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FRAMEWORK AGREEMENT

TREATY LAND ENTITLEMENT

THIS AGREEMENT signed this 29th day of May, 1997.

AMONG:

TREATY LAND ENTITLEMENT COMMITTEE OF MANITOBA INC.,

a corporation incorporated under the laws of Manitoba,

on its own behalf and as general partner on behalf of **TLEC LIMITED PARTNERSHIP**,
a limited partnership formed under the
laws of Manitoba

-and-

HER MAJESTY THE QUEEN IN RIGHT OF CANADA,

-and-

HER MAJESTY THE QUEEN IN RIGHT OF MANITOBA,

WHEREAS:

A. The Entitlement First Nations assert that in recognition of their aboriginal rights, Canada and the First Nations in Manitoba entered into a treaty making process;

B. Certain First Nations entered into or adhered to various Treaties, particularly Treaties No. 1, 3, 4, 5, 6 and 10, with Canada between 1871 and 1910 which provided, among other things, that Canada would lay aside and reserve tracts of land for those First Nations;

C. Treaty No. 1, executed on August 3, 1871, provided, according to the written terms of the Treaty, among other things, that Her Majesty the Queen would lay aside and reserve tracts of land for the benefit of each of the signatory First Nations in the amount of 160 acres for each family of five, or in that proportion for larger or smaller families;

D. The Brokenhead Ojibway Nation, being a signatory or adherent to, or a successor to a signatory or adherent to, Treaty No. 1, has not received land of sufficient area to fulfil the requirements of that Treaty;

E. Treaty No. 3, executed on October 3, 1873, provided, according to the written terms of the Treaty, among other things, that Her Majesty the Queen would lay aside and reserve tracts of land for the benefit of each of the signatory First Nations in the amount of 640 acres for each family of five, or in that proportion for larger or smaller families;

F. The Buffalo Point First Nation, being a signatory or adherent to, or a successor to a signatory or adherent to, Treaty No. 3, has not received land of sufficient area to fulfill the requirements of that Treaty;

G. Treaty No. 4, first executed on September 15, 1874, provided, according to the written terms of the Treaty, among other things, that Her Majesty the Queen would lay aside and reserve tracts of land for the benefit of each of the signatory First Nations in the amount of 640 acres for each family of five, or in that proportion for larger or smaller families;

H. Canada recognizes that the Wuskwi Sipiik Cree, Sapotaweyak Cree and Rolling River First Nations, each being signatories or adherents to, or each being successors to signatories or adherents to, Treaty No. 4, have each not received land of sufficient area to fulfill the requirements of that Treaty;

I. Treaty No. 5, first executed on September 20, 1875, provided, according to the written terms of the Treaty, among other things, that Her Majesty the Queen would lay aside and reserve tracts of land for the benefit of each of the signatory First Nations in the amount of 160 acres for each family of five, or in that proportion for larger or smaller families;

J. The Sayisi Dene, Fox Lake, God's Lake, God's River, Nelson House, Norway House, Opaskwayak Cree, Oxford House, Shamattawa, War Lake and York Factory First Nations, each being signatories or adherents to, or each being successors to signatories or adherents to, Treaty No. 5, have each not received land of sufficient area to fulfill the requirements of that Treaty;

K. Treaty No. 6, first executed on August 23, 1876, provided, according to the written terms of the Treaty, among other things, that Her Majesty the Queen would lay aside and reserve tracts of land for the benefit of each of the First Nations in the amount of 640 acres for each family of five, or in that proportion for larger or smaller families;

L. The Mathias Colomb Cree Nation, being a signatory or adherent to, or successor to a signatory or adherent to, Treaty No. 6, has not received land of sufficient area to fulfill the requirements of that Treaty;

M. Treaty No. 10, first executed on August 28, 1906, provided, according to the written terms of the Treaty, among other things, that Her Majesty the Queen would lay aside and reserve tracts of land for the benefit of each of the signatory First Nations in the amount of 640 acres for each family of five, or in that proportion for larger or smaller families and, for those families and individuals who preferred to live apart from the reserve of those First Nations, Her Majesty would provide land in severalty to the extent of 160 acres for each individual;

N. The Barren Lands and Northlands First Nations, each being signatories or adherents to, or each being successors to signatories or adherents to, Treaty No. 10, have each not received land of sufficient area to fulfill the requirements of that Treaty;

O. Canada has recognized that the Entitlement First Nations have each not received land of sufficient area to fulfil the requirements of the Treaties;

P. Subsection 35(1) of the *Constitution Act, 1982* provides as follows:

"The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.";

Q. Under the terms of a "Memorandum of Agreement" between Canada and Manitoba, commonly referred to as "The Manitoba Natural Resources Transfer Agreement" ("MNRTA"), executed by Canada and Manitoba on December 14, 1929, effective July 15, 1930, and confirmed as Schedule 1 of the *Constitution Act, 1930*, Canada transferred to Manitoba, all of the interest of Canada in all crown lands, mines and minerals (precious and base), waters, water powers and royalties and sums due or payable for any of those interests of Canada, subject to certain specific exclusions, terms and conditions;

R. In particular, paragraph 11 of the MNRTA provides as follows:

" ... the Province will, from time to time, upon the request of the Superintendent General of Indian Affairs, set aside, out of the unoccupied crown lands hereby transferred to its administration, such further areas as the said Superintendent General may, in agreement with the Minister of Mines and Natural Resources of the Province, select as necessary to enable Canada to fulfill its obligations under the treaties with the Indians of the Province, and such areas shall thereafter beadministered by Canada in the same way in all respects as if they never passed to the Province under the provisions hereof.";

S. Canada has advised Manitoba that the Entitlement First Nations have not received land of sufficient area to fulfil the requirements of the Per Capita Provisions;

T. The parties acknowledge that insufficient unoccupied Crown Land is available to fulfil the requirements of the Per Capita Provision of certain Entitlement First Nations;

U. The Entitlement First Nations have established, authorized and directed the TLE Committee to act as their representative in the negotiation of an agreement to address the entitlement of the Entitlement First Nations to land of sufficient area to fulfil the requirements of the Per Capita Provisions;

V. On October 14, 1993, the parties concluded a Protocol to guide and direct their negotiations on the entitlement of the Entitlement First Nations to land of sufficient area to fulfil the requirements of the Per Capita Provisions and negotiations have occurred among the parties since that date;

W. Canada has negotiated from the basis that its obligation to provide land of sufficient area to the Entitlement First Nations to fulfil the requirements of the Per Capita Provisions is calculated using the population of an Entitlement First Nation at the date the first reserve set apart for that Entitlement First Nation was surveyed;

X. The Entitlement First Nations have negotiated from the basis that Canada's obligation to provide land of sufficient area to the Entitlement First Nations to fulfil the requirements of the Per Capita Provisions is calculated using the population of the Entitlement First Nations at October 14, 1993;

Y. Despite their respective positions, the TLE Committee and Canada have agreed that the obligation of Canada to provide land of sufficient area to each Entitlement First Nation to fulfil the requirements of the Per Capita Provision of each Entitlement First Nation will be addressed in the manner and to the extent provided in this Agreement; and

Z. Canada and Manitoba have agreed that Manitoba will satisfy its obligations to Canada under paragraph 11 of the MNRTA in the manner and to the extent provided in this Agreement.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

PART 1: DEFINITIONS AND INTERPRETATION

1. Definitions and Interpretation

1.01 Defined Words and Phrases

In this Agreement:

- (1) **“Acquire”** means to purchase or otherwise obtain title to Other Land in accordance with this Agreement which an Entitlement First Nation wishes to be set apart as Reserve;
- (2) **“Acquired Property”** means, for the purposes of Article 37, land or any interest in land, including any Third Party Interest and fixtures, purchased by or on behalf of an Entitlement First Nation which the Entitlement First Nation wishes to be set apart as Reserve in accordance with this Agreement;
- (3) **“Acquisition”** means:
 - (a) the act of Acquiring; or
 - (b) Other Land which is Acquired;
- (4) **“Additional Land”** means land to be Selected by an Entitlement First Nation in accordance with Subsection 12.07(1);
- (5) **“Additions to Reserves Policy”** means:
 - (a) the policy of the Department of Indian Affairs and Northern Development relating to Reserve creation and additions contained in the “Land Management Manual” of the Department of Indian Affairs and Northern Development as of the Date of Execution;
 - (b) the policy referred to in Paragraph (a) as amended in accordance with Subsection 8.02(3); or
 - (c) where this Agreement refers to the requirement of the Additions to Reserve Policy being satisfied, the policy referred to in Paragraph (a) or (b) as modified by any inconsistency between that policy and this Agreement in accordance with Subsection 8.02(5);

- (6) **“Adjudicator”** means a person qualified in the techniques of alternate dispute resolution identified by the Implementation Monitoring Committee in accordance with Section 35.01;
- (7) **“Agreed Form”** means a form of document which the parties agree upon as a standard form for the purposes of implementation of this Agreement;
- (8) **“Agreement”** means this Framework Agreement and includes any amendments made in accordance with Section 40.07;
- (9) **“Authorized Uses”** means “authorized use” of the Federal Payment or “authorized use” of the Land Acquisition Payment as defined in a Trust Agreement;
- (10) **“Award”** means a decision of an Adjudicator in binding arbitration in accordance with Section 35.04;
- (11) **“Canada”** means Her Majesty the Queen in right of Canada and includes all departments of the Government of Canada;
- (12) **“Capital Account”** means “capital account” as defined in a Trust Agreement;
- (13) **“Chairperson”** means the Chairperson of the Implementation Monitoring Committee appointed in accordance with Sections 34.03 and 34.05;
- (14) **“Community Approval Process”** means the process set out in Schedule “H” by which the Eligible Members of an Entitlement First Nation authorize and direct:
 - (a) the Council of that Entitlement First Nation to execute a Treaty Entitlement Agreement;
 - (b) the Initial Trustees to execute a Trust Agreement; and
 - (c) the Council of that Entitlement First Nation and the Initial Trustees and their successors to execute all other documents to give effect to the Treaty Entitlement Agreement and Trust Agreement;
- (15) **“Community Approval Process Account”** or **“CAP Account”** means the account established by the TLE Committee in accordance with Paragraph 17.02(1)(a);

