraphs 2.8.1 (a) to (g) of this Article, the Post Project Water Regime shall be amended to reflect the change in the compensated portion of the water regime. In addition, the guidelines set forth in [subsection 2.4.4](#) of this Article shall similarly be amended. If there is a dispute between Split Lake Cree and Hydro as to the amendment of the guidelines set forth in [subsection 2.4.4](#) of this Article, required to accurately reflect the additional portion of the water regime that has been compensated, such dispute shall be resolved by reference to the Dispute Resolution Mechanism.
- i. Reasonable costs for studies and for negotiations shall be borne by Hydro provided that:
  - i. prior to incurring any such cost, Split Lake Cree shall provide to Hydro a budget, or a revised budget, for such costs, outlining in detail the unit fee or hourly rate for such work, a total estimated cost, a description of the work to be done, and a brief indication of the purpose of such work,
  - ii. the actual invoice reflects the budget, and
  - iii. the work done accords with the work outlined to be done in the budget.
- j. If Hydro disputes the reasonableness of any budget, or any revised budget, submitted by Split Lake Cree pursuant to paragraph 2.8.1(i) of this Article, Hydro shall advise Split Lake Cree of such dispute, within thirty (30) days of the submission of the budget, or revised budget, and unless such dispute is resolved by agreement, such dispute with respect to the budget, or the revised budget, or payment of any costs for consultants, reports or legal advice, shall be resolved pursuant to the Dispute Resolution Mechanism.

## 2.8.2 NFA Liability

Nothing in subsection 2.8.1 of this Article is intended to vary Hydro's continuing liability under the NFA, as such continuing liability is set out in [subsection 15.4.1](#) of this Agreement, except as specifically provided as a result of the amendments to the Post Project Water Regime contemplated in paragraph 2.8.1(h) of this Article in relation to [paragraph 15.4.1\(b\)](#) of this Agreement.

## 2.8.3 Resolution Process to Amend Easements

If Hydro anticipates that, to accommodate a proposed Impacting Future Development, it will be necessary to amend any Easement, then as soon as reasonably practicable following the first notice of such Impacting Future Development given pursuant to [section 2.7](#) of this Article, Hydro and Split Lake Cree shall enter into the Resolution Process to Amend Easements as set out below.

- a. Hydro shall provide to Split Lake Cree details, including plans, water levels and preliminary surveys indicating the extent of such anticipated condition not permitted pursuant to the Easements.
- b. Hydro, at its own expense, and with the cooperation of Split Lake Cree, shall implement, jointly with Split Lake Cree if possible, a review of the existing environment including the impacts of that part of Existing Development which impact on the Resource Area, and of future environmental impacts on Split Lake Cree anticipated to result from such Future Development, as such relates to Split Lake Cree.
- c. Split Lake Cree agrees to review such proposed encroachment beyond the Setback Lines, and(or) the static inundation level of 169.47 m (556.0 ft.) ASL Local Datum permitted by the Easements and, to accommodate Hydro subject to compensation acceptable to Split Lake Cree for such encroachment and, subject to the implementation of remedial, mitigatory and compensatory programs acceptable to Split Lake Cree for such Adverse Effects, if any, which may arise.
- d. Subject to agreement between Split Lake Cree and Hydro as to relocation of the Setback Lines and(or) modification of the static inundation level of 169.47 m (556.0 ft.) ASL Local Datum permitted by the Easements and, if required, the concurrence of Canada to the granting of such further easement(s) by virtue of an order of the Governor in Council, pursuant to Section 35 of the Indian Act (Canada) or otherwise, the Resolution Process For Deviations, excluding the reference to the NFA, may, with the agreement of Split Lake Cree and Hydro, be adopted and followed with respect to any Adverse Effects anticipated from the amendment in the Setback Lines and(or) the static inundation level.
- e. Hydro, Split Lake Cree and, if required, Canada, shall endeavour to conclude an agreement as to
  - i. compensation,
  - ii. the implementation of compensatory programs,
  - iii. the construction of Remedial Works relating to Adverse Effects, and
  - iv. the amendment of the Easements, or granting of a new easement(s) necessary to permit development of the Impacting Future Development.

#### 2.8.4 Immediate Concern

Notwithstanding the foregoing, Hydro is currently reviewing the development potential and associated options along the waterway between the Kelsey Generating Station and the Kettle Generating Station. Initial studies indicate that full development cannot be accomplished without an upward adjustment of the Setback Lines and the static inundation level of 169.47 m (556.0 ft.) ASL Local Datum permitted by the Easements. As a consequence, Hydro and Split Lake Cree agree, after the Date of this Agreement, to commence the environmental review and the negotiation contemplated in the Resolution Process to Amend Easements set forth in subsection 2.8.3 of this Article, at the earliest possible date.

#### 2.8.5 Without Prejudice

Any resolution process which may be conducted pursuant to this Article is without prejudice to Canada, except to the extent of Canada's specific concurrence therewith.

#### 2.8.6 No Compulsion

Nothing in this Agreement shall compel Split Lake Cree to relocate as part of the Resolution Process to Amend Easements.

### **2.9 End of Project**

#### 2.9.1 Maintenance of Water Regime

If, in the future, the Project is no longer utilized for the production of hydro-electric power, then Hydro 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, deviations from the Post Project Water Regime.

# Article 3

## 3.0 Compensation Lands and Easements

### 3.1 Introduction

#### 3.1.1 Introduction

This Article provides for the identification, survey and transfer of the Compensation Lands by Manitoba to Canada for designation as Reserve Lands, and for the establishment of Setback Lines and the Easements to be granted in favour of Hydro and Manitoba.

### 3.2 Compensation Lands

#### 3.2.1 Description

The lands within the boundaries described in [Schedule 3.1](#) of this Agreement, excluding the lands required for public purposes as described in [Schedule 3.3](#) of this Agreement, are the Compensation Lands to be transferred by Manitoba to Canada to be set aside by Canada as Reserve Lands for Split Lake Cree.

#### 3.2.2 Conditions of Transfer

The Parties acknowledge that Hydro and Split Lake Cree are requesting consideration of hydro-electric transmission and transformer site arrangements which would, as proposed, be located in part on Compensation Lands, and subject to a subsequent agreement among the Parties, if any, with respect to such hydro-electric transmission and transformer site arrangements, 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. Easements in the form and content set forth in [Schedule 3.4](#) of this Agreement, shall be granted in accordance with this Agreement.

#### 3.2.3 Access to Split Lake

It is acknowledged, based on the provisions of [Article 2](#) of this Agreement, that in the absence of the agreement of Split Lake Cree and Canada to an amendment, and the amendment of the Easements to be granted upon the Reserve Lands, water levels on Split Lake will usually remain below elevation 169.47 m (556.0 ft.) ASL Local Datum. Manitoba hereby covenants and agrees that Split Lake Cree and Members will have such exclusive and permanent right of use on and to any provincial Crown lands lying between the Compensation Lands and Split Lake, as may be required to ensure unhindered access without fee, charge or taxation, to the water's edge, and the use thereof as though the Compensation Lands did in fact extend to the water's edge, subject only

to the conditions set out in subsection 3.2.5 of this Article. The rights so conferred will be recorded and maintained in the Crown Lands Registry of Manitoba, and no other interest or right will be granted except as provided in subsection 3.2.5 of this Article.

#### 3.2.4 Agents of Canada

Agents and servants of Canada, in connection with their official duties, may have access to any such provincial Crown lands lying between the Compensation Lands and Split Lake, without obstruction, interruption, hindrance, fee or charge of any kind. Manitoba does not in any way warrant, control, guarantee or assume any liability of any kind whatsoever with respect to any action of Split Lake Cree, Chief and Council or any Member in connection with the access granted to Canada.

#### 3.2.5 Conditions of Use

Upon request of Split Lake Cree by Council Resolution, Manitoba will permit Split Lake Cree and any Member, without fee, charge or taxation, of any kind, to develop, improve, construct or place any temporary or permanent structure or improvement on any such provincial Crown lands lying between the Compensation Lands and Split Lake; provided, however, Manitoba will not permit any such structure or improvement that would materially interfere with or adversely affect Hydro's rights under this Agreement, Hydro's right to inundate and store water on such provincial Crown lands, the right of access to provincial Crown lands and the Easement Lands, or the right to provide bank protection, maintenance and shoreline work necessary for Hydro operations. Any such permit or permission shall be conditional upon, and subject to, the provision to Manitoba of an indemnity given by Split Lake Cree and any Member granted such permit or permission, indemnifying Manitoba for any claims, loss or damage suffered by any Third Party as a result of or arising out of the existence or use of such structure or improvement.

#### 3.2.6 Domestic Water Requirement

Where Split Lake Cree or Canada requests permission for facilities on or across the provincial Crown lands lying between the Compensation Lands and Split Lake, for the purpose of withdrawing water from the adjacent waters for on Reserve uses, such permission shall not be unreasonably withheld by Manitoba.

#### 3.2.7 Liability for Damage

Subject to the provisions of Article 2 of this Agreement, neither Manitoba nor Hydro shall be liable for any damage to, or loss of, any structure or improvement erected, constructed or placed on any provincial Crown lands lying between the Compensation Lands and Split Lake, except for such damage or loss as may result from, or be caused by, their own wilful act or negligence, or the wilful act or negligence of their agents, employees, contractors or subcontractors.

#### 3.2.8 Releases – Canada



Split Lake Cree releases and discharges Canada, of and from any duty or obligation of a fiduciary or other character with respect to the arrangements set out in subsections 3.2.3, 3.2.5, 3.2.6 and 3.2.7 of this Article.

### **3.3 Surveys**

#### **3.3.1 Surveys**

Legal surveys of the boundaries of the Compensation Lands, Setback Lines thereon, and the boundaries of exclusions required for public purposes, will be completed by, and at the expense of Manitoba, in accordance with the survey instructions in [Schedule 3.2](#) of this Agreement.

#### **3.3.2 Legislation**

Pursuant to subsection 6(2) of The Water Power Act (Manitoba), the approval of the Legislature of the Province of Manitoba may be required with respect to a disposition which could impact upon potential water power, dependent upon the capacity of such water power. Accordingly, the survey instructions attached as [Schedule 3.2](#) to this Agreement, provide for the Compensation Lands to be surveyed in separate parcels, dependent upon whether the disposition of such lands could impact upon potential water power. The disposition of Parcel A of the Compensation Lands would not impact on potential water power, while the disposition of both Parcels B and C could have such impact and therefore require legislative approval.

#### **3.3.3 Approvals – The Water Power Act (MB)**

Manitoba shall recommend to the Legislative Assembly of Manitoba approval of the disposition of Parcels B and C of the Compensation Lands pursuant to subsection 6(2) of The Water Power Act (Manitoba), or such other legislation as may be necessary to permit the disposition of Parcels B and C of the Compensation Lands.

#### **3.3.4 Completion of Surveys by Manitoba**

Manitoba shall:

- a. within sixty (60) 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 lands described and shown in Schedules 3.1 and 3.3 of this Agreement, except for the Setback Lines and the boundaries of the said lands which are adjacent to Project Influenced Waterways;
- b. following the Date of this Agreement and within sixty (60) days of receipt by Manitoba of
  - i. notice from Hydro that the boundaries of the Compensation Lands adjacent to Project Influenced Waterways and the Setback Lines on Parcels B and C of the Compensation Lands are described and set out in accordance with [Schedule 3.2](#) of this Article, and

- ii. a Council Resolution confirming acceptance by Split Lake Cree of the Setback Lines,

commence, or cause to be commenced, the necessary legal surveys to describe the Setback Lines, and the boundaries of the Compensation Lands adjacent to Project Influenced Waterways, and to tie same to the legal boundaries and Setback Lines on I.R. 171; and,

- c. subject only to any delay which may be caused by
  - i. receipt of notice and(or) confirmation under paragraph 3.3.4(b) of this Article,
  - ii. a change in survey instructions under subsection 3.3.5 of this Article, or
  - iii. any dispute which may arise with respect to the provisions of this Article,

make reasonable efforts to complete, or cause to be completed, all legal surveys to be done by Manitoba, within twelve (12) months of the receipt of notice and(or) confirmation under paragraph 3.3.4(b) of this Article, the approval of a change in survey instructions or the date of the final resolution of disputes arising under this Article.

### 3.3.5 Change in Survey Instructions

The survey instructions in [Schedule 3.2](#) of this Agreement may only be changed with the approval of each of Split Lake Cree, Manitoba and Canada, and any consequent expense shall be borne by the Party requesting approval of the other two (2) Parties for any such change in instructions.

### 3.3.6 Plans Supplied by Manitoba

Manitoba will, upon completion of the legal surveys, supply to Split Lake Cree and Canada, at no cost, plans of boundaries, Setback Lines and exclusions for public purposes on the Compensation Lands, satisfactory to the Surveyor General of Canada.

### [Back to Article 3.4.4](#)

### 3.3.7 Legal Descriptions

Following completion of legal surveys, the Director of Surveys of Manitoba will provide to Canada and Split Lake Cree, the legal descriptions of the Compensation Lands and the Easement Lands satisfactory to the Surveyor General of Canada.

### 3.3.8 Affirmation

Split Lake Cree shall, upon receipt of the plans referred to in subsection 3.3.6 of this Article, and the legal descriptions referred to in subsection 3.3.7 of this Article, affirm by Council Resolution, if such is the case, that:

- a. the lands are those described in [Schedule 3.1](#) of this Agreement, less the exclusions in [Schedule 3.3](#) of this Agreement;
- b. the lands are satisfactory to Split Lake Cree as the Compensation Lands;
- c. the Setback Lines shown on plans referred to in subsection 3.3.6 of this Article and the description of the Easement Lands referred to in subsection 3.3.7 of this Article are approved by Split Lake Cree; and,
- d. the provisions of Articles 3, 4, 7, 12 and 22 of the NFA, except as same may relate to Article 6 of the NFA, have been fully and satisfactorily implemented or otherwise settled by means of, or prior to, this Agreement.

### **3.4 Administration of Lands**

#### **3.4.1 Transfer Documents**

Upon receipt of the affirmation required by [subsection 3.3.8](#) of this Article, and confirmation of the plans in subsection 3.3.6 of this Article and the legal descriptions in subsection 3.3.7 of this Article, Manitoba will consult with Canada and Split Lake Cree 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 Split Lake Cree. Thereafter, Manitoba shall by Order in Council, conditional upon Canada's acceptance as provided in subsections 3.4.3 and 3.4.4 of this Article, transfer administration and control of:

- a. if the legislation contemplated in subsection 3.3.3 of this Article has been proclaimed, all of the Compensation Lands to Canada; or,
- b. if the legislation contemplated in subsection 3.3.3 of this Article has not been proclaimed, all of the Compensation Lands, except Parcels B and C, to Canada.

Provided that in the event of paragraph 3.4.1(b) of this Article, then, immediately upon proclamation of the legislation contemplated in subsection 3.3.3 of this Article, Manitoba shall, conditional upon Canada's acceptance as provided in subsections 3.4.3 and 3.4.4 of this Article, transfer administration and control of Parcels B and C of the Compensation Lands to Canada. In each such event Manitoba shall provide a copy of such Order in Council to Split Lake Cree.

#### **3.4.2 Request for Reserve Status**

Split Lake Cree, upon receipt of a copy of any Order in Council referred to in subsection 3.4.1 of this Article, shall by Council Resolution request that the Compensation Lands, or the portion thereof referenced in such Order in Council, be set apart as Reserve Lands for Split Lake Cree, and that the Easements relevant thereto be granted to Hydro and Manitoba.

#### **3.4.3 Designation of Reserve Lands**

Canada shall, upon receipt of the Council Resolutions referred to in subsection 3.4.2 of this Article, by order of Governor in Council, accept Manitoba's Orders in Council and designate the Compensation Lands, or such portion thereof referenced in the Orders in Council, as Reserve Lands. Canada shall make reasonable efforts to complete the designation of the Compensation

Lands, or such portion thereof referenced in the Orders in Council, as Reserve Lands, within twelve (12) months of Canada's receipt of the Council Resolution.

#### 3.4.4 Registry of Plans and Easements

Canada shall, upon acceptance of the Order in Council of Manitoba, conveying Parcel A of the Compensation Lands, in accordance with subsection 3.4.3 of this Article:

- a. file the plans referred to in [subsection 3.3.6](#) of this Article in accordance with the Canada Lands Surveys Act;
- b. grant Easements on I.R. Nos. 171, 171A and 171B to Hydro; and,
- c. transfer administration and control to Manitoba, on the same terms and conditions as contained in the grant of Easement to Hydro, in respect of I.R. Nos. 171, 171A and 171B.

Upon acceptance of any Order in Council of Manitoba conveying Parcels B and C of the Compensation Lands, Canada shall grant Easements on Parcels B and C, to Hydro, and transfer administration and control to Manitoba, on the same terms and conditions as contained in the grant of Easement to Hydro. Canada shall file all grants of Easements in accordance with the Indian Act (Canada).

#### 3.4.5 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, any lands described as the Compensation Lands. Following the Date of this Agreement and prior to transfer of the Compensation Lands to Canada, Manitoba will grant to Split Lake Cree a general Land Use Permit, on terms satisfactory to Manitoba and Split Lake Cree, for the Compensation Lands. Any Land Use Permit shall terminate upon acceptance by Canada of the relevant Order in Council transferring 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 Article.

#### 3.4.6 Survey of Setback Lines

Where a Setback Line, or any portion of a Setback Line, on I.R. Nos. 171, 171A and 171B is reasonably required by Canada, Split Lake Cree or Hydro to be surveyed or re-surveyed in the field, or a Setback Line or any portion of a Setback Line on Parcels B and C of the Compensation Lands, once designated as Reserve Lands, is reasonably required to be re-surveyed by Split Lake Cree, Canada or Hydro, Hydro shall, at its expense, cause legal surveys to be carried out to the satisfaction of the Surveyor General of Canada in accordance with the Canada Lands Surveys Act.

### **3.5 General**

#### 3.5.1 Amendment – The Real Property Act (MB)

Manitoba shall recommend that Section 111 of The Real Property Act (Manitoba) be amended to provide for the registration of Easements in favour of Hydro and Manitoba, to inundate and store water.

### 3.5.2 Releases to Manitoba

The NFA, by virtue of its Articles 3, 4, and 15, makes provision for the establishment of additional reserve lands, hold areas, resource areas and Band consultation in the management of resources. Articles [3](#), [4](#) and [5](#) of this Agreement satisfy Manitoba's obligations under Articles 3, 4 and 15 of the NFA, and Split Lake Cree 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 Split Lake Cree, its successors, or assigns, have had, now have or hereafter can, shall or may have, for, or by reason of, any cause, matter or thing whatsoever up to the Date of this Agreement, or at any future time, attributable, in whole or in part, to or arising out of Articles 3, 4 and 15 of the NFA. Split Lake Cree covenants and agrees not to commence or prosecute any action, claim, demand, or proceeding on its own behalf or on behalf of any Member, Split Lake Cree Based Business, or Controlled Institution, on account of or in relation to any such matters.

### 3.5.3 Releases to Canada

Split Lake Cree releases and discharges Canada from any claims and demands, whatsoever, including claims, if any, of a fiduciary character which may arise in respect of Canada's obligations to Split Lake Cree for anything done or omitted to be done by Canada to the Date of this Agreement with respect to compensation in kind under the NFA, for Reserve Lands affected.

### 3.5.4 Covenants

The covenants provided in this Article shall not merge with the transfer of administration and control of the Compensation Lands.

### 3.5.5 Condition of Lands

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 all mineral claims have been removed. No timber permits, leases or licences have been issued or are in effect for the said lands, and any lumber removed has been for domestic use and shelter. No commitments exist in respect to the existing forest resource on the said lands. No major wildfires have occurred within the Compensation Lands during the three (3) years immediately 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.

### 3.5.6 Warranty

Split Lake 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 Split Lake Cree by persons designated by Chief and Council and found acceptable; and that Chief and Council have caused inquiries to be made among Split Lake Cree resource harvesters and Elders as to any environmental conditions within their knowledge which might render the lands unacceptable to Split Lake Cree as Reserve Lands, and no such conditions have been found.

# Article 4

## 4.0 Permit Lands and Fee Simple Lands

### 4.1 Introduction

#### 4.1.1 Introduction

This Article provides for the acquisition and right of use by Split Lake Cree of specific parcels of provincial Crown lands in the Resource Management Area.

### 4.2 Land Corporation

#### 4.2.1 Incorporation

Chief and Council shall cause the Land Corporation to be incorporated under the provisions of The Corporations Act (Manitoba) as a share capital corporation with authorized capital of one (1) common share for consideration of One Dollar (\$1.00). The registered office of the Land Corporation shall be located on the Reserve. The number of directors of the Land Corporation ("Directors") shall be a minimum of three (3) and a maximum of thirteen (13), a majority of whom shall always be Members ordinarily resident on Reserve.

#### 4.2.2 Restrictions in Articles

The Articles of Incorporation of the Land Corporation shall contain provisions restricting the business which the Land Corporation may carry on to the holding, managing, administering and maintaining of corporate assets, initially comprised of lands provided pursuant to Article 4 of this Agreement. The Articles of Incorporation shall further contain provisions setting forth all of the restrictions, conditions and procedures set forth in [section 4.3](#) of this Article.

#### 4.2.3 Ownership of Share

The one (1) common share in the Land Corporation shall be held by the Chief, in trust for all Members, such share to be voted by the Chief in a manner not contrary to the provisions of section 4.3 of this Article, and at the direction of the Chief and Council by Council Resolution.

#### 4.2.4 Declaration of Trust

The Chief, to whom such share is issued or transferred, shall execute a Declaration and Acceptance of Trust ("Declaration") as set forth in [Schedule 4.2](#) of this Agreement, providing:

- a. that such share is held by him as trustee and nominee of all Members;
- b. that he shall, immediately upon ceasing to be Chief, transfer such share to his successor;  
and,
- c. that he shall endorse the share certificate issued in his name and by Declaration authorize the Directors to transfer such share, in the event of his physical or mental infirmity or

death, to a successor Chief or, if a successor Chief is not yet elected, to the Trustees, to hold such share in trust for Split Lake Cree and to transfer such share to the successor Chief upon his entering office.

Unless and until the Chief or successor Chief has executed such a Declaration and agreed to endorse the share certificate in the Land Corporation, no share shall be issued in his name.

#### 4.2.5 Transfer of Shares

The Articles of Incorporation of the Land Corporation shall restrict the transfer of the share to the Chief and(or) the Corporate Trustee.

### [Schedule 4.3](#)

#### 4.2.6 Land Corporation By-Laws

The Chief and first shareholder of the Land Corporation shall cause By-law No. 1 to be enacted and ratified limiting the Directors of the Land Corporation to the Chief and Members as elected by Chief and Council by Council Resolution, such Members to be eighteen (18) years of age or over, not an undischarged bankrupt or a person of unsound mind so found. The By-law shall provide that the Officers of the Land Corporation ("Officers") shall be elected by a majority of the Directors, excepting the president of the Land Corporation, who shall be the Chief.

### **4.3 Approval of Land Corporation Transactions**

#### 4.3.1 Conditions Applicable

The Chief, as the nominal owner and trustee of the one (1) share of the Land Corporation, or as an officer of the Land Corporation, and(or) the Directors and Officers shall not be entitled to buy, sell, transfer, lease, mortgage, pledge, hypothecate, lien, charge, alienate, grant a right of first refusal or option to purchase or otherwise deal with or encumber either land and(or) the share unless and until Split Lake Cree have duly authorized the trustee and(or) the Directors and Officers as the case may be, to consent to such transfer, lease, mortgage, pledge, hypothecation, lien, charge, alienation, right of first refusal, option to purchase or encumbrance in accordance with the following procedures:

- a. a public meeting will be convened in accordance with [subsection 11.5.2](#) of the Indenture at which Chief and Council shall cause to be explained to the Members, the nature and significance of the proposed transfer, lease, mortgage, pledge, hypothecation, lien, charge, alienation, right of first refusal, option to purchase or encumbrance, including the planned disposition of proceeds arising from such transaction, if any; and,
- b. Chief and Council shall ensure that the trustee, Directors and(or) Officers shall not authorize or consent to such transfer, lease, mortgage, hypothecation, lien, charge, alienation, right of first refusal, option to purchase or encumbrance, unless and until a majority of the Members, eighteen (18) years of age and older, attending at such meeting vote in favour of such authorization and consent, on behalf of Split Lake Cree.



## [Article 4.3.6](#)

### 4.3.2 Majority Vote

None of, an alteration to the share structure, the amendment of the Articles of Incorporation, or the voluntary winding up of the Land Corporation, shall take place without the majority vote of the Members required by paragraph 4.3.1(b) of this Article.

### 4.3.3 Transactions with Third Parties

Notwithstanding the foregoing provisions of subsection 4.3.1 of this Article, such provisions shall not be applicable in the event that, in the opinion of the Directors the disclosure at a public meeting of the 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 such Third Party might reasonably be expected not to proceed with any such transaction, and provided that such transaction is determined by the Directors to be for the benefit of Split Lake Cree, and in that event, the Directors shall provide written notice of such determination to the Trustees fourteen (14) days prior to the intended date of entering into any such transaction with a Third Party, or such lesser period of time as the Trustees may allow. Provided the Trustees agree with the determination made by the Directors and so notify the Directors, in writing, the Directors shall be entitled to cause the Land Corporation to enter into such a transaction. Forthwith upon the completion of such a transaction a public meeting will be convened in accordance with subsection 11.5.2 of the Indenture, and Chief and Council shall cause to be explained to the Members attending such meeting, the nature and significance of the transaction.

### 4.3.4 Pledging of Title

Split Lake Cree shall cause the Land Corporation to execute a Pledge Agreement, in form and content attached as [Schedule 4.3](#) to this Agreement, whereby to secure the obligation of the Land Corporation not to sell, transfer, lease, mortgage, pledge, hypothecate, lien, charge, alienate, grant a right of first refusal or option to purchase or otherwise deal with or encumber any title to the Selected Lands in respect of which Fee Simple Title has been transferred to it pursuant to [subsection 4.5.7](#) of this Article (the "Proposed Transaction"), without first having complied with the requirements of subsections [4.3.1](#), [4.3.2](#) and [4.3.3](#) of this Article, the Land Corporation shall

- a. pledge to and deposit with the Trustees the duplicate titles to all such parcels of Fee Simple Lands; and,
- b. deposit with the Trustees duly executed registerable transfers of land for all such parcels of Fee Simple Lands in favour of the Corporate Trustee, together with any supporting documentation required by the land titles office to permit registration.

### 4.3.5 Release of Pledged Documents

Upon the Trustees receiving:

- a. written notice as provided under subsection 4.3.3 of this Article, and upon the Trustees providing to the Directors of the Land Corporation the written agreement of the Trustees to such determination contemplated under subsection 4.3.3 of this Article; or,
- b. a Council Resolution certifying that the public meeting was convened, the Proposed Transaction in respect of specifically identified parcels of land was explained as required by [paragraph 4.3.1\(a\)](#) of this Article, and a majority of Members eighteen (18) years of age or older in attendance voted in favour of authorizing the Chief as trustee, Directors and(or) Officers of the Land Corporation to consent as required by [paragraph 4.3.1\(b\)](#) of this Article and authorizing the Chief as trustee, Directors and(or) Officers to consent to the Proposed Transaction; and,
- c. a certified true copy of the resolution of the Directors of the Land Corporation consenting to and authorizing the Proposed Transaction;

the Trustees shall release to the Land Corporation the relevant duplicate titles, transfers of land, and withdrawal or partial withdrawal of caveat relevant to such transaction. Where any parcel which is the subject matter of the Proposed Transaction is a portion only of the lands described in the relevant duplicate title or transfer of land, the Land Corporation shall return to the Corporate Trustee the duplicate title and a revised transfer of land covering all the lands previously described in the said duplicate and transfer prior to their release to the Land Corporation pursuant hereto, excepting only any parcel which is the subject matter of the Proposed Transaction, and thereupon the Corporate Trustee shall withdraw any caveat registered against that parcel. Where the Proposed Transaction is not completed for any reason, the Land Corporation shall promptly return the relevant duplicate title, transfer of land, and any withdrawal of caveat which was provided pursuant hereto.

#### 4.3.6 Dividends

If the Directors propose to declare dividends in excess of ten thousand dollars (\$10 000.00), cumulatively, in any fiscal year of the Land Corporation, they shall not do so unless and until they have given notice to Split Lake Cree and Split Lake Cree have held a public meeting in accordance with [subsection 4.3.1](#) of this Article, at which the proposed disposition of dividends has been approved. Any dividends declared in amounts cumulatively of ten thousand dollars (\$10 000.00) or less, in any fiscal year of the Land Corporation, shall be paid to Split Lake Cree.

#### 4.3.7 No Obligation

Nothing in this Article or in the Indenture shall oblige the Trustees to see to the carrying out or completion of the Proposed Transaction.

[Back to Article 4.2](#)

### **4.4 Land Use Permits**

#### 4.4.1 Issuance of Permits

Manitoba will, within three (3) months of receipt of a request by Council Resolution, issue general Land Use Permits to the Land Corporation for Selected Lands, subject to the following conditions:

- a. the Land Corporation is constituted in accordance with this Agreement;
- b. the Corporate Trustee has confirmed that the Declaration has been duly executed and the endorsed share certificate, referred to therein, has been received; and,
- c. the use of the Selected Lands shall be subject to all applicable laws of Manitoba.

#### 4.4.2 Non-Conversion to Reserve

It is the intent of the Parties that the Selected Lands shall not be Reserve Lands subject to the Indian Act (Canada), and, in particular that Sections 35 and 36 of the Indian Act (Canada) shall have no application to the Selected Lands. Any general Land Use Permits issued in relation to the Selected Lands may be cancelled by Manitoba without notice, at any time, should any action be taken by any Party to this Agreement to make such Selected Lands subject to the Indian Act (Canada).

#### 4.4.3 Permits to Third Parties

Nothing in this Article shall affect the right of any person, not a Party to this Agreement, to acquire a land use permit within the Resource Management Area, other than in respect of the Selected Lands.

### **4.5 Transfer in Fee Simple Title**

#### 4.5.1 Request for Fee Simple Title

At any time after receipt of any Land Use Permit under [subsection 4.4.1](#) of this Article, Split Lake Cree may request by Council Resolution that Fee Simple Title to all or any parcel of the Selected Lands be transferred to the Land Corporation.

#### 4.5.2 Legislation by Canada

In recognition of the intent of the Parties that Sections 35 and 36 of the Indian Act (Canada) shall have no application to the Selected Lands, Canada shall recommend the enactment of legislation to ensure the said Sections 35 and 36 do not apply to the Selected Lands, and when enacted shall proclaim such legislation in force.

#### 4.5.3 Surveys

Upon receipt of a request under subsection 4.5.1 of this Article, and the proclamation by Canada of legislation required under subsection 4.5.2 of this Article, Manitoba will:

- a. schedule surveys within such reasonable period as may be determined taking into account the then current volume of legal surveys; and,

- b. advise Split Lake Cree of the date on which legal surveys will commence on each parcel of the Selected Lands for which Fee Simple Title has been requested.

#### 4.5.4 Water Body Boundaries

The water body boundary for the Selected Lands shall be the Ordinary High Water Mark observed in the field or established by surveys, except where the Selected Lands:

- a. are subject to water erosion and other hazards as defined in Regulation 480/88R under The Planning Act (Manitoba), in which case the water body boundary shall be a line, established by Manitoba, following consultation with Split Lake Cree, based upon the reasonable criteria necessary for protection from such hazard or erosion, such determination to be made prior to the expiry of six (6) months from the scheduled commencement of each survey scheduled under paragraph 4.5.3(b) of this Article;
- b. are adjacent to a water body which is subject to a Water Power Licence, such as Stephens Lake, in which case the water body boundary shall be a line established by Manitoba and approved by Hydro; or,
- c. are adjacent to a water body which is subject to a Water Power Reserve, in which case the water body boundary shall be the upper boundary established by that Water Power Reserve in all instances except for that parcel of Selected Lands identified as Clark Lake or Split Lake where the water body boundary shall be a contour line at approximate elevation 172.00 m (564.3 ft.) ASL Local Datum. Hydro will identify those locations, based upon the same criteria used for establishing Setback Lines, where the said water body boundary is to be above the said contour.

#### 4.5.5 Level Fluctuations – Kettle Forebay

It is acknowledged that Stephens Lake is the forebay of the Kettle Generating Station and is operated, pursuant to a licence issued by Manitoba, as a forebay for the production of hydro-electric power. As a consequence, the levels of Stephens Lake will be subject to frequent changes to meet demands for hydro-electric power. Accordingly, as a condition of the conveyance of Selected Lands on Stephens Lake, and as contemplated by subsection 13(2)(a) of The Crown Lands Act (Manitoba), Split Lake Cree, the Land Corporation and their successors in title shall not be entitled to compensation for such fluctuations in level. This condition is intended to be, and is, a covenant running with the land, and notice of such covenant may be given by filing a caveat in the appropriate land titles office.

#### 4.5.6 Deviations

Nothing in subsection 4.5.5 of this Article is intended to limit any liability of Hydro for deviations from the Post Project Water Regime pursuant to Article 2 of this Agreement.

#### 4.5.7 Transfer of Title

Upon completion of the legal survey of each parcel of the Selected Lands, and confirmation from Split Lake Cree, evidenced by Council Resolution, that such parcel conforms to this Agreement, Manitoba will transfer Fee Simple Title in that parcel to the Land Corporation.

#### [Article 4.3.5](#)

##### 4.5.8 Reservations to Manitoba

Where any parcel of the Selected Lands is transferred in Fee Simple Title to the Ordinary High Water Mark, there is reserved to Manitoba, out of each such disposition, those reservations contained in subsections 4(1)(b), (c), (d), (e) and (f) of The Crown Lands Act (Manitoba). The reservation contained in subsection 4(1)(a) of The Crown Lands Act (Manitoba) will not be reserved to Manitoba.

##### 4.5.9 Costs of Surveys and Transfers

Subject to subsection 4.5.10 of this Article, Manitoba shall complete all surveys, transfers and registrations of title for each parcel of the Selected Lands for which Fee Simple Title has been requested, including Registration Detail Applications and forms of Request, at no cost to Split Lake Cree, the Land Corporation or Canada, including payments of any land transfer tax which may otherwise be payable. 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 each parcel of the Selected Lands for which Fee Simple Title has been requested.

##### 4.5.10 Costs Chargeable

Should, for any reason, Split Lake Cree, or the Land Corporation, decline to accept Fee Simple Title for any parcel after the commencement of the legal survey for such parcel, the cost of such legal survey, the cost of registration of title, if incurred, and other reasonable costs will be a charge to Split Lake Cree, payable to Manitoba on demand.

## **4.6 General Conditions**

### 4.6.1 Waiver of Fees and Charges

Manitoba shall waive any fees or charges for the issuance and continuance of Land Use Permits acquired and renewed under this Article during the term specified in subsection 4.6.2 of this Article. Any lands required to be held under Land Use Permit by the Land Corporation at the expiry of the term specified in subsection 4.6.2 of this Article shall be subject to fees and charges due and payable by the Land Corporation in accordance with The Crown Lands Act (Manitoba).

### 4.6.2 Term of Provisions

Manitoba, after three (3) years from the Date of this Agreement, may withdraw the waiver of fees or charges for Land Use Permits under subsection 4.6.1 of this Article; provided that, if at

that time Canada has not yet proclaimed the legislation contemplated in [subsection 4.5.2](#) of this Article, then Split Lake Cree, may, at its option, request Manitoba to replace some or all of the Land Use Permits with leases, to be issued to the Land Corporation in accordance with The Crown Lands Act (Manitoba). Upon the subsequent enactment and proclamation of the contemplated legislation, Split Lake Cree may request that the Selected Lands, whether held under lease or Land Use Permit, be transferred to Fee Simple Title.

#### 4.6.3 Releases to Manitoba

The NFA, by virtue of its Articles 3, 4, and 15, makes provision for the establishment of additional reserve lands, hold areas, resource areas and Band consultation in the management of resources. Articles [3](#), [4](#) and [5](#) of this Agreement satisfy Manitoba's obligations under Articles 3, 4 and 15 of the NFA, and Split Lake Cree 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 Split Lake Cree, its successors, or assigns, have had, now have or hereafter can, shall or may have, for, or by reason of, any cause, matter or thing whatsoever up to the Date of this Agreement, or at any future time, attributable, in whole or in part, to or arising out of Articles 3, 4 and 15 of the NFA. Split Lake Cree covenants and agrees not to commence or prosecute any action, claim, demand, or proceeding on its own behalf or on behalf of any Members, Split Lake Cree Based Business, or Controlled Institution, on account of or in relation to any such matters.

#### 4.6.4 Releases to Canada

Split Lake Cree releases and discharges Canada from any claims and demands, whatsoever, including claims, if any, of a fiduciary character which may arise in respect of Canada's obligations to Split Lake Cree for anything done, including any legislation enacted pursuant to this Article, or omitted to be done by Canada to the Date of this Agreement in relation to the matters dealt with in this Article.

#### 4.6.5 Expropriation

If any of the Selected Lands, while under the ownership and control of the Land Corporation or another corporation wholly owned and controlled by Split Lake Cree, are expropriated under the legislative authority of Manitoba, the Land Corporation or such wholly owned and controlled corporation 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, subject to the agreement of Manitoba and Split Lake Cree, in accordance with the provisions of The Crown Lands Act (Manitoba).

#### 4.6.6 Merger

The covenants provided in this Article shall not merge with the transfer of Selected Lands.

# **Article 5**

## **5.0 Integrated Land Use and Resource Management**

### **5.1 Introduction**

#### 5.1.1 Introduction

This Article provides for the designation of the Resource Management Area and the establishment of the Resource Management Area Board.

### **5.2 The Split Lake Resource Management Area**

#### 5.2.1 Designation of Area

Integrated Land Use and Resource Management is to be achieved by the coordinated application of Manitoba and Split Lake Cree authority, and to this end Manitoba and Split Lake Cree shall each, within their respective authority and powers, take the necessary steps to designate the land areas described and shown in [Schedule 5.1](#) of this Agreement, and the waters lying within the identified areas, as part of the Resource Management Area for the purposes of Integrated Land Use and Resource Management.

#### 5.2.2 Amendment of Area

The lands and waters which are included in the Resource Management Area may be amended, from time to time, by agreement between Manitoba and Split Lake Cree.

#### 5.2.3 Restriction

Notwithstanding subsections 5.2.1 and 5.2.2 of this Article, there shall be no restrictions or impediments imposed by this Agreement with respect to any lands held, acquired, to be acquired, or expropriated by, or transferred or transferrable to Canada, other than Reserve Lands; nor to any interest in or use of lands required by Manitoba or Canada for the purposes of fulfilling obligations to which the provisions of any one or more of Section 11 of the Manitoba Natural Resources Transfer Agreement, 1930, Section 35 of the Constitution Act, 1982, Section 35 of the Indian Act (Canada), the NFA or Treaty No. 5 apply.

### **5.3 The Split Lake Resource Management Board**

#### 5.3.1 Establishment of Board

Manitoba and Split Lake Cree shall each, within ninety (90) days of the Date of this Agreement, appoint five (5) members to constitute the Resource Management Area Board (the "Board"). Manitoba agrees with Hydro that one (1) of its appointees may be selected in consultation with Hydro. Manitoba and Split Lake Cree agree to participate in the Board in such a fashion as to implement Integrated Land Use and Resource Management and to accommodate the interests of

Split Lake Cree and Manitoba, in the Resource Management Area. By agreement between Manitoba and Split Lake Cree, which agreement shall not be unreasonably withheld, the number of appointees may be increased to accommodate representation of interests in the Resource Management Area, provided that there will always be an equal number of appointees by Manitoba and Split Lake Cree.

#### 5.3.2 Selection of Chair

The members of the Board shall select a chair from among the members, and establish rules and procedures for the conduct of the business of the Board. The member selected as chair shall continue to have a vote as a member but shall have no additional or deciding vote as the chair.

#### 5.3.3 Quorum

A quorum of the Board shall be a majority of the members, including at least three (3) appointees of each of Manitoba and Split Lake Cree.

#### 5.3.4 Annual Program and Budget

The Board shall prepare annual programs and budgets, subject to review and approval by the Minister and Chief and Council. Such programs and budgets will be prepared in accordance with guidelines determined by the Board, in consultation with the Minister and Chief and Council, and may include anticipated requirements for:

- a. staff, facilities, equipment and administration;
- b. public meetings, consultations and hearings;
- c. research, publications and public education;
- d. technical assistance; and,
- e. other programs or activities as deemed necessary by the Board for the purposes of this Article.

#### 5.3.5 Technical Support

Technical support and programs for land use planning and natural resource management, available from Manitoba, will be made available to, and coordinated with programs of the Board, without charge, except in those instances where a set fee or charge has been established, in which case the set fee or charge will be levied unless otherwise agreed by Manitoba.

#### 5.3.6 Sharing of Costs

Manitoba and Split Lake Cree will pay the costs incurred by each in support of their members on the Board. Other costs to be incurred will be shared by Manitoba and Split Lake Cree in a proportion to be determined jointly at the time of the review and approval of the annual program and budget under subsection 5.3.4 of this Article. For this purpose, Chief and Council shall have the authority to request money from Accounts or Reserve Accounts established pursuant to the



Indenture, consistent with the Appropriate Uses, Article 10 of this Agreement, and Article 11 of the Indenture.

#### 5.3.7 Fiscal Year

The fiscal year of the Board will correspond with the fiscal year of Manitoba.

#### 5.3.8 Annual Report

The Board shall produce and provide to the Minister and Chief and Council an annual report of its activities, within three (3) months of the end of each fiscal year.

### **5.4 Powers and Purposes of the Board**

#### 5.4.1 Powers

In order to promote Integrated Land Use and Resource Management, the Board may:

- a. assess the appropriate consumptive and non-consumptive uses and enjoyment of the lands and resources within the Resource Management Area;
- b. monitor the actual uses of the lands and resources within the Resource Management Area, and the extent of compliance with authorized uses;
- c. consider what processes would be suitable for varying any authorized uses, and recommend the terms and conditions under which such variances may be allowed;
- d. investigate the nature and extent of Fish and Wildlife populations and their habitat;
- e. identify areas of significant Fish and Wildlife and the measures which would preserve and enhance such areas, including land use plans, zoning, water control schemes and monitoring procedures;
- f. consider what quotas, limits and harvesting practices would be appropriate for domestic, commercial and recreational use of renewable resources, consistent with aboriginal rights and requirements;
- g. view specific plans for forest, land and water management, the harvesting of resources, the extraction of minerals and commercial ventures associated with such endeavours, including tourism;
- h. hold such public meetings and consultations and conduct or participate in research, meetings or hearings as will promote the goals of sustainable economic development and resource management practices in the Resource Management Area;
- i. identify areas of ecological, cultural and historical significance; and,
- j. prepare a communication and information strategy.

#### 5.4.2 No Sharing of Revenues

The powers and purposes of the Board do not extend to or include consideration of royalties, revenues, income or other payments derived from or attributable to resources, including minerals. Nothing in this Article entitles Split Lake Cree to share in any royalties, revenues, income or other payments derived from or attributable to resources, including minerals, situate

in, on or under lands within the jurisdiction of Manitoba. Nothing in this Article entitles Manitoba to share in any royalties, revenues, income or other payments derived from or attributable to resources, including minerals, situate in, on or under lands within the jurisdiction of Split Lake Cree.

## **5.5 Land Use Planning**

### **5.5.1 Land Use Plans**

The Board shall develop and recommend any one or more of a Basic Planning Statement, a Development Plan and(or) other land use plan for the Resource Management Area, or any part thereof, for the purpose of determining and guiding development policies and decisions. Any such statement or plan may include provisions:

- a. for the zoning of lands and waters for purposes of establishing and regulating activities thereon;
- b. for the preservation, protection and management of Fish and Wildlife, including the regulation of habitat for such purposes;
- c. for policies under which any Trapper or Commercial Fisherman may exercise the right to utilize unoccupied provincial Crown land within the Resource Management Area, to construct and(or) personally occupy a cabin or shelter for purposes of trapping within a Registered Trapline, commercial fishing or hunting, without first obtaining a land use permit, and the means by which such uses shall be recorded for administrative purposes;
- d. dealing with any matter arising out of, or ancillary to, the above matters; and,
- e. giving a role to the Board in the administration of the statement or plan

### **5.5.2 Application of Plans**

Statements or plans for the Resource Management Area shall not apply to any land or water not included in the Resource Management Area and, further, shall not apply to lands or waters within the boundaries of a Municipality, where such Municipality has adopted a Development Plan or Basic Planning Statement under The Planning Act (Manitoba). Provided that, if a boundary of a Municipality is created or altered so as to include any lands or waters subject to any plan or statement developed in accordance with this Article, such plan or statement shall continue to apply until a Development Plan or Basic Planning Statement adopted by the Municipality is approved for the lands and waters affected. Statements or plans for the Resource Management Area shall not apply to lands or waters within the boundaries of a Community. If a Community boundary is created or altered so as to include any portion of the Resource Management Area, any statement or plan developed in accordance with this Article shall not apply.

## **5.6 Resource Management Planning**

### **5.6.1 Resource Management Plans**

Manitoba and Split Lake Cree recognize that aboriginal people, including Split Lake Cree, have priority rights to the harvesting of Fish and Wildlife resources within the Resource Management Area, based on their rights recognized and affirmed by Section 35 of the Constitution Act, 1982. In section 15.1 of the NFA, Manitoba agreed, as a matter of policy, subject to certain limitations, to grant to Split Lake Cree priority rights to those wildlife resources in the Resource Management Area traditionally available to and used by Split Lake Cree as a source of food supply, income-in-kind and income. Split Lake Cree and Manitoba recognize that, subject to the rights of aboriginal people, and subject to resource management plans in force, other individuals shall be able to hunt, trap and(or) fish in the Resource Management Area. Manitoba and Split Lake Cree recognize that provisions for conservation, management and protection of the Fish and Wildlife resources in the Resource Management Area will be necessary. Actions under this Article, by the Board, Chief and Council, and the Minister, shall be consistent with the rights of Split Lake Cree, and other aboriginal people, the rights of other individuals, and the need for the conservation, management and protection of the Fish and Wildlife resources in the Resource Management Area.

#### 5.6.2 Development of Resource Management Plans

The Board shall develop and recommend resource management plans for the Resource Management Area, or any part thereof.

#### 5.6.3 Scope of Resource Management Plans

Resource management plans, developed and recommended by the Board, may deal with:

- a. Fish and Wildlife population goals;
- b. total allowable harvesting levels;
- c. species enhancement;
- d. habitat protection and enhancement;
- e. methods of harvesting;
- f. health and safety considerations;
- g. preservation, treatment, packaging or marketing of renewable resources;
- h. procedures for the assignment or reassignment of new, vacant or under-utilized traplines, fishery quotas and wild rice leases;
- i. domestic harvesting needs and priorities;
- j. leases, permits or quotas required for commercial and subsistence harvesting of renewable and non-renewable resources, including timber;
- k. enforcement considerations;
- l. conflicting uses of land;
- m. establishing criteria for the protection of Fish and Wildlife and their habitat in connection with forest and mineral developments;
- n. protection of particular species, and, in particular, rare, threatened and endangered species;
- o. facilitating commercial uses, including tourism and sports fishing; and,
- p. protection of areas of ecological, cultural or historical significance.

#### 5.6.4 Application of Plans

Resource management plans established in accordance with this Article shall cover any part of the Resource Management Area to the extent that they are reasonably determined not to be in conflict with any Development Plan or Basic Planning Statement in effect within a boundary of a Municipality or Community.

#### 5.6.5 Amendment of Plans

The Board may, in respect to a resource management plan, or any other measure, policy or practice in effect in the Resource Management Area, submit for the consideration of the Minister and(or) Chief and Council, a resolution of the Board relating to any matter in subsection 5.6.3 of this Article, recommending an amendment of a plan, policy or practice which, in the opinion of the Board, is necessary for the administration and protection of resources in the Resource Management Area. Such resolutions shall be considered and dealt with in accordance with [section 5.8](#) of this Article.

### **5.7 Consultation, Assistance and Disclosure**

#### 5.7.1 Public Meetings

In the course of the development or substantial revision of a Development Plan, Basic Planning Statement, other land use plan, and (or) resource management plan, the Board shall hold public meetings to receive comments and submissions. The Board may provide information to interested parties, and to persons attending the public meetings, to allow for informed discussion and comment on the issues being considered by the Board. In particular, in regard to resource management plans or resolutions respecting renewable resources, the Board shall hold public meetings or otherwise consult with the fur councils, fishermen's associations, and other resource users active in the Resource Management Area.

#### 5.7.2 Provision of Information

Manitoba and Split Lake Cree will, upon request, provide the Board with any information within their control which would assist the Board to properly carry out its responsibilities, provided such information is not privileged, or restricted by commercial confidentiality. Where a set fee or charge has been established for the provision of information, that set fee or charge will be levied, unless otherwise agreed by the Party from which the information is requested.

#### 5.7.3 Assistance to the Board

The Minister shall, on request, provide assistance to the Board as to the application of existing provincial statutes, regulations and policies governing the management, use and harvesting of the lands and resources, including Fish and Wildlife, in the Resource Management Area, and such additional assistance as may be required by the Board, including prior consultation, review and advice on drafting of such resolutions as may be deemed appropriate by the Board, but such assistance or additional assistance shall not in any way imply or ensure approval by Manitoba.

## **5.8 Approval of Plans and Statements**

### **5.8.1 Approval**

Any Basic Planning Statement, Development Plan, land use plan, resource management plan or resolution developed by the Board shall be forwarded to:

- a. the Minister; and,
- b. Chief and Council;

for approval, enactment, or other appropriate action, consistent with the respective authority and powers of Manitoba and Split Lake Cree.

### **5.8.2 Rejection**

If the Minister (or other appropriate provincial authority), or Chief and Council are unwilling, or unable, to approve a statement, plan or resolution of the Board, the Minister or Chief and Council will, within sixty (60) days of the receipt of the statement, plan or resolution, refer the matter to the Board for further consideration, with written reasons for the rejection.

### **5.8.3 Resubmission by the Board**

The Board may, within thirty (30) days of receipt of notice under subsection 5.8.2 of this Article, forward to the Minister and Chief and Council, a decision of the Board:

- a. revising the statement, plan or resolution;
- b. submitting the statement, plan or resolution for reconsideration with such additional information as the Board may deem relevant; or,
- c. withdrawing the statement, plan or resolution.

### **5.8.4 Final Decision**

The Minister (or other appropriate provincial authority), and Chief and Council shall, within sixty (60) days of a submission by the Board under paragraphs 5.8.3 (a) or (b) of this Article, advise the Board of their final decision in respect to the matter in question.

### **5.8.5 Extensions**

Time limits set forth in this section may be extended by agreement of Split Lake Cree, Manitoba and the Board.

### **5.8.6 Withdrawal of Plans**

In the absence of approval by both the Minister (or other appropriate provincial authority), and Chief and Council, pursuant to section 5.8 of this Article, any Basic Planning Statement,

Development Plan, land use plan, resource management plan or resolution developed by the Board shall be withdrawn and have no force or effect.

#### 5.8.7 Amendments

Any Basic Planning Statement, Development Plan, land use plan or resource management plan may be amended, as it relates to lands within the jurisdiction of Manitoba, by the Minister (or other appropriate provincial authority) with notice to but with or without the approval of Chief and Council, and as it relates to lands within the jurisdiction of Split Lake Cree, by Chief and Council, with notice to but with or without the approval of Manitoba, provided that prior to such amendment being made, the proposed amendment shall be submitted to the Board for its consideration and recommendation. Recommendations by the Board, if any, shall be made within sixty (60) days of its receipt of the proposed amendment and the Board shall not be bound by section 5.7 of this Article in its consideration of such proposed amendment. If any recommendation by the Board is not followed by the Minister (or other appropriate provincial authority) as it relates to lands within the jurisdiction of Manitoba, or by Chief and Council as it relates to lands within the jurisdiction of Split Lake Cree, then the Minister (or other appropriate provincial authority) or Chief and Council shall, prior to implementing the amendment, provide written reasons for rejecting the recommendation of the Board.

#### 5.8.8 No Derogation

The approval processes set forth in section 5.8 of this Article, do not derogate from the authority of Split Lake Cree and Manitoba with regard to the lands and resources in their respective jurisdictions.

### [Article 5.7](#)

## **5.9 Interim Management**

### 5.9.1 Resource Allocations

Pending approval of any Basic Planning Statement, Development Plan, land use plan or resource management plan, Manitoba and Split Lake Cree shall refer to the Board requests for resource allocations, including any applications for land use permits, under consideration by Manitoba or Split Lake Cree, with respect to lands and resources within the Resource Management Area. The Board may, within forty-five (45) days of referral, submit resolutions with respect to such allocations or land uses in accordance with section 5.8 of this Article. In the absence of a resolution being submitted within the time provided, Manitoba may process the said applications for land use permits, and Manitoba and Split Lake Cree may act upon requests for resource allocations within their respective jurisdictions. Requests for resource allocations or applications for land use permits received prior to the establishment of the Board will be deferred pending it being established, and then referred to the Board.

## **5.10 General**

#### 5.10.1 Ownership of Resources

Nothing in this Article is intended to confer rights of ownership in Fish and Wildlife or other resources.

#### 5.10.2 Access to Lands

Nothing in this Article will be so construed as to prevent or hinder the entry of any person on provincial Crown lands within the Resource Management Area for any lawful purpose.

#### 5.10.3 Releases to Manitoba

The NFA, by virtue of its Articles 3, 4 and 15, makes provision for the establishment of additional reserve lands, hold areas, resource areas and Band consultation in the management of resources. [Articles 3](#), [Articles 4](#) and 5 of this Agreement satisfy Manitoba's obligations under Articles 3, 4 and 15 of the NFA, and Split Lake Cree 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 Split Lake Cree, its successors, or assigns, have had, now have or hereafter can, shall or may have, for, or by reason of, any cause, matter or thing whatsoever up to the Date of this Agreement, or at any future time, attributable, in whole or in part, to or arising out of Articles 3, 4 and 15 of the NFA. Split Lake Cree covenants and agrees not to commence or prosecute any action, claim, demand, or proceeding on its own behalf or on behalf of any Member, Split Lake Cree Based Business, or Controlled Institution, on account of or in relation to any such matters.

#### 5.10.4 Releases to Canada

Split Lake Cree releases and discharges Canada from any claims and demands, whatsoever, including claims, if any, of a fiduciary character, which may arise in respect of Canada's obligations to Split Lake Cree for anything done or omitted to be done by Canada to the Date of this Agreement in relation to the matters dealt with in this Article.

#### 5.10.5 Extent of Authority under the Indian Act

Canada gives no warranty as to the existence or extent of the authority of Split Lake Cree under the Indian Act (Canada), in relation to the various subjects on which the Board may make recommendations for actions by Chief and Council. Nothing in this Article alters any statutory requirements for approval or action by Canada, of any action to be taken or thing to be done by Split Lake Cree or Chief and Council pursuant to this Article.

#### 5.10.6 Limit of Powers

Nothing in this Article is intended to contemplate the exercise of power under federal statutes or regulations other than the Indian Act (Canada) or other authorities exercisable by Split Lake Cree.

### 5.10.7 Jurisdictional Authority

Nothing in this Article shall derogate from the authority of Split Lake Cree, Manitoba, or Canada with regard to the lands and resources in their respective jurisdictions.

### **Schedule 5.1 The Split Lake Resource Management Area**

All lands and waters within the Split Lake Trapline Zone, as shown on Plan 5.1, are included within the Split Lake Resource Management Area with the exception of:

1. Trapline #13 which has been allocated by Split Lake Cree to the York Factory Indian Band;
2. The reserve of the York Factory Indian Band;
3. The reserves of the Fox Lake Indian Band;
4. Lands within a Municipality or Community designated or occupied, from time to time, for residential, commercial, industrial or associated purposes;
5. Areas of Reserve Lands designated or occupied, from time to time, for residential, commercial, industrial or associated purposes.



# Article 6

## 6.0 Environmental Monitoring and Investigation

### 6.1 Introduction

#### 6.1.1 Introduction

This Article is to establish and describe the Appropriate Uses, procedures for application, and requirements for management, accountability and expenditure of moneys from the Environmental Monitoring Account, and to describe the four (4) Party arrangements with respect to environmental monitoring.

### 6.2 Financing

#### 6.2.1 Payments

Hydro and(or) Manitoba and Canada shall pay to Split Lake Cree in aggregate the sum of one million five hundred and eight thousand dollars (\$1,508,000.00), to fund the Environmental Monitoring Account, in instalments, on the dates, and in accordance with the Financial Schedule.

#### 6.2.2 Release

Split Lake Cree hereby releases and forever discharges Canada, Manitoba and, subject to the limitations contained in [section 15.4](#) of this Agreement, Hydro, of and from any and all actions, causes of actions, suits, claims, demands, losses or damages of any nature or kind whatsoever, at law or in equity, which Split Lake Cree, its successors, or assigns, have had, now have, or hereafter can, shall or may have, for or by reason of, any cause, matter or thing whatsoever up to the Date of this Agreement, or at any future time, attributable, in whole or in part, to or arising out of the environmental or other related monitoring provisions of the NFA, and recommendations 5 and 10 of the Lake Winnipeg and Churchill-Nelson Rivers Diversion Study Board, Summary Report, 1975.

#### 6.2.3 Settlement of Claims and Obligations

This Agreement, and in particular, but without limitation, this Article, and the related monitoring provisions of Articles [2](#) and [5](#) of this Agreement, are in full satisfaction of the environmental and related monitoring provisions of, or pursuant to, Article 17 of the NFA, and recommendations 5 and 10 of the Lake Winnipeg and Churchill-Nelson Rivers Diversion Study Board, Summary Report, 1975. Split Lake Cree covenants and agrees not to commence or prosecute any action, claim, demand, or proceeding on its own behalf or on behalf of any Member, Split Lake Cree Based Business or Controlled Institution on account of or in relation to any or all of the matters dealt with and released in subsection 6.2.2 of this Article.

#### 6.2.4 Legislation

Nothing in this Article shall require any Party to take any action in relation to environmental monitoring not otherwise provided for in this Agreement or required by statute or regulation. Further, this Article does not modify or exempt any Party from any requirement related to environmental monitoring arising under this Agreement or statute or regulation.

### **6.3 Environmental Agency**

#### 6.3.1 Establishment

Chief and Council shall establish an agency of the Split Lake Cree government for the purposes of environmental monitoring and related activities on the Reserve and in the Resource Area. Such environmental monitoring may be done independently, or, by agreement, jointly with any, or all, of the other Parties.

### **6.4 The Trust**

#### 6.4.1 Appropriate Uses

Appropriate Uses of the Environmental Monitoring Account shall be:

- a. the gathering of data on environmental conditions;
- b. the recommendation and commissioning of environmental investigation or monitoring activities in relation to Adverse Effects on Reserve or in the Resource Area, including those Adverse Effects referenced in [subsection 15.4.1](#) of this Agreement, and further including those Adverse Effects which may be the subject matter of compensation claims under Articles [8](#) or [9](#) of this Agreement;
- c. the direction or preparation of environmental studies, investigations or other work, including, without limitation;
  - i. investigations of the apprehended or actual implications of development within the Resource Area, and,
  - ii. studies of environmental aspects of regulatory, or other joint resource management proposals, under Article 5 of this Agreement;
- d. the communication and discussion of environmental activities and findings;
- e. community consultation in connection with environmental activities and findings;
- f. Split Lake Cree preparation for, and participation in, meetings and related activities contemplated by section 6.5 of this Article; and,
- g. such other related activities as Chief and Council may direct in relation to environmental audits, impact statements or impact assessments.

#### 6.4.3 Request for Funds

Chief and Council may request funding from the Income of the Environmental Monitoring Account in accordance with the procedures set forth in the Indenture and in Article 10 of this Agreement.

### **6.5 Four Party Arrangements**

### 6.5.1 Responsibility

The Executive Implementation Committee shall be responsible for scheduling and convening meetings in accordance with section 6.5 of this Article.

### 6.5.2 Meetings

Two (2) meetings will be held in each calendar year, within forty-five (45) days of each of April 1 and October 15, or such greater or fewer number of meetings as may be unanimously agreed upon by the members of the Executive Implementation Committee.

### 6.5.3 Representatives of the Parties

The members of the Executive Implementation Committee will arrange, respectively, for representatives of Split Lake Cree and Hydro, and of applicable departments of the Government of Canada and of Manitoba, to be in attendance at such meetings.

### 6.5.4 Convenor of Meetings

The federal member of the Executive Implementation Committee will play a coordinating role in initiating and arranging the date, time, venue, agenda, exchange of available documentation, and requests for information prior to the meeting. Such preparation will be commenced not later than sixty (60) days (or such other period as may be agreed to unanimously by the members of the Executive Implementation Committee) in advance of the projected dates for the Spring, Fall and other meetings.

### 6.5.5 Expenses

Each Party will bear its own costs in connection with the provisions of section 6.5 of this Article.

### 6.5.6 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 Area, as is reasonable and practicable to provide;
- b. discuss plans of any Parties to conduct investigations of environmental conditions in or near the Resource Area;
- c. discuss contemplated environmental monitoring or investigations to be undertaken by any Party in or near the Resource Area, pursuant to provisions of this Agreement or any statute or regulation;
- d. consider whether, and to what extent, it is practical for any activities under (b) or (c) to be adjusted, to accommodate the environmental assessment interests of the other Parties, without prejudicing the interests of the Party whose activities are to be adjusted; 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 Parties.

#### 6.5.7 Determination

The four (4) Party arrangement contemplated by this Article may be held in abeyance or terminated by the mutual agreement of all Parties, and shall, unless otherwise mutually agreed, terminate at the end of the Project, or if the representative of Split Lake Cree fails to attend four (4) successive meetings, without being excused or without reasonable cause.

# Article 7

## 7.0 Economic and Social Development

### 7.1 Introduction

#### 7.1.1 Introduction

This Article is to establish and describe Appropriate Uses, procedures for application, and requirements for management, accountability and expenditure of moneys from the Economic and Social Development Account established as part of the Indenture.

### 7.2 Financing

#### 7.2.1 Payments

Hydro and (or) Manitoba, and Canada shall pay to Split Lake Cree in aggregate the sum of twelve million, two hundred and one thousand dollars (\$12,201,000.00) to fund the Economic and Social Development Account, in instalments, on the dates, and in accordance with the Financial Schedule.

#### 7.2.2 Acknowledgment

Split Lake Cree acknowledges that the compensation and development arrangements in this Article 7, including the establishment of the Tataskweyak Development Corporation, provide management authority, disclosure and accountability to, and within, Split Lake Cree; and that none of Manitoba, Hydro, and Canada shall be responsible for the effectiveness of these arrangements or for the operation of the Tataskweyak Development Corporation. Split Lake Cree acknowledges that there is no sanction or warranty, either express or implied, by any of Manitoba, Hydro, or Canada, that the arrangements in this Article, including the establishment and operation of the Tataskweyak Development Corporation, will result in the attainment of the development or other purposes of Split Lake Cree. Subsection 7.2.2 of this Article does not alter or qualify the obligations of Canada, Manitoba or Hydro pursuant to this Agreement.

#### 7.2.3 Releases

Split Lake Cree releases and forever discharges Canada, Manitoba, and, subject to the limitations contained in [section 15.4](#) of this Agreement, Hydro, 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 Split Lake Cree, its successors, or assigns, have had, now have or hereafter can, shall or may have, for, or by reason of, any cause, matter or thing whatsoever up to the Date of this Agreement, or at any future time, attributable, in whole or in part, to or arising under Articles 12.3, 16 and 18 and Schedule E of the NFA, and the Economic Development Agreement, dated September 1, 1977. Split Lake Cree covenants and agrees not to commence or prosecute any action, claim, demand, or proceeding on its own behalf or on behalf of any Member, Split Lake Cree Based Business, or Controlled Institution on account of or in relation to any such matters.

## 7.3 Compensation

### 7.3.1 Personal Compensation

Split Lake Cree has used, and will use, the moneys set aside for compensation for individual Members, under Articles 7, [8](#) and [9](#) of this Agreement, except compensation for the taking of or damage to real property or real property interests, to finance, in four (4) instalments, a payment totaling two thousand two hundred and fifty dollars (\$2,250.00) to each Eligible Compensation Beneficiary as defined in subsection 7.3.2 of this Article. This cash compensation represents a small portion of the total implementation package, which will assist in the alleviation of Adverse Effects experienced to the Date of this Agreement by Split Lake Cree and Members, by supplementing other compensation and development arrangements provided for in this Agreement. In accordance with the procedures set out in Articles [8](#) and [9](#) of this Agreement, the payments to Eligible Compensation Beneficiaries under section 7.3 of this Article will be credited against any other entitlement they may have pursuant to Articles 8 and 9 of this Agreement.

[Article 7.4](#)

[Article 9.8.1](#)

### 7.3.2 Eligible Compensation Beneficiaries

Any Member who is, or has been, ordinarily resident on Reserve, at any time from 1977 to, the earlier of, the date of payment or the Date of this Agreement, or, any Member who is, or has been, ordinarily resident in the Resource Area, at any time from 1977 to, the earlier of, the date of payment or the Date of this Agreement, and who has suffered an Adverse Effect, is eligible to receive cash compensation payments pursuant to subsection 7.3.1 of this Article. Eligibility of any individual Member shall be determined in accordance with these standards, by Chief and Council upon application for compensation by, or on behalf of, such Member. Decisions by Chief and Council with respect to eligibility may be appealed to a Tribunal, and the provisions of [subsections 8.4.7 and 8.4.8](#) of this Agreement shall apply with such changes as the context requires. In the event of an appeal to a Tribunal, the onus of proof as to an Adverse Effect shall be as set out in [subsection 16.7.23](#) of this Agreement. The decision of the Tribunal shall be final and shall be subject to no further appeal.

[Article 7.3.7](#)

[Article 7.3.8](#)

### 7.3.3 Payments prior to Agreement

Chief and Council warrant that, from moneys advanced by Manitoba and (or) Hydro as set out in the Financial Schedule, a one thousand seven hundred and fifty dollar (\$1,750.00) payment was paid to each Eligible Compensation Beneficiary of whom Chief and Council had notice at the time the funds were paid, and where minors were involved, the funds were paid in accordance with [subsection 7.3.6](#) of this Article. Specifically, on December 19, 1990 those aged 60 years or older received one thousand dollars (\$1,000.00), and those aged less than 60 years, on that date,

received five hundred dollars (\$500.00); on August 20, 1991, those aged 60 years and older, at December 19, 1990, received five hundred dollars (\$500.00), and those aged less than 60 years on December 19, 1990, received one thousand dollars (\$1,000.00); and on December 20, 1991 all eligible Members received two hundred and fifty dollars (\$250.00).

#### 7.3.4 Final Instalment

After the Date of this Agreement, the final instalment of five hundred dollars (\$500.00) will be paid to each Eligible Compensation Beneficiary as defined in [subsection 7.3.2](#) of this Article, and will be attributable to the Resource compensation and Asset Damage Compensation purposes of this Agreement.

#### 7.3.5 Unpaid Instalments

Chief and Council shall pay any unpaid portion of the two thousand two hundred and fifty dollar (\$2,250.00) payment, to each Eligible Compensation Beneficiary, as set out in subsection 7.3.2 of this Article, upon application being made by or on behalf of such Eligible Compensation Beneficiary, within four (4) years of the Date of this Agreement, but not thereafter.

#### 7.3.6 Minors

Payments to minors have been, and will be, made to that minor's parents or guardian, in trust, for the benefit of the minor, unless in the sole judgment of Chief and Council such payment would be of uncertain benefit to the minor, in which case the payment will be held in an interest-bearing trust account to be paid to the minor, including the accrued interest, at the time he attains the age of majority, or, on his behalf, at such earlier time, if, in the sole judgment of Chief and Council, the payment can be of assured benefit to the minor. Chief and Council shall maintain proper records to account for moneys paid pursuant to subsection 7.3.6 of this Article, sufficient to identify in respect of each minor, to whom or to what account the moneys payable pursuant to section 7.3 of this Article were paid.

[Article 7.3.4](#)

[Article 8.4](#)

#### 7.3.7 Indemnity

Split Lake Cree hereby undertakes and agrees to indemnify and save harmless Canada, Hydro and Manitoba, 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 by any Member, Split Lake Cree Based Business, or Controlled Institution, caused by or attributable, in whole or in part, to:

- a. the distribution of moneys, or trust accounts, on behalf of minors;
- b. decisions pursuant to [subsection 7.3.2](#) of this Article; or,
- c. the administration and distribution of per capita payments under this Article.

## [Trust Indenture – Article 11.3.2](#)

### 7.3.8 Compensation to Elders

Those persons who are fifty (50) years of age or older at the Date of this Agreement, and who meet the eligibility criteria set out in [subsection 7.3.2](#) of this Article, shall receive payments of one hundred and twenty-five dollars (\$125.00) per month, for life. Such monthly payments shall be made, directly by the Trustees, upon written confirmation of eligibility by Chief and Council or, upon appeal of the decision of Chief and Council, by a Tribunal. The provisions of [subsections 8.4.7 and 8.4.8](#) of this Agreement shall apply to an appeal to the Tribunal, with such changes as the context requires. This provision does not confer rights upon individuals to enforce a claim for such amounts against any Party.