- (16) **“Community Interest Zone”** means an area identified for an Entitlement First Nation in accordance with Section 5.01;
- (17) **“Council”** means, in respect of an Entitlement First Nation, the “council of the band” as defined in the *Indian Act*;
- (18) **“Council Resolution”** means a written resolution signed by a quorum of the Council of an Entitlement First Nation adopted at a duly convened meeting of the Council;
- (19) **“Crown Land”** means land which is owned by, or is under the administration and control of, Manitoba and is within the Province of Manitoba, but does not include:
- (a) land that at the Date of Execution is administered by Manitoba on behalf of a “local government district” as defined in *The Local Government Districts Act* under a “Memorandum of Understanding” between the Minister of Municipal Affairs and the Minister of Mines and Natural Resources of Manitoba dated May 11, 1964; or
 - (b) Surplus Provincial Land;
- (20) **“Crown Land Amount”** means the amount of land set out in the column headed “Crown Land Amount” in Schedule “A” for an Entitlement First Nation;
- (21) **“Crown Reservations”** means all interests which are reserved to Manitoba in or out of any disposition of Crown Land under *The Crown Lands Act* or under any other act of the Legislature of Manitoba, whether enacted before or after the Date of Execution, which interests may include:
- (a) in the case of land extending to the shores of any navigable water or inlet thereof:
 - (i) a strip of land one and one-half chains (being 99 feet) in width, measured from the Ordinary High Water Mark; and
 - (ii) the public right of landing from, and mooring, boats and vessels so far as is reasonably necessary;

- (b) in the case of land bordering a body of water:
 - (i) the bed of the body of water below the Ordinary High Water Mark; and
 - (ii) the public right of passage over a portage, road or trail in existence at the date of disposition;
 - (c) Mines and Minerals, together with the right to enter, locate prospect, mine for and remove minerals;
 - (d) the right to, and use of, land necessary for the protection and development of adjacent water power; and
 - (e) the right to raise or lower the levels of a body of water adjacent to the land, regardless of the effect upon the land;
- (22) **“Date of Acquisition”** means the date on which title to Other Land is registered in the name of the Entitlement First Nation or its agent or trustee;
- (23) **“Date of Execution”** means the date on which this Agreement is executed by Canada, Manitoba and the TLE Committee;
- (24) **“Date of Selection”** means the date on which Canada receives a Council Resolution from an Entitlement First Nation identifying a Selection in accordance with Subsection 6.02(3), and where that date is before the date the parties and the Entitlement First Nation execute a Treaty Entitlement Agreement, the Date of Selection shall be deemed to be the date that Treaty Entitlement Agreement comes into force;
- (25) **“Developed Road Allowance”** means a Road Allowance on which a road has been constructed as at the Date of Execution which the public is ordinarily entitled or permitted to use for the passage of vehicles or pedestrians and which is actually so used and maintained for that purpose;
- (26) **“Developed Waterway”** means a body of water upon which there is a Water Project, including the Burntwood River, Churchill River, Laurie River, Nelson River, Saskatchewan River, Winnipeg River, the lakes located on those river systems and all affected tributaries, but not including those bodies of water referred to in Subsection 12.08(1);

- (27) **“Disposition”** means an act by Manitoba whereby Crown Land or a right, interest or estate in Crown Land is granted or disposed of, or by which Manitoba creates a right, interest or estate in, divests itself of or permits the use of Crown Land, but does not include:
- (a) a renewal of or consent to the assignment of a right, interest or estate in or permit to use Crown Land which is subject to renewal as a matter of law, established practice or the policy of Manitoba as at the Date of Execution;
 - (b) a Mineral Disposition; or
 - (c) a quarry permit issued under *The Mines and Minerals Act* to authorize the use of a specific volume of quarry minerals for a specific period of time from a specific quarry site for a specific project or activity for public purposes;
- (28) **“Easement Line”** means a line marking the inland boundary of a Hydro Easement determined in accordance with Section 12.05;
- (29) **“Eligible Financial Institution”** means a chartered bank, licensed trust company or incorporated credit union or caisse populaire;
- (30) **“Eligible Investments”** means any of the following classes of investments:
- (a) a debt instrument issued or guaranteed by Canada, a province of Canada, or a municipality in Canada;
 - (b) a debt instrument issued or guaranteed by a chartered bank or licensed trust company including a banker's acceptance, certificate of deposit, guaranteed investment certificate, or term deposit;
 - (c) a mortgage, payments of principal of which are guaranteed by Canada, a province of Canada, a municipality in Canada, chartered bank or licensed trust company;
 - (d) commercial paper issued by a corporation rated “R-1” or “A-1” by the Dominion Bond Rating Services or Canadian Bond Rating Services;
 - (e) bonds issued by a corporation rated “A” or better by the Dominion Bond Rating Services or Canadian Bond Rating Services;

- (f) convertible debentures rated “BBB” or better by the Dominion Bond Rating Services or Canadian Bond Rating Services, provided that, the total amount invested in this class of investment shall not exceed:
 - (i) 10 percent of the amount of capital (net of liabilities) in the CAP Account, Implementation Account or TPI Account (as the case may be) that is invested in equity securities; or
 - (ii) 2.5 percent of all Eligible Investments in which the amount of capital (net of liabilities) in the CAP Account, Implementation Account or TPI Account (as the case may be) is invested

whichever is the lesser;

- (g) preferred shares or convertible preferred shares rated “P2” or better by the Dominion Bond Rating Services or Canadian Bond Rating Services, provided that the total amount invested in this class of investment shall not exceed 2.5 percent of all Eligible Investments in which the amount of capital (net of liabilities) in the CAP Account, Implementation Account or TPI Account (as the case may be) is invested;
- (h) equity securities other than preferred shares or convertible preferred shares, including, without limitation, common shares, instalment receipts and share purchase warrants of a corporation the stock of which corporation forms part of the Toronto Stock Exchange 300 Index or Standard & Poor 500 Index, provided that the total amount invested in this class of investment shall not exceed 25 percent of all Eligible Investments in which the amount of capital (net of liabilities) in the CAP Account, Implementation Account or TPI Account (as the case may be) is invested;
- (i) subject to Paragraphs (f), (g), and (h), units or shares of mutual or pooled funds administered by a chartered bank, licensed trust company or a subsidiary of a chartered bank or licensed trust company; or
- (j) bonds, debentures or other debt instruments of or with respect to which the repayment of principal and interest is

guaranteed by the government of a country other than Canada;

(31) **“Eligible Member”** means a person:

- (a) whose name appears on a Membership List or whose name does not so appear but who has submitted an application to have his or her name so entered and that application has been approved;
- (b) who is over the age of 18 years; and
- (c) who has not been found mentally incompetent or otherwise unable to manage his or her own affairs by a court of competent jurisdiction

as of the date of any vote referred to in this Agreement;

(32) **“Entitlement First Nation”** means a First Nation identified in Schedule “A”;

(33) **“Environmental Audit”** means an “environmental assessment and review” or “environmental audit” of land Selected or Acquired by an Entitlement First Nation as defined in the Additions to Reserves Policy;

(34) **“Event of Default”** means an event described in Section 36.02;

(35) **“Federal Payment”** means the amount of money set out in the column headed “Federal Payment” in Schedule “A” for an Entitlement First Nation, to be paid in accordance with Section 18.01;

(36) **“First Nation”** means a “band” as defined in the *Indian Act*;

(37) **“Forest Management Licence”** means a “forest management licence” granted in accordance with section 18 of *The Forest Act*;

(38) **“Forest Operator”** means:

- (a) Louisiana-Pacific Canada Ltd., Pine Falls Pulp and Paper Co. or Repap Manitoba Inc. in respect of plans under a Forest Management Licence; or
- (b) the holder of rights to cut timber under a timber sale agreement or timber permit;

- (39) **“Founding Limited Partner”** means the first Entitlement First Nation that subscribed for a unit in the TLEC Limited Partnership;
- (40) **“Hydro Easement”** means the interest to be held by Manitoba and Manitoba Hydro in land adjacent to a Developed Waterway in accordance with Article 12;
- (41) **“Implementation Account”** means the account established by the TLE Committee in accordance with Paragraph 21.04(1)(a);
- (42) **“Implementation Monitoring Committee”** means the committee established in accordance with Section 34.01;
- (43) **“Indemnity”** means the indemnity to be given by an Entitlement First Nation in favour of Canada in the Treaty Entitlement Agreement executed by that Entitlement First Nation, the form of which is set out in Article 26;
- (44) **“Indian”** means an “Indian” as defined in the *Indian Act*;
- (45) **“Initial Trustee”** means an “initial trustee” as defined in a Trust Agreement;
- (46) **“Land Acquisition Account”** means “land acquisition account” as defined in a Trust Agreement;
- (47) **“Land Acquisition Payment”** means the amount of money set out in the column headed “Land Acquisition Payment” in Schedule “B” for an Entitlement First Nation identified in Schedule “B”, to be paid in accordance with Section 19.01;
- (48) **“Land in Severalty”** means land which a Member of the Barren Lands First Nation or the Northlands First Nation may, in accordance with Section 9.01, assert the alternative right to elect to take apart from the Reserve of the First Nation of that Member pursuant to Treaty No. 10;
- (49) **“Land of Cultural or Historical Significance”** means a burial ground, ceremonial site, sacred site, area where a Treaty was executed or other similar site that is of similar significance to an Entitlement First Nation;
- (50) **“Land Selection Study”** means a study to be undertaken by an Entitlement First Nation concurrent with the commencement of the Community Approval Process by an Entitlement First Nation in accordance with Subsection 22.02(2);

- (51) “**Manitoba**” means Her Majesty the Queen in right of Manitoba and includes all departments of the Government of Manitoba;
- (52) “**Manitoba Hydro**” means:
- (a) The Manitoba Hydro-Electric Board;
 - (b) Winnipeg Hydro as the holder of a licence under *The Water Power Act*; or
 - (c) any other Person as the holder of a licence under *The Water Power Act*;
- (53) “**Member**” means a “member of a band” as defined in the *Indian Act*;
- (54) “**Membership List**” means:
- (a) the list of persons maintained by the Department of Indian Affairs and Northern Development as the “Band List” in accordance with section 8 of the *Indian Act* for an Entitlement First Nation; or
 - (b) where an Entitlement First Nation has assumed control of its own membership in accordance with section 10 of the *Indian Act*, the list of persons maintained by that Entitlement First Nation as its “Band List”;
- (55) “**Mineral Disposition**” means a “mining claim” or “mineral lease” as defined in *The Mines and Minerals Act*, but does not include a “quarry lease” or “quarry permit” as defined in *The Mines and Minerals Act*;
- (56) “**Mines and Minerals**” includes all mines and minerals (precious and base), including sand and gravel, oil and gas and the royalties derived therefrom;
- (57) “**Minimum Entitlement Acres**” means the amount of land set out in the column headed “Minimum Entitlement Acres” in Schedule “B” for an Entitlement First Nation identified in Schedule “B”;