### 7.3.9 Management

Except for those payments set out in subsection 7.3.8 of this Article, Chief and Council have been, and shall be, responsible for the management and administrative arrangements related to the cash compensation payments. The reasonable costs incurred by Chief and Council in distributing the cash compensation are a proper charge and may be paid from the moneys advanced for the cash compensation.

### 7.3.10 Social Assistance and Cash Compensation

Based on the determination by Manitoba, and the application of this determination by Canada, the cash payments referenced in [subsection 7.3.1](#) of this Article will not be considered to be 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 set out in subsection 7.3.1 of this Article.

## **7.4 Appropriate Uses**

### 7.4.1 Ongoing Economic and Social Development Support

The Appropriate Uses of moneys approved for disbursement from the Economic and Social Development Account comprise a range of purposes encompassing:

- a. economic development, including
  - i. business financing such as loans, providing collateral for loans, direct investments and (or) grants, for business ventures providing economic benefits and (or) employment for Members,
  - ii. entrepreneurial skill development and training in business functions,
  - iii. gathering and analysis of relevant economic information,
  - iv. establishment and operation of business persons' organizations, and coordination with similar regional or national organizations,



- v. provision of technical, management and legal services to support existing and potential entrepreneurs, and
- vi. effectiveness evaluation of financed initiatives;
- b. employability and employment development, including
  - i. literacy, academic upgrading and specific vocational and skill training,
  - ii. short term job creation which supports economic and social development initiatives,
  - iii. gathering and analysis of relevant labour force supply and demand information,
  - iv. development of appropriate employment and entrepreneurial training curricula,
  - v. provision of technical staff to support the implementation of training and employment initiatives,
  - vi. subsidization of incremental costs of training programs, and
  - vii. effectiveness evaluation of financed initiatives;
- c. cultural and recreational enhancement, including
  - i. preservation and development of cultural and historical sites and resources,
  - ii. establishment and operation of cultural and recreational programming,
  - iii. provision of staff support for financed initiatives, and
  - iv. effectiveness evaluation of financed initiatives;
- d. social development initiatives, including
  - i. definition, establishment, and operation of programs tailored to address Adverse Effects on individuals, families and the community,
  - ii. establishment and operation of social, health, and education initiatives to address social pathologies and other behaviors detrimental to healthy community life,
  - iii. provision of specialized staff resources required to support funded initiatives, and
  - iv. effectiveness evaluation of financed initiatives;
  - v.
- e. community infrastructure, capital development and the related operations and maintenance costs, including the establishment and operation of
  - i. work space, to permit the profitable operation of business ventures,
  - ii. appropriate employment training facilities,
  - iii. cultural and recreational facilities,
  - iv. other facilities to support the development of a healthy community atmosphere, and
  - v. effectiveness evaluation of financed initiatives; and,
- f. the implementation of Articles 13 and 14 of this Agreement, including the funding of activities and actions contemplated to be fulfilled by Split Lake Cree pursuant to those Articles.

#### 7.4.2 Investments

Investments or applications of funds from the Economic and Social Development Account will be permitted to be undertaken both on and off of the Reserve, with the approval of Chief and Council and the Split Lake Cree Trustees, consistent with the disclosures, tests and procedures in the Indenture and in [Article 10](#) of this Agreement.

#### 7.5 Management Responsibilities

### 7.5.1 Split Lake Cree Government

Chief and Council, as the governmental authority of Split Lake Cree, and consistent with the Appropriate Uses set out in [section 7.4](#) of this Article, and the requirements set out in [sections 10.5, 10.6](#) and [10.7](#) of this Agreement and the provisions of the Indenture, shall be responsible, either directly or indirectly, to ensure the proper planning, organization, coordination, management and implementation of all Program Initiatives and Specific Projects funded out of the Economic and Social Development Account.

### 7.5.2 Payments to Agencies

Chief and Council shall not, in any fiscal year, propose for, or provide to:

- a) any one (1) agency, as contemplated by [subsection 10.5.4](#) of this Agreement, more than two hundred and fifty thousand dollars (\$250,000.00) for approved Program Initiatives; and,
- b) all such agencies, in aggregate, more than five hundred thousand dollars (\$500,000.00), for such purposes.

### 7.5.3 No Limitation on Specific Projects

The financial limits, set out in subsection 7.5.2 of this Article, do not apply to approved Specific Projects.

### 7.5.4 Tataskweyak Development Corporation

On or after the Date of this Agreement, Chief and Council intend to establish the Tataskweyak Development Corporation (the "Corporation") to which the following shall apply.

- a. The Corporation shall be an agent of Chief and Council as contemplated in subsection 10.5.4 of this Agreement. The Corporation shall be a share capital corporation, whose shares shall be held by Chief and Council in trust and under terms approved pursuant to subsection 10.5.4 of this Agreement, and whose registered head office shall be on Reserve.
- b. The business of the Corporation will be to manage investments, by planning, organizing, coordinating, financing and operating Specific Projects and Program Initiatives, as directed by Chief and Council, consistent with the terms of paragraphs 7.4.1 (a), and (b) of this Article and Article 10 of this Agreement.
- c. The Corporation will have a Board of Directors, with a minimum of three (3) and a maximum of thirteen (13) Directors, comprised, in the majority, of Members ordinarily resident on Reserve, who can provide relevant expertise to the Corporation. In all cases, the Directors will be appointed by Chief and Council, on a staggered basis, for terms of not less than two (2) years, and all Directors will be eligible for re-appointment.
- d. With respect to expenditures by the Corporation, related to the creation of training places, jobs and businesses, Chief and Council shall ensure that the Corporation establishes clearly defined criteria, from time to time, which will be proposed for the approval of

Chief and Council and the Split Lake Cree Trustees. Approved criteria will enable the objective assessment of initiatives based on such conditions as

- i. cost per job and(or) training placement,
  - ii. creation of employment not currently accessible to Members,
  - iii. adequacy of personal equity contributions, whether in cash, or in goods or services,
  - iv. availability of loan security,
  - v. prospects for loan repayment,
  - vi. degree of attainment of projected performance,
  - vii. business profitability, and
  - viii. provision of goods and services not previously provided as a result of on Reserve economic activity.
- e. In addition to the approvals and disclosures required pursuant to the Indenture and Article 10 of this Agreement, the following approval authorities will apply with respect to Specific Project investments planned to be undertaken within approved Program Initiatives
- a. up to twenty-five thousand dollars (\$25,000.00), approval by the Directors of the Corporation,
  - b. between twenty-five thousand dollars (\$25,000.00) and fifty thousand dollars (\$50,000.00), approval by the Directors of the Corporation and Chief and Council,
  - c. between fifty thousand dollars (\$50,000.00) and one hundred thousand dollars (\$100, 000.00), approval by the Directors of the Corporation and Chief and Council, after notice of the planned investment is posted in the community consistent with the provisions of subsection 11.5.3 of the Indenture, and
  - d. above one hundred thousand dollars (\$100,000.00), approval by the Directors of the Corporation and Chief and Council, after notice of the planned investment is posted in the community advising Members of the proposed expenditure, and the Specific Project is approved by a public meeting of Members, convened consistent with the procedures and standards set out in subsection 11.5.2 of the Indenture.

## **7.6 Financial Management and Disclosure**

### **7.6.1 Management**

Money from the Economic and Social Development Account will be received and managed in accordance with the terms and conditions of the Indenture and [Article 10](#) of this Agreement.

# Article 8

## 8.0 Resource Compensation Fund

### 8.1 INTRODUCTION

#### 8.1.1 Introduction

This Article is to establish and describe the Appropriate Uses, procedures for application, and requirements for management, accountability and expenditure of moneys from the Resource Compensation Fund established as part of the Indenture.

### 8.2 COMPENSATION

#### 8.2.1 Resource Compensation

As compensation for Adverse Effects on Resources, Hydro and(or) Manitoba shall pay to Split Lake Cree in aggregate the sum of ten million, eight hundred and fifty-seven thousand dollars (\$10,857,000.00), to fund the Resource Compensation Fund, in instalments, on the dates, and in accordance with the Financial Schedule.

#### 8.2.2 Release

Split Lake Cree hereby releases and forever discharges Canada, Manitoba, and, subject to the limitations set forth in [Section 15.4](#) of this Agreement, 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 Split Lake Cree its successors, or assigns, have had, now have, or hereafter can, shall or may have, for, or by reason of, any cause, matter or thing whatsoever, up to the Date of this Agreement, or at any future time, attributable, in whole or in part, to or arising out of any Adverse Effects on Resources.

#### 8.2.3 Settlement of Claims

Split Lake Cree shall obtain and provide to Canada, Manitoba, and, subject to the limitations set forth in [section 15.4](#) of this Agreement, Hydro, releases for all claims or the relevant interest in such claims, against Canada, Manitoba and Hydro, respectively, as listed on [Schedule 8.1](#) of this Agreement, filed by or on behalf of Split Lake Cree, any Member, Split Lake Cree Based Business, or Controlled Institution before the Arbitrator under the NFA, relating to compensation for Adverse Effects on Resources.

#### [Article 18.12.1](#)

#### 8.2.4 Releases

Split Lake Cree further covenants to use its best efforts to obtain releases in favour of Canada, Manitoba, and, subject to the limitations set forth in [Section 15.4](#) of this Agreement, Hydro, from

any Member, Split Lake Cree Based Business, or Controlled Institution who, or which, may, at any time or times have filed or who, in future, may file a claim before the NFA Arbitrator for compensation for Adverse Effects on Resources.

#### [Article 18.12.1](#)

##### 8.2.5 Covenant Not to Commence Action

Split Lake Cree covenants and agrees not to commence any action, suit, claim, demand, or proceeding on its own behalf or on behalf of any Member, Split Lake Cree Based Business, or Controlled Institution, against any of Canada, Manitoba or, subject to [Section 15.4](#) of this Agreement, Hydro with respect to Adverse Effects on Resources.

##### 8.2.6 Release of Canada

Hydro and Manitoba hereby release and forever discharge 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 Hydro or Manitoba have had, now have or hereafter can, shall or may have against Canada, for or by reason of, any cause, matter or thing whatsoever, up to the Date of this Agreement, or at any future time, attributable, in whole or in part, to or arising out of Adverse Effects on Resources.

##### 8.2.7 Release by Canada

Canada hereby releases and forever discharges Hydro and 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 Canada has had, now has or hereafter can, shall or may have against Hydro and(or) Manitoba, for or by reason of, any cause, matter or thing whatsoever, up to the Date of this Agreement, or at any future time, attributable, in whole or in part, to or arising out of Adverse Effects on Resources.

##### 8.2.8 Indemnity

Split Lake Cree undertakes and agrees to indemnify Manitoba and, subject to the exceptions contained in [Section 15.4](#) of this Agreement, Hydro from the Resource Compensation Fund, but not otherwise, with respect to any and all actions, causes of action, suits, claims, demands, losses or damages of any nature or kind whatsoever, which may at any time, or times, hereafter be brought by any Member, Split Lake Cree Based Business or Controlled Institution, against either or both Manitoba and Hydro, arising from or with respect to any action, cause of action, suit, claim, demand, loss or damage resulting from Adverse Effects on Resources.

#### [Article 8.2.10](#)

##### 8.2.9 Limitation

The indemnity in subsection 8.2.8 of this Article shall be limited to the amount of compensation that an Eligible Compensation Beneficiary could be awarded under this Article, if the claim had been filed as a claim against the appropriate Reserve Account. The indemnity shall be treated in the same manner, and given the same priority as to payment, as if the award against Hydro or Manitoba were a final award under the procedure for administering compensation claims set out in this Article. It is the intention of the Parties that, subject to the rights of Hydro under [subsection 8.2.12](#) of this Article, if any Member, Split Lake Cree Based Business, or Controlled Institution, not a Party to this Agreement, should opt to proceed under the NFA, that:

- a. in the absence of binding legislation foreclosing such action, the claim, if successful against either Hydro or Manitoba, would be honoured by Hydro or Manitoba, who would, pursuant to the indemnity provided to them under subsection 8.2.8 of this Article, be reimbursed from the appropriate Reserve Account as provided above; and,
- b. the settlement and the implementation provisions of this Agreement would not be nullified.

#### 8.2.10 Conditions

The indemnity under [subsection 8.2.8](#) of this Article is not intended to cover the costs of the indemnified Party in resisting such actions, causes of action, suits, claims, demands, losses or damages of any nature or kind whatsoever, and is conditional upon the indemnified Party:

- a. giving notice to Split Lake Cree of any claim being advanced by any Member, Split Lake Cree Based Business or Controlled Institution for which Split Lake Cree may be liable pursuant to the indemnity, forthwith upon the indemnified Party becoming aware of such claim;
- b. consenting to and(or) otherwise supporting any application by Split Lake Cree, if Split Lake Cree is not named as a party, to be named as a party to such claim; and,
- c. not settling any such claim without the written consent of Chief and Council to such settlement, provided that this does not require the indemnified Party to appeal any decision, award, ruling, or judgment by which it may be bound and for which it is seeking indemnity from the Resource Compensation Fund, pursuant to subsection 8.2.8 of this Article.

#### 8.2.11 Legislation

Canada and Manitoba will recommend the enactment of legislation providing that:

- a. any claims of any Member, Split Lake Cree Based Business, or Controlled Institution can and shall be advanced against the appropriate Reserve Account of the Resource Compensation Fund, in accordance with the procedure established in this Article for adjudicating such claims, including the appeal procedure to the Split Lake Cree Arbitrator, and shall not be advanced against any of the Parties to this Agreement, each of whose obligations in all respects of such claims have been fully satisfied, except
  - i. as set forth in section 15.4 of this Agreement, and

- ii. for Split Lake Cree's obligations in the administration of the compensation regime and the Tataskweyak Trust; and,
- b. the payment of the portion of the Settlement Proceeds to Split Lake Cree to be used to fund the Resource Compensation Fund fully satisfies all obligations of Hydro and Manitoba under the NFA with respect to Adverse Effects on Split Lake Cree Resources, except as expressly set forth in section 15.4 of this Agreement.
- c.
- d.
- e.

#### 8.2.12 Constitutionality

If:

- a. prior to the proclamation of the legislation contemplated in subsection 8.2.11 of this Article, a court of competent jurisdiction or the arbitrator under the NFA should rule that Hydro or Manitoba are required to pay further compensation to any Member, Split Lake Cree Based Business, or Controlled Institution, not a Party to this Agreement, and the amount of such compensation is too large to be fully reimbursed to Hydro or Manitoba from the appropriate Reserve Account, in accordance with [section 8.4](#) of this Article, within two (2) full calendar years from the date of the payment of such compensation by Hydro or Manitoba; or,
- b. following the proclamation of the legislation contemplated in subsection 8.2.11 of this Article, a court of competent jurisdiction should, after all appeals have been exhausted, or the time to appeal has expired, rule that all or part of either or both the federal or provincial legislation lacks constitutional validity, and, as a result, Hydro, directly, or as a consequence of any indemnity provided by Hydro to Canada or Manitoba, indemnifying Canada and Manitoba with respect to claims arising from Adverse Effects on Resources, is required to pay further compensation to any Member, Split Lake Cree Based Business, or Controlled Institution, not a Party to this Agreement, for any actions, causes of action, suits, claims, demands, losses or damages of any nature or kind whatsoever related to Adverse Effects on Resources or to indemnify Canada or Manitoba in respect thereto;

then, Hydro may, at its sole option, demand the Corporate Trustee immediately repay to Hydro the entire Capital of the Resource Compensation Fund then paid into and remaining in the Tataskweyak Trust, including all earned and undistributed Income thereon, or related thereto.

[Article 8.2.9](#)  
[Trust Indenture – Article 11.14](#)

#### 8.2.13 Reversion Provision

Upon such repayment pursuant to subsection 8.2.12 of this Article, all releases and indemnities given by Split Lake Cree in this Article, in favour of Hydro, and the general releases and indemnities provided by Split Lake Cree in [Article 15](#) of this Agreement, in favour of Hydro, as such releases and indemnities relate to Adverse Effects on Resources, shall be void and without

further force and effect, and the provisions of the NFA related to compensation for damages arising from Adverse Effects on Resources, shall be revived in full force and effect and shall be the obligation of Hydro to perform. All other provisions and Articles of this Agreement, including, without limitation, the procedure for administering compensation claims set forth in this Article, as those apply to other Articles in this Agreement, shall remain in full force and effect without modification or amendment. The Parties contemplate and intend that Hydro shall claim and be entitled to receive, as a credit, to the extent applicable, against the claim of any Member, Split Lake Cree Based Business, or Controlled Institution, any benefits received by such claimant from the Resource Compensation Fund, and any damages paid to such claimant for Adverse Effects on Resources, pursuant to the order of the court, or the arbitrator appointed pursuant to the NFA.

#### 8.2.14 Hydro Indemnity

If the conditions outlined in paragraph 8.2.12(b) of this Article exist, or if the Capital is repaid to Hydro under subsection 8.2.12 of this Article, then Hydro shall indemnify Canada and Manitoba with respect to any damages that may be awarded against either of them, by a court of competent jurisdiction, or by the arbitrator appointed pursuant to the NFA, with respect to any loss or damage suffered by any Member, Split Lake Cree Based Business, or Controlled Institution as a result of Adverse Effects on Resources. This indemnity is not intended to cover the costs of the indemnified Party in resisting such claim, and is conditional upon the indemnified Party:

- a. giving notice to Hydro of any claim being advanced by any Member, Split Lake Cree Based Business, or Controlled Institution for which Hydro may be liable pursuant to the indemnity, forthwith upon the indemnified Party becoming aware of such claim;
- b. actively and diligently resisting any action or suit brought questioning the lawfulness of this Agreement or the constitutional validity of the legislation contemplated by this Agreement, and providing reasonable cooperation to Hydro in Hydro's efforts to resist any claim brought by any Member, Split Lake Cree Based Business, or Controlled Institution with respect to which Hydro may be liable pursuant to the indemnity; and,
- c. consenting to and(or) otherwise supporting any application by Hydro, if Hydro is not named as a party, to be named as a party to such claim.

### **8.3 THE TRUST**

#### 8.3.1 Read in Conjunction

This Article shall be read in conjunction with the Indenture, and Articles [7](#) and [10](#) of this Agreement.

#### 8.3.2 Establishment of Accounts

That portion of the Resource Compensation Fund initially settled on the Tataskweyak Trust, and each portion of the Resource Compensation Fund subsequently contributed to the Trust by Split Lake Cree, shall be divided into and held by the Trustees in Accounts and Reserve Accounts comprised as set out below.



a.

**DOMESTIC RESOURCE COMPENSATION ACCOUNT AND RESERVE ACCOUNT**

To compensate for Adverse Effects on Resources related to domestic, non-commercial use of Resources.

Account	\$5,105,280.00
Reserve Account	150,720.00
Total	\$5,256,000.00

b.

**FUR TRAPPING COMPENSATION ACCOUNT AND RESERVE ACCOUNT**

To compensate for Adverse Effects on Resources related to trapping.

Account	\$2,939,510.00
Reserve Account	80,490.00
Total	\$3,020,000.00

c.

**COMMERCIAL FISHING COMPENSATION ACCOUNT AND RESERVE ACCOUNT**

To compensate for Adverse Effects on Resources related to commercial fishing.

Account	\$2,512,210.00
Reserve Account	68,790.00
Total	\$2,581,000.00
<b>TOTAL</b>	<b>\$10,857,000.00</b>

### 8.3.3 Appropriate Uses

The Appropriate Uses of the Resource Compensation Fund shall be:

- a. distributions of cash as compensation for past, present and future, loss or damage, suffered as a result of Adverse Effects on Resources;
- b. compensation from the Domestic Resource Compensation Account for past, present and future, loss or damage, related to domestic non-commercial use of Resources, and suffered as a result of Adverse Effects on Resources;
- c. conservation, rehabilitation, redevelopment, enhancement or replacement of Resources, or enhancement or improvement of the harvesting of Resources to mitigate Adverse Effects on Resources;
- d. economic development of Split Lake Cree as a compensatory substitute for diminished harvesting of Resources resulting from Adverse Effects on Resources; and,

- e. compensation awards pursuant to the procedure for the administration of compensation claims.

#### 8.3.4 Eligible Compensation Beneficiaries

The Eligible Beneficiaries and Eligible Compensation Beneficiaries for each Account of the Resource Compensation Fund, and for each Reserve Account of the Resource Compensation Fund, shall be as follows:

- a. for the Domestic Resource Compensation Account, the Eligible Beneficiary shall be Chief and Council on behalf of Split Lake Cree;
- b. for the Domestic Resource Compensation Account and the Domestic Resource Compensation Reserve Account, an Eligible Compensation Beneficiary shall be any Member whose domestic, non-commercial use of Resources has suffered an Adverse Effect;
- c. for the Fur Trapping Compensation Account and the Fur Trapping Compensation Reserve Account, an Eligible Compensation Beneficiary shall be any Trapper, whose use of Resources to hunt and trap animals for skins and fur, for sale or other commercial purpose, has decreased, or otherwise suffered a negative impact, as a result of Adverse Effects on Resources; and,
- d. for the Commercial Fishing Compensation Account and the Commercial Fishing Compensation Reserve Account, an Eligible Compensation Beneficiary shall be any Commercial Fisherman, whose use of Resources for or in relation to commercial fishing has decreased, or otherwise suffered a negative impact, as a result of Adverse Effects on Resources.

#### 8.3.5 Distribution of Income

The Trustees shall distribute Income and Capital from the Resource Compensation Fund pursuant to the terms of Article 11 of the Indenture, and to [section 8.4](#) of this Article, provided that Capital and Income to be distributed from a particular Account or Reserve Account shall only be available to those persons who are, from time to time, appropriate Eligible Beneficiaries or appropriate Eligible Compensation Beneficiaries.

#### 8.3.6 Acknowledgement

The Resource Compensation Fund may be used, and some of the Settlement Proceeds applicable to the Resource Compensation Fund may have been used, to pay the cash compensation to any Member contemplated in [subsection 7.3.1](#) of this Agreement, in whole or in part, in accordance with the provisions of subsections 7.3.1 to 7.3.6, inclusive, of this Agreement.

### **8.4 Application to Trustees**

#### 8.4.1 Information from Trustees

In each year the Trustees shall estimate the Income from each of the Domestic Resource Compensation Account, the Fur Trapping Compensation Account and the Commercial Fishing Compensation Account anticipated to be earned in the following fiscal year. The Trustees shall, not later than January 31st in the same year, communicate their estimate of the Income from each such Account to Chief and Council, and shall further communicate to any Trapper's association and to any Commercial Fisherman's association which may then exist as evidenced by notice from Chief and Council, their estimate of the Income from the Fur Trapping Compensation Account and the Commercial Fishing Compensation Account, respectively.

#### 8.4.2 Domestic User Application

The Income from the Domestic Resource Compensation Account may be accessed and utilized by Chief and Council on behalf of Split Lake Cree in accordance with the relevant provisions of [Article 11 of the Indenture](#).

#### 8.4.3 Fishing and Trapping Applications

Proposals from any Commercial Fisherman, Trapper, or any group or association of Commercial Fishermen or Trappers, for distribution and use, during the then current year, of Income from the Fur Trapping Compensation Account and Commercial Fishing Compensation Account, for Specific Projects or Program Initiatives, shall be submitted to Chief and Council for consideration as an Appropriate Use of the Commercial Fishing Compensation Account and Fur Trapping Compensation Account, respectively. Such proposals shall not be dealt with pursuant to the procedures for administering compensation claims, but shall be dealt with as Specific Projects or Program Initiatives under the Indenture, and shall be subject to the requirements set out below.

- a. Each such proposal shall contain an acknowledgement and acceptance of the compensation scheme established by this Agreement, and shall contain the agreement of the proponent and each Member constituting the proponent to be bound by the procedures and terms set forth in this Agreement, and, without limiting the rights of such proponent to make further proposals pursuant to subsection 8.4.3 of this Article, to acknowledge that that portion of the Settlement Proceeds allocated to the Resource Compensation Fund was paid in full satisfaction of the liability, if any, of Canada, Manitoba and, subject to [section 15.4](#) of this Agreement, Hydro, in relation to Adverse Effects on Resources.
- b. Within thirty (30) days of receipt of such proposal, Chief and Council shall review it and determine, in accordance with Article 11 of the Indenture, whether or not to approve the proposal and submit it to Split Lake Cree Trustees, in whole or in part.
- c. If Chief and Council do not approve the proposal, it shall not be proceeded with, but the proponent may revise and resubmit the proposal.
- d. If the proposal or proposals, and the determination of Chief and Council, are forwarded to Split Lake Cree Trustees, Split Lake Cree Trustees shall apply the tests set forth in Article 11 of the Indenture and, within thirty (30) days, determine whether or not to fund any such proposal or proposals.

- e. If there is insufficient Income from any particular Account to fully fund all proposals, Split Lake Cree Trustees shall decide which proposal, if any, to fund in whole or in part.

#### 8.4.4 Prior Claims Against Reserve Accounts

Any Domestic User and any Commercial Fisherman or Trapper, may file, with Chief and Council, claims against the appropriate Reserve Account for compensation for loss or damage resulting from Adverse Effects on Resources which arose not earlier than four (4) years prior to the Date of this Agreement. Such claims shall be dealt with in accordance with the procedure for administering claims for compensation set out in this Article. Individual claims previously filed with the NFA Arbitrator may be submitted within one (1) year of the Date of this Agreement, but not thereafter, regardless of when such claims arose. All such claims shall then be dealt with in accordance with the procedure for administering compensation claims set out in this Article.

#### 8.4.5 Subsequent Claims Against Reserve Accounts

Claims against the appropriate Reserve Account of the Resource Compensation Fund, for compensation for loss or damages arising from Adverse Effects on Resources suffered after the Date of this Agreement, by any Commercial Fisherman, Trapper or Domestic User, may be submitted at any time prior to the expiry of four (4) years from the date that such claimant suffered the loss or damage for which compensation is claimed, but not thereafter. Such claims shall be dealt with in accordance with the procedure for administering compensation claims set out in this Article.

#### 8.4.6 Priority Charge

Compensation claims under subsections 8.4.4 and 8.4.5 of this Article shall have priority over Specific Projects and Program Initiatives and, if there are insufficient funds in the appropriate Reserve Account, such claims shall be paid, on a first come first served basis, from Income from the appropriate Account and, to the extent unpaid, including interest on any unpaid portion, calculated at the rate of interest being seventy-five percent (75%) of the prescribed rate of interest as determined from time to time under the Income Tax Act (Canada), rounded to the nearest tenth of a point, shall represent a first charge against and be payable, firstly, from and out of the appropriate Reserve Account, and then from the Income from the appropriate Account in the succeeding calendar year or years.

#### 8.4.7 Procedure for the Administration of Compensation Claims

Wherever, in this Article, there is provision for a claim for compensation to be made with respect to a loss suffered as a result of an Adverse Effect on Resources, such claim or any appeal therefrom shall be a submission to arbitration pursuant to The Arbitration Act (Manitoba) and shall be administered in accordance with the procedure set out below.

- a. The claimant shall file the claim in writing with Chief and Council setting forth the following information
  - i. the name of the claimant,

- ii. the nature of the claim,
  - iii. the date that or the period during which the loss giving rise to the claim was suffered,
  - iv. the amount of compensation being claimed, and
  - v. the details and nature of the Adverse Effect resulting in the loss giving rise to the claim for compensation.
- b. The Chief and Council shall, within thirty (30) days of their receipt of the claim, appoint a panel of not less than three (3) and not more than five (5) independent, unbiased elders, who are not members of Council, to act as an arbitration Tribunal to hear and determine such claim, and further, Chief and Council shall give notice of a hearing date to be not earlier than fifteen (15) days or later than forty-five (45) days from the date of the appointment of the Tribunal. If no Tribunal is or has been appointed by Chief and Council, as required, the claimant shall, pursuant to [section 14.9 of the Indenture](#), have access to the Split Lake Cree Arbitrator in accordance with the Dispute Resolution Mechanism.
- c. Such notice shall be delivered personally to the claimant, and shall be posted in at least four (4) conspicuous places on the Reserve, including the Split Lake Cree general administration office.
- d. On the date of the hearing, which may be adjourned from time to time, the Tribunal shall conduct a hearing with respect to the claim, and shall maintain a record of such proceedings, and may, but shall not be required to maintain a transcript of any oral evidence received.
- e. The Tribunal shall hear representations from the claimant and all other interested persons, and conduct the hearing in a fair, equitable and reasonable manner. Submissions to the Tribunal shall be pursuant to The Arbitration Act (Manitoba) which Act shall govern except where the Act conflicts with any express term of this Article, in which case the provisions of this Article shall prevail.
- f. The claimant, and any other interested person may, if they so desire, and at their sole expense, be represented by counsel or other person of their choosing.
- g. The claimant, and any other person making representations or giving evidence to the Tribunal, shall be subject to questioning, examination and cross-examination by other interested persons, and by members of the Tribunal.
- h. During the hearing, the Tribunal shall not proceed if its members present shall fall below a majority of all of its members, which majority shall be the necessary quorum, but shall adjourn until the quorum is returned. Once constituted, the membership of the Tribunal shall be fixed, and no new member shall be entitled to hear or consider the claim. If a member of the Tribunal is absent from any portion of the hearing, that member shall be excluded from continuing as a member of the Tribunal.
- i. Within thirty (30) days from the conclusion of the hearing, the Tribunal shall deliberate and
  - i. render a decision on the merits of the claim, including the eligibility of the claimant, and
  - ii. if the claimant is eligible and the claim is meritorious, determine the quantum of compensation to be paid, taking fully into account any prior benefit received by or compensation paid to the claimant, including any per capita payment,
  - iii. and the Tribunal shall give written reasons for its decision.

- j. The decision shall be forwarded to the claimant, Chief and Council, and any interested person shown on the record, and shall be subject to appeal to the Split Lake Cree Arbitrator under Article 16 of this Agreement.
- k. Any appeal to the Split Lake Cree Arbitrator may be made by the claimant or by any interested person shown on the record, by filing an appeal in writing within thirty (30) days of the decision of the Tribunal, and serving same on Chief and Council, the claimant, and any interested person shown on the record.
- l. In the event of an appeal, Chief and Council may, at their option, appear in support of the appellant or as a respondent.
- m. If the decision of the Tribunal is to recommend payment of all or any portion of the claim for compensation, and no appeal is filed, such decision shall be forwarded to Split Lake Cree Trustees, who shall within sixty (60) days pay such claim to the extent there are sufficient funds available in that year, and shall advise the Tribunal, Chief and Council and any interested persons shown on the record, accordingly.
- n. If there are insufficient funds available in that year to pay the claim in full, the Split Lake Cree Trustees shall advise that the claim shall be paid as a priority charge pursuant to subsection 8.4.6 of this Article, and further they shall provide an estimate of the date when payment should be completed.
- o. The discretion of the Split Lake Cree Arbitrator, with respect to a decision relating to the claim, shall be unfettered except by the limitation on payment set forth in the Indenture.
- p. The costs of the appeal may, in the discretion of Split Lake Cree Arbitrator, be paid out of the appropriate Reserve Account or the appropriate Account, in full or in part.

#### 8.4.8 Costs

The reasonable costs of conducting the hearing by the Tribunal shall be the responsibility of Split Lake Cree, and shall be an Appropriate Use of the appropriate Account of the Resource Compensation Fund. The costs of investigating whether or not a claimant is eligible, and if the loss claimed resulted from an Adverse Effect on Resources, shall be an Appropriate Use of the Environmental Monitoring Account.

[Article 7.3.3](#)

[Article 7.3.8](#)

[Article 8.2.12\(b\)](#)

### **8.5 Split Lake Cree**

#### 8.5.1 Role of Split Lake Cree

Nothing in this Article imposes upon Chief and Council or Split Lake Cree Trustees, any obligation to any Member, Split Lake Cree Based Business or Controlled Institution, with respect to loss or damage resulting from Adverse Effects on Resources, except to the extent of their respective roles in the fair and impartial administration of the Resource Compensation Fund.

### **Schedule 8.1**

<b>Arbitration Claim No.</b>	<b>Claimant</b>	<b>Respondent</b>
12	Northern Flood Committee	Canada, Manitoba & Hydro
18	Northern Flood Committee	Canada, Manitoba & Hydro
19	Northern Flood Committee	Manitoba & Hydro
23	Northern Flood Committee	Manitoba
27	Northern Flood Committee	Manitoba
28	Northern Flood Committee	Canada, Manitoba & Hydro
32	Split Lake Cree	Manitoba & Hydro
34	Northern Flood Committee	Canada, Manitoba & Hydro
36	Northern Flood Committee	Manitoba & Hydro
38	Northern Flood Committee	Canada, Manitoba & Hydro
43	Northern Flood Committee	Manitoba
93	Northern Flood Committee	Manitoba
96	Split Lake Cree	Canada, Manitoba & Hydro
97	Split Lake Cree	Manitoba & Hydro
98	Northern Flood Committee	Canada, Manitoba & Hydro
99	Northern Flood Committee	Canada, Manitoba & Hydro
104	Split Lake Cree	Canada, Manitoba & Hydro
110	Northern Flood Committee	Manitoba & Hydro
113	Northern Flood Committee	Manitoba & Hydro
114	Northern Flood Committee	Hydro
116	Hydro	Canada
126	Northern Flood Committee	Canada, Manitoba & Hydro
129	Northern Flood Committee	Canada, Manitoba & Hydro
130	Northern Flood Committee	Hydro
131	Northern Flood Committee	Canada, Manitoba & Hydro
132	Northern Flood Committee	Canada, Manitoba & Hydro
133	Northern Flood Committee	Canada, Manitoba & Hydro
135	Canada	Manitoba
136	Canada	Manitoba & Hydro
137	Canada	Manitoba & Hydro
139	Canada	Manitoba & Hydro
144	Manitoba	Canada
146	Northern Flood Committee	Canada, Manitoba & Hydro

# Article 9

## 9.0 Remedial Works and Measures Account

### 9.1 Introduction

#### 9.1.1 Introduction

This Article is to establish and to describe the Appropriate Uses, procedures for application, and requirements for management, accountability and expenditure of moneys from the Remedial Works and Measures Account established as part of the Indenture.

### 9.2 Compensation

#### 9.2.1 Remedial Works Compensation

As compensation for Adverse Effects on Split Lake Cree Assets, Hydro and (or) Manitoba shall pay to Split Lake Cree in aggregate the sum of twelve million, nine hundred and ninety-six thousand dollars (\$12,996,000.00), to fund the Remedial Works and Measures Account, in instalments, on the dates, and in accordance with the Financial Schedule.

#### 9.2.2 Release

Split Lake Cree hereby releases and forever discharges Canada, Manitoba, and, subject to the limitations set forth in [section 15.4](#) of this Agreement, 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 Split Lake Cree, its successors, or assigns have had, now have or hereafter can, shall or may have, for, or by reason of, any cause, matter or thing whatsoever, up to the Date of this Agreement, or at any future time, attributable, in whole or in part, to or arising out of any Adverse Effects on Split Lake Cree Assets.

#### 9.2.3 Settlement of Claims

Split Lake Cree shall obtain and provide to Canada, Manitoba, and, subject to the limitations set forth in [section 15.4](#) of this Agreement, Hydro, releases for all claims, or the relevant interest in such claims, against Canada, Manitoba, and Hydro, respectively, as listed on Schedule 8.1 to this Agreement, filed by or on behalf of Split Lake Cree, any Member, Split Lake Cree Based Business, or Controlled Institution before the Arbitrator under the NFA, relating to compensation for Adverse Effects on Split Lake Cree Assets.

#### [Article 18.12.1](#)

#### 9.2.4 Releases

Split Lake Cree further covenants to use its best efforts to obtain releases in favour of Canada, Manitoba and, subject to the limitations set forth in [section 15.4](#) of this Agreement, Hydro, from



any Member, Split Lake Cree Based Business, or Controlled Institution who, or which, may, at any time or times, have filed or who, or which, in future, may file a claim before the NFA Arbitrator for compensation for Adverse Effects on Split Lake Cree Assets.

#### [Article 18.12.1](#)

##### 9.2.5 Covenant Not to Commence Action

Split Lake Cree covenants and agrees not to commence any action, suit, claim, demand, or proceeding on its own behalf or on behalf of any Member, Split Lake Cree Based Business, or Controlled Institution, against Canada, Manitoba or, subject to section 15.4 of this Agreement, Hydro, with respect to Adverse Effects on Split Lake Cree Assets.

##### 9.2.6 Release of Canada

Hydro and Manitoba hereby release and forever discharge 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 Hydro or Manitoba have had, now have or hereafter can, shall or may have against Canada, for or by reason of, any cause, matter or thing whatsoever, up to the Date of this Agreement, or at any future time, attributable, in whole or in part, to or arising out of Adverse Effects on Split Lake Cree Assets.

##### 9.2.7 Release by Canada

Canada hereby releases and forever discharges Hydro and 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 Canada has had, now has or hereafter can, shall or may have against Hydro and(or) Manitoba for or by reason of, any cause, matter or thing whatsoever, up to the Date of this Agreement, or at any future time, attributable, in whole or in part, to or arising out of Adverse Effects on Split Lake Cree Assets, other than claims by Canada arising from or in relation to Article 6 of the NFA.

##### 9.2.8 Indemnity

Split Lake Cree undertakes and agrees to indemnify Manitoba and, subject to the exceptions contained in [section 15.4](#) of this Agreement, Hydro from the Remedial Works and Measures Account, but not otherwise, with respect to any and all actions, causes of action, claims, suits, demands, losses or damages of any nature or kind whatsoever, which may at any time, or times, hereafter be brought by any Member, Split Lake Cree Based Business or Controlled Institution, against either or both Manitoba and Hydro, arising from or with respect to any action, cause of action, suit, claim, demand, loss or damage resulting from Adverse Effects on Split Lake Cree Assets.

#### [Article 9.2.12](#)

##### 9.2.9 Limitation

The indemnity in subsection 9.2.8 of this Article shall be limited to the amount of compensation that an Eligible Compensation Beneficiary could be awarded under this Article, if the claim had been filed as a claim against the Asset Damage Reserve. The indemnity shall be treated in the same manner, and given the same priority as to payment, as if the award against Hydro or Manitoba were a final award under the procedure for administering compensation claims, outlined in [Article 8](#) of this Agreement, as applied in this Article. It is the intention of the Parties that, subject to the rights of Hydro under [subsection 9.2.12](#) of this Article, if any Member, Split Lake Cree Based Business, or Controlled Institution, not a Party to this Agreement, should opt to proceed under the NFA, that:

- a. in the absence of binding legislation foreclosing such action, the claim, if successful against either Hydro or Manitoba, would be honoured by Hydro or Manitoba, who would, pursuant to the indemnity, provided to them under subsection 9.2.8 of this Article, be reimbursed from the Asset Damage Reserve as provided above; and,
- b. the settlement and the implementation provisions of this Agreement would not be nullified.

#### 9.2.10 Conditions

The indemnity under subsection 9.2.8 of this Article is not intended to cover the costs of the indemnified Party in resisting such actions, causes of action, suits, claims, demands, losses or damages of any nature or kind whatsoever, and is conditional upon the indemnified Party:

- a. giving notice to Split Lake Cree of any claim being advanced by any Member, Split Lake Cree Based Business or Controlled Institution for which Split Lake Cree may be liable pursuant to the indemnity, forthwith upon the indemnified Party becoming aware of such claim;
- b. consenting to and(or) otherwise supporting any application by Split Lake Cree, if Split Lake Cree is not named as a party, to be named as a party to such claim; and,
- c. not settling any such claim without the written consent of Chief and Council to such settlement, provided that this does not require the indemnified Party to appeal any decision, award, ruling, or judgment by which it may be bound and for which it is seeking indemnity from the Remedial Works and Measures Account, pursuant to subsection 9.2.8 of this Article.

#### 9.2.11 Legislation

Canada and Manitoba will recommend the enactment of legislation providing that:

- a. any claims of any Member, Split Lake Cree Based Business, or Controlled Institution, can and shall be advanced against the Asset Damage Reserve of the Remedial Works and Measures Account, in accordance with the procedure established for adjudicating such claims set forth in [Article 8](#) of this Agreement, including the appeal procedure to the Split Lake Cree Arbitrator, and shall not be advanced against any of the Parties to this Agreement, each of whose obligations in all respects of such claims have been fully satisfied except

- i. as set forth in [section 15.4](#) of this Agreement, and
  - ii. for Split Lake Cree's obligations in the administration of the compensation regime and the Tataskweyak Trust; and,
- b. the payment of settlement funds to Split Lake Cree to fund the Remedial Works and Measures Account fully satisfies all obligations of Hydro and Manitoba under the NFA with respect to Adverse Effects on Split Lake Cree Assets, except as expressly set forth in [section 15.4](#) of this Agreement.

#### 9.2.12 Constitutionality

If:

- a. prior to the proclamation of the legislation contemplated in subsection 9.2.11 of this Article, a court of competent jurisdiction or the arbitrator under the NFA should rule that Hydro or Manitoba are required to pay further compensation to any Member, Split Lake Cree Based Business, or Controlled Institution, not a Party to this Agreement, and the amount of such compensation is too large to be fully reimbursed to Hydro or Manitoba, in accordance with [section 9.8](#) of this Article, from the Asset Damage Reserve, within two (2) full calendar years from the date of the payment of such compensation by Hydro or Manitoba; or,
- b. following the proclamation of the legislation contemplated in subsection 9.2.11 of this Article, a court of competent jurisdiction should, after all appeals have been exhausted, or the time to appeal has expired, rule that all or part of either or both the federal or provincial legislation lacks constitutional validity, and, as a result, Hydro, directly, or as a consequence of any indemnity provided by Hydro to Canada or Manitoba, indemnifying Canada and Manitoba with respect to claims arising from Adverse Effects on Split Lake Cree Assets, is required to pay further compensation to any Member, Split Lake Cree Based Business, or Controlled Institution, not a Party to this Agreement, for any actions, causes of action, suits, claims, demands, losses or damages of any nature or kind whatsoever related to Adverse Effects on Split Lake Cree Assets or to indemnify Canada or Manitoba in respect thereto;  
[Article 9.2.14](#)  
then, Hydro may, at its sole option, demand the Corporate Trustee immediately repay to Hydro the entire Capital amount of the Remedial Works and Measures Account then paid into and remaining in the Tataskweyak Trust, including all earned and undistributed Income thereon, or related thereto.

#### [Article 9.2.9](#)

#### [Trust Indenture – Article 11.14](#)

#### 9.2.13 Reversion Provisions

Upon such repayment pursuant to [subsection 9.2.12](#) of this Article, all releases and indemnities given by Split Lake Cree in this Article, in favour of Hydro, and the general releases and indemnities provided by Split Lake Cree in [Article 15](#) of this Agreement, in favour of Hydro, as such releases and indemnities relate to Adverse Effects on Split Lake Cree Assets, shall be void

and without further force and effect, and the provisions of the NFA related to compensation for damages arising from Adverse Effects on Split Lake Cree Assets, shall be revived in full force and effect and shall be the responsibility of Hydro to perform. All other provisions and Articles of this Agreement shall remain in full force and effect without modification or amendment. The Parties contemplate and intend that Hydro shall claim and be entitled to receive, as a credit, to the extent applicable, against the claim of any Member, Split Lake Cree Based Business, or Controlled Institution, any benefit received by such claimant from the Remedial Works and Measures Account, and any damages paid to such claimant for Adverse Effects on Split Lake Cree Assets, pursuant to the order of the court, or the arbitrator appointed pursuant to the NFA.

#### 9.2.14 Hydro Indemnity

If the conditions outlined in [paragraph 9.2.12 \(b\)](#) of this Article exist, or if the Capital is repaid to Hydro pursuant to subsection 9.2.12 of this Article, then Hydro shall indemnify Canada and Manitoba with respect to any damages that may be awarded against either of them, by a court of competent jurisdiction, or the arbitrator appointed pursuant to the NFA, with respect to any loss or damage suffered by any Member, Split Lake Cree Based Business, or Controlled Institution as a result of Adverse Effects on Split Lake Cree Assets. This indemnity is not intended to cover the costs of the indemnified Party in resisting such claim, and is conditional upon the indemnified Party:

- a. giving notice to Hydro of any claim being advanced by any Member, Split Lake Cree Based Business, or Controlled Institution for which Hydro may be liable pursuant to the indemnity, forthwith upon the indemnified Party becoming aware of such claim;
- b. actively and diligently resisting any action or suit brought questioning the lawfulness of this Agreement or the constitutional validity of the legislation contemplated by this Agreement, and providing reasonable cooperation to Hydro in Hydro's efforts to resist any claim brought by any Member, Split Lake Cree Based Business, or Controlled Institution with respect to which Hydro may be liable pursuant to the indemnity; and,
- c. consenting to and(or) otherwise supporting any application by Hydro, if Hydro is not named as a party, to be named as a party to such claim.

### **9.3 The Trust**

#### 9.3.1 Read in Conjunction

This Article shall be read in conjunction with the Indenture, and Articles [7](#), [8](#) and [10](#) of this Agreement.

### **9.4 Appropriate Uses of Remedial Works and Measures Account**

#### 9.4.1 Appropriate Uses

The Appropriate Uses of the Remedial Works and Measures Account shall be:

- a. to fund Remedial Works within the Reserve, the Resource Area, and the Project Influenced Waterways within and adjacent to the Resource Area, for the benefit of Split Lake Cree;
- b. to fund the O & M Reserve and to pay therefrom all Operations and Maintenance with respect to Remedial Works including the necessary contributions to the Asset Replacement Reserve;
- c. to provide funding for the Asset Replacement Reserve and to pay therefrom the costs of Replacement Remedial Works;
- d. to fund Asset Damage Compensation Awards; and,
- e. to fund work done by Split Lake Cree, if any, to comply with the provisions of the Easements.

## **9.5 Obligations of Other Parties**

### 9.5.1 Funds Not to be Used for Other Obligations

Notwithstanding [subsection 9.4.1](#) of this Article, the Remedial Works and Measures Account shall not be used to fund Remedial Works, Operations and Maintenance or Replacement Remedial Works which would otherwise be the obligation of Hydro, Manitoba or Canada to perform pursuant to any licences, permits, authorizations, or other obligations arising out of any federal or provincial legislation, any agreement of any nature including this Agreement, or which may be for the benefit of the general public.

### 9.5.2 Joint Undertaking

Hydro and Split Lake Cree may, but shall not be obliged to, undertake Remedial Works for their mutual benefit as a joint undertaking, provided that to the extent funding for such Remedial Works is to be derived from the Remedial Works and Measures Account, the process and procedures in this Agreement and in the Indenture related to Trustee approvals, the O & M Reserve and the Asset Replacement Reserve, must be followed.

## **9.6 The Administration of Remedial Works and Measures Account**

### 9.6.1 Plan

The money available from the Remedial Works and Measures Account for purposes of Remedial Works, Operations and Maintenance and Replacement Remedial Works are to be expended pursuant to a plan approved annually by Chief and Council. The plan must, in addition to any Specific Projects or Program initiatives for the then current year, provide a five (5) year forecast of anticipated Remedial Works and estimated demands on the Remedial Works and Measures Account. Such plan shall be submitted by Chief and Council to the Trustees, annually, prior to the approval by the Trustees of any expenditures from the Remedial Works and Measures Account, except as necessary and permitted to pay Asset Damage Compensation awards.

### [Article 9.7.6](#)

### 9.6.2 Content

The plan annually presented to the Trustees by Chief and Council in accordance with subsection 9.6.1 of this Article shall include a detailed consideration of all Remedial Works, both existing and anticipated, including the actual or anticipated capital cost thereof, the Operation and Maintenance costs and the Replacement Remedial Works costs related thereto. Each such plan shall set forth a program of Remedial Work development, if any, including Operation and Maintenance and Replacement Remedial Works, if any, and shall identify the total expenditure of Remedial Works and Measures Account money expected to be necessary for such program.

### 9.6.3 Disclosure

In addition to the requirements of [section 10.6](#) of this Agreement, Chief and Council will be required to disclose to any Member and the Trustees, when proposing expenditures for any Remedial Work:

- a. a complete description of the proposed Remedial Work and all costs associated with the Remedial Works, Operations and Maintenance and Replacement Remedial Works; and,
- b. an Operations and Maintenance budget and a Replacement Remedial Works budget for the particular Remedial Work containing and supported by an opinion prepared by and bearing the seal of a professional Engineer registered and licensed to practise in the Province of Manitoba, based upon a thorough review of the plans and working drawings, as to the expected costs of Operation and Maintenance of the Remedial Work, the anticipated useful life of such Remedial Work and the cost of replacing such Remedial Work.

## [Article 9.8](#)

### 9.6.4 Allocation

Based upon information and documentation submitted by Chief and Council, in compliance with all of the requirements of subsection 9.6.3 of this Article, and any additional financial information or professional, financial or actuarial opinion required by the Corporate Trustee, all of which the Corporate Trustee is hereby authorized to obtain and rely upon, the Corporate Trustee shall allocate the amount of Capital the Corporate Trustee reasonably anticipates will be required, from the Remedial Works and Measures Account, to the O & M Reserve to cover the Operation and Maintenance of the Remedial Work and the annual funding of the Asset Replacement Reserve, and shall cause such amount to be placed in the O & M Reserve.

## [Article 9.7.4](#)

### 9.6.5 Partial Funding

During the first six (6) years following the Date of this Agreement (the "Partially Funded Period") the O & M Reserve and the Asset Replacement Reserve, for any Remedial Work may be funded either:

- a. at the time funding is provided for the Remedial Work; or,
- b. at the earlier of the date that the construction of the Remedial Work is complete or two (2) years following approval of the funding for the construction of the Remedial Work, provided, in either such case, that in the reasonable opinion of the Corporate Trustee, based on its determination under [subsection 9.6.4](#) of this Article, the assumption that the Tataskweyak Trust will be funded in accordance with the Financial Schedule, and in contemplation of the date that operations are scheduled to commence, there will be a sufficiency of Income and Capital available following completion of construction of the Remedial Work to fund the O & M Reserve and the Asset Replacement Reserve.

#### 9.6.6 Full Funding

Following the Partially Funded Period, the O & M Reserve and the Asset Replacement Reserve for any Remedial Work shall be established at the same time and as part of the funding for the Remedial Work.

#### 9.6.7 Permitted Expenditures

Other than to establish and fund Reserve Accounts contemplated by this Article, the Trustees shall not permit any expenditure from the Remedial Works and Measures Account except in accordance with [section 10.6](#) of this Agreement, [Article 11 of the Indenture](#), and pursuant to a proposal made by Chief and Council for a Remedial Works. Such proposal shall set out a complete description of the Remedial Works proposed and all costs associated with the Remedial Works, including engineering costs, consulting and development costs and continuing Operations and Maintenance expenses. Operation and Maintenance expenses shall include Asset Replacement Reserve contributions, anticipated in connection with the proposed Remedial Works, in sufficient detail to enable the Trustees to determine whether or not the expenditure for the Remedial Work meets the financial criteria established by this Article, this Agreement, the Indenture and the objects of the Remedial Works and Measures Account.

#### 9.6.8 No New Work

No new Remedial Work shall be funded out of the Remedial Works and Measures Account if the annual Income available from the Remedial Works and Measures Account not allocated or dedicated to the O & M Reserve for existing Remedial Works, the Asset Replacement Reserve or the Asset Damage Reserve would be insufficient to fund, in full, all costs related to such new Remedial Work including its Operation and Maintenance and Asset Replacement Reserve contributions.

#### [Article 9.7.2](#)

### **9.7 Operation and Maintenance Obligations**

#### 9.7.1 Covenant to Maintain

Split Lake Cree covenant and agree to manage and maintain any and all Remedial Works undertaken by or on behalf of Split Lake Cree which are Split Lake Cree's responsibility, as a reasonably prudent manager would manage and maintain comparable works in similar circumstances, and upon providing reasonable notice, Hydro may, but shall not be obliged to, inspect all Remedial Works.

#### [Article 9.7.7](#)

##### 9.7.2 Paramount Consideration

The requirements of [subsection 9.6.8](#) of this Article are paramount. No Remedial Works are to be approved unless the costs of Operation and Maintenance, including Asset Replacement Reserve contributions for such work, can be funded entirely with no shortfall from Approved Funding and Programming, as defined in [subsection 9.7.5](#) of this Article, or from Income generated from the O & M Reserve and Asset Replacement Reserve established for such Remedial Works.

#### [Section 9.7.6](#)

##### 9.7.3 Independent Financial Review

The Corporate Trustee is authorized and empowered to carry out its own independent financial investigation, as contemplated in [subsection 9.6.4](#) of this Article, and to retain such experts in that regard, as it, acting reasonably, deems necessary to investigate, report and provide to it such opinions as it may rely upon, and as it may reasonably require, to enable it to exercise its discretion in this regard.

##### 9.7.4 Liability

Except as expressly set out in this Agreement, including the Indenture, the Corporate Trustee shall have no obligation or responsibility, with the exception of its own negligence or wilful act, or omission with respect to the costs of Operation and Maintenance, including Asset Replacement Reserve contributions.

##### 9.7.5 Approved Funding

The term "Approved Funding and Programming" shall be restricted to such Funding and Programming related to the Remedial Work and the Operation and Maintenance and Replacement Remedial Works requirements of the Remedial Work, that has been approved by either Canada or Manitoba. There is no undertaking by Canada or Manitoba, in this Agreement, that any such Approved Funding and Programming will be available or, if available, will be on terms or for periods required to satisfy [subsections 9.7.1 and 9.7.2](#) of this Article, or any provision of this Agreement.

#### [Article 9.7.2](#)



#### 9.7.6 Shortfalls

The actual annual costs of Operation and Maintenance, including Asset Replacement Reserve contributions, for each Remedial Work previously funded, in whole or in part, from the Remedial Works and Measures Account, shall be reviewed annually in the plan, to be provided pursuant to [subsection 9.6.1](#) of this Article, and if:

- a. the actual Operation and Maintenance costs, including Asset Replacement Reserve contributions, for any year exceeds the Income generated from the O & M Reserve, then, prior to any further distribution from the Remedial Works and Measures Account in that year or any following year, the relevant O & M Reserve and, if necessary, the Asset Replacement Reserve shall be increased to the extent required to cover the excess and to ensure in future years that such shortfall shall not be repeated; or,
- b. a Remedial Work is no longer required, is demolished or disposed of, and is not to be replaced, and if as a result there is an excess in the Asset Replacement Reserve, then the Asset Replacement Reserve may be decreased to reflect the reduction in demand for money for Replacement Remedial Works, with the surplus amount being returned to the Remedial Works and Measures Account.

#### 9.7.7 Other Funds

If there is a shortfall in the O & M Reserve or the Asset Replacement Reserve, and there is insufficient Income and Capital in the Remedial Works and Measures Account to offset that shortfall and sufficiently increase the O & M Reserve and(or) the Asset Replacement Reserve as required by subsection 9.7.6 of this Article, then Chief and Council, as may be necessary to fulfill the covenant of Split Lake Cree contained in [subsection 9.7.1](#) of this Article, shall request the Trustees to apply such Income as may be necessary from:

- a. the Asset Damage Reserve;
- b. the Economic and Social Development Account;
- c. the Implementation Account; and(or)
- d. the Environmental Monitoring Account;

for such purpose, and the Trustees shall apply the Income from such Accounts for such purpose in accordance with the request of Chief and Council or, if Chief and Council determine that no further funds are necessary, Chief and Council shall advise the Corporate Trustee of such cost saving measures or other steps taken to reduce the costs of Operation and Maintenance, supported by information equivalent to that required in [paragraph 9.6.3 b\)](#) and subsection 9.6.4 of this Article.

### **9.8 Asset Damage Claims**

#### 9.8.1 Acknowledgement

The Remedial Works and Measures Account may be used, and some of the Settlement Proceeds applicable to the Remedial Works and Measures Account may have been used, to pay the cash

compensation to Members contemplated in [subsection 7.3.1](#) of this Agreement, in whole or in part, in accordance with the provisions of subsections 7.3.1 to 7.3.6, inclusive, of this Agreement.

#### 9.8.2 Prior Claims

Any Member may file with Chief and Council claims for compensation for loss or damage suffered by that Member not more than four (4) years prior to the date of such claim, as a result of an Adverse Effect on Split Lake Cree Assets. Such claims shall be dealt with in accordance with the procedure for administering claims for compensation set out in Article 8 of this Agreement. Individual claims previously filed with the NFA Arbitrator may be submitted to Chief and Council within one (1) year of the Date of this Agreement, but not thereafter, regardless of when such claims arose. Such claims shall then be dealt with in accordance with the procedure for administering compensation claims set out in [Article 8](#) of this Agreement.

#### 9.8.3 Subsequent Claims

Claims by Members, for loss of or damage to Split Lake Cree Assets suffered after the Date of this Agreement as the result of an Adverse Effect, may be submitted to the Chief and Council at any time prior to the expiry of four (4) years from the date that the claimant suffered the loss for which compensation is claimed, but not thereafter. Such claims shall be dealt with in accordance with the procedure for administering claims for compensation set out in [Article 8](#) of this Agreement.

#### 9.8.4 Limitation on Payment of Asset Damage Claims

Claims for damages arising from Adverse Effects on Split Lake Cree Assets, filed by Members, shall be paid from the Asset Damage Reserve and, in the discretion of the Split Lake Cree Trustees or the Split Lake Cree Arbitrator, from any other Income generated from the Remedial Works and Measures Account, except that generated by the O & M Reserve or the Asset Replacement Reserve. Notwithstanding anything to the contrary, including the decision of Chief and Council, Split Lake Cree Trustees, or the Split Lake Cree Arbitrator, payments towards such claims, or awards made with respect to such claims, shall not exceed in any one (1) year the Asset Damage Reserve and the Income generated in that year by the Remedial Works and Measures Account, excluding the Income generated from the O & M Reserve and the Asset Replacement Reserve.

#### 9.8.5 Insufficient Funds

If there are insufficient funds generated to pay awards with respect to claims for Asset Damage Compensation in any year, the awards shall be prioritized on a first come first served basis and shall be paid as funds are available from Income from the Remedial Works and Measures Account, exclusive of Income generated by the O & M Reserve. To the extent any award remains unpaid, including interest thereon, calculated at the rate of interest being seventy-five percent (75%) of the prescribed rate of interest as determined from time to time under the Income Tax Act (Canada), rounded to the nearest tenth of a point, it shall represent a first charge

and claim against Income not required to fund Operation and Maintenance costs, or Asset Replacement Reserve contributions in the succeeding calendar year or years.

## **9.9 Split Lake Cree**

### 9.9.1 Role of Split Lake Cree

Nothing in this Article imposes upon Chief and Council or Split Lake Cree Trustees, any obligation to any Member, Split Lake Cree Based Business or Controlled Institution, with respect to loss or damage resulting from Adverse Effects on Split Lake Cree Assets, except to the extent of their roles in the fair and impartial administration of the Remedial Works and Measures Account.

# Article 10

## 10.0 Implementation

### 10.1 Introduction

#### 10.1.1 Introduction

This Article is to establish and describe the Appropriate Uses, procedures for application and requirements for management, accountability and expenditure of moneys from the Implementation Account established as part of the Indenture, and to provide for the Executive Implementation Committee.

### 10.2 Financing

#### 10.2.1 Payments

Hydro and(or) Manitoba, and Canada shall pay to Split Lake Cree in aggregate the sum of three million, eight hundred, fifty-eight thousand dollars (\$3,858,000.00), to fund the Implementation Account, in instalments, on the dates, and in accordance with the Financial Schedule.

#### [Article 10.3.2](#)

#### 10.2.2 Split Lake Cree Warranty

Save and except as provided in [section 10.3](#) of this Article, Split Lake Cree warrants that there have been no financial commitments or undertakings with respect to those Settlement Proceeds which have not been received at the Date of this Agreement.

#### 10.2.3 Acknowledgement

Split Lake Cree acknowledges that none of Manitoba, Hydro or Canada shall be responsible for the effectiveness of the implementation arrangements in this Agreement and in the Indenture, with respect to which Split Lake Cree, Chief and Council, Split Lake Cree Trustees, the Corporate Trustee, any Member, Split Lake Cree Based Businesses and(or) Controlled Institutions have rights and defined responsibilities. Split Lake Cree acknowledges that there is no sanction 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 development and other purposes of Split Lake Cree. This subsection does not limit the obligations of Canada, Manitoba, and Hydro, pursuant to this Agreement.

#### 10.2.4 Releases

Split Lake Cree hereby releases and forever discharges Canada, Manitoba and 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 Split Lake Cree, its successors, or assigns,

have had, now have or hereafter can, shall or may have for, or by reason of, any cause, matter or thing whatsoever, up to the Date of the Agreement or at any future time, attributable, in whole or in part, to or arising out of or in respect to the obligations of Canada, Manitoba or Hydro to Split Lake Cree under provisions of the NFA, related to implementation of the NFA, or for anything done, or omitted to be done, in this regard by Canada, Manitoba or Hydro, except as specifically provided for in this Agreement.

### **10.3 Pre-Operational Expenses**

#### 10.3.1 Pre-operational Expenses

Split Lake Cree will immediately settle all moneys referenced in [subsection 10.2.1](#) of this Article, save and except only those moneys which are to be available for reasonable expenses incurred, and to be incurred, by Split Lake Cree, in the definition and establishment of implementation structures, and arrangements with respect to this Agreement, ("Preoperational Expenses"), which are further described in subsection 10.3.2 below. The money from the Settlement Proceeds approved for Pre-operational Expenses shall not exceed seven hundred and fifty thousand dollars (\$750,000.00).

#### 10.3.2 Nature of Expenses

Pre-operational Expenses shall include only those expenditures undertaken prior to the Date of this Agreement on those matters which are directly related to enabling Split Lake Cree, and Chief and Council, to effectively implement Split Lake Cree rights and responsibilities as set out in this Agreement. Without limiting the generality of the foregoing, such matters will include the definition and operational organization of Tataskweyak Trust, the Tribunals, the environmental agency established pursuant to [Article 6](#) of this Agreement, the arrangements in [Article 5](#) of this Agreement, the transfer of Compensation Lands and Fee Simple Lands, the Tataskweyak Development Corporation, the Joint Committee established pursuant to [Article 13](#) of this Agreement, and associated Split Lake Cree governmental management and accounting systems.

#### 10.3.3 Approval of Expenses

Split Lake Cree warrants that:

- a. with respect to those commitments related to Pre-operational Expenses entered into by Chief and Council during 1991, such commitments were authorized for payment from the money set aside for Pre-operational Expenses only after they had been approved by Members and Chief and Council through a process providing disclosure to, and approvals by Members no less exacting than those required pursuant to [section 7.18 of the Indenture](#); and,
- b. with respect to the Pre-operational Expenses planned to be undertaken in 1992, such undertakings were authorized, prior to the commitment and expenditure of Pre-operational Expenses, by Members and Chief and Council through a process providing disclosure to, and approvals by Members no less exacting than those required pursuant to section 7.18 of the Indenture.

#### 10.3.4 Non-Qualifying Amounts

If Members do not approve the expenditure of Pre-operational Expenses, with respect to any prior commitments by Chief and Council related to the purposes for which Pre-operational Expenses are available, Split Lake Cree warrants that such commitments will not be paid or reimbursed from the money available under section 10.3 of this Article for Pre-operational Expenses.

#### 10.3.5 Limitation on Approvals

Split Lake Cree represents and acknowledges that [Article 12](#) and sections 14.8, 14.9 and 14.10 of the Indenture will apply with respect to the moneys approved for Pre-operational Expenses, pursuant to subsection 10.3.3 of this Article, as if such moneys had been paid out of the Trust Funds. Split Lake Cree warrants that Chief and Council shall not receive, and to the Date of the Agreement, Chief and Council have not received, in connection with the discharge of their duties as Chief and Council, any amounts from Settlement Proceeds related to Pre-operational Expenses.

#### [Article 10.2.3](#)

### **10.4 Appropriate Uses of Implementation Account**

#### 10.4.1 Appropriate Uses

The Appropriate Uses of the Implementation Account shall be to finance Split Lake Cree costs associated with:

- a. designing and implementing local governmental, financial and institutional structures and arrangements reasonably required to enable the effective, continuing implementation of the terms of this Agreement, as set out in this Article and [Articles 6, 7, 8 and 9](#) of this Agreement, consistent with the authority and responsibility of Split Lake Cree and its obligations under this Agreement; and,
- b. participating in implementation arrangements with Canada, Manitoba and Hydro, as appropriate, and as established pursuant to this Agreement, including resolving disputes and paying costs related to either the Agreement, or the matters excepted by [subsections 15.4.1 and 15.7.6](#) of this Agreement.

#### 10.4.2 Costs

With respect to the resolution of disputes referenced in paragraph 10.4.1(b) of this Article, such financing from the Implementation Account will not diminish the liability, if any, of the other Party or Parties to the dispute, to reimburse Split Lake Cree for reasonable costs incurred in resolving the dispute, consistent with [Articles 15 and 16](#) of this Agreement.

### **10.5 Split Lake Cree Implementation Responsibilities**

### 10.5.1 Split Lake Cree Government

Chief and Council, as the governmental authority of Split Lake Cree, and consistent with the Appropriate Uses, the requirements set out in Article 10 of this Agreement, and the provisions of the Indenture, shall be responsible to ensure the proper planning, organization, coordination, management and implementation of all Program Initiatives and Specific Projects to be funded from any of the Accounts, with the exception of the payments which are to be made directly by the Trustees to Eligible Compensation Beneficiaries, pursuant to the terms set out in this Agreement.

### 10.5.2 Direct Management

Chief and Council, may meet its responsibilities, as set out in subsection 10.5.1 of this Article, directly, including through the use of Split Lake Cree government organizations and agencies, in which case Chief and Council will retain overall responsibility for approved Program Initiatives and Specific Projects.

### [Article 1 – Program initiative](#)

### 10.5.3 Indirect Management

Chief and Council may meet its responsibilities, as set out in subsection 10.5.1 of this Article, indirectly, with respect to Specific Projects, through the efforts of community organizations and(or) Members, whether at the request of Chief and Council or as the result of proposals to Chief and Council, in which case, provided all required disclosures and approvals have been made, the responsibility of Chief and Council pursuant to subsection 10.5.1 of this Article will, after payment from the Designated Bank Account established pursuant to [subsection 10.7.1](#) of this Article, be limited to the responsibility of Chief and Council to ensure reporting pursuant to [subsection 10.7.6](#) of this Article.

### [Article 10.7.5](#)

### 10.5.4 Split Lake Cree Agencies

In those instances in which Chief and Council propose to use a corporate entity, as an agent of Split Lake Cree government, to implement Program Initiatives or Specific Projects funded out of any Accounts or Reserve Accounts, Chief and Council will, in advance, disclose their intention to Members together with the material characteristics of such corporate entities, and secure the approval of the Members, according to the standards set out in [sections 10.6](#) and [10.7](#) of this Article, and the process of community and Chief and Council approvals set out in Article 11 of the Indenture.

### [Article 7.5.3](#)

## **10.6 Standards for Financial Support**

### 10.6.1 Disclosure

Chief and Council shall be required to disclose to Members and Split Lake Cree Trustees, when proposing expenditures as Program Initiatives and Specific Projects, the reasons for believing the expenditures will result in lasting benefits and improvements for present and future Members, including:

- a. the use of the funds, including the amounts, if any, for salaries, purchases of goods and services, provision of project and initiative financing and(or) payment of compensation;
- b. the specific benefits which are anticipated, and where the activities and the expenditures will be undertaken or provided;
- c. how the proposed expenditures will achieve the contemplated benefits;
- d. the competence of involved individuals and(or) organizations to produce the benefits within the resources provided;
- e. if previously funded, the amount of money previously provided and the results accomplished; and,
- f. how any Program Initiative will be administered, including the decision process with respect to Specific Projects funded thereby.

### 10.6.2 Prohibition

Chief and Council shall not authorize, or allow, the pledging, binding commitment or encumbering of any future year's or years' anticipated Income from any Accounts, for any purposes save and except as specifically provided by this Agreement.

## **10.7 Financial Management and Disclosure**

### 10.7.1 Designated Bank Account

Upon receipt of moneys from the Accounts, Chief and Council will cause such money to be deposited in a bank account designated for that purpose, (the "Designated Bank Account"), segregated from Split Lake Cree operating accounts, as required by [section 11.4 of the Indenture](#).

#### [Article 10.5.3](#)

### 10.7.2 Expenditures

Expenditures from the Designated Bank Account shall not vary from the purposes approved, consistent with Article 11 of the Indenture.

### 10.7.3 Accounting

Expenditures from the Designated Bank Account shall be accounted for in a manner that will enable the reporting and auditing of the use of the funds, to allow for an assessment of the compliance of expenditures of funds with purposes approved consistent with Article 11 of the Indenture. The annual audit report of the Designated Bank Account shall include an opinion as to



the compliance, or otherwise, of the accounting system utilized, with the standards established in section 11.4 of the Indenture.

[Trust Indenture – Article 11.6.2](#)

[Trust Indenture – Article 11.13](#)

#### 10.7.4 Relationship to General Audit

The availability and use of moneys from the Accounts and Reserve Accounts within Split Lake Cree government and administration shall be identified and reported on clearly, in a manner permitting comparison between the actual use of the funds and the approved uses, within the general, annual audit report of Split Lake Cree. This report shall also be made available to the Trustees within ninety (90) days of the fiscal year end. On request, a copy of the audit report shall be made available to any Member or any Party.