- (58) **“MNRTA”** means “The Manitoba Natural Resources Transfer Agreement”, executed by Canada and Manitoba on December 14, 1929, effective July 15, 1930 and confirmed as Schedule 1 of the *Constitution Act, 1930*;
- (59) **“Municipal Development and Services Agreement”** means an agreement between an Entitlement First Nation and a Municipality, concluded in anticipation of a parcel of land located in the Municipality being set apart as Reserve and which may provide for, among other matters:
- (a) the ownership of infrastructure (including sewer and water facilities, roads, sidewalks and waste disposal sites) located on land after the land is set apart as Reserve;
 - (b) the continuation or extension of services (including sewer and water, garbage collection, snow removal, fire protection, policing, public utilities, infrastructure maintenance and other similar municipal services) to that land after the land is set apart as Reserve;
 - (c) the rates of payment or the means of determining rates of payment for the actual and direct costs incurred by the Municipality in permitting the Entitlement First Nation to use its infrastructure (in the event that the infrastructure should remain the property of the Municipality) or in providing services to that land (in the event the Municipality is to provide services) and the timing and enforcement of payment for the use of that infrastructure and the provision of those services;
 - (d) any need for joint planning and development between the Entitlement First Nation and the Municipality;
 - (e) the maintenance of reasonably compatible use of that land and of adjoining land in the Municipality by the enactment of bylaws for zoning and development; and
 - (f) the resolution of disputes between the Entitlement First Nation and the Municipality;
- (60) **“Municipal and School Taxes”** means all taxes levied in respect of land and improvements by a Municipality or School Division, including taxes, charges or levies against occupants of the land and grants-in-lieu of taxes paid by either Canada or Manitoba;

- (61) **“Municipality”** means a “municipality” as defined in *The Municipal Act* or “local government district” as defined in *The Local Government Districts Act*;
- (62) **“Navigable Waterway”** means a body of water that is a navigable waterway at common law, and without limiting the generality of the foregoing, is ordinarily usable by members of the public for navigation or transportation, but does not include a waterway which does not ordinarily have a discernible surface outlet suitable for navigation or transportation;
- (63) **“Non-navigable Waterway”** means a body of water that is not a Navigable Waterway;
- (64) **“Northern Community”** means a “community” or “incorporated community” as defined in *The Northern Affairs Act*;
- (65) **“Ordinary High Water Mark”** means a line defined by the normal high water mark determined by plant growth and soil conditions observed at and in the vicinity of land adjacent to a Navigable Waterway and is the limit or edge of a non tidal body of water, where the bed is the land so long covered by water as to wrest it from vegetation, or as to mark a distinct character on the vegetation where it extends into the water or upon the soil itself;
- (66) **“Other Land”** means:
- (a) land owned by a Third Party;
 - (b) Surplus Provincial Land;
 - (c) land that as at the Date of Execution is administered by Manitoba on behalf of a “local government district” as defined in *The Local Government Districts Act* under a “Memorandum of Understanding” between the Minister of Municipal Affairs of Manitoba and the Minister of Mines and Natural Resources of Manitoba dated May 11, 1964;
 - (d) Crown Land that Manitoba agrees to sell to an Entitlement First Nation on a “willing buyer and willing seller” basis but which is not Surplus Provincial Land;
 - (e) Surplus Federal Land; and

- (f) land owned by Canada that Canada agrees to sell to an Entitlement First Nation on a “willing buyer and willing seller” basis but which is not Surplus Federal Land;
- (67) **“Other Land Amount”** means the amount of land set out in the column headed “Other Land Amount” in Schedule “B” for an Entitlement First Nation identified in Schedule “B”;
- (68) **“Per Capita Provision”** means the term of a Treaty pursuant to which Canada undertook to lay aside and reserve tracts of land for the benefit of an Entitlement First Nation or its Predecessor Band in the amounts as written in the Treaty, being:
- (a) in Treaties No. 1 and 5, 160 acres for each family of five, or in that proportion for larger or smaller families;
 - (b) in Treaties No. 3, 4 and 6, 640 acres for each family of five, or in that proportion for larger or smaller families; and
 - (c) in Treaty No. 10, 640 acres for each family of five, or in that proportion for larger or smaller families, including the alternative right of an individual Member to take land apart from the Reserves of that Member’s First Nation
- as expressly set out in the Treaty Entitlement Agreement executed by the parties and that Entitlement First Nation;
- (69) **“Period of Acquisition”** means the period of time provided in Sections 4.01 and 4.02 for Acquisition of Other Land by an Entitlement First Nation identified in Schedule “B”;
- (70) **“Period of Selection”** means the period of time provided in Sections 4.01 and 4.02 for Selection of Crown Land by an Entitlement First Nation;
- (71) **“Person”** means any individual, corporation (including a Crown corporation), partnership, trust, joint venture, unincorporated association, Northern Community or First Nation and their respective heirs, successors, legal representatives and permitted assigns;
- (72) **“Predecessor Band”** means a band of Indians which signed or adhered to a Treaty and to which an Entitlement First Nation is the successor or to which an Entitlement First Nation otherwise traces its right to land entitlement under a Per Capita Provision;

- (73) **“Principles for Land Selection and Acquisition”** or **“Principles”** means the provisions set out in or incorporated into Sections 3.02 to 3.10 inclusive;
- (74) **“Provincial Road”** means “provincial road” as defined in *The Highways and Transportation Department Act*;
- (75) **“Provincial Trunk Highway”** means “provincial trunk highway” as defined in *The Highways and Transportation Department Act*;
- (76) **“Public Utility”** means a supplier of electricity, telephone, cable television, telecommunications or natural gas, and includes Manitoba Hydro;
- (77) **“Release”** means the release to be given by an Entitlement First Nation in favour of Canada in the Treaty Entitlement Agreement executed by the parties and that Entitlement First Nation, the form of which is set out in Article 25;
- (78) **“Replacement Interest”** means any right granted by Canada or an Entitlement First Nation in replacement of, or in substitution for, any Third Party Interest in or over any land Selected or Acquired by that Entitlement First Nation that has been or is to be set apart as Reserve, and includes a Replacement Mining Interest;
- (79) **“Replacement Mining Interest”** means a permit, lease, licence or other disposition issued, made or granted by Canada under the *Indian Oil and Gas Regulations* made under the *Indian Oil and Gas Act* or the *Indian Mining Regulations* made under the *Indian Act* or under any other applicable federal legislation, in replacement of, or in substitution for, any rights or interests in Mines and Minerals granted by Manitoba or held by or granted by any private owner of those interests in land Selected or Acquired by an Entitlement First Nation that has been or will be set apart as Reserve;
- (80) **“Reserve”** means land which is set apart by Canada for the use and benefit of an Entitlement First Nation as a “reserve” as defined in the *Indian Act*;
- (81) **“Residual Crown Interest”** means any right, title or interest which Manitoba may have under the constitution of Canada or the common law in land or an interest in land which is not owned or administered or controlled by Manitoba;

- (82) **“Road Allowance”** means “road allowance” as defined in *The Highways and Transportation Department Act*;
- (83) **“Road Right of Way”** means land excluded from a Selection or Acquisition for road purposes in accordance with Section 13.01;
- (84) **“School Division”** means “school division” or “school district” as defined in *The Public Schools Act*;
- (85) **“Select”** means to identify Crown Land in accordance with this Agreement that the Entitlement First Nation wishes to be set apart as Reserve;
- (86) **“Selection”** means:
- (a) the act of Selecting; or
 - (b) Crown Land which is Selected;
- (87) **“Senior Advisory Committee”** means the committee to be established in accordance with Section 34.10;
- (88) **“Surplus Federal Land”** means any “federal real property”, as defined in the *Federal Real Property Act*, excluding any “real property” as defined in the *Federal Real Property Act* to which the title is vested in a “federal crown corporation” as defined in section 83 of the *Financial Administration Act*, that is:
- (a) within the Province of Manitoba;
 - (b) determined by a “minister”, as defined in the *Federal Real Property Act*, who has the “administration”, as defined in the *Federal Real Property Act*, of that “federal real property”, to no longer be required for the program purposes of that “minister’s” department;
 - (c) determined by that “minister” to be available for sale; and
 - (d) made available by that “minister” to any “other minister” of Canada for a transfer of administration in accordance with any then existing policies or directives of the Treasury Board of Canada;

- (89) **“Surplus Provincial Land”** means land with or without improvements of value which is owned by or is under the administration and control of Manitoba which has been used or occupied by Manitoba and is no longer required and is declared surplus by Manitoba;
- (90) **“Third Party”** means a Person, other than Canada, Manitoba, the TLE Committee, any Entitlement First Nation or the Trustees;
- (91) **“Third Party Interest”** means any interest, right or estate of any nature held by a Third Party in or to land, or any right of use or occupation of land, other than a fee simple interest, and includes without limiting the generality of the foregoing:
- (a) interests held by an occupant of land under a lease, licence or permit;
 - (b) mortgages and charges;
 - (c) assignments of rights, estates or interests in land for security or other purposes;
 - (d) security interests on fixtures protected under *The Personal Property Security Act*;
 - (e) easements and restrictive covenants and profits a prendre;
 - (f) interests protected by caveat;
 - (g) interests in Mines and Minerals; and
 - (h) forage leases, casual grazing permits and renewable hay leases and permits

but does not include

- (i) a right or interest which is to expire after a specified period, and which is not subject to renewal as a matter of law, established practice or the policy of Manitoba as at the Date of Execution, once that specified period expires;
- (j) trapping licences or permits;
- (k) Forest Management Licences, timber sale agreements or timber permits, subject to Subsections 3.03(25) to (38) inclusive; and

- (l) the right to levy Municipal and School Taxes;

- (92) **“Third Party Interest Account”** or **“TPI Account”** means the account established by the TLE Committee in accordance with Paragraph 20.04(1)(a);
- (93) **“TLE Committee”** means Treaty Land Entitlement Committee of Manitoba Inc., as general partner on behalf of TLEC Limited Partnership, except in Paragraphs 15.01(a), 17.01(c), 20.02(2)(d), 21.01(2)(c), 34.09(b) to (d) inclusive and 34.10(1)(c), Article 16 and Sections 28.02 and 28.03, where it means Treaty Land Entitlement Committee of Manitoba Inc. on its own behalf;
- (94) **“TLEC Limited Partnership”** means the limited partnership formed by the TLE Committee and the Founding Limited Partner by agreement made pursuant to *The Partnership Act* in accordance with Subsection 28.03(2);
- (95) **“Total Land Amount”** means the amount of land set out in the column headed “Total Land Amount” in Schedule “A” for an Entitlement First Nation;
- (96) **“Traditional Territory”** means the area of land in Canada historically used by an Entitlement First Nation at the date the Entitlement First Nation or its Predecessor Band signed or adhered to a Treaty;
- (97) **“Transmission Line”** means a hydro-electric transmission line with a capacity of 66 kilovolts or more operated by Manitoba Hydro;
- (98) **“Treaty”** means any of Treaties No. 1,3,4,5,6 and 10 or any adhesion thereto entered into between Her Majesty the Queen and an Entitlement First Nation or its Predecessor Band;
- (99) **“Treaty Area”** means the area of land particularly described in, and surrendered and ceded by an Entitlement First Nation or its Predecessor Band to Her Majesty the Queen under, a Treaty;
- (100) **“Treaty Entitlement Agreement”** means an agreement in an Agreed Form by which an Entitlement First Nation agrees, among other things, to accept the terms of this Agreement;
- (101) **“Trust”** means the trust established in accordance with a Trust Agreement;
- (102) **“Trust Agreement”** means an agreement in an Agreed Form pursuant to which the terms for the administration and management of

monies to be paid by Canada to the Trust for the benefit of an Entitlement First Nation in accordance with a Treaty Entitlement Agreement are set out;

- (103) **“Trust Property”** means “trust property” as defined in a Trust Agreement;
- (104) **“Trustee”** means a “trustee” as defined in a Trust Agreement;
- (105) **“Undeveloped Road Allowance”** means a Road Allowance which is not a Developed Road Allowance;
- (106) **“Urban Area”** means land within the boundaries of a “city”, “town” or “village” as defined in *The Municipal Act*; and
- (107) **“Water Project”** means:
 - (a) a hydro-electric development or water diversion project in existence at the Date of Execution;
 - (b) any future major redevelopment or reconstruction of a hydro-electric development or water diversion project in existence as of the Date of Execution; and
 - (c) any future hydro-electric development or water diversion project undertaken on a Developed Waterway at those sites noted as “1” to “13” inclusive identified on the map attached as Schedule “E”

which is licensed or is subject to licensing under *The Water Power Act* and which has or may have a material and continuing physical, chemical or biological impact upon a body of water.

1.02 Interpretation

- (1) In this Agreement:
 - (a) words or phrases which are defined under Section 1.01 have been identified in the text by the capitalization of the first letter of the words or the first letter of each word in phrases;
 - (b) the definition of words or phrases which are defined under Section 1.01 in one tense shall apply to all tenses as the context so requires; and

- (c) the singular includes the plural and vice versa.
- (2) Headings used in this Agreement are for ease of reference only, do not form part of this Agreement and shall not be used in the interpretation of this Agreement.

1.03 Statutory References

- (1) The following acts are referred to in this Agreement and, when described by the title set out in this Subsection, shall be interpreted to mean the act as cited in this Subsection:

- (a) acts of the Parliament of Canada:

[Canada Lands Survey Act, R.S.C. 1985, c. L-6;](#)

[Canadian Environmental Assessment Act, S.C. 1992, c. 37;](#)

[Excise Tax Act, R.S.C. 1985, c. E-15;](#)

[Federal Real Property Act, S.C. 1991, c. 50;](#)

[Financial Administration Act, R.S.C. 1985, c. F-11;](#)

[Income Tax Act, R.S.C. 1985, c.1 \(5th Supp.\);](#)

[Indian Act, R.S.C. 1985, c. I-5;](#)

[Indian Oil and Gas Act, R.S.C. 1985, c. I-7; and](#)

[National Parks Act, R.S.C. 1985, c. N-14; and](#)

- (b) acts of the Legislature of Manitoba:

[The Business Names Registration Act, CCSM, c. B110;](#)

[The Corporations Act, CCSM, c. C225;](#)

[The Crown Lands Act, CCSM, c. C340;.](#)

[The Forest Act, CCSM, c. F150;](#)

[The Gas Pipe Line Act, CCSM, c. G50;](#)

[The Highways and Transportation Department Act, CCSM, c. H40;](#)

[The Highways Protection Act, CCSM, c. H50;](#)

[The Local Government Districts Act, CCSM, c. L190;](#)

[The Mines and Minerals Act, CCSM, c. M162;](#)

[The Municipal Act, CCSM, c. M225;](#)

[The Municipal Assessment Act, CCSM, c. M226;](#)
[The Oil and Gas Act, CCSM, c. 034;](#)
[The Northern Affairs Act, CCSM, c. N100;](#)
[The Partnership Act, CCSM, c. P30;](#)
[The Personal Property Security Act, CCSM, c. P35;](#)
[The Public Schools Act, CCSM, c. P250;](#)
[The Real Property Act, CCSM, c. R30;](#)
[The Registry Act, CCSM, c. R50; and](#)
[The Water Power Act, CCSM, c. W60; and](#)

(c) acts constituting part of the Constitution of Canada:

[Constitution Act, 1930; and](#)
[Constitution Act, 1982.](#)

(2) All references to an act referred to in Subsection (1) shall include all regulations made in accordance with that act and any amendment, re-enactment or replacement from time to time of that act.

1.04 Description of Provisions of Agreement

For ease of reference, the provisions of this Agreement are described in the following manner in this Agreement:

Part	I
Article	1.
Section	1.01
Subsection	1.01(1)
Paragraph	1.01(1)(a) or 1.01(a)
Subparagraph	1.01(1)(a)(i) or 1.01(a)(i)
Clause	1.01(1)(a)(i)A or 1.01(a)(i)A.

PART II: LAND

2. Selection and Acquisition of Land

2.01 Amount of Land

Upon the coming into force of the Treaty Entitlement Agreement of an Entitlement First Nation, the Entitlement First Nation shall be entitled to:

- (a) Select an amount of Crown Land up to the Crown Land Amount set out in Schedule "A" for that Entitlement First Nation; and
- (b) where that Entitlement First Nation is an Entitlement First Nation identified in Schedule "B", Acquire an amount of land up to the Other Land Amount set out in Schedule "B" for that Entitlement First Nation

so that the total amount of land so Selected or Acquired does not exceed the Total Land Amount set out in Schedule "A" for that Entitlement First Nation.

2.02 Selection and Acquisition of Land in Accordance with Principles

- (1) During the Period of Selection and Period of Acquisition, an Entitlement First Nation shall Select and Acquire land which conforms with the Principles.
- (2) Land Selected or Acquired in accordance with the Principles shall be eligible to be set apart as Reserve subject to the provisions of this Agreement.

3. Principles for Land Selection and Acquisition

3.01 Principles Provide Guidelines

- (1) Sections 3.02 to 3.10 inclusive, including the other provisions of this Agreement incorporated into those Sections, constitute the Principles for Land Selection and Acquisition.
- (2) The Principles provide guidelines applicable to the Selection or Acquisition of land by an Entitlement First Nation.
- (3) The Principles are not listed in any particular order of priority and land shall be Selected or Acquired by an Entitlement First Nation and considered by the parties with reference to all applicable Principles.

- (4) The Principles may not address all of the issues or circumstances to be encountered and considerations affecting the Selection or Acquisition of land by an Entitlement First Nation.
- (5) Any issues or circumstances encountered in and considerations affecting the Selection or Acquisition of land by an Entitlement First Nation which are not addressed by the Principles shall be addressed by the parties and the Entitlement First Nation to the extent that they are able, and if they are unable to resolve any issues or circumstances encountered in or considerations affecting a Selection or Acquisition to the satisfaction of any party or the Entitlement First Nation, Section 3.11 shall apply.

3.02 General Principles for Selection and Acquisition of Land

- (1) An Entitlement First Nation may Select its Crown Land Amount from:
 - (a) the area comprising its Treaty Area or Traditional Territory in the Province of Manitoba; or
 - (b) the area outside its Treaty Area or Traditional Territory, but within the Province of Manitoba where, on a case by case basis:
 - (i) the Entitlement First Nation can establish a reasonable social or economic development objective for the Selection; and
 - (ii) Manitoba concurs in the Selection, which concurrence will not be unreasonably withheld.
- (2) An Entitlement First Nation identified in Schedule “B” may Acquire Other Land from within:
 - (a) the area comprising its Treaty Area or Traditional Territory in the Province of Manitoba; or
 - (b) the area outside its Treaty Area or Traditional Territory, but within the Province of Manitoba where, on a case by case basis, the Entitlement First Nation can establish a reasonable social or economic development objective for the Acquisition.
- (3) Subject to Subsection (4), an Entitlement First Nation may Select or Acquire parcels of land of such size and configuration as the Entitlement First Nation determines will reasonably contribute to the enhancement of its historical and cultural identity or provide economic or social benefit.