#### 10.7.5 Financial Report

Chief and Council shall have the responsibility to provide, or, in the case of indirect delivery as contemplated in [subsection 10.5.3](#) of this Article, to obtain and provide, a narrative and financial report for each year in which moneys from an Account or Reserve Account are received, with respect to all uses of such moneys, which report shall disclose the purposes to which such moneys were applied, and the discernible results.

#### 10.7.6 Availability of Reports

Any report required pursuant to subsection 10.7.5 of this Article, when approved by Chief and Council, shall be provided to the Trustees within ninety (90) days of the end of the fiscal year, and notice, that such report is available on request to any Member or any Party, shall be posted on Reserve in conspicuous places including the general administration office.

#### [Article 10.5.4](#)

#### 10.7.7 Failure to Provide

If the required audit reports and opinions, and other reports, are not provided within the ninety (90) day period set out in [subsections 10.7.4 and 10.7.6](#) of this Article, Chief and Council will cease to have the authority to propose expenditures, or receive funds, from any Account or Reserve Account, either directly or indirectly as the case may be, until the reporting deficiency is corrected.

#### 10.7.8 Required Meeting

If the said audit reports and opinions, and other reports, are not provided within a further fifteen (15) day period, a meeting of the Members, including the Trustees, shall be called by Chief and Council to explain the failure to comply with the reporting requirements, which meeting shall be held on Reserve, within a further fifteen (15) day period.

### 10.7.9 Remedies

At any time following the meeting of Members contemplated pursuant to subsection 10.7.8 of this Article, or the date by which such meeting should have been held, any Member may seek remedies through the provisions of Article 16 of this Agreement, to ensure compliance with the aforesaid reporting requirements, either by Chief and Council, or by other independent means, as ordered by the Split Lake Cree Arbitrator.

[Article 7.5.2](#)

[Article 10.5.4](#)

[Article 11.3.6](#)

[Trust Indenture - Article 11.6.2](#)

[Trust Indenture - Article 12.1.2](#)

[Trust Indenture - Article 13](#)

## 10.8 Executive Implementation Committee

### 10.8.1 Establishment

An Executive Implementation Committee (the Committee) shall be established to facilitate the implementation of the Agreement.

### 10.8.2 Composition

The Committee shall include the Chief of Split Lake Cree, the Chief Executive Officer of Hydro; the Assistant Deputy Minister of Northern Affairs of Manitoba, and an Assistant Deputy Minister of Indian Affairs and Northern Development of Canada.

### 10.8.3 Duties

The Committee shall:

- a. review progress on the implementation of the Agreement;
- b. follow-up previously identified commitments by any of the Parties; and,
- c. seek solutions to emerging identified difficulties, if any, in implementing the Agreement, including assisting in the amicable resolution of disputes, if any, among the Parties.

### 10.8.4 Meetings

The Committee will meet twice annually, generally in March and September, to receive and consider reports filed by Split Lake Cree, Hydro, Manitoba and Canada, and by the joint committees and implementation bodies established pursuant to this Agreement. Each member of the Committee will be responsible to ensure that reports, related to implementation issues and activities reasonably required for the activities of the Committee, are filed with the other members of the Committee, at least thirty (30) days prior to the date established for the meeting.

## [Article 10.8.8 a\)](#)

### 10.8.5 Co-ordination

The member of the Committee appointed by Canada shall undertake a coordinating role with respect to initiating and arranging the date, time, venue, agenda, exchange of required reports and requests for information prior to the meeting. Such preparation shall be commenced not later than sixty (60) days (or such other period as may be unanimously agreed by the members of the Committee) in advance of the projected dates for spring and fall meetings, and special meetings, if any.

### 10.8.6 Staffing

The Committee will normally rely upon the internal resources of the respective Parties to meet staffing and operating requirements.

### 10.8.7 Secretariat

The members of the Committee may, by unanimous agreement but not otherwise, establish an ongoing secretariat capacity, and(or) organize and finance projects, related to joint or related responsibilities. Such agreement must stipulate and provide for funding of any unanimously approved secretariat capacity or projects.

### 10.8.8 Term

The Committee shall be obliged to hold meetings as set out in [subsection 10.8.4](#) of this Article, until:

- a. the Compensation Lands have been set aside as Reserve and the Easements have been granted as required by [Article 3](#) of this Agreement;
- b. all Fee Simple Lands have been transferred pursuant to [Article 4](#) of this Agreement
- c. all payments have been made as set out in the Financial Schedule; and,
- d. all contemplated legislation has been enacted and proclaimed;

provided that, in the case of paragraphs 10.8.8(a) and 10.8.8(b), of this Article, Chief and Council have not unduly withheld required approvals with respect to the transfer of the Compensation Lands and the granting of the Easements. Thereafter, the Committee shall only be obliged to meet annually upon the request of at least two (2) members of the Committee.

## **10.9 Reports by the Executive Implementation Committee**

### 10.9.1 Reporting

The Committee will report annually, in those years in which a meeting is held, within ninety (90) days of the end of the fiscal year, giving details of the implementation of this Agreement. The Committee will provide the annual report to Chief and Council, the Chief Executive Officer of

Hydro, the Minister of Indian Affairs and Northern Development of Canada and the Minister of Northern Affairs of Manitoba.

#### 10.9.2 Separate Reports

One or more members of the Committee may issue a separate report or reports, and if dissenting from the report of the Committee, provide reasons for such dissent.

### **10.10 IMPLEMENTATION ACTION**

#### 10.10.1 Implementation

Various actions, as set out in the specific Articles of this Agreement are required to accomplish effective implementation. Whether the required action is of a one-time or continuing character, the Parties will take the steps pursuant to their obligations in order to accomplish the agreed action, either within the time frames specified in the various Articles, or in the absence of specified time frames, on a demonstrably reasonable and timely basis, but, nothing in subsection 10.10 of this Article shall alter the obligations set out elsewhere in this Agreement.

# Article 11

## 11.0 Indian Moneys

### 11.1 Introduction

#### 11.1.1 Introduction

The purpose of this Article is to describe arrangements for the portion of the Settlement Proceeds which may be subject to certain provisions of the Indian Act (Canada).

### 11.2 Exemptions from Indian Moneys Requirements

#### 11.2.1 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 the Settlement Proceeds.

#### [Article 11.4.1](#)

#### 11.2.2 Alternative to Specific Legislation

In the event that the legislation contemplated by subsection 11.2.1 of this Article has not been enacted and proclaimed, prior to April 30, 1994, then:

- a. if other legislation has been enacted and proclaimed which authorizes the transfer and administration of Indian Moneys to Indian control, including by trust arrangements of the kind set forth in this Agreement, then each Party shall take the steps pursuant to that legislation to accomplish the transfer and administration of all Settlement Proceeds to and under the trust arrangements set forth in the Agreement and the Indenture; or
- b. if no legislation has been enacted and proclaimed, then, provided that
- c. there is a reasonable prospect of the legislation referred to in subsection 11.2.1 or paragraph 11.2.2.(a) of this Article being enacted and proclaimed within two (2) years of the proclamation contemplated below, and,
  - i. Canada has received written covenants from each of Split Lake Cree, Hydro and Manitoba that the exemption granted by the proclamation contemplated below will, on their own part, be used only and exclusively for the purposes of transfer of Settlement Proceeds to, and the administration of the Settlement Proceeds in accordance with the trust arrangements set forth in the Agreement and the Indenture
  - ii. Canada will, pursuant to subsection 4(2) of the Indian Act (Canada), consider declaring by proclamation that the provisions of subsection 35(4) of the Indian Act (Canada) shall not apply to Split Lake Cree.

#### [Article 11.4.2](#)

## 11.3 Payments of Indian Moneys to Canada

### 11.3.1 Amounts

In the event that there is neither legislation nor the proclamation of a declaration as contemplated by [section 11.2](#) of this Article, then the following amounts and bonds, which would otherwise have been paid or delivered to Split Lake Cree for settlement on the Trust, shall instead be paid and delivered to Canada for the use and benefit of Split Lake Cree:

- The amount payable by Manitoba and(or) Hydro in accordance with this Agreement:
  - \$1,000,000.00 payable on April 30, 1994
  - \$1,000,000.00 payable on April 30, 1995
  - \$1,000,000.00 payable on April 30, 1996
  - \$920,000.00 payable on April 30, 1997
- The bonds to be issued by Hydro in accordance with this Agreement:
  - \$5,000,000.00 to be issued on April 30, 1994
  - \$6,500,000.00 to be issued on April 30, 1995

and the obligations to pay Split Lake Cree set forth in Articles [6](#), [7](#), [8](#), [9](#) and [10](#) of this Agreement, and in the Financial Schedule, shall be modified accordingly, as required.

### 11.3.2 Allocation

These amounts shall be designated for the same purposes as corresponding Accounts and Reserve Accounts as set out in the Financial Schedule in consultation with the Corporate Trustee and such Capital shall be similarly so allocated.

### 11.3.3 Designation of Capital

From the amount designated for the Remedial Works and Measures Account under subsection 11.3.2 of this Article, Split Lake Cree may, in accordance with the provisions of [Article 9](#) of this Agreement and Article 11 of the Indenture, request the allocation of Capital to the O & M Reserve, the income of which shall be used to fund Operations and Maintenance of Remedial Works; and, on receipt of the certificates contemplated by those Articles, the Minister shall set aside the amounts available for that purpose.

### 11.3.4 Expenditures

Settlement Proceeds received and held by Canada will be expended in accordance with section 64 and other applicable provisions of the Indian Act (Canada) and Canada undertakes, pursuant to Section 64, to allow any expenditure which is an Appropriate Use as contemplated pursuant to [Article 9](#) of this Agreement, and is also approved at the time requested by the Minister, pursuant to the applicable provisions of the Indian Act (Canada).

### 11.3.5 Application of Agreement

In addition to the requirements of the Indian Act(Canada) it is the intention of the Parties that the provisions of Article 11 of the Indenture and [sections 10.6](#) and [10.7](#) of this Agreement will apply to any requests for expenditures of Settlement Proceeds held by Canada for the use and benefit of Split Lake Cree.

#### 11.3.6 Nominal Capital Amounts

Where Capital is held by Canada for the use and benefit of Split Lake Cree, this Capital shall be added to the corresponding amounts in the Accounts and Reserve Accounts for the purposes of determination by the Corporate Trustee of Minimum Nominal Capital Amounts and Continuing Nominal Capital Amounts. On request of the Corporate Trustee, Canada shall promptly advise the Corporate Trustee of the amount of such Capital held by Canada.

#### 11.3.7 Payment of Income

Income earned, on the Capital amounts held by Canada for the use and benefit of Split Lake Cree, shall be paid to the Corporate Trustee for the Tataskweyak Trust on an annual or more frequent basis.

#### 11.3.8 Allocation of Income to Capital

Where the Indenture provides that a portion of income is to be allocated to the Capital of an Account or a Reserve Account, that amount shall be so allocated by the Corporate Trustee from income received pursuant to subsection 11.3.7 of this Article.

### **11.4 Subsequent Legislation**

#### 11.4.1 Subsequent subsection 11.2.1 Legislation

If the legislation referred to in [subsection 11.2.1](#) of this Article is considered by Parliament subsequent to April 30, 1994, Canada shall recommend to Parliament that such legislation include provision for the transfer to the Trust of all Settlement Proceeds, if any, held by Canada.

#### 11.4.2 Subsequent paragraph 11.2.2(a) Legislation

If legislation of the kind referred to in [paragraph 11.2.2\(a\)](#) of this Article is proclaimed subsequent to April 30, 1994, but prior to any legislation to which subsection 11.4.1 of this Article refers, each Party shall take the steps necessary pursuant to the proclaimed legislation to accomplish the transfer and administration of all Settlement Proceeds, if any, to and under the trust arrangements set forth in the Agreement and the Indenture.

# **Article 12**

## **12.0 Settlement Proceeds and Federal and Provincial Funding and Programming**

### **12.1 Introduction**

#### 12.1.1 Introduction

This Article describes standards and procedures for the relationship between the use of Settlement Proceeds by Split Lake Cree, and the provision of Funding and Programming to Split Lake Cree by Canada and Manitoba.

### **12.2 Release**

#### 12.2.1 Release

Split Lake Cree releases and forever discharges each of Canada and 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 Split Lake Cree, its successors, or assigns, have had, now have or hereafter can, shall or may have, for or by reason of any cause, matter or thing whatsoever up to the Date of the Agreement, or at any future time, attributable, in whole or in part, to or arising out of the provisions of Article 2.4 and related provisions of the NFA. Split Lake Cree covenants and agrees not to commence or prosecute any action, claim, demand, or proceeding on its own behalf or on behalf of any Member, or Controlled Institution on account of or in relation to any such matters.

### **12.3 PROVISIONS APPLICABLE TO CANADA**

#### 12.3.1 Programs of Canada

The application or disbursement of Settlement Proceeds by Split Lake Cree, in accordance with this Agreement or the Indenture, shall not be considered substitutes for Funding and Programming which may otherwise be made available by Canada. Decisions on such Funding and Programming by departments of the government of Canada shall be in accordance with the standards set forth in the paragraphs immediately following.

- a. Where 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 Split Lake Cree need shall not reduce the quantum of such Funding and Programming to the extent that such a reduction of need is reasonably attributable to, or results from, the expenditure of Settlement Proceeds.
- b. Where 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 Settlement Proceeds. However, the availability or



expenditure of Settlement Proceeds may be taken into account where such availability or expenditure would make the decision more favourable to Split Lake Cree 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 Funding and Programming are 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 Settlement Proceeds for Funding and Programming which, in the absence of those Settlement Proceeds, would be, or would have been, available.
- d. Where 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 Split Lake Cree, Chief and Council, any Member, and (or) Controlled Institution, treatment which is the same as or similar to that provided to other first nations or their members in comparable circumstances.
- e. Where Settlement Proceeds are expended to construct works or infrastructure on Reserve, it shall be the responsibility of Split Lake Cree to provide for the operation and maintenance of such works or infrastructure. Canada shall not be obliged to, but may, in its discretion, provide funding for operations and maintenance of such works and infrastructure under subsection 12.3.1 of this Article. Operations and maintenance funding shall be available to Split Lake Cree to the same extent it is available to other first nations who fund capital works and infrastructure out of sources other than Funding and Programming.

### 12.3.2 Disclosure

Not later than October 1 in each year, or such other date as may be mutually agreed in writing by Canada and Split Lake Cree, Split Lake Cree shall:

- a. disclose to Canada the availability or expenditure of Settlement Proceeds
  - i. planned, proposed or approved for the forthcoming fiscal year or years of Canada,
  - ii. planned, proposed or approved in accordance with the Indenture, for the current fiscal year of the Tataskweyak Trust, and
  - iii. undertaken during the previous three (3) fiscal years of the Tataskweyak Trust as set out in financial reports as required by the Indenture; and,
- b. indicate the amounts, and(or) nature, of the Funding and Programming requested from that department for the following fiscal year of Canada, or where Funding and Programming is available on a multi-year basis, for the relevant fiscal years of Canada.

### [Article 12.3.8](#)

### 12.3.3 Applications

If a specific date is established, and publicly announced, by a department of the government of Canada for the receipt or submission of applications for Funding and Programming, such date

shall be the date which is applicable with respect to Split Lake Cree disclosures and requests instead of the October 1 date referenced in subsection 12.3.2 of this Article.

#### 12.3.4 Information

The information provided by Split Lake Cree, pursuant to subsection 12.3.2 of this Article, shall be accompanied by such additional material as in the opinion of Split Lake Cree will reasonably assist the relevant department or departments of the government of Canada to comply with the provisions of this Article. Split Lake Cree will provide such supplementary information or clarification as may reasonably be requested by such department(s), within a reasonable period of time following such request.

#### 12.3.5 Non-Compliance

If Split Lake Cree does not comply with [subsections 12.3.2, 12.3.3 and 12.3.4](#) of this Article, in respect of any particular Funding and Programming, it shall have no claim under the provisions of this Article against Canada with respect to the relationship of Settlement Proceeds to such particular Funding and Programming for the applicable fiscal period.

#### 12.3.6 Emergencies

The procedures set out above will not preclude or prejudice consideration of any application by Split Lake Cree for assistance in the event of emergencies. This subsection shall not be construed to suggest that such emergency funding is or will be available.

#### 12.3.7 Negotiations

Within a reasonable time after receipt of the documentation or supplementary documentation, representatives of Split Lake Cree and representatives of departments of the government of Canada, to whom Funding and Programming requests have been made under [subsection 12.3.2](#) of this Article, will negotiate an arrangement with respect to Funding and Programming in compliance with this Article.

#### 12.3.8 Referral

If an arrangement as contemplated by subsection 12.3.7 of this Article is not concluded within one hundred and fifty (150) days of the submission of the documentation provided for in [subsection 12.3.2](#) of this Article, the outstanding issues shall be referred, for resolution, to the Chief or other person designated by Chief and Council and to the Deputy Minister or Assistant Deputy Minister of the department concerned.

#### 12.3.9 Issues

If the outstanding issues are not resolved within a further ninety (90) days, Split Lake Cree or Canada may, within sixty (60) days from the expiry of the ninety (90) day period, but not thereafter, submit such outstanding issues for resolution to the Dispute Resolution Mechanism.

#### 12.3.10 Alteration

Split Lake Cree and Canada may by agreement in writing alter any time limit set out in section 12.3 of this Article.

#### 12.3.11 Compensation Lands

It is understood, as between Canada and Split Lake Cree, that Funding and Programming allocations to Split Lake Cree will be neither restricted from application to the Compensation Lands, nor increased other than as may result from the fair application of general Funding and Programming policies of Canada by reason of the Compensation Lands, unless Canada and Split Lake Cree otherwise agree in the future.

[Article 12.5.1](#)

[Article 12.5.3](#)

### **12.4 Provisions Applicable to Manitoba**

#### 12.4.1 Manitoba Programs

Settlement Proceeds shall not be considered substitutes for Funding and Programming available to communities, residents, or groups of residents of Manitoba, under the normal program criteria in effect from time to time.

#### 12.4.2 Considerations

In considering requests for Funding and Programming, Manitoba shall:

- a. consider all requests in accordance with existing program criteria; and
- b. provide 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 Settlement Proceeds.

#### 12.4.3. P.R. 280

Manitoba's existing regional transportation program contemplates the regrading and stabilization of Provincial Road 280 from Thompson to Gillam, which program shall be implemented based on the following considerations:

- a. demonstration of need, including traffic volumes, public safety and maintenance requirements;
- b. provincial policies and priorities; and,
- c. activities occurring in the Resource Management Area and adjoining lands as a result of implementation of this Agreement.

#### 12.4.4 Timing

Manitoba currently proposes to undertake the program described in subsection 12.4.3 of this Article under normal programming within ten (10) years of the Date of this Agreement, subject always to the considerations in subsection 12.4.3 of this Article and the appropriation of funds by the Legislative Assembly of Manitoba. Manitoba shall advise Split Lake Cree in advance of implementation of the work in order to facilitate Split Lake Cree participation in construction and maintenance activities under the policies of the Department of Highways and Transportation of Manitoba.

#### 12.4.5 Notice

If Manitoba's future regional transportation program contemplates developments or improvements in the Resource Management Area, other than those mentioned in subsection 12.4.3 of this Article, Manitoba shall advise Split Lake Cree for the purposes outlined in subsection 12.4.4 of this Article.

#### [Article 12.5.3](#)

### **12.5 General Provisions**

#### 12.5.1 No Requirement

Except for the purpose of compliance with the standards set out in [section 12.3](#) of this Article in respect of Canada, and [section 12.4](#) of this Article in respect of Manitoba, nothing in this Article shall, or shall be deemed to, require the provision by the governments of Canada or of Manitoba of any Funding and Programming. Nothing in this Article shall require the maintenance or continuation of any Funding and Programming, or require that any particular terms or form of Funding and Programming be established or maintained.

#### 12.5.2 Exclusion

If Canada or Manitoba 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 Split Lake Cree and(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 [section 12.3](#) and(or) [12.4](#) of this Article shall not apply to that program.

#### 12.5.3 Potable Water

Split Lake Cree is entitled to 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 Northern Flood Committee Inc., 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 this Article 12 shall change that agreement. If the NFA arbitrator or a court of competent jurisdiction rules that the May 10, 1988 Agreement is or has

been terminated, then any rights Split Lake Cree may have in relation to provision of potable water shall be as set out in Article 6 and related provisions of the NFA.

#### 12.5.4 Disputes

Disputes arising under the provisions of this Article shall, where not otherwise provided for in this Article, be resolved pursuant to the Dispute Resolution Mechanism.

#### 12.5.5 Distribution Date

Unless all Parties to this Agreement otherwise agree in writing, the provisions of this Article shall be deemed spent on the Distribution Date, if any, under the Indenture.

# Article 13

## 13.0 Project Employment

### 13.1 Introduction

#### 13.1.1 Introduction

This Article outlines general procedures for the co-ordination of opportunities with respect to training, Project employment and business.

### 13.2 Programs

#### 13.2.1 Training and Opportunity Programs

Subject to [subsection 13.2.3](#) of this Article, Hydro shall, in consultation with Split Lake Cree, and within and consistent with Hydro's policies as such policies apply to all Northern aboriginal people, endeavour to establish:

- a. practical programs to provide opportunities for Members to participate in employment and training respecting the Project; and,
- b. practical programs to provide opportunities for Split Lake Cree Based Businesses to participate in business respecting the Project.

#### 13.2.2 Split Lake Cree Programs

Subject to [subsection 13.2.4](#) of this Article, Split Lake Cree shall:

- a. in consultation with Hydro, and within and consistent with Split Lake Cree's policies, endeavour to establish practical training, employability and business support programs with respect to the Prerequisite Training to provide opportunities for any Members to participate in further training;
- b. identify any Members with the Prerequisite Training who are interested in becoming candidates for training and employment in respect of the Project;
- c. identify employment candidates who are Members interested in obtaining employment in respect of the Project or related industries;
- d. with respect to all candidates, whether for employment and training related to the Project or related industries, obtain all relevant information necessary to prepare employment records for such candidates including age, physical condition and health, education and training (formal or informal), job related experience, interests and perceived aptitudes, and willingness to relocate, if required, to participate in training and employment in respect of the Project;
- e. update all such information on a regular basis and provide current lists of such candidates and their qualifications to Hydro and the Joint Committee; and,

- f. provide Hydro and the Joint Committee with lists of Split Lake Cree Based Businesses, and a description of such businesses, the personnel involved, work experience and such other information as Hydro and the Joint Committee may reasonably require.

### 13.2.3 Alteration of Policies – Hydro

Hydro, in its sole discretion, may change or rescind all or any portion of its policies, and all or any portion of such programs as are established by it pursuant to subsection 13.2.1 of this Article, at any time or times.

#### [Article 13.2.1](#)

### 13.2.4 Alteration of Policies – Split Lake Cree

Split Lake Cree, in its sole discretion, may change or rescind all or any portion of its policies, and all or any portion of such programs as are established by it pursuant to subsection 13.2.2 of this Article, at any time or times.

#### [Article 13.2.2](#)

## **13.3 Releases**

### 13.3.1 Release of Canada and Manitoba

Split Lake Cree hereby releases and forever discharges Canada and 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 Split Lake Cree, its successors, or assigns, have had, now have or hereafter can, shall or may have, for, or by reason of, any cause, matter or thing whatsoever up to the Date of this Agreement, or at any future time, attributable, in whole or in part, to or arising out of Articles 18.4 and 18.5 of the NFA, and any other provision of the NFA as such provision relates to Project employment. Split Lake Cree covenants and agrees not to commence or prosecute any action, suit, claim, demand, or proceeding on its own behalf or on behalf of any Member, Split Lake Cree Based Business or Controlled Institution against Canada or Manitoba, in relation to or arising out of the provisions of the NFA referenced in subsection 13.3.1 of this Article.

### 13.3.2 Release to Hydro

Split Lake Cree 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 Split Lake Cree, its successors, or assigns, have had, now have or hereafter can, shall or may have, for or by reason of, any cause, matter or thing whatsoever up to the Date of this Agreement, attributable, in whole or in part, to or arising out of Articles 18.4 and 18.5 of the NFA, and any other provision of the NFA as such provision relates to Hydro's obligations respecting Project employment. Split Lake Cree covenants and agrees not to commence or prosecute any action, claim, demand, or proceeding, arising prior to the Date of

this Agreement, on its own behalf or on behalf of any Members, Split Lake Cree Based Business or Controlled Institution against Hydro, in relation to or arising out of the provisions of the NFA referenced in subsection 13.3.2 of this Article.

### 13.3.3 Acknowledgement

Hydro and Split Lake Cree acknowledge, with the exception of the release of and from past obligations, that this Article and the practical programs, if any, established pursuant to this Article, and the joint efforts of Hydro and Split Lake Cree to implement such programs, are not to be interpreted or construed as reflecting the position of either Hydro or Split Lake Cree as to their respective rights and obligations under Articles 18.4 and 18.5 of the NFA, and any other provision of the NFA as such provision relates to Hydro's obligations respecting Project employment. To the contrary, such programs and joint efforts are entirely without prejudice to the positions that either Hydro or Split Lake Cree may advance in the context of arbitration or legal proceedings, if any, respecting the rights and obligations of Hydro and Split Lake Cree under Articles 18.4 and 18.5 of the NFA, and any other provision of the NFA as such provision relates to Hydro's obligations respecting Project employment.

### 13.3.4 Hydro Obligations

Notwithstanding any provision of this Agreement, the obligations of Hydro to Split Lake Cree respecting Project employment, from the Date of this Agreement, are Article 18.4 and 18.5 of the NFA, and any other provision of the NFA as such provision relates to Hydro's obligations respecting Project employment. There is no assumption by Hydro of the obligations to Split Lake Cree of either Canada or Manitoba in relation to employment and training under the NFA, all of which are released under this Agreement, or of the obligations of either Canada or Manitoba in relation to normal programming, as set out in [Article 12](#) or otherwise.

### 13.3.5 Preservation of Right

Subject to the release of and from past obligations, nothing in this Agreement shall preclude either Split Lake Cree or Hydro from proceeding on the basis of reference through the Arbitrator under the NFA to the Manitoba Court of Appeal, as provided by the NFA, to determine their respective rights, entitlements, remedies and obligations under Articles 18.4 and 18.5 of the NFA, and any other provision of the NFA as such provision relates to Hydro's obligations respecting Project employment. This Article, and practical programs, if any, established pursuant to this Article, shall not derogate from or enhance the rights, entitlements, remedies, obligations or defences of either Hydro or Split Lake Cree in any such proceeding.

### 13.3.6 Acknowledgment

It is acknowledged that all obligations of Canada and Manitoba in relation to employment matters under the NFA are satisfied and settled in full by the provisions of this Agreement, and that the relationship of Settlement Proceeds to Funding and Programming is exclusively addressed by the provisions of [Article 12](#) of this Agreement. Canada and(or) Manitoba may, in their discretion, assist Split Lake Cree and(or) Hydro in the activities contemplated in this



Article, but no provision of this Article is enforceable against Canada and(or) Manitoba under the Dispute Resolution Mechanism or in any other forum.

## **13.4 Funding**

### 13.4.1 Appropriate Use

Funding of the development and implementation of policies and programs related to Prerequisite Training, and the costs of Split Lake Cree participation in the activities of the Joint Committee established in section 13.5 of this Article, will be Appropriate Uses of Income from the Economic and Social Development Account. Income from the Economic and Social Development Account may be used to augment and enhance normal programming of Canada and Manitoba in relation to employment and training.

## **13.5 Joint Committee**

### 13.5.1 Committee

A committee to be called the Joint Committee shall be established consisting of five (5) members of whom three (3) shall be Split Lake Cree representatives, and two (2) shall be Hydro representatives.

### 13.5.2 Term of Office

Subject to resignation or disqualification, members of the Joint Committee shall serve at the pleasure of the Party appointing them.

### 13.5.3 Appointment

Hydro and Split Lake Cree shall appoint their respective Members to the Joint Committee, not later than ninety (90) days after the Date of this Agreement.

### 13.5.4 Canada and Manitoba

To describe normal education and training policies and programs offered or available from Canada and Manitoba, in order to assist the effort of the Joint Committee, Canada and Manitoba shall each designate an individual as their representative to the Joint Committee and such individual shall be given notice of and may attend all Joint Committee meetings, but in any event such representative shall attend not less than two (2) meetings per year. Canada and Manitoba may change their respective representative by notice in writing to the Joint Committee.

### 13.5.5 Qualifications

The members of the Joint Committee shall be persons acquainted with the employment, education, and business conditions prevailing in the Project area.

### 13.5.6 Resignation

Any member of the Joint Committee shall be entitled to resign, at any time, by tendering a written resignation with or without notice. If any one of the members of the Joint Committee should die, or resign, or become mentally incompetent, or for any other reason be unable to continue to act, the Party who appointed such member shall forthwith, and in any event not later than thirty (30) days following the date of such vacancy, appoint a new representative to be a member of the Joint Committee.

### 13.5.7 Purpose and Powers of the Joint Committee

The purposes and powers of the Joint Committee shall be as follows:

- a. to review Project activities from time to time, in order to identify opportunities for increased participation of Members in Project employment and business benefits, including facilitating the arrangements required to support such increased participation;
- b. to make recommendations to Canada, Manitoba, Split Lake Cree and Hydro relating to the provision and coordination of their respective programs and policies, so as to achieve the purposes of this Article;
- c. to make recommendations to Chief and Council with respect to its programs and policies related to Prerequisite Training and the promotion of Split Lake Cree Based Business, and to Hydro with respect to its programs and policies relating to Project employment and training, and the promotion of opportunities for participation in Project related business;
- d. to review the implementation of the policies and programs established by Split Lake Cree and by Hydro, and to recommend change, if appropriate;
- e. to report, at least annually, to Hydro and Split Lake Cree with respect to each Split Lake Cree Based Business detailing, to the extent possible:
  - i. the name, address and phone number of each business,
  - ii. the name of a contact person for each business,
  - iii. a list of past undertakings, endeavours, contracts and work done by each business,
  - iv. the number of employees of each business,
  - v. the amount and availability of equipment, materials and labour resources of each business,
  - vi. the performance history of each business, and
  - vii. the financial strength, to the extent disclosed, of each business including its past ability to obtain labour and material bonds and performance bonds;
- f. to recommend to Hydro, unanimously but not otherwise, if, and the extent to which, contract security should be waived with respect to any particular contract; and,
- g. to consider inquiries, representations and recommendations made to it, and to make representations and recommendations, with regard to any matter affecting the provision of further training, education, employment and business opportunity, for the purpose of this Article.

### 13.5.8 Recommendations

Both Hydro and Split Lake Cree agree to receive and consider any recommendation of the Joint Committee, but neither Hydro nor Split Lake Cree shall in any way be bound to accept or follow such recommendations.

#### 13.5.9 Joint Committee Meetings

The first meeting of the Joint Committee shall be held as soon as practical after the appointment of its members, and shall be convened by the Chief.

#### 13.5.10 Minimum

The Joint Committee shall meet at least once every three (3) months.

#### 13.5.11 Quorum

The quorum required for a meeting of the Joint Committee shall be a majority of the members of that committee, provided that at least one (1) representative of each of Hydro and Split Lake Cree must be present.

#### 13.5.12 Appointment of Chair

At the first meeting and annually thereafter, the Joint Committee shall appoint from among its members a chair who shall be a Split Lake Cree representative and who shall act as chair of the meetings of the Joint Committee.

#### 13.5.13 Voting

Unless unanimity is otherwise required, all questions before the Joint Committee shall be decided by a majority of the members present and voting thereon at the meeting, provided that the chair shall not have a vote except in the case of an equality of votes, in which case the chair shall have a deciding vote.

#### 13.5.14 Rules of Procedure

The Joint Committee may make, vary or revoke rules for the conduct of its business.

#### 13.5.15 Costs and Administration

To the extent reasonably possible, the Committee shall meet in either the Hydro office at Thompson, or the Split Lake Cree office at Split Lake, and any incidental costs in relation to such meetings, including the provision of facilities, a secretary and supplies, shall be the obligation of the Party whose offices are employed for such meeting.

#### 13.5.16 Expenses

Each Party shall be responsible for the expenses of its members or representatives to attend and participate in the functions of the Joint Committee.

#### 13.5.17 Budget

If the Joint Committee is unanimously of the view that further funds are necessary to permit it to function effectively, a budget for such expenses shall be prepared and submitted to Hydro and Split Lake Cree who may agree to fund such budget in whole or in part. Any dispute between Hydro and Split Lake Cree with respect to such funding, may be referred by either for resolution pursuant to the Dispute Resolution Mechanism contained in [Article 16](#).

# **Article 14**

## **14.0 Split Lake Cree Distribution Company**

### **14.1 Introduction**

#### 14.1.1 Introduction

This Article provides for a feasibility study related to the potential acquisition and operation by Split Lake Cree, of the electrical distribution system at Split Lake, and establishes certain terms and conditions in the event of a transfer of ownership of such system.

### **14.2 Distribution Company**

#### 14.2.1 Feasibility Study

As soon as reasonably practicable after the Date of this Agreement, Split Lake Cree may, in consultation with Hydro, arrange for the preparation of a study to determine the feasibility of the formation of a Split Lake Cree Distribution Company to operate, or to own and operate, all or a portion of the electrical distribution system on the Reserve. The cost of the preparation of the feasibility study will be the responsibility of Split Lake Cree, and may be paid for from the Economic and Social Development Account and(or) the Implementation Account, established pursuant to the Indenture, in accordance with the relevant approval requirements of the Indenture.

#### 14.2.2 Split Lake Cree Distribution Company

If, after receipt of the feasibility study, Hydro and Split Lake Cree both determine that a Split Lake Cree Distribution Company is feasible, and if Split Lake Cree decides to form such an entity to operate, or to own and operate, all or a portion of the electrical distribution system on the Reserve, Split Lake Cree will incorporate Split Lake Cree Distribution Company, and retain control thereof, and require that it comply with the terms of this Article. Disputes as to whether or not Split Lake Cree Distribution Company is feasible shall not be referred to the Dispute Resolution Mechanism for resolution. Provided they have acted in good faith the determinations by Hydro and Split Lake Cree, respectively, as to the feasibility or non-feasibility of a Split Lake Cree Distribution Company shall be solely in their respective discretion and shall not be subject to review.