- (4) Subject to Subsections (5) and (7), an Entitlement First Nation will generally Select parcels of land of 1,000 acres or more in area except where suitable Crown Land is not available in the location preferred by the Entitlement First Nation or where the purpose of a Selection for historical, cultural, economic or social reasons necessitates the Selection of a parcel of Crown Land of a less than 1,000 acres in area.
- (5) Subject to Subsection (7), where an Entitlement First Nation Selects a parcel of land of less than 1,000 acres in area, the Entitlement First Nation shall, upon receipt of a written request from Manitoba, provide to Manitoba a written statement outlining the reasons for the Selection of less than 1,000 acres in area.
- (6) Where, after considering the written statement referred to in Subsection (5), Manitoba identifies other reasonable competing considerations relating to the Selection not addressed by the Principles:
 - (a) Manitoba shall set out those competing considerations in writing to the Entitlement First Nation;
 - (b) Manitoba and the Entitlement First Nation shall make a reasonable effort to address those considerations having appropriate regard to the right of the Entitlement First Nation to Select land in accordance with this Agreement; and
 - (c) where Manitoba and the Entitlement First Nation do not address those considerations to their satisfaction, the matter may be referred to the Implementation Monitoring Committee.
- (7) An Entitlement First Nation may Select a parcel of land of less than 1,000 acres in area where the land is located in reasonable proximity to a Reserve of that Entitlement First Nation.
- (8) Where an Entitlement First Nation Selects land and there are competing interests in that Selection resulting from:
 - (a) another Entitlement First Nation Selecting all or a portion of the same parcel of land; or
 - (b) another Entitlement First Nation or any other First Nation providing notice in writing to Canada stating that it claims a lawful right to have that land set apart as

Reserve

then:

- (c) where Canada has received notice from another Entitlement First Nation or any other First Nation in accordance with Paragraph (b), Canada will provide the Entitlement First Nation and Manitoba with written notice of the competing interests in the Selection;
 - (d) the Selection will not be proceeded with further under this Agreement until the First Nations resolve their competing interests in the Selection; and
 - (e) Manitoba may make a Disposition of the land if the First Nations have not resolved their competing interests within one year of the last Date of Selection relating to that Selection.
- (9) After a Selection is made by an Entitlement First Nation but before the land is surveyed, Manitoba may, as a matter of policy, with the agreement of the Entitlement First Nation and Canada, make adjustments to the proposed boundaries of the Selection so as to straighten the proposed boundaries, and, in so doing, may take into account specific physical and geographic factors relating to the Selection, and in that event:
 - (a) the amount of land added to the parcel as a result of the adjustment of the boundaries will be determined by agreement; and
 - (b) the amount of land added to the parcel as a result of the adjustment of the boundaries will not be applied against the Crown Land Amount or Total Land Amount of that Entitlement First Nation.
- (10) Two or more Entitlement First Nations may, upon those Entitlement First Nations entering into an agreement between themselves regarding the use and management of the land, Select or Acquire land to be set apart as Reserve in common for the use and benefit of each of those Entitlement First Nations, the proportionate interest of each Entitlement First Nation in the land to be set apart as Reserve in common to be determined in Council Resolutions issued by those Entitlement First Nations and applied against the Crown Land Amount or Other Land Amount and Total Land Amount of each of those Entitlement First Nations.

- (11) An Entitlement First Nation may Select or Acquire land where the Selection or Acquisition does not deprive the owner or lawful user (including Canada or Manitoba) of another parcel of land which does not form part of the Selection or Acquisition of access to that other parcel of land.
- (12) Where a Selection or Acquisition may deprive the owner or lawful user (including Canada or Manitoba) of another parcel of land which does not form part of the Selection or Acquisition of access to that other parcel, the Selection or Acquisition may be made where an agreement is entered into between the Entitlement First Nation and that owner or lawful user providing access to that other parcel of land.

3.03 Specific Principles for Selection of Crown Land

Specific Principles part of Principles:

- (1) Subsections (2) to (38) inclusive set out specific Principles for the Selection of various categories of Crown Land.

Land not affected by a Third Party Interest:

- (2) An Entitlement First Nation may Select land not affected by a Third Party Interest.

Land affected by a Third Party Interest:

- (3) An Entitlement First Nation may Select land affected by a Third Party Interest, subject to the Third Party Interest being resolved in accordance with Article 10.

Land Adjacent to a Tourist Lodge or Outcamp:

- (4) An Entitlement First Nation may Select land adjacent to the land occupied by a tourist lodge or its outcamps, provided that:

- (a) in the event that the area being used or to be used by the tourist lodge operator is not specified in the land use permit issued to the tourist lodge operator, Manitoba will, as soon as reasonably practicable, upon a Selection being made adjacent to a tourist lodge or its outcamps, define a reasonable use area for the tourist lodge and its outcamps after full and meaningful consultation with the tourist lodge operator and the Entitlement First Nation; and

- (b) in the event that Manitoba and the Entitlement First Nation

are unable to agree on the reasonable use area for the tourist lodge or its outcamps or the eligibility of the Selection to be set apart as Reserve in accordance with this Principle, the matter may be referred to the Implementation Monitoring Committee.

- (5) Where a Selection is made adjacent to a body of water where a tourist lodge is located, the impact of the Selection on the tourist lodge operation may be considered based on the following understanding:

- (a) a Selection adjacent to
 - (i) a larger body of water; or
 - (ii) a body of water which may, upon reasonable examination, sustain additional developmentshould have less impact on the operation of the tourist lodge and is therefore more likely to be eligible for Selection under this Principle; and
- (b) a Selection adjacent to
 - (i) a smaller body of water; or
 - (ii) a body of water which may, upon reasonable examination, have difficulty sustaining additional development; or
 - (iii) a body of water on which the tourist lodge has been established and is being operated as a “pristine wilderness experience” facilityshould have more impact on the operation of the tourist lodge and is therefore less likely to be eligible for Selection under this Principle.

Land in a Provincial Park, Ecological Reserve, Wildlife Refuge or Proposed National Park:

- (6) An Entitlement First Nation may not generally Select land in a provincial park, ecological reserve or wildlife refuge, provided that:
- (a) Crown Land in the Amisk, Sand Lakes, Caribou River and Numaykoos Lake Provincial Parks shall be available for Selection;
 - (b) Crown Land in a provincial park created after the Date of Execution shall be available for Selection; and
 - (c) the “Limestone Point Planning Area” as shown on Schedule

“C” has been identified as land of ecological sensitivity and will not be available for Selection.

- (7) Manitoba confirms that the Norway House Management Board established under the negotiations relating to the “Northern Flood Agreement” will give priority to the development of a land use or resource management plan for the “Limestone Point Planning Area” as shown on Schedule “C” to provide for the protection and conservation of that area.
- (8) An Entitlement First Nation may Select land within the area of any proposed “national park” (as defined in the *National Parks Act*), provided that:
 - (a) prior to the effective date of any agreement between Canada and Manitoba providing for the creation of the proposed “national park”:
 - (i) Crown Land within the area of that proposed “national park” shall be available for Selection by an Entitlement First Nation with a Treaty Area or Traditional Territory which includes the area of the proposed “national park”;
 - (ii) Canada and Manitoba will provide notice in writing to the TLE Committee and any Entitlement First Nation with a Treaty Area or Traditional Territory which includes the area of the proposed “national park” stating that Canada and Manitoba are considering the establishment of the “national park”;
 - (iii) an Entitlement First Nation which receives a notice in accordance with Subparagraph (ii) may respond in writing within 120 days of receiving that notice to Canada and Manitoba expressing interest in Selecting land in the area of the proposed “national park”; and
 - (iv) Canada and Manitoba will participate in full and meaningful consultation with any Entitlement First Nation which expresses an interest in Selecting land within the area of the proposed “national park” in accordance with Subparagraph (iii) or its representatives;
 - (b) any agreement of the nature described in Paragraph (a) shall provide for the right of Selection of land in the area of the proposed “national park” by any Entitlement

First Nation which expresses an interest in accordance with Subparagraph (a)(iii) not inconsistent with the terms of this Agreement; and

- (c) after the effective date of any agreement of the nature described in Paragraph (a), land within the area of the proposed "national park" shall be available for Selection by an Entitlement First Nation which expresses an interest in accordance with Subparagraph (a)(iii) in accordance with that agreement.

Land in a Wildlife Management Area:

- (9) An Entitlement First Nation may Select land in a wildlife management area provided the land:
 - (a) is not essential to the purpose for which the land was designated as a wildlife management area; or
 - (b) was not transferred or gifted to Manitoba for the purpose of having the land designated as a wildlife management area.

Land in a Public Shooting Ground:

- (10) An Entitlement First Nation may Select land in a public shooting ground provided the land:
 - (a) was not designated as a public shooting ground prior to the effective date of the MNRTA; or
 - (b) was not transferred or gifted to Manitoba for the purpose of having the land designated as a public shooting ground.

Land in a Community Pasture:

- (11) An Entitlement First Nation may Select land in a community pasture, provided:
 - (a) where the land is under the administration and control of Manitoba:
 - (i) Manitoba determines that the land Selected is not integral to the use of the area as community pasture; and
 - (ii) 75 per cent of the designated users of the community pasture consent to the Selection; or
 - (b) where the land is under the administration and control of Canada at the time of Selection and the land would transfer or revert to Manitoba in the event the land is not used as a community pasture:

- (i) Canada and Manitoba agree that the land Selected is not integral to the use of the area as community pasture;
- (ii) 75 per cent of the designated users of the community pasture consent to the Selection; and
- (iii) administration and control of the land is transferred to Manitoba by Canada or reverts to Manitoba.

Land Containing Mines and Minerals:

- (12) An Entitlement First Nation may Select land containing Mines and Minerals in accordance with Article 11.

Crown Land Bordering upon Navigable Waterways, Non-navigable Waterways or Developed Waterways:

- (13) An Entitlement First Nation may Select land bordering upon a Navigable Waterway, a Non-navigable Waterway or a Developed Waterway in accordance with Article 12.

Crown Land Bordering Upon or Enclosing Roads:

- (14) An Entitlement First Nation may Select land bordering upon or enclosing roads in accordance with Sections 13.01 to 13.07 inclusive.

Land Used for an Airport Operated by Manitoba:

- (15) An Entitlement First Nation may not Select, but may, where the Entitlement First Nation is identified in Schedule "B", Acquire as Surplus Provincial Land, land which has been used as an airport operated by Manitoba has been decommissioned and is designated as Surplus Provincial Land by Manitoba.
- (16) An Entitlement First Nation may Select land adjacent to an airport operated by Manitoba in accordance with Section 13.08.

Crown Land used by a Public Utility:

- (17) An Entitlement First Nation may Select land used by a Public Utility which is subject to any easement, "right of user" as defined in *The Gas Pipe Line Act* or "pipeline operating licence" as defined in *The Oil and Gas Act* issued to a Public Utility, which easement, "right of user" or "pipeline operating licence" shall be treated as a Third Party Interest.
- (18) Where a Public Utility is using the land which is Selected without an easement, "right of user" or "pipeline operating licence", the land will be eligible to be set apart as Reserve in accordance with this Principle subject to an easement in favour of the Public Utility, which easement may be in an Agreed Form, provided that the Public Utility shall, at its cost, survey the easement right of way

within 12 months of Canada and Manitoba confirming that the land is eligible to be set apart as Reserve in accordance with the Principles except where impractical due to weather conditions and in that event as soon thereafter as may be reasonably practicable.

- (19) An Entitlement First Nation may not Select land used by Manitoba Hydro for a Transmission Line, except with the agreement of Manitoba Hydro.
- (20) Where land is Selected by an Entitlement First Nation which Manitoba Hydro requires for a Transmission Line for which construction will begin within four years of the Date of Selection, the following process shall apply:
 - (a) Manitoba and Manitoba Hydro shall, in the written reply provided by Manitoba in accordance with Subsection 6.02(7), notify Canada and the Entitlement First Nation in writing that the land is required for a Transmission Line route and confirm the proposed time period for the design and construction of the Transmission Line;
 - (b) Manitoba and Manitoba Hydro shall, as soon as reasonably practicable after the notice referred to in Paragraph (a) but within one year of the date of that notice, develop a preliminary plan of the Transmission Line route and provide a copy to Canada and the Entitlement First Nation, and should Manitoba and Manitoba Hydro fail to develop and provide the preliminary plan of the Transmission Line route within that period, the Selection shall be eligible to be set apart as Reserve in accordance with this Principle;
 - (c) Canada and the Entitlement First Nation may, within a reasonable period after receiving a copy of the preliminary plan for the proposed Transmission Line route in accordance with Paragraph (b), comment in writing to Manitoba and Manitoba Hydro on the preliminary plan of Transmission Line route; and
 - (d) Manitoba and Manitoba Hydro shall take the comments referred to in Paragraph (c) into account in making a decision about the location of the Transmission Line route, having regard for the right of the Entitlement First Nation to Select land under this Agreement.
- (21) The land contained within the preliminary plan of the Transmission Line route required by Manitoba Hydro will be excluded from the Selection, but the remainder of the Selection will be eligible to be set apart as Reserve in

accordance with this Principle.

- (22) The land in the preliminary plan of the Transmission Line route may be larger than the width of the final Transmission Line route (being a maximum of 120 meters) to allow for variances in planning and construction.
- (23) Manitoba and Manitoba Hydro shall determine the final Transmission Line route within two years of the Date of Selection and, in the event the land Selected by the Entitlement First Nation in accordance with Subsection (20) has been set apart as Reserve, the Entitlement First Nation may, by Council Resolution, request that any land between the boundaries of that land and the Transmission Line route be set apart as Reserve.
- (24) Where an Entitlement First Nation has made a request in accordance with Subsection (23):
 - (a) the land shall be considered to be a Selection for the purposes of Articles 6, 7 and 8; and
 - (b) the amount of that land shall not be applied against the Crown Land Amount or Total Land Amount of the Entitlement First Nation.

Crown Land in a Forest Plan:

- (25) Crown Land which is the subject of any of the following forest plans:
 - (a) Louisiana-Pacific Canada Ltd. Forest Development Plan, 1996-2005;
 - (b) Pine Falls Pulp and Paper Co. Forest Resource Management Plan 1991-98, or any extension or replacement of that plan beyond 1998;
 - (c) the Repap Manitoba Inc. annual operating forest plan current as of the Date of Selection and the most recent Repap Manitoba Inc. draft Forest Management Plan, 1997-2009, as of the Date of Execution; or
 - (d) cutting plans under a timber sale agreement or timber permitshall be available for Selection where the Selection does not conflict with an area identified in the forest plan to be harvested or subject to road construction within three years of the Date of Selection, including any contingency areas identified in the forest plan, and if such a conflict occurs, the Selection shall be dealt with in accordance with Subsections (26) to (33) inclusive.
- (26) Despite Subsection (25), Land of Cultural or Historical Significance within the area identified in a forest plan may be Selected by an Entitlement First Nation.

- (27) Despite Subsection (25) and subject to Subsection (30), land within an area identified in a forest plan to be harvested or subject to road construction within three years of the Date of Selection, including any contingency areas identified in the forest plan, may be Selected where the Entitlement First Nation and the Forest Operator enter into an agreement which provides that the land is available for Selection in accordance with this Principle, subject to the terms and conditions of that agreement.
- (28) An agreement of the nature referred to in Subsection (27) may also include Manitoba as a party and may provide for one or more of the following:
- (a) the issuance of a Crown Land use permit to the Entitlement First Nation in accordance with Subsection 6.03(1);
 - (b) the right of the Forest Operator to harvest on the land Selected after the Crown Land use permit is issued to the Entitlement First Nation;
 - (c) the continued access of the Forest Operator across existing access roads in the Selection, the maintenance of those roads and the right of the Forest Operator to build, use and maintain new access roads reasonably required within the boundaries of the Selection for the purpose of harvesting under the forest plan to be undertaken outside of the boundaries of Selection;
 - (d) the payment of forest charges and dues by the Forest Operator to or in trust for the Entitlement First Nation after the Crown Land use permit is issued to the Entitlement First Nation;
 - (e) arrangements for forest renewal and forest protection;
 - (f) arrangements for contracting for harvesting and forest renewal on the land Selected after the Crown Land use permit is issued to the Entitlement First Nation;
 - (g) the application of some or all of the terms and conditions of a Forest Management Licence agreement on the land Selected after the Crown Land use permit is issued to the Entitlement First Nation; and
 - (h) any other matters as may be agreed.
- (29) Without limiting the generality of Subsection (25), and subject to

Subsection (26), where a Selection conflicts with an area identified in a forest plan to be harvested or subject to road construction within one year of the Date of Selection, including any contingency areas identified in the forest plan, the Forest Operator will be entitled to continue with harvesting activities on that land for that period, subject to any agreement made between the Forest Operator and the Entitlement First Nation.

- (30) Without limiting the generality of Subsection (25), where a Selection conflicts with an area to be harvested or subject to road construction under a forest plan within three years of the Date of Selection, including any contingency areas identified under the forest plan:
- (a) negotiations for an agreement of the nature referred to in Subsection (27) will occur on a priority basis during the first year after the Date of Selection;
 - (b) if at any time during the first year after the Date of Selection an agreement of that nature has not been reached, the Entitlement First Nation or Manitoba may refer the matter to the Implementation Monitoring Committee;
 - (c) where a matter is referred to the Implementation Monitoring Committee in accordance with Paragraph (b), the Implementation Monitoring Committee shall, during the first year after the Date of Selection and before any harvesting or road construction activities take place on the Selection, for the second or third year after the Date of Selection, consider the matter on a priority basis in accordance with the following process:
 - (i) the Implementation Monitoring Committee may direct an Entitlement First Nation, a Forest Operator or, (if applicable), Manitoba to provide, within the time period established by the Implementation Monitoring Committee, detailed written reasons as to why that party has not entered into an agreement of the nature referred to in Subsection (27);
 - (ii) where an Entitlement First Nation, a Forest Operator or, (if applicable), Manitoba does not provide detailed written reasons as requested by the Implementation Monitoring Committee as to why that party has not entered into an agreement of the nature referred to in Subsection (27) or where, after considering the written reasons provided in accordance with Subparagraph (i), the Implementation Monitoring Committee determines that the failure to enter into an agreement of that nature is unreasonable, the Implementation Monitoring

Committee may:

- A. recommend to those parties terms or conditions of an agreement of the nature referred to in Subsection (27) and a time period to conclude an agreement on those terms or conditions; or
 - B. where the Implementation Monitoring Committee does not believe that a recommendation will assist those parties to conclude an agreement of that nature or where those parties have been unable to conclude an agreement of that nature on the basis of the recommendations made by the Implementation Monitoring Committee in accordance with Clause A within the time period recommended by the Implementation Monitoring Committee, determine the reasonable terms and conditions of an agreement of that nature and advise the Entitlement First Nation, Manitoba and the Forest Operator of those terms and conditions; and
- (iii) where the Implementation Monitoring Committee determines the reasonable terms and conditions of an agreement of the nature referred to in Subsection (27) in accordance with Clause (ii)B, those terms and conditions will apply to harvesting and road construction activities by the Forest Operator on the Selection for the second and third year of the forest plan; and
- (d) no harvesting or road construction activities will take place under the second or third year of the forest plan on the Selection until the matter is considered by the Implementation Monitoring Committee in accordance with Paragraph (c).
- (31) An Entitlement First Nation or Manitoba may seek the assistance of the Implementation Monitoring Committee during the negotiation of an agreement of the nature referred to in Subsection (27), and where the assistance of the Implementation Monitoring Committee is sought, the Chairperson may participate in those negotiations as the Chairperson may consider necessary to assist the parties to the negotiations to reach an agreement.
 - (32) Upon an agreement between the Entitlement First Nation and the Forest Operator being concluded in accordance with Subsection (27) or the matter being resolved by the Implementation Monitoring Committee in accordance with Subsection (30), the Selection will be eligible to be set apart as Reserve in accordance with this Principle.
 - (33) Where land is Selected by an Entitlement First Nation that either Canada

or Manitoba consider not to be eligible to be set apart as Reserve in accordance with this Principle and the Entitlement First Nation disagrees with the opinion of Canada or Manitoba, the Entitlement First Nation may refer the matter to the Implementation Monitoring Committee which shall consider the matter on a priority basis.