#### 14.2.3 Purchase of System

If the ownership of the electrical distribution system on the Reserve is determined by both Hydro and Split Lake Cree to be feasible, and is desirable to Split Lake Cree, then after the formation of Split Lake Cree Distribution Company, Split Lake Cree will cause Split Lake Cree Distribution Company to purchase the then existing electrical distribution system on the Reserve, or such portion thereof as is agreed upon by Split Lake Cree and Hydro. The purchase price shall be the

book value of such assets as recorded on the books and records of Hydro, or such other price as may be agreed upon by Hydro and Split Lake Cree. The agreement shall include:

- a. a prohibition against Split Lake Cree and Split Lake Cree Distribution Company selling, transferring or otherwise disposing of the assets purchased from Hydro, except to Hydro, without Hydro's prior written consent;
- b. a provision that Split Lake Cree and Split Lake Cree Distribution Company will maintain, or cause to be maintained, in accordance with technical and legal standards applicable to like systems in the Province of Manitoba, the electrical distribution system including, without limitation, all meters, in good condition and repair; and,
- c. a provision that Split Lake Cree and Split Lake Cree Distribution Company shall, at all times, employ, or contract for the provision of, qualified personnel necessary to ensure proper operation of the electrical distribution system.

#### [Article 14.2.7. d\)](#)

Failing agreement, the terms and conditions of such sale, other than the purchase price and the required provisions set out in paragraphs 14.2.3 (a), (b) and (c) of this Article, shall be fixed or settled in accordance with the Dispute Resolution Mechanism provided in Article 16 of this Agreement. Hydro, Split Lake Cree and Split Lake Cree Distribution Company shall execute and deliver a purchase and sale agreement, which shall set out the terms and conditions agreed upon, or determined as provided in this Article. Neither Canada nor Manitoba shall be named as a respondent to any arbitration, or be bound by any decision or award, relating to the terms and provisions of the purchase and sale agreement.

#### [Article 14.2.7 b\)](#)

#### 14.2.4 Qualified Personnel

Prior to the transfer of operating control of any portion of the electrical distribution system to Split Lake Cree Distribution Company, and as a condition precedent to the transfer of such control, Split Lake Cree Distribution Company shall demonstrate to Hydro that Split Lake Cree Distribution Company has retained qualified personnel to operate and maintain the distribution system in accordance with Hydro's standards for large, industrial/commercial, customer owned and operated distribution systems. Should any training be required for the purposes of enabling Split Lake Cree Distribution Company employees to meet such standards, such training and education may be provided by Hydro and(or) any educational institution qualified to provide such education and training, and in either event the costs of the same may be paid as an Appropriate Use of either the Implementation Account or the Economic and Social Development Account, consistent with the provisions of the Indenture.

#### 14.2.5 Power Supply Agreement

Upon, and as a condition precedent to, the transfer of the electrical distribution system from Hydro to Split Lake Cree Distribution Company, Hydro and Split Lake Cree Distribution Company will execute Hydro's standard power supply agreement for large industrial/commercial

customers contracting for the supply of power and energy. Unless otherwise agreed between Hydro and Split Lake Cree, the cost to Split Lake Cree Distribution Company, for the supply of electric power and energy, will be up to, but not more than, the lowest rate being charged to other bulk power users that have contracted for an equivalent supply of power and energy under equivalent conditions.

#### [Article 14.2.7 c\)](#)

##### 14.2.6 Service and Maintenance

Upon request by Split Lake Cree Distribution Company, Hydro shall provide services and maintenance for the Reserve distribution system, in accordance with its normal practices and charges for providing such services to large, industrial/commercial, customers owning their own distribution system.

#### [Article 14.2.7 d\)](#)

##### 14.2.7 Default

If Split Lake Cree or Split Lake Cree Distribution Company default:

- a. in payment of the purchase price to be paid for the electrical distribution system purchased pursuant to [subsection 14.2.3](#) of this Article;
- b. in payment of the charges for electrical power and energy contemplated in [subsection 14.2.5](#) of this Article;
- c. in payment of the charges for services and maintenance contemplated in [subsection 14.2.6](#) of this Article; or,
- d. in their obligations contemplated in [paragraphs 14.2.3\(b\) and \(c\)](#), as such are reflected in the purchase and sale agreement contemplated in subsection 14.2.3 of this Article;

and any such default continues in whole or in part for thirty (30) days, Hydro shall give written notice to Split Lake Cree, that if such default is not remedied, by payment in full of the amount owing and in arrears, or otherwise, within sixty (60) days of the date of delivery of such notice to Split Lake Cree, then immediately after expiry of the sixty (60) day period, title and ownership of the electrical distribution system shall automatically revert in Hydro, and Hydro shall repossess and recommence Hydro operation of the electrical distribution system. Upon the reversion of title and repossession of the electrical distribution system, all amounts owing by Split Lake Cree to Hydro under paragraphs 14.2.7 (a), (b) and (c) of this Article shall thereby be satisfied.

##### 14.2.8 Resumption by Hydro

If Hydro recommences operation of the electrical distribution system pursuant to subsection 14.2.7 of this Article, Hydro shall provide electrical power to Split Lake Cree customers in accordance with its normal practices and charges, and all of its rights, in relation to such operation and the collection of arrears arising thereafter, shall exist, unabated.

#### 14.2.9 Access

As may be required for the purposes of permitting the operation of [subsection 14.2.7](#) of this Article, Split Lake Cree and Canada covenant:

- a. to permit access to the Reserve to Hydro, or a Hydro representative, to deliver the default notice to Split Lake Cree general administration office; and,
- b. to permit Hydro such access to the Reserve as may from time to time be reasonably required for the operation by Hydro of the electrical distribution system;

and Split Lake Cree covenants to execute, or cause Split Lake Cree Distribution Company to execute, any documentation reasonably required to formalize the re-vesting of the electrical distribution system and assets in Hydro, pursuant to the default provision contained in subsection 14.2.7 of this Article.

### **14.3 Canada Not Bound**

#### 14.3.1 Not binding

The provisions of this Article do not in any way bind Canada to any agreement of purchase and sale or imply consent on the part of Canada to the transfer of the electrical distribution system and assets.



# Article 15

## 15.0 Reciprocity

### 15.1 Introduction

#### 15.1.1 Introduction

This Article sets forth the general releases and indemnities, and the exceptions to both the general and specific releases contained in this Agreement.

### 15.2 Releases

#### 15.2.1 Release – Manitoba

Split Lake Cree 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 Split Lake Cree, its successors, or assigns, have had, now have or hereafter can, shall or may have, for, or by reason of, any cause, matter or thing whatsoever attributable, in whole or in part, to the Project and(or) the NFA.

#### 15.2.2 Release – Canada

Split Lake Cree 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 Split Lake Cree, its successors, or assigns, have had, now have or hereafter can, shall or may have, for, or by reason of, any cause, matter or thing whatsoever attributable, in whole or in part, to the Project and(or) the NFA, save and except as set forth in [subsection 15.7.6](#) of this Agreement.

#### 15.2.3 Release – Hydro

Split Lake Cree 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 Split Lake Cree, its successors, or assigns, have had, now have or hereafter can, shall or may have, for, or by reason of, any cause, matter or thing whatsoever attributable, in whole or in part, to the Project and(or) the NFA, save and except as expressly set forth in [section 15.4](#) and [subsection 15.7.6](#) of this Agreement.

#### 15.2.4 Covenant

Split Lake Cree covenants and agrees not to commence or prosecute any action, claim, demand or proceeding on its own behalf or on behalf of any Member, Split Lake Cree Based Business, or Controlled Institution, against any of Canada, Manitoba or Hydro with respect to any action, cause of action, suit, claim, demand, loss or damage with respect to which Split Lake Cree has respectively released Canada, Manitoba and(or) Hydro.

### 15.2.5 Saving

Nothing in this Agreement shall relieve any Party of liability for breaches of this Agreement, future negligent acts or omissions, or future wilful misconduct, on their own part, jointly or severally, or on the part of those for whom they are responsible at law, whether jointly or severally.

## 15.3 INDEMNITIES

### 15.3.1 Indemnity – Manitoba

Split Lake Cree hereby undertakes and agrees to indemnify and save harmless Manitoba, 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 by any Member, Split Lake Cree Based Business, or Controlled Institution, caused by or attributable, in whole or in part, to the Project and(or) the NFA.

### 15.3.2 Indemnity – Canada

Split Lake Cree hereby undertakes and agrees to indemnify and save harmless Canada, in respect of any and all actions, causes of action, claims, suits, demands, losses or damages of any nature or kind whatsoever, at law or in equity, brought or instituted by any Member, Split Lake Cree Based Business, or Controlled Institution, caused by or attributable, in whole or in part, to the Project and(or) the NFA.

### 15.3.3 Indemnity – Hydro

Split Lake Cree hereby undertakes and agrees to indemnify and save harmless Hydro in respect of any and all actions, causes of action, claims, suits, demands, losses or damages of any nature or kind whatsoever, at law or in equity, brought or instituted by any Member, Split Lake Cree Based Business, or Controlled Institution, caused by or attributable, in whole or in part, to the Project and(or) the NFA.

### 15.3.4 Exception

Nothing in this Agreement shall require Split Lake Cree to indemnify Canada, Manitoba or Hydro:

- a. for an amount or amounts, in aggregate, greater than the Trust Funds;
- b. for the matters set forth in section 15.4 and [subsection 15.7.6](#) of this Article; or,
- c. for future negligent acts or omissions, or future wilful misconduct on the part of Canada, Manitoba or Hydro, or on the part of those for whom they are responsible at law, whether jointly or severally.

### 15.3.5 Costs

The indemnities under subsections [15.3.1](#), [15.3.2](#), and(or) [15.3.3](#) of this Article are not intended to cover the costs of the indemnified Party, and are conditional upon the indemnified Party:

- a. giving notice to Split Lake Cree of any claim being advanced by any Member, Split Lake Cree Based Business or Controlled Institution for which Split Lake Cree may be liable pursuant to the indemnity, forthwith upon the indemnified Party becoming aware of such claim;
- b. consenting to and(or) otherwise supporting any application by Split Lake Cree, if Split Lake Cree is not named as a party, to be named as a party to such claim; and,
- c. not settling any such claim without the written consent of Chief and Council to such settlement, provided that this does not require the indemnified Party to appeal any decision, award, ruling, or judgment by which it may be bound, and for which it is seeking indemnity pursuant to any one of subsections 15.3.1, 15.3.2, and(or) 15.3.3 of this Article.

## **15.4 Continuing Liability of Hydro**

### 15.4.1 Liability

It is understood and agreed that Split Lake Cree does not waive, release, or indemnify Hydro from, the following:

- a. personal injury and death, past and future, caused by or attributable to the Project;
- b. Adverse Effects, to the extent such Adverse Effects were caused by or attributable to the Project, and arose from or as a result of deviations in the Post-Project Water Regime;
- c. Adverse Effects of the Project, as further defined by subsection 15.4.2 of this Article, that were, at the Date of this Agreement, unknown and(or) unforeseen and not discernible or foreseeable with the exercise of due diligence and concern;
- d. human disabilities, illness or death resulting from the ingestion of methyl mercury caused by or attributable to the Project; or,
- e. future obligations of Hydro under Articles 18.4 and 18.5 of the NFA, and any other provision of the NFA as such provision relates to Hydro's obligations respecting Project employment;

[Article 15.5.6](#)

[Article 15.5.12](#)

and, except as set forth in [section 15.5](#) of this Article, the provisions of the NFA remain in force and effect as such provisions relate to Hydro's liability, and the assessment of that liability, under paragraphs 15.4.1(a) to 15.4.1(e) inclusive, of this Article. Canada and Manitoba shall have no liability or obligation under subsection 15.4.1 of this Article and, nothing in subsection 15.4.1 of this Article imposes on either Canada or Manitoba any obligation to exercise due diligence or concern.

[Article 2.8.2](#)

[Article 6.4.1](#)

[Article 7.3](#)  
[Article 10.4.1](#)  
[Article 15.2.4](#)

#### 15.4.2 Limitation

The Adverse Effects referred to in [paragraph 15.4.1\(c\)](#) are further limited to bio-physical impacts causing material damage to the claimant, and attributable to the Project. Alleged socio-economic damages to the claimant, if any, are understood to be compensable only to the extent that they are caused by or attributable to such bio-physical impact.

[Article 6.2.3](#)  
[Article 8.2.2](#)  
[Article 8.2.3](#)  
[Article 8.2.5](#)  
[Article 8.2.6](#)  
[Article 8.2.9](#)  
[Article 8.4.3 b\)](#)  
[Article 9.2.3](#)  
[Article 9.2.4](#)  
[Article 9.2.5](#)  
[Article 9.2.9](#)  
[Article 9.2.11](#)  
[Article 9.2.12](#)

### **15.5 Four Party Expert Panel Review**

#### 15.5.1 Alleged Occurrence

If Split Lake Cree is of the opinion that an Adverse Effect referred to in paragraph 15.4.1(b) or paragraph 15.4.1(c) of this Article, has occurred, and that Split Lake Cree or any Member, Split Lake Cree Based Business or Controlled Institution, has, as a result of such Adverse Effect, suffered damage, Split Lake Cree shall, forthwith, advise Hydro of the alleged occurrence of such Adverse Effect of the type referred to in paragraph 15.4.1(b) or paragraph 15.4.1(c) of this Article, and the nature of the perceived damages resulting from that Adverse Effect, and shall contemporaneously provide to Hydro any available evidence in support of that belief.

#### 15.5.2 Response

If Hydro disputes that the alleged Adverse Effect, if proven, is of the nature referred to in either paragraph 15.4.1(b) or paragraph 15.4.1(c) of this Article, then, within one hundred and twenty (120) days of Hydro's receiving notice of the alleged Adverse Effect, and any supporting evidence, Hydro shall advise the members of the Executive Implementation Committee of such dispute, and provide to that Committee a copy of the notice and supporting evidence provided to Hydro by Split Lake Cree. If Hydro does not dispute the opinion of Split Lake Cree that the alleged Adverse Effect, if proven, is of the nature referred to in either paragraph 15.4.1(b) or

paragraph 15.4.1(c) of this Article, then, the matter shall proceed for determination pursuant to the NFA.

### 15.5.3 Expert Panel

Within thirty (30) days of the receipt of the notice from Hydro referred to in subsection 15.5.2 of this Article, the members of the Executive Implementation Committee shall each appoint a person appropriately qualified in relation to the subject matter of the dispute, and the persons so appointed shall constitute an expert panel (the "Expert Panel") for the purposes hereinafter set out in this section.

### 15.5.4 Summary Investigation

The members of the Expert Panel shall make a summary investigation as to whether or not the alleged Adverse Effect, if proven, would be an Adverse Effect within the meaning of paragraph 15.4.1(b) or paragraph 15.4.1(c) of this Article.

### 15.5.5 Costs

The Parties agree to cooperate with the members of the Expert Panel in conducting their summary investigation, provided that, except for the costs of their appointee to the Expert Panel, no Party shall be required to incur costs to conduct any investigation, or to retain any outside consultants or experts.

### 15.5.6 Preliminary Determination

Upon completion of their summary investigation, the members of the Expert Panel shall make their preliminary determinations as to whether or not the alleged Adverse Effect, if proven, would be an Adverse Effect within the defined meaning of paragraphs [15.4.1\(b\)](#) or [15.4.1\(c\)](#) of this Article, and forthwith:

- a. advise Hydro and Split Lake Cree of their preliminary determinations; and,
- b. advise Hydro and Split Lake Cree if, in their opinions, further investigation would be warranted before finalizing their determinations;

and either or both Hydro and Split Lake Cree shall be entitled to request, at its own expense, such further investigations to be conducted by or under the supervision of one (1) or more of the members of the Expert Panel.

### [Article 15.5.12](#)

### 15.5.7 Determination

If neither Split Lake Cree nor Hydro agree to fund further investigations, or, if the members of the Expert Panel are not prepared to conduct, or to have such further investigations conducted, in

a timely manner, then the preliminary determinations of the members of the Expert Panel shall be their determinations for the purposes of [subsection 15.5.11](#) of this Article.

#### 15.5.8 Further Investigation

If warranted, based on their preliminary determinations, and if funded by either or both Hydro and Split Lake Cree, the members of the Expert Panel will cause the alleged Adverse Effect to be further investigated and, upon completion of such investigation, the members of the Expert Panel shall finalize their determination.

#### [Article 15.5.12](#)

#### 15.5.9 Facts

If possible, as part of their investigations and determinations under subsections 15.5.6 and 15.5.8 of this Article, the members of the Expert Panel will establish the scientific facts related to the dispute, and make recommendations to Hydro and Split Lake Cree, in a timely fashion, with respect to the existence, and probable significance and meaning of the alleged Adverse Effect.

#### 15.5.10 Without Prejudice

The participation of any Party in the Expert Panel, and in any investigation conducted by the members of the Expert Panel, and any statement of any Party during the investigations and the determinations of the members of the Expert Panel, shall be without admission of liability and without prejudice to the position of that Party.

#### 15.5.11 Dispute Resolution

If a dispute continues to exist, between Hydro and Split Lake Cree, as to whether or not the alleged Adverse Effect, if proven, would be an Adverse Effect within the defined meaning of paragraphs 15.4.1(b) or 15.4.1(c) of this Article, that dispute shall be resolved as an issue between Parties in accordance with the Dispute Resolution Mechanism.

#### 15.5.12 Costs

If, following the summary investigation contemplated under [subsection 15.5.6](#) of this Article, or following the further investigation contemplated under [subsection 15.5.8](#) of this Article, two (2) or more of the members of the Expert Panel are of the opinion that the alleged Adverse Effect, if proven, would be of a kind defined in [paragraphs 15.4.1\(b\) or 15.4.1\(c\)](#) of this Article, then, in such event but not otherwise, and subject to any ultimate determination under the Dispute Resolution Mechanism, Hydro shall be responsible, on an interim basis, for the cost of Split Lake Cree in relation to the resolution of any continuing dispute between Hydro and Split Lake Cree as to whether or not the alleged Adverse Effect, if proven, would be of a kind defined in paragraphs 15.4.1(b) or 15.4.1(c) of this Article, including the costs, if any, incurred by Split Lake Cree to fund the further investigation of the members of the Expert Panel pursuant to subsection 15.5.8 of this Article.

[Article 15.4.1.e](#)  
[Article 15.5.7](#)

## **15.6 Assumption of Liability**

### 15.6.1 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 paragraph 15.6.1(a) or paragraph 15.6.1(b) of this Article applies, assume all of the rights and obligations of Hydro under this Agreement; and,
- e. in the circumstances to which paragraph 15.6.1(c) of this Article applies, assume the rights and obligations of Hydro under this Agreement, as such rights and obligations relate to the work(s) or structure(s) 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.

### 15.6.2 Dispute

In the circumstances to which subsection 15.6.1 of this Article applies, Split Lake Cree shall make reasonable efforts, but shall not be required in making such reasonable efforts to expend excessive or unusual costs, to have any dispute or matter resolved by Hydro, or the successor of Hydro having authority or control with respect to the Project or a major work or structure thereof, as the case may be, before having recourse to Manitoba in accordance with the obligations it will have assumed under this Agreement.

## **15.7 NFA**

### 15.7.1 Satisfaction

Except as otherwise specifically provided in this Agreement, all existing and future rights of action and claims of Split Lake Cree, and of Split Lake Cree on behalf of each and every past, present and future Member, and their respective estates, and of Split Lake Cree on behalf of any Split Lake Cree Based Business or Controlled Institution, in respect of any claims or causes of

action relating to or arising out of the Project and the NFA, as against Canada, Manitoba and Hydro are fully and finally concluded.

#### 15.7.2 Acknowledgments

All claims filed by or on behalf of Split Lake Cree, or any Member, Split Lake Cree Based Business, or Controlled Institution (collectively referred to in this Article as the "Claimants") before the arbitrator under the NFA, as detailed in [Schedule 8.1](#) to this Agreement, shall be and are by the terms of this Agreement fully satisfied, and Split Lake Cree has obtained and shall provide to Canada, Manitoba and, subject to the limitations set forth in subsection 15.4 of this Agreement, Hydro, releases for all claims, or the relevant interest in such claims, against Canada, Manitoba and Hydro, respectively, as listed on Schedule 8.1 to this Agreement, filed by, or on behalf of, Split Lake Cree, any Member, Split Lake Cree Based Business, or Controlled Institution before the arbitrator under the NFA, relating to or arising out of the Project and the NFA. Split Lake Cree further covenants to use its best efforts to obtain releases, subject to the limitations set forth in section 15.4 of this Agreement, from any Member, Split Lake Cree Based Business, or Controlled Institution who, or which, may, at any time or times, have filed, or who, or which, in future, may file a claim before the NFA arbitrator relating to or arising out of the Project and the NFA. Further, Split Lake Cree shall obtain and provide to Canada, Manitoba, and Hydro consents contemplated in subsection 15.7.3 of this Article, duly executed under seal, from all Claimants identified on Schedule 8.1, with respect to such claims, or the interests of the Claimants in such claim.

#### [Article 18.12.1](#)

#### 15.7.3 Order

The Parties agree that after the Date of this Agreement, application will be made jointly by all of the Parties, to the arbitrator under the NFA, with the consent of the Claimants, obtained by Split Lake Cree pursuant to the provisions of subsection 15.7.2 of this Article, and the consents of Canada, Manitoba and Hydro, for an order dismissing all outstanding claims detailed in Schedule 8.1 to this Agreement. If any claim has been filed by the NFC or any other Third Party that is not a Claimant, on behalf of a Claimant, then application shall be made to the arbitrator under the NFA for an order confirming the settlement and discontinuance of such claim as it relates to the Claimant's interest in such claim.

#### 15.7.4 Rights of Other First Nations Not Affected

It is agreed and understood that nothing in this Agreement will or can affect the rights or obligations of the Cross Lake, Nelson House, Norway House, or York Factory First Nations under or pursuant to the provisions of the NFA.

#### 15.7.5 Warranty



Split Lake Cree warrants that from at least November 30, 1990, up to and including the Date of this Agreement, the NFC has not been and is not the agent or representative of Split Lake Cree in relation to the NFA, or any claim thereunder, or for any other purposes.

#### 15.7.6 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, including any related provisions of the NFA, or the agreement dated May 10, 1988 to which Canada, Split Lake Cree and others are parties.

[Article 10.4.1](#)

[Article 15.2.3](#)

[Article 15.2.4](#)

[Article 15.3.4 c\)](#)

#### 15.7.7 General Releases Govern

Where a conflict exists between the specific releases set out in various Articles of this Agreement, and the general releases contained in this Article, the general releases shall govern. Where a limitation or condition exists with respect to any specific indemnity, set out in the various Articles of this Agreement, such limitation, to the extent of the specific indemnity, shall govern.

#### 15.7.8 Liability for Actions or Omissions of Other Parties

No Party shall have liability or responsibility for things done or omitted to be done by any other Party or Parties.

### **15.8 Treaty and Aboriginal Rights**

#### 15.8.1 Treaty Rights

Nothing in this Agreement is intended to alter aboriginal or treaty rights of Split Lake Cree, 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, compensating and making provision for future compensation in cash, kind and through the implementation of compensatory and mitigatory programs for Adverse Effects on Split Lake Cree, any Member, Split Lake Cree Based Business and Controlled Institution, their respective property, resources, assets and the exercise of their rights.

### **15.9 Legislation**

#### 15.9.1 Legislation

After the Date of this Agreement, Canada and Manitoba shall recommend legislation, as set forth in the relevant Articles of this Agreement, to give effect to the provisions of this Agreement.

## 15.9.2 Legislative Drafting

Where by the terms of this Agreement, Canada or Manitoba are required to recommend legislation to give effect to provisions contained within this Agreement, the following consultation process shall be used:

- a. each Party shall appoint a representative to a working group (the "Working Group");
- b. draft legislation prepared by Canada and Manitoba shall be submitted for review and comments by each member of the Working Group;
- c. Canada and Manitoba shall consider those comments in the preparation of successive drafts for consideration by the Working Group, and shall consider all such comments prior to submitting final draft legislation for consideration by the Governor in Council or Lieutenant Governor in Council; and,
- d. the Working Group shall report to the Executive Implementation Committee established under section 10.7 of this Agreement.

Nothing in this subsection 15.9.2 shall be deemed to, or be interpreted so as to, derogate from the powers and prerogatives of the Governor in Council or Lieutenant Governor in Council in relation to the recommendation of legislation to Parliament or the Legislative Assembly of Manitoba, respectively.

## 15.10 Easement Provision

### 15.10.1 Easement Provision

The continuing liability of Hydro under section 15.4 of this Article does not extend to damage, loss or destruction to or of any building, structure, or improvement, constructed, erected or placed by Split Lake Cree or any Member, Split Lake Cree Based Business, or Controlled Institution, on the Easement Lands contrary to the requirements of the Easements.

## 15.11 Inter Party Release

### 15.11.1 Release

Subject to subsection 15.7.6 of this Article, each of Canada, Manitoba and Hydro hereby release and forever discharge 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 and(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, in whole or in part, to the Project and(or) the NFA, to the extent such actions, causes of action, suits, claims, demands, losses or damages of any nature or kind whatsoever relate to Split Lake Cree. This release does not apply to costs which were dealt with in the March 16, 1992 joint proposal letter of the negotiators on behalf of Canada, Manitoba and Hydro.

# Article 16

## 16.0 Dispute Resolution Mechanisms

### 16.1 Introduction

#### 16.1.1 Introduction

This Article sets forth methods of resolving disputes among or between the Parties, and of resolving compensation claims for Adverse Effects and other matters arising out of this Agreement including the Indenture.

### 16.2 Arbitration

#### 16.2.1 Arbitration Act

Submissions to arbitration shall be pursuant to The Arbitration Act (Manitoba), which Act shall govern the arbitration except where the Act conflicts with any express term of this Article, in which case the provisions of this Article shall prevail. Nothing in this Article grants any substantive rights to any Party, except for the right to refer matters to arbitration.

#### 16.2.2 Fees

Any arbitrator appointed pursuant to this Article shall be entitled to be paid a reasonable fee which shall not be fixed or determined by The Arbitration Act (Manitoba).

### 16.3 Disputes Between the Parties

#### 16.3.1 Submission

The Parties agree to arbitrate any dispute as to the meaning, application, implementation or breach (the "Issue") of this Agreement including the Indenture, but excluding the Easement, except as provided in [subsection 16.8.4](#) of this Article. Each such Issue shall be submitted to arbitration in the Province of Manitoba to an arbitrator (the "Arbitrator") to be appointed as hereinafter set forth.

#### 16.3.2 Notice

The Party initiating recourse to arbitration (the "Claimant") shall serve upon each of the other Parties (the "Respondents") a written notice of arbitration, whether or not each of the Respondents is likely to be affected by the decision of the Arbitrator.

#### [Article 16.3.7 c\)](#)

#### 16.3.3 Contents

The notice of arbitration shall include the following:

- a. a demand that the Issue be referred to arbitration;
- b. the nature of the Issue;
- c. the relief, remedy or redress sought; and,
- d. the Party or Parties with whom the Claimant has the dispute constituting the Issue.

#### [Article 16.3.7 d\)](#)

Notwithstanding the foregoing, any Party may refer to the Arbitrator a dispute as to the interpretation of this Agreement, without claiming any relief, remedy or additional redress.

#### 16.3.4 Amendments

The notice of arbitration may be amended, at any time prior to the decision or award of the Arbitrator, with leave of the Arbitrator, following notice to all of the Parties, and on such terms as the Arbitrator deems just.

#### 16.3.5 Participation

Each of the Respondents, whether identified by the Claimant pursuant to [paragraph 16.3.3\(d\)](#) of this Article or not, has the right to participate in the arbitration. However, any Respondent not identified in paragraph 16.3.3(d) may, at its option, elect not to participate in the arbitration. A Respondent that elects not to participate in the arbitration shall not participate in choosing the Arbitrator for the arbitration, but shall be bound by the decision of the Arbitrator.

Notwithstanding that a Party elects not to participate, such Party may, at any subsequent time, with leave of the Arbitrator, and subject to awards of costs for delay, choose to take part in, and be represented at, the arbitration.

#### 16.3.6 The Arbitrator

The Parties to this Agreement agree, each with the other, that, provided at the relevant time there is an incumbent filling the position of arbitrator pursuant to Article 24 of the NFA (the "NFA Incumbent"), the Claimant shall, immediately following the service of notice upon the last of the Respondents, request the NFA Incumbent to act as the Arbitrator, and if, within thirty (30) days of that request, the NFA Incumbent notifies the Claimant that:

- a. he is able and willing to act as the Arbitrator; and,
- b. he is able to hear the Issue in a timely fashion;

then, provided the NFA Incumbent is under no legal impediment, as determined, if necessary, by a court of competent jurisdiction, he shall be, and is hereby, appointed as the Arbitrator, and the Claimant shall immediately notify all of the Respondents, in writing, accordingly.

#### 16.3.7 Selecting Arbitrator

If there is no NFA Incumbent, or if the NFA Incumbent fails to respond to the Claimant's request within the time specified, or is unwilling or unable to act, or to hear the Issue in a timely fashion, or is under any legal impediment, then the Arbitrator shall be determined in accordance with the procedure set out in paragraphs 16.3.7(a) to (f), inclusive, of this Article.

- a. The Claimant and each of the Respondents participating in the arbitration ("Participating Respondents"), shall have the right to participate in the appointment of the Arbitrator in accordance with this procedure.
- b. The Claimant shall, within twenty-one (21) days of the determination that the NFA Incumbent will not be the Arbitrator, submit to each of the Respondents the names, addresses and occupations of not more than five (5) individuals, any one of whom may be selected by the Participating Respondents to act as the Arbitrator.
- c. If the Claimant fails to submit the list of names within the time specified, it shall be deemed to have withdrawn its notice of arbitration, and the matter shall not proceed further except by a new notice of arbitration under [subsection 16.3.2](#) of this Article.
- d. If the Respondent is not one identified by the Claimant pursuant to [paragraph 16.3.3\(d\)](#) of this Article, it shall, within twenty-one (21) days of its receipt of the names submitted by the Claimant, advise the Claimant if it wishes to be a Participating Respondent, failing which it shall be deemed to have decided not to participate.
- e. Each of the Participating Respondents, within twenty-one (21) days of their receipt of the names submitted by the Claimant, shall
  - i. select one (1) or more of the individuals submitted by the Claimant that is or are acceptable to it to act as the Arbitrator, and so advise the Claimant in writing, or
  - ii. reject all of the individuals submitted by the Claimant,

but, if a Participating Respondent does not respond within the twenty-one (21) days provided, it shall be deemed to have accepted any selection made by the Claimant and the other Participating Respondents.

- f. If any of the individuals whose names have been so submitted is unanimously selected by the Participating Respondents, and is willing and able to act as the Arbitrator, then that person shall be, and is hereby, appointed as the Arbitrator. If more than one (1) individual is unanimously selected, the Arbitrator shall be chosen from those individuals by the Claimant, and such individual, if willing and able to act, shall be and is hereby appointed as the Arbitrator to hear the Issue submitted to arbitration.

#### 16.3.8 Application to Judge

If the Claimant and the Participating Respondents (collectively the "Participating Parties") do not unanimously agree as to the individual to be named as the Arbitrator, then any Participating Party may request that 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).

#### 16.3.9 Time for Hearing

The Arbitrator shall be obliged to render his decision and the reasons for such decision, in writing, within thirty (30) days of the conclusion of the arbitration hearing, unless such time is extended by agreement of the Participating Parties or by order of a court of competent jurisdiction.

[Article 16.5.1 f\)](#)

## **16.4 Hearing Procedure on Disputes Between the Parties**

### 16.4.1 Jurisdiction

From and after the date of his appointment, the Arbitrator shall have jurisdiction to supervise the conduct of the proceedings and to make such orders as to procedure as may be necessary or expedient to ensure that all Participating Parties are in a position to proceed to determination of the Issue on an expeditious and fair basis.

### 16.4.2 Procedures

The Arbitrator may conduct the arbitration in whatever manner he considers appropriate, but shall maintain a record (although not necessarily a verbatim transcript unless such transcript is requested by any Participating Party, and then upon such terms as the Arbitrator may impose, including, without limitation, the costs thereof) of the proceedings, and at all times shall conform to the rules of natural justice.

### 16.4.3 Evidence

If any Participating Party so requests, at any stage of the proceedings, the Arbitrator shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument. In the absence of such a request, the Arbitrator shall decide whether or not to hold such a hearing, and whether or not the proceedings shall be conducted on the basis of documents and other materials.

### 16.4.4 Disclosure

The Parties agree that whether they are Participating Parties or not, they shall disclose and produce any document or documents, as may be required, in writing, by the Arbitrator, except such documents as would not be compellable were the Issue an action brought in a court of law.

### 16.4.5 Distribution

All documents or information supplied to the Arbitrator by any Party shall concurrently be provided by that Party to each Party to this Agreement, whether participating or not.

### 16.4.6 Rules of Evidence

The Arbitrator shall not be strictly bound by the rules of evidence, but may receive all evidence submitted by the Participating Parties which is determined to be relevant by the Arbitrator.

## **16.5 Award and Costs**

### **16.5.1 Power and Authority**

The Arbitrator shall have the power and authority to hear and determine any Issue, including the power to:

- a. interpret this Agreement, including the Indenture and, for the purposes of subsection 16.8.4 of this Article, the Easement, and any provisions thereof, and declare the rights and obligations of any Party thereunder;
- b. determine any dispute as to facts;
- c. direct that an audit be undertaken;
- d. award damages;
- e. award interest; and,
- f. award costs;

and shall, within the time prescribed by [subsection 16.3.9](#) of this Article, render the decision. The Arbitrator shall not have the authority or jurisdiction to change, alter, or amend this Agreement, the Indenture, or the Easements, or any term or provision contained therein.

### **16.5.2 Costs Generally**

In the absence of an order as to costs, each Participating Party shall bear its own costs and an equal share of the Arbitrator's fee.

### **16.5.3 Cost Awards**

Subject to section 16.5.4, the costs of the arbitration, including the Arbitrator's fee, upon application of any Participating Party, may be awarded by the Arbitrator against any of the Participating Respondents in full, or upon all Participating Respondents in any proportion. In making an award of costs, the Arbitrator shall consider all relevant circumstances including the relative financial means of the Participating Parties.

### **16.5.4 Costs Against Claimant**

Costs may be awarded under section 16.5.3 against the Claimant but only in circumstances where the Issue brought by the Claimant was determined by the Arbitrator to be frivolous or vexatious.

### **16.5.5 Finality**

The award of the Arbitrator shall be final and binding on all Parties, subject to the right of any Party, including any non-Participating Party, to appeal, within thirty (30) days of the Party's

receipt of the decision being rendered, to the Court of Appeal of Manitoba, on a point of law or jurisdiction.

## **16.6 Split Lake Cree Compensation and Trust Disputes**

### 16.6.1 Split Lake Cree Arbitrator

Wherever this Agreement provides for a reference to the Dispute Resolution Mechanism to arbitrate any matter involving any one or more of Split Lake Cree, Chief and Council, Split Lake Cree Trustees, Members, Split Lake Cree Based Businesses or any Controlled Institutions, but not involving the other Parties to this Agreement, including, without limitation:

- a. any decision of the Tribunal under Articles [8](#) or [9](#); or,
- b. any issue related to the use of Trust Funds as provided in this Agreement, including the Indenture;

(the "Matter"), the Matter shall be submitted to arbitration in the community of Split Lake, or elsewhere in Manitoba with the consent of all of the parties to the arbitration, to the Split Lake Cree Arbitrator appointed as hereinafter set forth.