- (34) During the Period of Selection for an Entitlement First Nation which may reasonably be expected to Select land in the area identified in a forest plan, Manitoba undertakes to participate with the Forest Operator and the Entitlement First Nation in a full and meaningful consultation process, prior to and in the course of considering any new forest plan or extension or replacement of a forest plan referred to in Subsection (25).
- (35) Despite the definition of "Date of Selection", for the purposes of this Principle, the "Date of Selection" means the date Canada receives a Selection in accordance with Subsection 6.02(3) from an Entitlement First Nation, whether or not that date is before the date the parties and the Entitlement First Nation execute a Treaty Entitlement Agreement, provided that date is after June 20, 1996.
- (36) Despite Subsections (29) and (35), recognizing that the Mathias Colomb Cree Nation has made a Selection dated June 27, 1996, and that this Agreement did not come into effect until the Date of Execution, negotiations for an agreement of the nature referred to in Subsection (27) will occur on a priority basis during the first year after the Date of Execution.
- (37) The parties agree that if an agreement of the nature referred to in Subsection (27) with respect to the Selection made by the Mathias Colomb Cree Nation dated June 27, 1996, is not resolved by the time that the Implementation Monitoring Committee is established, the Mathias Colomb Cree Nation may refer the issue to the Implementation Monitoring Committee as a priority matter to be considered forthwith upon the establishment of the Implementation Monitoring Committee, and Subsections (25) to (33) inclusive shall apply with necessary modifications.
- (38) The parties may develop an Agreed Form of agreement which may be considered as the basis for the negotiation of the agreement referred to in Subsection (27).

3.04 Specific Principle Pertaining to Land in Wapusk National Park

Land defined as "park land" in the "Memorandum of Agreement for Wapusk National Park", dated April 24, 1996, shall be available for Selection by an Entitlement First Nation being a signatory or adherent to, or being a successor to a signatory or adherent to, Treaty No. 5, subject to the provisions of that "Memorandum of Agreement".

3.05 Specific Principles for Acquisition of Other Land

- (1) Subsections (2) to (4) inclusive set out specific Principles for the Acquisition of Other Land by the Entitlement First Nations identified in Schedule "B".
- (2) The Acquisition of Other Land by an Entitlement First Nation identified in Schedule "B" shall be undertaken on a "willing buyer and willing seller" basis.
- (3) Neither Canada nor Manitoba shall expropriate any land or any interest in land of any Third Party for the purpose of permitting an Entitlement First Nation identified in Schedule "B" to Acquire that land or that interest in land.
- (4) An Entitlement First Nation identified in Schedule "B" may Acquire:
 - (a) Surplus Provincial Land in accordance with Section 3.09;
 - (b) Surplus Federal Land in accordance with Section 3.10;
 - (c) Other Land not affected by any Third Party Interest;
 - (d) Other Land affected by a Third Party Interest, subject to the resolution of the Third Party Interest in accordance with Article 10;
 - (e) Other Land in respect of which an interest in Mines and Minerals has been Disposed of in accordance with Article 11;
 - (f) Other Land bordering upon a Navigable Waterway, Non-navigable Waterway or Developed Waterway or Acquire water lots in accordance with Article 12; and
 - (g) Other Land bordering upon or enclosing roads in accordance with Sections 13.01 to 13.07 inclusive and adjacent to airports operated by Manitoba in accordance with Section 13.08.

3.06 Specific Principles for Selection or Acquisition of Land in an Urban Area

- (1) Where an Entitlement First Nation Selects or Acquires land in an Urban Area, the Entitlement First Nation shall:
 - (a) give Canada, Manitoba and the Municipality notice in writing of the intention of the Entitlement First Nation to request that the land be set apart as Reserve; and
 - (b) provide the Municipality a copy of:
 - (i) the provisions of the Additions to Reserves Policy respecting "Municipal Considerations"; and
 - (ii) Schedule "D" of this Agreement.
- (2) With respect to the setting apart of land as Reserve in an Urban Area:
 - (a) the practice of the Manitoba regional office of the Department of Indian

Affairs and Northern Development relating to the application of the Additions to Reserves Policy in Urban Areas set out in Schedule "D" will apply; and

- (b) Schedule "D" may be amended by Canada from time to time, but any amendment to that practice will apply to land to be set apart as Reserve in an Urban Area in accordance with this Agreement only with the written agreement of the parties.
- (3) Land Selected or Acquired by an Entitlement First Nation in an Urban Area shall not be ineligible to be set apart as Reserve due to a claim by a Municipality or a School Division alleging a loss of Municipal and School Taxes.
- (4) Nothing in this Article shall oblige Canada or Manitoba to pay any costs incurred by any Entitlement First Nation or any Municipality arising out of a Municipal Development and Services Agreement.
- (5) The parties may develop Agreed Forms of Municipal Development and Services Agreements or a checklist of items to be addressed in a Municipal Development and Services Agreement.

3.07 Specific Principles for Selection or Acquisition of Land in a Municipality

- (1) Where an Entitlement First Nation Selects or Acquires land in a Municipality which is not in an Urban Area, the Entitlement First Nation shall:
 - (a) give Canada, Manitoba and the Municipality notice in writing of the intention of the Entitlement First Nation to request that the land be set apart as Reserve;
 - (b) request the Municipality to set out any concerns it may have with respect to the setting apart of the land as Reserve within 90 days of the date of receipt of that notice;
 - (c) advise the Municipality that should the Municipality not provide its comments within the 90 day period, the land may be set apart as Reserve without further notice to the Municipality;
 - (d) where the Entitlement First Nation intends to use the infrastructure of the Municipality, or requires services provided by the Municipality, request the Municipality to enter into negotiations with the Entitlement First Nation with a view to concluding a Municipal Development and Services Agreement; and
 - (e) where the Entitlement First Nation intends to use the infrastructure of the Municipality, or requires services provided by the Municipality, advise the Municipality that if negotiations are not commenced within 90 days of the date of receipt of the notice referred to in Paragraph (a), the land may be set apart as Reserve without a Municipal Development and Services Agreement.
- (2) Where a Municipality expresses concerns about the land being set apart as

Reserve, the Entitlement First Nation shall make reasonable efforts to address the concerns of the Municipality.

- (3) Where a Municipality advises the Entitlement First Nation that it intends to enter into negotiations on a Municipal Development and Services Agreement, the Entitlement First Nation shall make reasonable efforts to conclude a Municipal Development and Services Agreement with the Municipality.
- (4) Land shall not be ineligible to be set apart as Reserve under this Agreement due to:
 - (a) subject to Subsection (2), the failure or inability of an Entitlement First Nation to satisfy the concerns of a Municipality;
 - (b) subject to Subsection (3), the failure of the Entitlement First Nation and a Municipality to enter into a Municipal Development and Services Agreement; or
 - (c) a claim by a Municipality or School Division alleging a loss of Municipal and School Taxes.
- (5) Nothing in this Section shall oblige Canada or Manitoba to pay any costs incurred by any Entitlement First Nation or any Municipality arising out of a Municipal Development and Services Agreement.
- (6) The parties may develop Agreed Forms of Municipal Development and Services Agreements or a checklist of items to be addressed in a Municipal Development and Services Agreement.

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

- (1) Subject to Subsection (2), an Entitlement First Nation may Select or Acquire land in a Northern Community, provided:
 - (a) the Entitlement First Nation gives Canada, Manitoba and the Northern Community notice in writing of the intention of the Entitlement First Nation to Select or Acquire the land; and
 - (b) consultation about the Selection or Acquisition and the intent of the Entitlement First Nation to request that the land be set apart as Reserve by Canada has first occurred with the community council, the local committee or the incorporated community council (as the case may be) of the Northern Community.
- (2) Where the intent of an Entitlement First Nation is ultimately to have all or substantially all of the land in the Northern Community set apart as Reserve, the Entitlement First Nation may not Select or Acquire land in that Northern Community until Canada, Manitoba and the Entitlement First Nation have entered into an agreement which addresses:
 - (a) the timing of the Selection or Acquisition of land and the subsequent setting apart of the land as Reserve;
 - (b) the transfer and operation of capital infrastructure and related costs;
 - (c) the ongoing provision of social and public services to Members of the Entitlement First Nation and other persons ordinarily resident in the Northern Community and related costs; and
 - (d) other matters of the nature which may be addressed by a Municipal Development and Services Agreement if the land was located in a Municipality.
- (3) Where the intent and purpose of the Selection or Acquisition in a Northern Community is not ultimately to have all or substantially all of a Northern Community set apart as Reserve, Section 3.07 shall apply with necessary modifications.
- (4) For the purposes of Subsections (2) and (3), the intent of an Entitlement First Nation shall be deemed to be ultimately to have all or substantially all of the land in the Northern Community set apart as Reserve where:
 - (a) the Entitlement First Nation has declared by Council Resolution that its intent is ultimately to have all or substantially all of the land in the Northern Community set apart as Reserve; or
 - (b) the Selection or Acquisition of the land, whether by itself or in combination with other Selections or Acquisitions of land by the Entitlement First Nation, would result in more than 25 per cent of the area comprising the Northern Community being set apart as Reserve for the Entitlement First Nation.
- (5) The parties may develop Agreed Forms of agreements of the nature referred to in Subsection (2) or a checklist of items to be addressed in those agreements.

- (6) Where land is Selected by an Entitlement First Nation within eight kilometers of the boundary of a Northern Community, Manitoba will not confirm whether the Selection is eligible to be set apart as Reserve in accordance with the Principles until the Minister of Northern Affairs of Manitoba has consulted with the community council, the local committee or the incorporated community council (as the case may be) in accordance with subsection 9(2) of *The Northern Affairs Act*, which consultation shall be undertaken forthwith upon Canada providing to Manitoba the documents referred to in Subsection 6.02(4).

3.09 Specific Principles for Acquisition of Surplus Provincial Land

- (1) Manitoba undertakes to ensure that notice of Surplus Provincial Land (including a description of the land and improvements on the land) is forwarded as soon as reasonably practicable after the land is declared Surplus Provincial Land and before any public offering of the land for sale is made to:
- (a) the TLE Committee; and
 - (b) each Entitlement First Nation identified in Schedule "B":
 - (i) in the Treaty Area within which the land is located;
 - (ii) in respect of which the Period of Acquisition has not expired as of the date Manitoba issues the notice; and
 - (iii) which has not Acquired its Other Land Amount as of the date Manitoba issues the notice.
- (2) An Entitlement First Nation which receives a notice in accordance with Subsection (1) may give notice in writing to Manitoba within 30 days of the date of the notice referred to in Subsection (1) expressing an interest in Acquiring the Surplus Provincial Land and in that case:
- (a) Manitoba shall, within 30 days of receiving the notice from the Entitlement First Nation, provide to the Entitlement First Nation a proposed sale price based on an appraisal of the fair market value of the Surplus Provincial Land (including improvements) or assessed value of the Surplus Provincial Land (including improvements); and
 - (b) the Entitlement First Nation may, at its option, by providing written notice to Manitoba within a period of 45 days after receipt of the notice from Manitoba referred to in Paragraph (a), express an interest to Acquire or enter into an agreement with Manitoba to Acquire the Surplus Provincial Land (including improvements) for the proposed sale price set out in the notice from Manitoba referred to in Paragraph (a).
- (3) In the event more than one Entitlement First Nation identified in Schedule "B" provides notice to Manitoba in accordance with Paragraph (2)(b), those Entitlement First Nations shall resolve their competing interests within a period of 180 days from the date Manitoba receives the last notice under Paragraph (2)(b).
- (4) In the event:

- (a) no Entitlement First Nation gives notice to Manitoba of its interest in Acquiring the land within the 30 day period referred to in Subsection (2);
- (b) an Entitlement First Nation having given notice in accordance with Paragraph (2)(a) fails to Acquire or enter into an agreement with Manitoba to Acquire the land in accordance with Paragraph (2)(b) for reasons not attributable to Manitoba;
- (c) an Entitlement First Nation having entered into an agreement with Manitoba to Acquire the land fails to complete the purchase within the period set out in that agreement; or
- (d) more than one Entitlement First Nation provides notice to Manitoba expressing an interest in Acquiring the Surplus Provincial Land and those Entitlement First Nations do not resolve their competing interests within the period of time set out in Subsection (3)

Manitoba may dispose of the land without further notice to any Entitlement First Nation and without regard to the expression of interest of any Entitlement First Nation in Acquiring the Surplus Provincial Land.

3.10 Specific Principles for Acquisition of Surplus Federal Land

- (1) Where the Department of Indian Affairs and Northern Development receives notice of Surplus Federal Land which is located in the Treaty Area of an Entitlement First Nation identified in Schedule "B", the department shall forward to that Entitlement First Nation and to the TLE Committee notice of that Surplus Federal Land and a copy of any appraisal or an estimate of the fair market value of that Surplus Federal Land, provided:
 - (a) the Period of Acquisition of that Entitlement First Nation has not expired; and
 - (b) the Entitlement First Nation has not Acquired its Other Land Amount as of the date the Department of Indian Affairs and Northern Development receives notice of the Federal Surplus Land.
- (2) An Entitlement First Nation described in Subsection (1) may give notice in writing to Canada, within 30 days of receiving the notice referred to in Paragraph (1)(a), expressing an interest in Acquiring the Surplus Federal Land and in that case:
 - (a) the Department of Indian Affairs and Northern Development shall take those steps as may be required under the policy of the Treasury Board of Canada existing at that date relating to the sale of Surplus Federal Land to express an interest in obtaining a transfer of administration of the Surplus Federal

Land for the purpose of enabling the Entitlement First Nation to Acquire that land;

- (b) the Department of Indian Affairs and Northern Development shall advise the Entitlement First Nation as to whether, in accordance with the policy referred to in Paragraph (a), the administration of the Surplus Federal Land will be transferred to it for that purpose; and
 - (c) subject to Subsection (5), in the event the Entitlement First Nation is advised that the land will be transferred to the Department of Indian Affairs and Northern Development, the Entitlement First Nation shall have 60 days to Acquire the Surplus Federal Land or to enter into an agreement with the Department of Indian Affairs and Northern Development pursuant to which, among other things:
 - (i) sufficient funds (being not greater than the fair market value of the Surplus Federal Land and any adjustment as between Canada and the Entitlement First Nation in respect of Municipal and School Taxes) will be provided to the Department of Indian Affairs and Northern Development by the Entitlement First Nation to permit that department to obtain administration of the land; and
 - (ii) a right to lease the land for a sum sufficient to discharge the obligations of the Entitlement First Nation under Paragraph (5) will be provided to the Entitlement First Nation for the period of time between the date responsibility for the land is transferred to the Department of Indian Affairs and Northern Development and the date the land is set apart as Reserve for the Entitlement First Nation.
- (3) In the event more than one Entitlement First Nation gives notice in accordance with Subsection (2), Canada shall advise each of the Entitlement First Nations of their competing interests and those Entitlement First Nations shall resolve those competing interests and notify the Department of Indian Affairs and Northern Development in writing of the resolution of those competing interests within the time limit within which that department must proceed to express interest in obtaining that Surplus Federal Land under the policy referred to in

Paragraph (2)(a), failing which that department shall be under no obligation to pursue obtaining the transfer of administration of that Surplus Federal Land.

- (4) In the event an Entitlement First Nation, having been advised that the land will be transferred to the Department of Indian Affairs and Northern Development in accordance with Paragraph (2)(c), fails to satisfy its obligations under that Paragraph, the Department of Indian Affairs and Northern Development will be under no further obligation to pursue the transfer of the administration of the Surplus Federal Land.
- (5) An Entitlement First Nation which is intending to Acquire Surplus Federal Land, or any other Person intended to hold title to the Surplus Federal Land for the benefit of the Entitlement First Nation, shall be responsible for all costs incurred by the Department of Indian Affairs and Northern Development with respect to the operation and maintenance of the Surplus Federal Land and any improvements located thereon (including, without limitation, the costs of providing heat, water, sewer and electricity to any improvements located on the land and any amounts paid or payable for Municipal and School Taxes) from the effective date of transfer of administration of the land to the Department of Indian Affairs and Northern Development.
- (6) The parties intend that, wherever possible, title to the Surplus Federal Land should be transferred to the Entitlement First Nation or any Person intended to hold title to the Surplus Federal Land for the benefit of the Entitlement First Nation or be set apart as Reserve on the effective date of transfer of administration of the land to the Department of Indian Affairs and Northern Development.
- (7) The parties recognize that in accordance with the policy of the Treasury Board of Canada relating to the sale of Surplus Federal Land, the expression of interest in Acquiring Surplus Federal Land by an Entitlement First Nation under Subsection (2) or the taking of steps by the Department of Indian Affairs and Northern Development in accordance with Paragraph (2)(a) does not provide a right or create a guarantee that the land will be available to be Acquired by the Entitlement First Nation or that the land if Acquired by the Entitlement First Nation or a Person on behalf of the Entitlement First Nation will be set apart as Reserve.

3.11 Reference of Matters to the Implementation Monitoring Committee

Any issues or matters in dispute relating to the Selection or Acquisition of land by an Entitlement First Nation not resolved by the parties or an Entitlement First Nation may be referred to the Implementation Monitoring Committee.

4. Periods of Selection and Acquisition of Land

4.01 Periods

Subject to Section 4.02:

- (a) an Entitlement First Nation may Select land up to its Crown Land Amount within three years from the date the Treaty Entitlement Agreement of the Entitlement First Nation comes into force; and
- (b) an Entitlement First Nation identified in Schedule "B" may Acquire land up to its Other Land Amount within 15 years from the date the Treaty Entitlement Agreement of the Entitlement First Nation comes into force.

4.02 Extension of Periods

(1) Where:

- (a) an Entitlement First Nation is unable to Select or Acquire its Total Land Amount within the periods of time set out in Section 4.01; and
- (b) the Entitlement First Nation alleges that the inability to Select or Acquire its Total Land Amount within the periods of time set out in Section 4.01 is directly attributable to the failure of Canada or Manitoba to fulfill their respective obligations under this Agreement relating to the Selection or Acquisition of land by that Entitlement First Nation

the Entitlement First Nation may refer the matter to the Implementation Monitoring Committee.

- (2) Where the Implementation Monitoring Committee determines that the reason for the inability of the Entitlement First Nation to Select or Acquire its Total Land Amount within the periods of time set out in Section 4.01 is reasonably attributable to the failure of either or both of Canada or Manitoba to fulfill their respective obligations under this

Agreement relating to the Selection or Acquisition of land by that Entitlement First Nation, the Implementation Monitoring Committee:

- (a) shall extend the period or periods of time referred to in Paragraph 4.01(a) or (b) or both (as the case may be) for the period of time equal to the time that the Entitlement First Nation has been or will be unable to Select or Acquire its Total Land Amount which is or has been reasonably attributable to that failure; and
 - (b) may, to the extent appropriate, make recommendations respecting means of addressing the inability of the Entitlement First Nation to Select or Acquire its Total Land Amount.
- (3) In the event Canada or Manitoba are of the view that an Entitlement First Nation will not Select or Acquire its Total Land Amount within the periods of time set out in Section 4.01, Canada or Manitoba, as the case may be, may refer the matter to the Implementation Monitoring Committee.
- (4) Subject to Subsections (1) and (2), where the Implementation Monitoring Committee determines that the Entitlement First Nation will not be able to Select its Crown Land Amount or Acquire its Minimum Entitlement Acres within the periods of time set out in Section 4.01:
 - (a) the Implementation Monitoring Committee shall request the Entitlement First Nation to develop a detailed plan for the Selection of its Crown Land Amount or Acquisition of its Minimum Entitlement Acres;
 - (b) the Entitlement First Nation shall develop a detailed plan for the completion of the Selection of its Crown Land Amount or Acquisition of its Minimum Entitlement Acres and provide the plan to the Implementation Monitoring Committee within 120 days of the date of the request; and
 - (c) the Implementation Monitoring Committee may, if the Entitlement First Nation provides a reasonable plan to complete the Selection of its Crown Land Amount or Acquisition of its Minimum Entitlement Acres, extend the period of time set out in Paragraph 4.01(a) or (b) or both (as the case may be) for up to two further periods of not more than one additional year each.

- (5) Subject to Subsections (1) and (2), in the event either Canada or Manitoba refers a matter to the Implementation Monitoring Committee in accordance with Subsection (3) and where an Entitlement First Nation identified in Schedule "B" has Acquired its Minimum Entitlement Acres but has not Acquired its Other Land Amount:
- (a) the Implementation Monitoring Committee shall request the Entitlement First Nation to advise as to whether or not it intends to Acquire its Other Land Amount; and
 - (b) where the Entitlement First Nation advises the Implementation Monitoring Committee that it intends to Acquire its Other Land Amount:
 - (i) the Entitlement First Nation shall develop a detailed plan for the completion of the Acquisition of its Other Land Amount and provide the plan to the Implementation Monitoring Committee within 120 days of the date of the request; and
 - (ii) the Implementation Monitoring Committee may, if the Entitlement First Nation provides a reasonable plan to complete the Acquisition of its Other Land Amount, extend the period of time set out