### 16.6.2 NFA Incumbent

If, from time to time during the currency of this Agreement, there is an incumbent filling the position of arbitrator pursuant to Article 24 of the NFA (the "NFA Incumbent"), then, if the NFA Incumbent is able and willing to act as Split Lake Cree Arbitrator and is not under any legal impediment, as determined, if necessary, by a court of competent jurisdiction, the NFA Incumbent shall be and is hereby appointed as Split Lake Cree Arbitrator.

### 16.6.3 Selecting Arbitrator

If there is no NFA Incumbent at any time during the currency of this Agreement, or if the NFA Incumbent is, or subsequently becomes, unwilling or unable to act as Split Lake Cree Arbitrator, or if it becomes apparent to both Chief and Council and Split Lake Cree Trustees that the NFA Incumbent is unable to act in a timely fashion with respect to any reference to him pursuant to this Agreement, then the Split Lake Cree Arbitrator shall be determined by agreement between Chief and Council and Split Lake Cree Trustees (and if any Member, Split Lake Cree Based Business or Controlled Institution has a direct interest as a Claimant relating to such matter, with the agreement of such person or entity as a Claimant) and failing agreement, any persons or entities whose agreement is required may request that the Split Lake Cree 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).

## **16.7 Hearing Procedure and Powers of Split Lake Cree Arbitrator**

### 16.7.1 Awards and Implementation



Subject to the specific limitations contained in this Agreement, the Split Lake Cree Arbitrator shall have broad authority and power to make awards capable of implementation, and to fashion an appropriate and just remedy in respect of any and all compensation claims for Adverse Effects, including those under Articles [8](#) or [9](#), with the intent that such remedies shall, to the extent permitted by the limitations of this Agreement, and the Indenture, place that Claimant in no worse condition in that respect than he would have been in the absence of the Adverse Effects for which compensation is claimed.

#### 16.7.2 Power and Authority

The Split Lake Cree Arbitrator shall have the power and authority to hear and determine any Matter.

#### 16.7.3 Mitigatory Measures

Mitigatory and(or) remedial measures are more likely to have a lasting beneficial effect on the viability of a community and(or) on individual residents than monetary compensation, and accordingly such measures, which have been implemented on a group or community basis, and their mitigatory effect, when they have been implemented, shall be carefully considered in assessing the quantum of compensation to which any Member, Split Lake Cree Based Business or Controlled Institution claiming for compensation shall be entitled.

#### 16.7.4 Interim Orders

The Split Lake Cree Arbitrator shall have the right to forthwith order interim compensation prior to the determination of any Matter in totality.

#### 16.7.5 Liability to Compensate

In dealing with any matter submitted to the Split Lake Cree Arbitrator, and in particular in assessing compensation or approving funding of an Appropriate Use, the Split Lake Cree Arbitrator shall deal with such Matter on the basis that the liability to compensate, whether under Articles [8](#) and [9](#) or otherwise, is the sole and exclusive responsibility of Split Lake Cree, to be funded by the appropriate Account or Reserve Account, and any recommendation for remedial action or the like is similarly the responsibility of Split Lake Cree, to be funded by the appropriate Account or Reserve Account, and any award or approved funding must be subject to the restrictions contained in this Agreement.

#### 16.7.6 Procedures

The powers and procedures set forth in The Arbitration Act (Manitoba) shall govern all references to arbitration except:

- a. where the powers and procedures in The Arbitration Act (Manitoba) are contrary to the provisions set forth in this Agreement, in which case the powers and procedures set forth in this Agreement shall govern;

- b. where the Split Lake Cree Arbitrator deems the procedures in The Arbitration Act (Manitoba) to be inappropriate, or inconsistent with his duty to arrive at a just award or order, in which case the Split Lake Cree Arbitrator shall give written reasons for deciding to vary the procedure in connection with any matter before him; and,
- c. the Split Lake Cree Arbitrator shall be entitled to be paid a reasonable fee which shall not be fixed or determined by The Arbitration Act (Manitoba).

#### 16.7.7 Access

Any Member may, as provided in Articles 8 and 9 of this Agreement or in the Indenture, have a Matter dealt with under the terms of this Article of this Agreement, and in circumstances where this Agreement provides for a Member to have access to the Split Lake Cree Arbitrator, that Member shall be entitled to require the appointment of the Split Lake Cree Arbitrator pursuant to the terms of this Agreement.

#### 16.7.8 Corporate Trustee

Notwithstanding subsection 16.7.7 of this Article, the Corporate Trustee has not agreed to submit any Matter in which it is involved to arbitration, and all such Matters shall be referred to a court of competent jurisdiction. Further, where any Matter involves, or could potentially involve personal liability or criminal sanction against any Split Lake Cree Trustee, the Chief, or any Split Lake Cree Councillor, such individual may at his option, prior to the commencement of the arbitration, revoke his agreement to submit the Matter to arbitration, in which case the Matter may only be proceeded with in a court of competent jurisdiction.

[Article 16.7.15 d\)](#)  
[Trust Indenture – Article 14.10](#)

#### 16.7.9 Counsel

Any person appearing before the Split Lake Cree Arbitrator may do so in person, or may be represented by counsel.

#### 16.7.10 Rules of Conduct

The Split Lake Cree Arbitrator may establish his own rules of conduct and may rule upon the admissibility of evidence. When acting in an appellate capacity, the Matter shall be brought as a new trial, but the decision of the Tribunal, including any written reasons, shall be submitted to the Split Lake Cree Arbitrator. It is agreed that evidence may be presented by affidavit, and the evidence of consultants or experts may be presented without the author being physically present, and hearsay evidence may be received. In all such cases it shall be for the Split Lake Cree Arbitrator to determine the weight, if any, to be placed upon such evidence.

#### 16.7.11 Statement of Agreed Facts

An arbitration before the Split Lake Cree Arbitrator may proceed by way of a statement of agreed facts.

#### 16.7.12 Professional Assistance

The Split Lake Cree Arbitrator may retain the assistance of such professionals or consultants as he may require in order to advise him on any issue involving, without limitation, accounting, law, engineering, or physical, social or economic impact consequences, as may in the sole discretion of the Split Lake Cree Arbitrator be necessary in order to properly consider the evidence presented. It is understood and agreed however, that any person interested in any Matter before the Split Lake Cree Arbitrator shall have the primary responsibility for presenting evidence to support his position, and the power of the Split Lake Cree Arbitrator to retain assistance of professionals or consultants shall be exercised only where the Split Lake Cree Arbitrator believes further advice or information would be necessary or desirable to formulate and reach a sound and fair decision.

#### 16.7.13 Right to Cross-Examine

If the Split Lake Cree Arbitrator exercises any of the powers set out in subsection 16.7.12 of this Article, for the purpose of obtaining assistance, any person interested in the Matter or his authorized representative shall have the right to cross-examine such individual or individuals from whom such information was obtained, and shall have the right to peruse any documentary evidence, and to cross-examine thereon.

#### 16.7.14 Decisions

In making any award in relation to a claim for compensation for Adverse Effects under Articles [8](#) and [9](#) of this Agreement, the Split Lake Cree Arbitrator shall, among other things,

- a. determine whether there is a liability under this Agreement;
- b. determine the appropriate quantum of compensation; and,
- c. designate the appropriate Account or Reserve Account under the Indenture to fund compensation and, if more than one Account or Reserve Account, apportion the funding.

#### 16.7.15 Power and Authority

In making any determination or decision in relation to any facts in dispute, or any interpretation and order as to the responsibilities or actions of Chief and Council, the Split Lake Cree Trustees, or any individual member of those bodies, in relation to the administration of the Indenture and the Trust Funds, including the community consultative provisions thereof, the Split Lake Cree Arbitrator has full power and authority:

- a. to determine any facts in dispute;
- b. to interpret this Agreement and declare rights and obligations thereunder;
- c. to determine liability, if any, of Chief and Council and Split Lake Cree Trustees, or subject to subsection 16.7.8 of this Article, any individual member of those bodies;

- d. to award restitution or damages subject to [subsection 16.7.8](#) of this Article;
- e. to direct an accounting; and,
- f. to determine the entitlement, if any, of any individual Split Lake Cree Trustee to indemnification from the Trust Fund.

#### 16.7.16 Awards in Writing

Every award or order of the Split Lake Cree Arbitrator shall be in writing and shall set forth reasons.

#### 16.7.17 Variations

Any participant in a Matter may apply in writing to the Split Lake Cree Arbitrator within fifteen (15) days after the receipt of an award or order, to amend or vary the award or order in respect of anything that was raised before the Split Lake Cree Arbitrator, or as to the application or interpretation of the said award or order.

#### 16.7.18 No Appeal

There shall be no appeal from the order or award of the Split Lake Cree Arbitrator except on an issue of law or jurisdiction, in which case the appeal shall be presented to the Manitoba Court of Appeal, and there shall be no further appeal therefrom.

#### 16.7.19 Counsel

In hearing any claim for compensation under Articles [8](#) and [9](#) of this Agreement, the Split Lake Cree Arbitrator shall have the discretion to make an order that counsel of the Claimant's choice be made available, at the expense of the appropriate Account, to assist the Claimant in preparing and advancing his claim.

#### 16.7.20 Costs

Subject to the restriction on costs contained in [section 13.2 of the Indenture](#), the Split Lake Cree Arbitrator may award costs in favour of any Member involved in and appearing before him with respect to any Matter, as he deems fair and equitable in the circumstances.

#### 16.7.21 Inclusions

Any award of costs may include legal fees or the costs of consultants or experts retained in order to deal with a Matter brought to the Split Lake Cree Arbitrator, to the extent such fees and costs are found by him to be reasonable.

#### 16.7.22 Ancillary Expenses

Any award of costs may include travelling allowances and ancillary expenses for participants in the Matter, their legal counsel, consultants or necessary witnesses.

### 16.7.23 Onus

In determining any Matter brought before the Split Lake Cree Arbitrator arising as a claim for compensation for Adverse Effects, including a claim under Articles [8](#) and [9](#) of this Agreement, the onus shall be on any Member, or entity with status to appear and make representations to the Split Lake Cree Arbitrator, who disputes such compensation claim for Adverse Effects, to establish that the Project did not cause or contribute to the Adverse Effect giving rise to the claim where such claim arises by virtue of an actual or purported Adverse Effect.

### [Article 7.3.3](#)

### 16.7.24 Reviews

All awards and orders of the Split Lake Cree Arbitrator shall be reviewable by the Split Lake Cree Arbitrator within four (4) years of such award or order at the request of any claimant, and the Split Lake Cree Arbitrator shall have the power to award additional compensation, including interest. No review of awards or orders of the Split Lake Cree Arbitrator shall be made after the aforesaid times have expired, and all such awards and orders shall then be deemed to be final.

## **16.8 General Provisions**

### 16.8.1 No Derogation

The provisions of this Article 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. Nothing in this subsection 16.8.1 of this Article shall derogate from specific obligations of Canada and Manitoba pursuant to this Agreement.

### 16.8.2 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 to enact the provisions of this Article as they apply to Canada. Unless or until such legislation is enacted, arbitration herein involving Canada is, as it relates to Canada, governed by common law rules.

### 16.8.3 Vacancy

Where a vacancy occurs in the office of the Arbitrator, or the Split Lake Cree Arbitrator, after the commencement of proceedings, the proceedings are not required to be recommenced if, but only if, the Participating Parties or the participants to the proceeding, as the case may be, unanimously consent.

### 16.8.4 Easement Resolution

The Parties agree that if a dispute relating to the Easements involves Split Lake Cree, then Split Lake Cree may, at its sole option, exercisable notwithstanding receipt by Split Lake Cree of a notice of referral to court, elect to refer such matter for resolution to the Dispute Resolution Mechanism for disputes between the Parties. Notwithstanding this subsection 16.8.4 of this Article, in the event that Canada is a party to a dispute relating to the Easements, involving either Manitoba and/or Hydro, which dispute concerns an interest in land under the Easements, then the option to refer such matter to the Dispute Resolution Mechanism for disputes between the Parties shall not be available to Split Lake Cree.

# Article 17

## 17.0 Ratification and Execution

### 17.1 Introduction

#### 17.1.1 Introduction

This Article sets forth the ratification and execution process for this Agreement.

### 17.2 Ratification and Execution

#### 17.2.1 Condition Precedent

The ratification and execution process required as a condition precedent to the execution of this Agreement is as set out below.

- a. Prior to the advance poll referenced in subparagraph 17.2.1(e)(iii) of this Article, Split Lake Cree, together with its consultants and legal advisors, shall conduct, on the Reserve, at least one (1) public meeting of Members in order to explain the nature and significance of this Agreement.
- b. Each public meeting shall be announced in the local media, and in a newspaper having general circulation in the Province of Manitoba, well in advance of such public meeting being held.
- c. Split Lake Cree will publish a phone number, as part of the notice referred to in paragraph 17.2.1(b) of this Article, which can be used by Members who wish to obtain a copy of the Agreement and information in relation to the Referendum vote.
- d. Split Lake Cree will provide Manitoba, Canada, and Hydro with five (5) days written notice of the aforesaid public meeting(s), and they shall have the opportunity to attend.
- e. A Referendum shall be conducted on or about June 1, 1992 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" shall be read as "Member";
  - 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. there shall be an advance poll to be held on the day which is two (2) Saturdays prior to the date of the Referendum;
  - iv. 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; and,
  - v. 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.
- f. All Members eighteen (18) years of age or older shall be entitled to vote in the Referendum. If:
  - i. at least fifty percent (50%) plus one (1) of the Members eligible to vote cast a ballot; and,

- ii. a majority of votes cast are in favour of approval of this Agreement;
- iii.
- iv.
- v.

then this Agreement shall be deemed to have been approved by the Referendum. If either condition (i) or (ii) above is not met, then the Agreement shall be deemed to have been rejected by the Referendum.

- g. The Referendum is to be conducted by Canada, and Canada shall provide to Manitoba and Hydro a statement in a form similar to that required under Section 29 of the said Regulations, but the term "elector" shall be read as "Member".
- h. Prior to the date of the Referendum vote, Split Lake Cree shall provide to Canada, Manitoba and Hydro certification that the conditions precedent set out in paragraphs 17.2.1(a), (b) and (c) of this Article have been fulfilled.
- i. Upon approval by the Referendum, Split Lake Cree shall forthwith request a Council Resolution authorizing the Chief and Council to execute this Agreement on behalf of Split Lake Cree.
- j. Upon approval by the Referendum, Manitoba shall forthwith authorize an appropriate Minister to execute this Agreement on behalf of Her Majesty the Queen in Right of the Province of Manitoba.
- k. Upon approval by the Referendum, Canada shall forthwith authorize an appropriate Minister to execute this Agreement on behalf of Her Majesty the Queen in Right of Canada.
- l. Upon approval by the Referendum, Hydro shall forthwith request its Board of Directors to pass a resolution authorizing its appropriate officers to execute this Agreement on behalf of Hydro.

#### 17.2.2 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 as provided in this Article.

### **17.3 Indenture**

#### 17.3.1 Concurrent Execution

It is a condition of this Agreement that concurrently with the execution of this Agreement, the parties to the Indenture, including Split Lake Cree, Split Lake Cree Trustees and the Corporate Trustee, shall execute the Indenture.



# **Article 18**

## **18.0 General Provisions**

### **18.1 Introduction**

#### 18.1.1 Introduction

This Article contains provisions of a general nature relating to this Agreement.

### **18.2 Interpretation**

#### 18.2.1 Headings

The Article and section headings, and the introductory subsection in each Article, and the Community Consultation Report attached as Schedule 18.1 are for reference and information purposes only, and shall not affect in any way the meaning or interpretation of this Agreement. The terms "of this Agreement", "hereof", "herein", and "hereunder" and similar expressions, refer to the Agreement in its entirety and not to any particular Article, section, subsection, paragraph or other portion of this Agreement.

#### 18.2.2 Numbers, Plural, Gender

Words importing the singular number only shall include the plural, and vice versa, as the context may require; words importing the use of any gender shall include both genders; and words importing persons shall include firms and corporations, and vice versa, as the context may require.

#### 18.2.3 Metric Measure

In the event of a conflict between metric and Imperial measure, metric measure shall prevail.

### **18.3 Presumptions**

#### 18.3.1 No Presumptions

The Parties have endeavoured to ensure that the terms of this Agreement are as clear as possible and do not intend that any presumption of law or interpretation be relied upon in interpreting this Agreement. In particular, that there shall be no presumption in favour of or against any Party.

### **18.4 Validity of Provisions**

#### 18.4.1 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 of Split Lake Cree.

#### 18.4.2 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.

### **18.5 Amendment, Modification, etc.**

#### 18.5.1 Amendment – General

The terms, conditions, and provisions of this Agreement may be amended or modified by the Parties, but no amendment to, or modification of, any of the provisions of this Agreement shall be effective unless made in writing, with equivalent procedure and formality, and signed by all of the Parties. The Trustees shall be given reasonable notice of any proposed and(or) agreed amendment or modification.

#### 18.5.2 Amendment – Financial

Any amendment to the financial provisions or limitations specified in this Agreement shall only require the approval of the Governor in Council, the Lieutenant Governor in Council, a Council Resolution and resolution of the Board of Hydro.

### **18.6 Parties**

#### 18.6.1 Binding on Parties

This Agreement shall be binding upon and enure to the benefit of the Parties and their respective successors and assigns. Except as specifically set forth in this Agreement, nothing in this Agreement is intended to confer upon any other person any rights or remedies under or by reason of this Agreement.

#### 18.6.2 Not to Share

No member of the House of Commons of Canada or the Legislative Assembly of Manitoba, or any employee or servant thereof, except as may be performed in the course of normal duties and responsibilities, will be admitted to or share a part of this Agreement, or of any contract, agreement or commission made pursuant to this Agreement, or to any benefit to arise from this Agreement.

### **18.7 Notice**

#### 18.7.2 Notices

All notices and other communications provided for in this Agreement shall be in writing, and shall be given by personal delivery to an officer or other responsible employee of the addressee, or sent by tele-facsimile, charges pre-paid, at or to the applicable addresses or tele-facsimile numbers, as the case may be, set out in subsection 18.7.1 of this Article, opposite the respective Party's name, or, at or to the last address or addresses or tele-facsimile number or numbers as any Party may from time to time designate to the other Parties in such manner. Any communication which is personally delivered as aforesaid 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. Any communication which is transmitted by tele-facsimile as aforesaid, shall be deemed to have been validly and effectively given on the date of the transmission if such date is a business day and such transmission, was 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 transmission.

To Canada:

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

Facsimile number:

(204) 983-6500

(204) 983-0861

To Split Lake Cree:

Split Lake Cree First Nation  
Split Lake, Manitoba  
R0B 1P0

Facsimile number:

(204) 342-2270

To Hydro:

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

Facsimile number:

(204) 474-4854

To Manitoba:

Deputy Minister of Northern Affairs  
Room 327, Legislative Bldg.  
Winnipeg, Manitoba

R3C 0V8  
Facsimile number:  
(204) 945-3727

## **18.8 Entire Agreement**

### 18.8.1 Agreement Supersedes

This Agreement constitutes the entire Agreement between and among the Parties, pertaining to the subject matter of this Agreement, and, except as expressly provided, this Agreement supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, between or among the Parties with respect to the subject matter of this Agreement. There are no representations, warranties, collateral agreements or conditions except as expressed in this Agreement.

### 18.8.2 No Merger

Except as expressly provided in this Agreement, or in any other agreement among the Parties, no provisions of any other agreement shall merge with this Agreement.

### 18.8.3 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.

### 18.8.4 Further Action

Each of the Parties to this Agreement will, from time to time, at another Party's request and expense, and without further consideration, execute and deliver such other instruments of transfer, conveyance and assignment, and take such further action as the other may require, to more effectively complete any matter provided for in this Agreement.

## **18.9 Governing Law**

### 18.9.1 Laws in Manitoba

This Agreement shall be governed by, and construed in accordance with, the federal and provincial laws in force in the Province of Manitoba.

### 18.9.2 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.

### 18.9.3 Enforceable by Parties

This Agreement shall be enforceable by any of the Parties, but not otherwise, provided that any Member shall have rights of enforcement as beneficiary of the Trust established by the Indenture.

### 18.9.4 Licences

Nothing in this Agreement is intended to detract from, or relieve any Party from, obligations incurred pursuant to any 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.

### 18.9.5 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).

## **18.10 NFA**

### 18.10.1 No Precedent

Neither this Agreement nor any provision of this Agreement, shall constitute a precedent for the position of any or all Parties in relation to like or unlike matters arising in relation to any Third Party.

### 18.10.2 No Admission

Nothing in this Agreement shall constitute an admission of liability on the part of any of the Parties.

### 18.10.3 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 Third Party.

## **18.11 Warranty**

### 18.11. Independent Advice

In addition to the representations and warranties contained in the Community Consultation Report attached as Schedule 18.1 to this Agreement, Split Lake Cree warrants that, throughout the negotiations leading to this Agreement:

- a. it has been independently advised by negotiators, legal counsel, technical advisors and consultants of its choice with respect to all matters arising in connection with or dealt with in this Agreement;

- b. this Agreement has been jointly drafted, considered and revised by representatives of all of the Parties, and duly authorized Split Lake Cree representatives have participated fully in the preparation of this Agreement; and,
- c. it has caused all aspects of this Agreement to be explained at community meetings, which were open to all Members, in order that all Members could have had the opportunity to discuss all relevant matters under negotiation and in order that the Members could have had the opportunity to make an informed decision at the time of ratification.

#### 18.11.2 Acknowledgment

The Parties acknowledge that there has been extensive information gathered and exchanged among 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 Split Lake Cree but funded by another Party or Parties; and information obtained by Split Lake Cree for its own purposes in the conduct of these negotiations. The Parties acknowledge that additional information could have been gathered; but that it was, and is, the unanimous judgment of the Parties that the gathering of additional information should not further delay the implementation of the NFA and other measures provided for in this Agreement; and that this Agreement should be concluded on the basis of the information in the possession of the Parties at the Date of this Agreement.

#### 18.11.3 Disclosure – Canada

Based upon information received from inquiries made to the Assistant Deputy Ministers of the departments of the government of Canada listed in [Schedule 18.2](#) of this Agreement, Canada warrants that none of the said departments of the government of Canada have, at any time prior to December 31, 1991, made a decision to withhold information or documentation from Split Lake Cree, which information or documentation a department could reasonably have known was material to the implementation of the NFA for the benefit of Split Lake Cree, 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 the Governor General in Council.

#### 18.11.4 Disclosure – Manitoba

Based upon information received from inquiries made to the Assistant Deputy Ministers of the departments of the government of Manitoba listed in [Schedule 18.3](#) of this Agreement, Manitoba warrants that none of the said departments of the government of Manitoba have, at any time prior to December 31, 1991, made a decision to withhold information or documentation from Split Lake Cree, which information or documentation a department could reasonably have known was material to the implementation of the NFA for the benefit of Split Lake Cree, 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 the Lieutenant Governor in Council.

#### 18.11.5 Disclosure – Hydro

Hydro warrants that it has not, at any time prior to December 31, 1991, made a decision to withhold information or documentation from Split Lake Cree, which information or documentation Hydro could reasonably have known was material to the implementation of the NFA for the benefit of Split Lake Cree, 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 the Board of Hydro.

#### 18.11.6 Disclosure – Split Lake Cree

Based upon information received from inquiries made to Chief and Council, Split Lake Cree warrants that it has not, at any time prior to December 31, 1991, made a decision to withhold information or documentation from Canada, Manitoba or Hydro, which information or documentation Split Lake Cree 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.

### **18.12 Independent Legal Advice**

#### 18.12.1 Independent Legal Advice

Each of the specific releases to be provided under [subsections 8.2.3, 8.2.4, 9.2.3, 9.2.4](#) and [15.7.2](#) of this Agreement shall be accompanied by a certificate of independent legal advice and such release and certificate shall be in the form and have the content of Schedule 18.5 of this Agreement, with such modification as may be necessary in the particular circumstances.

### **18.13 Appropriation**

#### 18.13.1 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.

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

Signed, sealed and delivered

in the presence of:

#### **Split Lake Cree First Nation**

Witness as to Chief and  
Counsellors

Chief  
Councillor  
Councillor

## **Split Lake Cree First Nation**

Councillor  
Councillor  
Councillor  
Councillor  
Councillor  
Councillor  
Councillor  
Councillor

on the 24th day of June, 1992

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

Per: "Jim Downey"

on the 24th day of June, 1992

The Manitoba-Hydro Electric Board

Per: "John S. McCallum"

Per: "R.B. Brennan"

on the 24th day of June, 1992

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

Per: "Tom Siddon"

on the 24th day of June, 1992

## **Schedule 18.2**

### **FEDERAL DEPARTMENTS CONSULTED**

Department of Indian Affairs & Northern Development

Department of Transport

Department of the Environment

Department of Fisheries & Oceans

Department of Health & Welfare

[Article 18.11.3](#)

## **Schedule 18.3**

### **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

[Article 18.11.4](#)

## **Schedule 18.4**

### **RELEASE AND CERTIFICATE OF INDEPENDENT LEGAL ADVICE**

WHEREAS an Agreement has been entered into the \_\_\_\_\_ day of \_\_\_\_\_, 1992 (hereinafter called the "Settlement Date") among Her Majesty the Queen in the Right of Canada, Her Majesty the Queen in the right of the Province of Manitoba, The Split Lake Cree First Nation and the Manitoba Hydro-Electric Board, which Agreement is referred to hereinafter as the "Split Lake Cree Implementation Agreement";

AND WHEREAS the terms "Adverse Effects", "Chief and Council", "Member", "Resources", "Split Lake Cree Based Business", "Controlled Institution", "NFA", "Split Lake Cree" and "Split Lake Cree Assets" are defined in Article 1 of the Split Lake Cree Implementation Agreement, and in this Release such terms are incorporated by reference and shall have the same meaning given to them in the Split Lake Cree Implementation Agreement;

NOW THEREFORE, Split Lake Cree (hereinafter referred to as the "Releasor") by its duly authorized officers, in consideration of the negotiation and settling of the Split Lake Cree Implementation Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged;

NOW THEREFORE, I, \_\_\_\_\_, being Split Lake Cree Member no. \_\_\_\_\_, (hereinafter referred to as the "Releasor") in consideration of the negotiation and settling of the Split Lake Cree Implementation Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged;

NOW THEREFORE, \_\_\_\_\_, (hereinafter referred to as the "Releasor") being a Split Lake Cree Based Business or Controlled Institution, by its duly authorized officers, in

consideration of the negotiation and settling of the Split Lake Cree Implementation Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged;

HEREBY RELEASE(S) Canada, Manitoba and Hydro, their successors and assigns, of and from any and all actions, causes of action, suits, claims and demands whatsoever, that I/it ever had, now have/has, or hereinafter can, shall or may have for or by reason or on account of all known and unknown adverse effects, losses, costs, damages or expenses whether direct or indirect, whether I/it have/has suffered, incurred or been put to, or may suffer, incur or be put to, or any cause, matter or thing whatsoever existing up to the Settlement Date, before the NFA Arbitrator for or in relation to compensation for Adverse Effects on Resources and on Split Lake Cree Assets, including but not limited to claim # \_\_\_\_\_ detailed in Schedule 8.1 to the Split Lake Cree Implementation Agreement.

Except it is hereby understood and agreed in accordance with 15.4.1 of the Split Lake Cree Implementation Agreement and is a term of this Release, that the Releasor herein does not waive, release or indemnify Hydro from the following:

1. Personal Injury and death, past and future, caused by or attributable to the Project;
2. Adverse Effects, to the extent such Adverse Effects were caused by or attributable to the Project, and arose from or as a result of deviations in the post-Project water regime;
3. Adverse Effects of the Project that were, at the date of the Split Lake Cree Implementation Agreement, unknown and(or) unforeseen and not discernible or foreseeable with the exercise of due diligence and concern;
4. Human disabilities, illness or death resulting from the ingestion of methyl mercury caused by or attributable to the Project; or
5. Future obligations of Hydro under Articles 18.4 and 18.5 of the NFA, and any other provision of the NFA as such provision relates to Project employment.

IT IS HEREBY ACKNOWLEDGED by the Releasor that prior to execution of the Release the nature of the Release was explained by independent legal counsel.

IN WITNESS WHEREOF \_\_\_\_\_ has/have hereunto executed this Release, by the hands of its proper officers duly authorized in that behalf, the \_\_\_\_\_ day of \_\_\_\_\_, 1992.

Per: Per:

IN WITNESS WHEREOF The Split Lake Cree First Nation has hereunto executed this Release, by the hands of its proper officers duly authorized in that behalf, the \_\_\_\_ day of \_\_\_\_\_, 1992.

**THE SPLIT LAKE CREE FIRST NATION**

Per:

Per:

IN WITNESS WHEREOF The Split Lake Cree First Nation Member No. \_\_\_\_\_ , \_\_\_\_\_  
 , has hereunto executed this Release the \_\_\_\_\_ day of \_\_\_\_\_ , 1992.

Witness

I, \_\_\_\_\_ of the \_\_\_\_\_ of \_\_\_\_\_ in the Province of Manitoba,  
Barrister and Solicitor, do hereby certify.

1. That I am a member in good standing of the Manitoba Bar.
2. That I was consulted in my professional capacity by \_\_\_\_\_ ("Releasor")  
named in the Release appended hereto as the Releasor, which Release is signed and dated  
the \_\_\_\_\_ day of \_\_\_\_\_ , 199 \_\_\_\_ .
3. That I acted for the Releasor and advised the Releasor as to his rights, explaining fully  
the nature and effect of the Release.
4. The Releasor executed the Release in my presence and did acknowledge and declare that  
he was executing same of his own volition and without any fear, threat, compulsion or  
influence from any other person and that he fully understood his rights and the nature and  
effect of the Release.

Dated at \_\_\_\_\_ , in Manitoba, this \_\_\_\_\_ day of \_\_\_\_\_ , 199 \_\_\_\_ .

Barrister and Solicitor

# Schedule 3.1

## Boundaries of Compensation Lands

### Assean Lake Parcel A Boundaries

per approximate general location Plans 3.1 and 3.2 attached to this Schedule and the following descriptions:

#### Inland Boundaries

- Beginning at the most northerly intersection of the 172.0 m contour referenced to the Controlling Bench Marks with the W limit of I.R. #171 in the SW of 1-84-8E, thence Westerly, Northerly, Southerly and Easterly along a monumented traverse at the 172.0 m contour to the intersection with the W limit of I.R. #171 in the N of 36-83-8E; and
- Thence Southerly along said West limit of I.R. #171 to the intersection of the N limit of 25-83-8E thence Westerly along the N limit of Sections 25 through 29 to the N of 30-83-8E, thence Southwesterly to the E of 4-83-7E, thence Westerly along the N limit of the S of Sections 4, 5 and 6-83-7E and Sections 1 and 2-83-6E to the E of 3-83-6E, thence Northerly along the E limit of 3-83-6E to Assean Lake; and
- Beginning at the said most Northerly intersection of the 172.0 m contour with the West limit of I.R. #171 in the SW of 1-84-8E, thence Northerly and Easterly along the several courses of the limit of said Reserve to the intersection of the 172.0 m contour situated in the SW of 9-84-9E thence Westerly, Northerly, and Easterly along a monumented traverse at the 172.0 m contour to the intersection with the E limit of 10-84-9E thence Northerly along the E limit of Sections 10, 15, 22, 27 and 34-84-9E and Section 3-85-9E to the NE of Section 3, thence Westerly along the N limit of Sections 3, 4 and 5 to the NE of 6-85-9E, thence Southerly along the E limit of Sections 6-85-9E and 31-84-9E to the N limit of Little Assean Lake.

#### Parcel B Boundaries

per approximate general location Plans 3.1 and 3.2 attached to this Schedule and the following descriptions:

- Beginning at the most Northerly intersection of the 169.47m contour referenced to the Controlling Bench Marks with the W limit of I.R. #171 in the SW of 1-84-8E, thence Westerly, Northerly, Southerly and Easterly along a monumented traverse at the 169.47 m contour to the intersection with the W limit of I.R. #171 in the N of 36-83-8E.
- Thence Southerly along the west limit of I.R. #171 situated in the N of 36-83-8E to the intersection of the 172.0 m contour referenced to the Controlling Bench Marks, thence Westerly, Northerly, Easterly and Southerly along a monumented traverse at the 172.0 m contour to the intersection of the W limit of I.R. #171 in the SW of 1-84-8E, thence southerly along the W limit of I.R. #171 in the SW of 1-84-8E to the point of beginning.

#### Parcel C Boundaries

per approximate general location Plans 3.1 and 3.2 attached to this Schedule and the following descriptions:

- Beginning at the intersection of the 169.47 m contour referenced to the Controlling Bench Marks with the W limit of I.R. #171 in the SW of 9-84-9E, thence Westerly, Northerly and Easterly along a monumented traverse at the 169.47 m contour to the intersection with the E limit of 10-84-9E thence Northerly along the E limit of 10-84-9E to the intersection of the 172.0 m contour referenced to the Controlling Bench Marks with the E limit of 10-84-9E.
- Thence Westerly, Southerly and Easterly along a monumented traverse at the 172.0 m contour to the intersection with the W limit of I.R. #171 situated in the SW of 9-84-9E thence northerly along the said west limit of I.R. #171 to the point of beginning.

#### OHWB Boundaries

The OHWB Boundaries shown on Plan 3.2 and described and established as per Schedule 3.2.

#### Road Allowances

All projected road allowances contained within the bounds of the compensation lands, as above described, form part of the compensation lands.

#### Water Beds

All water beds, including lakes, ponds, rivers, creeks and streams, contained within the bounds of said compensation lands form part of said lands excepting thereout the beds of Fox Lake, the Assen and Crying Rivers, and the unnamed creek lying in projected Section 5 in the 85th Township of the 9th Range, East of the Principal Meridian.

#### **Waskaiowaka Lake Parcel Boundaries**

per approximate general location Plans 3.1 and 3.3 attached to this Schedule and the following descriptions:

#### Inland Boundaries

- Beginning at the intersection of U.T.M. 6 Grid Line 6262000m N with Waskaiowaka Lake thence Westerly along said Grid Line to the intersection with U.T.M. 6 Grid Line 637000m E, thence Southerly along said Grid Line to the intersection with the small creek that enters Waskaiowaka Lake just south of the Rasp River; and
- Beginning at the intersection of U.T.M. 6 Grid Line 6260000m N with Waskaiowaka Lake thence Easterly along said Grid Line to the intersection with U.T.M. 6 Grid Line 644300m E, thence Northerly along said Grid Line to Waskaiowaka Lake; and

#### OHWB Boundaries

The OHWM Boundaries described and established as per Schedule 3.2.

#### Road Allowances

All projected road allowances contained within the bounds of the compensation lands, as above described, form part of the compensation lands.

#### Water Beds

All water beds, including lakes, ponds, rivers, creeks and streams, contained within the bounds of said compensation lands form part of said lands.

#### Grid Line

Grid line reference to North American Datum 1927.

<b>Plans</b>	<b>Scale</b>
Plan 3.1 General Location Plan	Not to Scale
Plan 3.2 Compensation Lands at Assean Lake	1:50,000
Plan 3.3 Compensation Lands at Waskaiowaka Lake	1:50,000

## Schedule 3.2

### Legal Survey Instructions

#### Assean Lake Parcels A, B and C

General:

1. To conduct surveys and prepare plans of the described areas in accordance with Land Titles Office guidelines.
2. Prepare Parcel Plans of the areas at a scale of 1:20,000.
3. Survey of the parcel(s) as follows:

#### Parcel A Inland Boundaries

- Beginning at the most northerly intersection of the 172.0 m contour referenced to the Controlling Bench Marks with the W limit of I.R. #171 in the SW of 1-84-8E, thence Westerly, Northerly, Southerly and Easterly along a monumented traverse at the 172.0 m contour to the intersection with the W limit of I.R.#171 in the N of 36-83-8E; and
- Thence Southerly along said West limit of I.R. #171 to the intersection of the N limit of 25-83-8E thence Westerly along the N limit of Sections 25 through 29 to the N of 30-83-8E, thence Southwesterly to the E of 4-83-7E, thence Westerly along the N limit of the S of Sections 4, 5 and 6-83-7E and Sections 1 and 2-83-6E to the E of 3-83-6E, thence Northerly along the E limit of 3-83-6E to Assean Lake; and
- Beginning at the said most Northerly intersection of the 172.0 m contour with the West limit of I.R. #171 in the SW of 1-84-8E, thence Northerly and Easterly along the several courses of the limit of said Reserve to the intersection of the 172.0 m contour situated in the SW of 9-84-9E thence Westerly, Northerly, and Easterly along a monumented traverse at the 172.0 m contour to the intersection with the E limit of 10-84-9E thence Northerly along the E limit of Sections 10, 15, 22, 27 and 34-84-9E and Section 3-85-9E to the NE of Section 3, thence Westerly along the N limit of Sections 3, 4 and 5 to the NE of 6-85-9E, thence Southerly along the E limit of Sections 6-85-9E and 31-84-9E to the N limit of Little Assean Lake.

#### Parcel B Boundaries

- Beginning at the most Northerly intersection of the 169.47 m contour referenced to the Controlling Bench Marks with the W limit of I.R. #171 in the SW of 1-84-8E, thence Westerly, Northerly, Southerly and Easterly along a monumented traverse at or above the 169.47 m contour to the intersection with the W limit of I.R. #171 in the N of 36-83-8E.
- Thence Southerly along the west limit of I.R. #171 situated in the N of 36-83-8E to the intersection of the 172.0 m contour referenced to the Controlling Bench Marks, thence Westerly, Northerly, Easterly and Southerly along a monumented traverse at the 172.0 m contour to the intersection of the W limit of I.R. #171 in the SW of 1-84-8E, thence southerly along the W limit of I.R. #171 in the SW of 1-84-8E to the point of beginning.

## Parcel C Boundaries

- Beginning at the intersection of the 169.47 m contour referenced to the Controlling Bench Marks with the W limit of I.R. #171 in the SW of 9-84-9E, thence Westerly, Northerly and Easterly along a monumented traverse at the 169.47 m contour to the intersection with the E limit of 10-84-9E thence Northerly along the E limit of 10-84-9E to the intersection of the 172.0 m contour referenced to the Controlling Bench Marks with the E limit of 10-84-9E.
  - Thence Westerly, Southerly and Easterly along a monumented traverse at the 172.0 m contour to the intersection with the W limit of I.R. #171 situated in the SW of 9-84-9E thence northerly along the said west limit of I.R. #171 to the point of beginning.
1. The Plan(s) will show adjacent theoretical section lines along surveyed boundaries as broken lines — outside the Reserve only.
  2. Bearings will be derived from the control and referenced to the Central Meridian of U.T.M. Zone 14. Bearings not angles, will show on all surveyed boundaries.
  3. Monuments along surveyed boundaries will be intervisible and the maximum distance between each will be 1 km. The monuments will be 0.025 m x 0.025 m x 0.914 m or short R. posts. Ties will be shown to all permanent water bodies crossed.
  4. The inland boundary shall be surveyed on true line and line cut to ensure a visible skyline.
  5. Enclosed parcels will be identified by number with areas of each shown.

## Setback Lines:

A survey line on Parcels B and C at or about the 170.38 m contour referenced to the Controlling Bench Marks. Courses along this line should exceed 100 m. Hydro will identify those locations where the Setback Line, based on the process and methodology referred to in the definition of Setback Line in Article 1 of this Agreement, must deviate from the 170.38 m contour. Hydro will have a staff person visit the survey to ensure that their requirements are satisfied and to verify the location and obtain approval of Split Lake Cree while the survey is in progress. The surveyed Setback Lines will be shown on the Plan as a solid line with each parcel identified by a number.

## Control:

Global Positioning System control will be expanded along Assean Lake and the Assean River to accommodate plotting the Ordinary High Water Mark and to provide additional coordinate control, all to be referenced to the Split Lake system. These monuments and values will be shown on the Plan. The G.P.S. process shall exceed third order accuracies.

## OHWB Boundaries:

All pertinent OHWB boundaries will be plotted from aerial photography in accordance with Land Titles Office guidelines.

## Road Allowances:



All projected road allowances contained within the bounds of the compensation lands, as above described, form part of the compensation lands.

**Water Beds:**

All water beds, including lakes, ponds, rivers, creeks and streams, contained within the bounds of said compensation lands form part of said lands excepting thereout the beds of Fox Lake, the Assean and Crying Rivers, and the unnamed creek lying in projected Section 5 in the 85th Township of the 9th Range, East of the Principal Meridian.

**Controlling Bench Marks:**

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

**Monumented Traverses (boundaries):**

Monumented traverse(s) shall be at or above the contour lines referenced as above. Courses along these lines should exceed 100 m. Hydro will identify those locations, if any, where the monumented traverse(s) are to be above the indicated contour line. Hydro will have a staff person visit the survey to ensure that their requirements are satisfied and to verify the location and obtain approval of Split Lake Cree while the survey is in progress. The monumented traverse(s) will be shown on the Plans as a solid line with each parcel identified by a number.

**Exclusions:**

Excluded lands as shown on Plan 3.2 and described in Schedule 3.3 will be surveyed with all new boundary lines to be line cut to ensure a visible skyline. The Plan will show bearings and distances along these new boundaries of the excluded lands.

Fox Lake, the Assean and Crying Rivers and the unnamed Creek in Sec. 5-85-9E will be excluded and shown on the Plan as such.

**Waskaiowaka Lake Parcel**

**General:**

1. To conduct a survey and prepare a Plan of the described area in accordance with Land Titles Office guidelines.
2. Prepare the Plan at a scale of 1:10,000 as:
  - o Plan of Survey
  - o Showing Lands Required For
  - o Split Lake Indian Reserve No. \_\_\_\_\_
  - o Being Part of \_\_\_\_\_
3. Survey the inland boundary of the parcel as follows:

- Beginning at the intersection of U.T.M. 6 Grid Line 6262000mN with Waskaiowaka Lake thence Westerly along said Grid Line to the intersection with U.T.M. 6 Grid Line 637000mE, thence Southerly along said Grid Line to the intersection with the small creek that enters Waskaiowaka Lake just south of the Rasp River; and
  - Beginning at the intersection of U.T.M. 6 Grid Line 6260000mN with Waskaiowaka Lake thence Easterly along said Grid Line to the intersection with U.T.M. 6 Grid Line 644300mE, thence Northerly along said Grid Line to Waskaiowaka Lake.
4. The Plan will show adjacent theoretical section lines along surveyed boundaries as broken lines — outside the Reserve only.
  5. Bearings will be derived from the control and referenced to the Central Meridian of U.T.M. Zone 14. Bearings, not angles, will show on all surveyed boundaries.
  6. Monuments along surveyed boundaries will be intervisible and the maximum distance between each will be 1 km. The monuments will be 0.025 m x 0.025 m x 0.914 m or short R. posts. Ties will be shown to all permanent water bodies crossed.
  7. The inland boundary shall be surveyed on true line and line cut to ensure a visible skyline.
  8. Enclosed parcels will be identified by number with areas of each shown.

#### Control:

Global Positioning System control will be extended to Waskaiowaka Lake to accommodate plotting the OHWM and to provide additional control, all to be referenced to the Split Lake system. These monuments and values will be shown on the Plan.

#### OHWM Boundaries:

OHWM boundaries will be plotted from aerial photography in accordance with Land Titles Office guidelines.

#### Road Allowances:

All projected road allowances contained within the bounds of the compensation lands, as above described, form part of the compensation lands.

#### Water Beds:

All water beds, including lakes, ponds, rivers, creeks and streams, contained within the bounds of said compensation lands form part of said lands.

#### Grid Line:

Grid line reference to North American Datum 1927.

## Schedule 3.3

### Exclusions for Public Purposes within Compensation Lands

The following lands shall be excluded from Compensation Lands:

1. The existing Provincial Road 280 right-of-way as shown on Plans of Public Roads Nos. 7083, 7084, 7085 and 2345 (Department of Highways and Transportation).
2. Access road rights-of-way from PR 280 to the boundary of I.R. #171 and from PR 280 to the ferry landing located on Sec 9, Twp 84, R9E as shown on Plan of Public Roads No. 7085 (Department of Highways and Transportation).
3. Lands adjacent to the existing PR 280 right-of-way traversing Compensation Lands as shown on Plan 3.2 attached to this Agreement, including:
  - a. A proposed distribution sub-station site of approximately 1.5 hectares at the junction of PR280 and the access road to I.R. #171 as shown on Plan 3.2; and
  - b. a landing area approximately 50 metres in width bordering Assean Lake within NW Sec 15 or NE Sec 15, Twp 83, R7E as shown on Plan 3.2.
4. All lands excluded other than those held under rights-of-way established by the Department of Highways and Transportation shall be held as provincial Crown lands available or transferrable to agents of Manitoba for borrow areas, realignment of PR280, distribution line rights-of-way or other purposes satisfactory to Manitoba.
5. Manitoba shall, in respect to excluded lands described in this Schedule
  - i. make available to Split Lake Cree, on request and at no cost, such quantities of borrow and quarry material on such lands as may be available and surplus to Manitoba's needs; and
  - ii. should any of the above lands be no longer required for public purposes, grant Split Lake Cree first right of refusal in respect to the acquisition of such lands, by purchase, lease or permit. Such first right of refusal shall be to purchase, lease or acquire by permit, on terms and conditions no less favourable to Split Lake Cree than to any other prospective purchaser, lessee or permittee, and shall be open for acceptance by Split Lake Cree for not less than thirty (30) days. This first right of refusal may, at the option of Split Lake Cree, be assigned to the Land Corporation.

## Schedule 3.4

### 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 SPLIT LAKE CREE FIRST NATION,**  
as represented by Chief and Council,  
(hereinafter referred to as "Split Lake Cree"),

OF THE THIRD PART,

**THE MANITOBA HYDRO-ELECTRIC BOARD,**  
(hereinafter referred to as "Hydro"),

OF THE FOURTH PART.

### Recitals

WHEREAS

1. Indian Reserve Number (hereinafter referred to as the Reserve) is a "Reserve" within the meaning of the Indian Act (Canada), and has been set apart for the use and benefit of Split Lake Cree, a "band" within the meaning of the Indian Act (Canada).
2. An Agreement dated December 16, 1977 (the "Northern Flood Agreement") was entered into among Her Majesty The Queen in Right of Manitoba, the Manitoba Hydro-Electric Board, the Northern Flood Committee, Inc., negotiating on behalf of the Cross Lake, Nelson House, Norway House, Split Lake and York Factory Indian bands, and Her Majesty The Queen in Right of Canada.
3. The Northern Flood Agreement was ratified by each of the bands.

4. The Northern Flood Agreement provides, among other provisions, for compensation for reserve lands, and adverse effects on Split Lake Cree Members, arising from, or affected by the Project.
5. The Northern Flood Agreement also provides that each of the said bands will facilitate, and Canada will grant to Hydro certain easements, for purposes related to the Lake Winnipeg Regulation and Churchill River Diversion Project, including any substantially similar redevelopment thereof.
6. Hydro is an agent of the Crown in right of Manitoba, and Manitoba will assume certain obligations of Hydro if certain eventualities occur, as set forth under this Easement.
7. Hydro is empowered by 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 Northern Flood Agreement 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; and, subject to the terms and conditions hereinafter set forth, Canada has directed that this Easement be granted to Hydro and that an instrument transferring administration and control of the said lands be issued in favour of Manitoba, in accordance with the provisions of this Easement.  
[To be substituted in the case of a new Reserve on Parcels B and C of the Compensation Lands.]
8. Canada has directed that this Easement be granted to Hydro and that an instrument transferring administration and control be issued in favour of Manitoba, in accordance with the provisions of this Easement, with respect to the lands described in this Easement.
9. Split Lake Cree Chief and Council has, by Resolution Number \_\_\_\_\_, dated the \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_, expressed approval of the grant of an easement on and over certain Reserve lands in this Easement described, upon the terms and conditions set out in this Easement.
10. Split Lake Cree has, by referendum, ratified the Agreement among Split Lake Cree, Canada, Manitoba and Hydro and has authorized Chief and Council to enter into this Easement on behalf of Split Lake Cree.
11. The Minister of Indian Affairs and Northern Development, Canada, has been authorized to enter into this Easement.
12. The Minister of Northern Affairs, Manitoba, has been authorized to enter into this Easement.
13. The appropriate officers of Hydro have been authorized by the Manitoba Hydro-Electric Board to execute this Easement on its behalf.

NOW THEREFORE, in consideration of the mutual terms and conditions in this Easement the Parties hereby covenant and agree as follows:

## **Article 1 Definitions**

In this Easement:

### **1.1**

"**Agreement**" shall mean the agreement dated \_\_\_\_\_ among Split Lake Cree, Canada, Manitoba and Hydro.

## 1.2

"**ASL**" shall mean Above Sea Level.

## 1.3

"**Chief and Council**" shall mean the Chief and Council of Split Lake Cree elected and in office pursuant to the Indian Act (Canada).

## 1.4

"**Easement**" shall mean this Easement Agreement and the interest in land and the other provisions of this easement agreement.

## 1.5

"**Easement Lands**" shall mean the lands which are the subject of this Easement as described in section 2.1. of this Easement.

## 1.6

"**Future Development**" shall mean the construction of any portion or portions of the Project that have not been physically constructed prior to the date of the Agreement and all major redevelopment or reconstruction of any existing portion of the Project.

## 1.7

"**Local Datum**" shall mean the elevation established for all purposes of this Easement based upon and referenced to specific controlling bench marks being any and all of

- B.M. #8 -----  
Water Survey of Canada brass cap in rock approximately 150 m north and east of the Water Survey of Canada recording shelter. Near the water's 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 the foundation of the nursing station located 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

Manitoba, Split Lake Cree and Hydro release Canada from all liability with respect to the definition, selection or determination of the controlling bench marks or Local Datum, and the determination of the Set-back Lines in accordance therewith, for the purposes of this Easement.

## 1.8

**"Project"** shall mean and include all past, present and future hydro-electric development or redevelopment on the Churchill, Burntwood and Nelson River systems and all development or redevelopment of the Lake Winnipeg Regulation system north of the 53rd (fifty-third) parallel and shall also include the operation thereof by Hydro.

## 1.9

**"Setback Lines"** shall mean the lines establishing the upper boundary of the Easement Lands, established, based on the process and methodology employed for geotechnical studies pursuant to the Canada-Manitoba Northlands Agreement (1976–1981), to reflect the margin of the effects of flooding, erosion, ice conditions, wind set-up, and wave up-rush on the Easement Lands above the Static Inundation Level. Setback Lines shall include the Severance Lines on I.R. Nos. 171, 171A and 171B, shown on plans filed in the Portage la Prairie Land Titles Office as Nos. 24689 to 24706 inclusive.

## 1.10

**"Static Inundation Level"** shall mean the inundation level with wind effects eliminated. The maximum Static Inundation Level permissible on Split Lake, pursuant to this Easement, is 169.47 m (556 ft.) ASL Local Datum.

## Article 2 Easement Lands

### 2.1

Canada shall:

#### 2.1.2

grant to Hydro the right, liberty, privilege and easement in accordance with the terms and conditions in this Easement; and,

#### 2.1.3

by order of Governor in Council, transfer to Manitoba such administration and control required to assure to Manitoba the right, liberty, privilege and easement in accordance with the terms and conditions in this Easement;

with respect to all the lands described as:

"Legal Description to be inserted"

## **Schedule 3.4**

### **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; 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, Split Lake Cree, or any person claiming by, through, or under Canada or Split Lake Cree.

#### 3.2

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

#### 3.3

Hydro and Manitoba shall not be liable to Canada, or to Split Lake Cree, for any loss or damage to persons or property, by virtue of their respective use of the Easement Lands for inundation and storage of water, within the terms and conditions prescribed in this Easement; 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; and, where Manitoba has or is deemed to have assumed the obligations of Hydro pursuant to the provisions of section 3.5 of this Easement, Manitoba shall be liable for any loss, damage, or injury to persons or property, arising from the breach of any provision of this Easement by Hydro, or its successor as operator of the works comprising the Project, its agents, employees, contractors and sub-contractors.

#### 3.4

This Easement 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; and the Easement Lands remain Reserve lands under the Indian Act (Canada); and Split Lake Cree may continue any and all uses of the Easement Lands which are not inconsistent with the provisions of this Easement. This Easement is made solely for the purposes stated in this Easement, 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, Split Lake Cree or Canada, pursuant to this Easement, 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.

### 3.5

In the event that Hydro ceases to:

#### 3.5.1

be an agent of Manitoba; or,

#### 3.5.2

have effective legal authority and control over the operation of the Project, or any major work or structure thereof whose operation may affect inundation or storage of water on the Easement Lands;

then Manitoba shall:

#### 3.5.3

in the circumstances to which subsection 3.5.1 of this Article applies, assume all of the rights and obligations of Hydro under this Easement; and,

#### 3.5.4

in the circumstances to which subsection 3.5.2 of this Article applies, assume the rights and obligations of Hydro under this Easement, to the extent of the works or structures over which Hydro no longer has effective authority and control, or all of the rights and obligations of Hydro under this Easement, where Hydro ceases to have effective authority and control over the Project;

but in any such event, the assumption by Manitoba, of Hydro's rights and obligations under this Easement, shall not relieve Hydro, or any successor beneficiary of this Easement, of its obligations under this Easement.

### [Article 7.4](#)

### 3.6

In the circumstances to which subsections 3.5.1 or 3.5.2 of this Article apply, Split Lake Cree 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 the successor entity having authority or control with respect to the Project or a major work or structure thereof, as the case may be, before having recourse to Manitoba, in accordance with the obligations which Manitoba will have assumed under this Easement.

3.7

In the event that a dispute should arise between Manitoba and Hydro with respect to their respective responsibilities under section 3.5 of this Article, Manitoba shall be liable for the responsibilities in dispute.

3.8

Except to the extent that partial administration and control is transferred to Manitoba by virtue of express provisions in this Easement, the Easement Lands shall remain within the constitutional jurisdiction of the Parliament and Government of Canada. The use of the Easement Lands by Hydro, Manitoba, or any successor entity, shall be restricted to those expressly authorized in this Easement, notwithstanding that the provisions of any law of Manitoba may purport to authorize uses other than those set forth in this Easement.

3.9

The granting of this Easement, and the provisions of this Easement, do not constitute approval or acceptance by Canada, express or implied, of any Future Development, or of any application or authorization which Hydro may make or obtain, subsequent to the date of the Agreement, with respect to material changes in the operation of the Project which could affect the Reserve lands or the waters adjacent thereto; but 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 in any way.

3.10

Except as expressly set forth in this Easement, nothing in this Easement shall amend, alter, grant relief from, or substitute for, any obligations imposed upon Hydro by or pursuant to any law of Canada or Manitoba.

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

4.1

Hydro and Split Lake Cree shall have the right to inspect, protect and maintain, at their own expense, the banks and shorelines forming part of the Easement Lands.

4.2

Split Lake Cree shall, and Hydro may 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

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

#### 4.4

Except while work pursuant to this Easement 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.

#### 4.5

Subject to the provisions of [Article 6](#) of this Easement, and except as expressly provided for in this Easement, where damage is done on Reserve lands to any works, buildings, crops, fences, livestock, goods and chattels of Split Lake Cree or Canada, or any person claiming through or under Canada or Split Lake Cree, and the damage is caused by Hydro, its agents, employees, contractors or sub-contractors, then Hydro shall be liable to compensate Canada, Split Lake Cree or any such person in respect of such damage.

#### 4.6

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 ought reasonably to have prevented, Chief and Council shall, at the expense of Split Lake Cree, restore such works to the reasonable satisfaction of Hydro.

#### 4.7

Subject to the provisions of Article 6 of this Easement, Hydro shall indemnify and save harmless Split Lake Cree 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 under this Easement is performed on its behalf by members of Split Lake Cree under the direction and supervision of Chief and Council.

#### 4.8

Hydro shall not be liable under either section 4.5 or section 4.7 of this Article, 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.

#### 4.9

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 a Static Inundation Level of 169.47

m (556.0 ft.) ASL Local Datum. Above that level, Hydro may request permission of Canada and Split Lake Cree 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. [To be substituted in the case of a new Reserve from Compensation Lands]

#### 4.10

Hydro may request permission of Canada and Split Lake Cree to cut or remove trees or timber, on or from the Easement Lands, 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.]

#### 4.11

Except as otherwise provided in this Easement, 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 the Minister of Indian Affairs and Northern Development, Canada. Inundation and storage permitted by this Easement shall not be a contravention of this section 4.10 of this Article.

#### 4.12

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

#### 4.13

Hydro shall dispose of any material excavated or removed from the Easement Lands on the Reserve, as may reasonably be directed by Chief and Council or, if there is no such direction provided within seven (7) days of such a request for direction, or in an emergency, off the Reserve. Any such disposal shall be in compliance with all applicable laws and regulations.

#### 4.14

In order 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, locate or restore the Setback Line, establish or restore cut lines associated therewith, and place or check and replace survey monuments to the satisfaction of the Surveyor General of Canada.

#### 4.15

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. 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 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.

4.16

Where survey monuments are disturbed as a result of wilful, deliberate or negligent actions of Split Lake Cree or Canada, it shall be the responsibility of that Party to restore or replace such monuments in a manner satisfactory to the Surveyor General of Canada.

4.17

Where Setback Lines have not been the subject of an on the ground survey and installation of monuments, Hydro shall, if reasonably required, at the request of the Chief and Council or Canada, undertake such a survey and installation of monuments in a manner satisfactory to Split Lake Cree and the Surveyor General of Canada.

4.18

Hydro shall, insofar as it is reasonably practical to do so, conduct all work so as not to interfere with the ordinary use or uses of the Easement Lands, or Reserve lands adjacent to the Easement Lands.

## **Article 5 Access to Easement Lands**

5.1

Subject to the terms hereinafter set forth, Canada and Split Lake Cree 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 Reserves of Split Lake Cree, contiguous to the Reserve set out in [section 2.1](#) of this Easement, with or without vehicles, machinery and equipment, for such inspections, bank protection, maintenance and other purposes authorized by this Easement, as Hydro at any time deem necessary or expedient.

5.2

Notice requirements for access shall be as follows:

5.2.1

Except in the case of an emergency, Hydro shall give Chief and Council 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,

#### 5.2.2

In the event of an emergency, Hydro shall, as soon as possible after the need is identified, give Chief and Council notice by telephone and facsimile of the nature of the work to be performed.

#### 5.3

One of the following means of access to the Easement Land shall be used:

##### 5.3.1

provincial highway or other provincial road leading to the Easement Land;

##### 5.3.2

the water adjacent to the Easement Lands;

##### 5.3.3

aircraft; or,

##### 5.3.4

via lands other than Reserve lands, where such lands are owned by the Crown in right of Manitoba, or Hydro or to which Hydro has a right of access and which are adjacent to the Easement Lands, other than lands forming part of the Reserve.

#### 5.4

Where, in the opinion of Hydro, it is impossible or impractical to enter upon or exit from the Easement Land for valid purposes under this Easement by any one or more of the means provided in subsections 5.3.1 through 5.3.4 of this Article, Hydro, except in the case of an emergency, shall so notify Chief and Council in writing at least twenty-one (21) days (or at least ten (10) days when the purpose is for inspections) in advance of proposed entry or exit across the Reserve as provided for in this Easement. Such notice shall include the nature, number, dimensions and gross weight of any vehicles, equipment or materials to be transported to or on the Easement Lands; set forth the reasons why other means of entry or exit are impossible or impractical in the circumstances; 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 the Chief and Council as soon as the circumstances of the emergency are known to Hydro.

## 5.5

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

## 5.6

Chief and Council may, within seven (7) days of receipt of a notice under section 5.4 of this Article, object to the proposed 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, in the interests of both Split Lake Cree and Hydro. In the event those differences cannot, in the opinion of either Chief and Council or Hydro, be resolved within a reasonable time, either Party may commence an action in, or make application to, a court of competent jurisdiction for an order or other relief; and, except in an emergency, Hydro shall refrain from use of the proposed access until the application or action is conclusively disposed of by the courts.

## 5.7

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 of competent jurisdiction may find that an emergency does not exist, and order Hydro to cease use of the proposed access.

## 5.8

Split Lake Cree covenants that it will take all reasonable steps to ensure that Hydro is able to exercise its rights of entry and exit as provided for in this Easement, without hindrance or interference.

# **Schedule 3.4**

## **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 Split Lake Cree and of 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 therefor from Chief and Council, and any other approvals required under the Indian Act (Canada).

### **6.3**

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

### **6.4**

Chief and Council shall give Hydro not less than thirty (30) days notice of any Council meeting at which a proposal is to be considered, to which sections 6.2 or 6.3 of this Article apply. Such notice shall include:

#### **6.4.1**

a description of the nature and location on the Easement Lands of the proposed structure, development or improvement; and,

#### **6.4.2**

the date, time and place of the Council meeting at which the proposal is to be considered;

and Hydro shall have, and is hereby granted the right to appear at that meeting and(or) to make such representations to Chief and Council as it considers appropriate.

### **6.5**

Chief and Council will grant permission, under section 6.3 of this Article, only where:

#### **6.5.1**

the structure, development or improvement is, in their judgment, necessary for the economic and social well-being of Split Lake Cree; and,

#### **6.5.2**

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

- a. inundate and store water on the Easement Lands as provided for in this Easement,
- b. access the Easement Lands in accordance with the entry and exit provisions of this Easement, or
- c. 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.

### **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 cause any of the results enumerated in section 6.5 of this Article, Hydro shall so notify Chief and Council in writing and indicate:

#### 6.6.1

that Hydro proposes to alter or remove the structure or improvement at its own expense and without liability therefore on a date not sooner than twenty-one (21) days from the date notice is received by Chief and Council; or,

#### 6.6.2

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 Split Lake Cree.

### 6.7

Chief and Council may, within fourteen (14) days of receipt of a notice under section 6.6 of this Article, object to the course of action proposed by Hydro by notifying Hydro 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 in the interests of both Split Lake Cree and Hydro. In the event those differences cannot in the opinion of either Chief and Council or Hydro be resolved within a reasonable time, either Party may have recourse to a court of competent jurisdiction to resolve the dispute; and any action taken by Hydro to remove the structure or improvement shall be at Hydro's risk, until the dispute has been conclusively disposed of by the courts.

### 6.8

Hydro shall not be liable under this Easement for any damages to any improvements, structures, crops or fences put in place on Easement Lands, incidental to the exercise by Hydro of its rights under this Easement, or caused by the inundation and storage of water on Easement Lands, except where such damages occur as a result of negligence or breach of the provisions of this Easement by Hydro.

[Article 4.5 of this Easement](#)

## Article 7 Additional Easement Terms

### 7.1

The granting of the Easement by Canada is subject to the following conditions:

#### 7.1.1

That Hydro shall, 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 169.47 m (556.0 ft.) ASL Local Datum.

#### 7.1.2

That Hydro will use all practical means, including adjustment of flows through control structures, to prevent any inundation of Reserve lands lying between the Static Inundation Level and the Setback Lines.

#### 7.2

Nothing in this Easement shall be deemed 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 to prevent the exploitation of such minerals by or with the permission of Split Lake Cree in accordance with the Indian Act (Canada); save that this provision 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.

#### 7.3

Subject to [section 3.5](#) of this Easement, Hydro may assign or encumber the rights in this Easement granted. Promptly upon any such assignment, Hydro shall give written notice to each of Canada and Split Lake Cree.

#### 7.4

Manitoba may assign or encumber its rights or assign its obligations, under this Easement. Promptly upon any such assignment or encumbrance, Manitoba shall give written notice to each of Canada and Split Lake Cree. 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 hereto.

#### 7.5

Neither Canada nor Split Lake Cree shall dispose of or alienate their respective interests in the Easement Lands, except subject to the terms of this Easement. 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 this provision in a form which binds assignees and successors in interest.

### **Article 8 Taxes, Levies and Charges**

## **8.1**

The Easement hereby granted shall be exercisable by Hydro without charge, rate, levy, assessment, licence, fee or tax exigible by or payable to Canada or Split Lake Cree 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 this section 8.1 of this Article shall be a full and sufficient exemption from any such charges.

## **8.2**

Section 8.1 is not intended to exempt Hydro from any applicable excise tax, income tax or goods and services tax.

## **8.3**

Hydro shall be responsible for, and shall indemnify Canada and Split Lake Cree with respect to, 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 section 8.1 of this Article.

## **Article 9 Warranties of Power and Authority**

### **9.1**

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

### **9.2**

Hydro warrants that it has full power and authority to enter into and be bound by this Easement, and that it is in compliance with all statutory requirements and Hydro by-laws in connection with the execution of this Easement.

### **9.3**

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

### **9.4**

Split Lake Cree warrants that it has full power and authority to enter into and be bound by this Easement.

### **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 Split Lake Cree or Chief and Council in connection with this Easement.

## **9.6**

Split Lake Cree and Chief and Council warrant that they have been independently advised by legal and technical counsel and advisors of their choice in entering into this Easement.

## **Article 10 Waiver, Indemnification and Correction of Breach**

### **10.1**

Hydro shall be responsible for, and at all times hereafter saves Canada and Split Lake Cree harmless, and will indemnify and keep Canada and Split Lake Cree indemnified from and against, all actions, claims, and demands that may be made against Canada and Split Lake Cree by reason of any act or omission by Hydro, in the exercise or purported exercise of the rights granted by this Easement, 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.

### **10.2**

Hydro shall indemnify and save harmless Canada and Split Lake Cree in respect of any actual or purported liens, encumbrances or charges which may attach to the Easement Lands under the laws of Manitoba or of Canada, where such liens, encumbrances or charges arise from the acts or omissions of Hydro, its agents, employees, contractors or sub-contractors.

### **10.3**

No waiver of any breach, by or on behalf of Canada, shall take place or be binding unless the same be expressed in writing over the signature of the Minister responsible under the laws of Canada, or his Deputy Minister or Assistant Deputy Minister, and any waiver so expressed shall extend only to the particular breach to which such waiver will specifically relate, 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 Split Lake Cree, shall take place or be binding unless the same be expressed in writing by the Chief as authorized in a Council Resolution, and any waiver so expressed shall extend only to the particular breach to which such waiver will specifically relate, and shall not be deemed to be a general waiver, or to limit or affect the rights of Split Lake Cree 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 waiver so expressed shall extend only to the particular breach to which such waiver will specifically relate, 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 waiver so expressed shall extend only to the particular breach to which such waiver will specifically relate, 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**

Split Lake Cree 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 Split Lake Cree or Split Lake Cree 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. Nothing in this section shall relieve Canada, Hydro or Manitoba of liability for breaches of this Easement, future negligent acts or omissions or wilful misconduct, on its own part, or on the part of those for whom it is at law responsible.

## **Article 11 General Provisions**

### **11.1**

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

### **11.2**

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

### **11.3**

Words importing the singular number include the plural and vice versa; words importing the masculine gender include the feminine gender, and vice versa.

#### **11.4**

The terms "herein", "hereof", "hereunder" and similar expressions refer to this Easement and not to any particular article, section, subsection, paragraph or other portion of this Easement.

#### **11.5**

In the event of a conflict between metric and Imperial measure, metric measure shall prevail.

#### **11.6**

Each of the Parties to this Easement will, from time to time, at another Party's request and expense, and without further consideration, execute and deliver such other instruments of transfer, conveyance and assignment, and take such further action as the other may require, to more effectively complete any matter provided for in this Easement.

#### **11.7**

This Easement constitutes the entire agreement among the Parties and, except as stated in this Easement, contains all the conditions, representations or warranties of the respective Parties. There are no oral conditions, representations or warranties of the respective Parties. This Easement may not be modified or amended in any respect except by a written instrument signed by all the Parties or, where expressly authorized in this Easement, by two (2) such Parties so authorized in this Easement.

#### **11.8**

The provisions of this Easement are without prejudice to the interpretation or application of the Northern Flood Agreement by any of the Parties to this Easement with respect to any party to the Northern Flood Agreement not a Party to this Easement.

#### **11.9**

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

#### **11.10**

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

#### **11.11**

No member of Parliament or of the Legislative Assembly of Manitoba may be admitted to any part of this Easement.

## **11.12**

Whenever in this Easement it is required or permitted that notice or demand be given or served by any Party to this Easement to or on any other Party to this Easement, such notice or demand shall be given or served in writing and forwarded by registered mail or transmitted by telecopier confirmed by telephone, addressed 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

Facsimile number:

(204) 983-6500

(204) 983-0861

To Split Lake Cree:

Split Lake Cree First Nation  
Split Lake, Manitoba  
R0B 1P0

Facsimile number:

(204) 342-2270

To Hydro:

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

Facsimile number:

(204) 474-4854

To Manitoba:

Deputy Minister of Northern Affairs  
Room 327, Legislative Bldg.  
Winnipeg, Manitoba  
R3C 0V8

Facsimile number:

(204) 945-3727

## **11.13**

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

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

**Split Lake Cree First Nation**

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Witness as to Chief and Councillors

**Chief**

Councillor  
Councillor  
Councillor  
Councillor  
Councillor  
Councillor  
Councillor  
Councillor  
Councillor  
Councillor  
Councillor

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

Per:

**The Manitoba Hydro Electric Board**

Per:

Per:

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

Per: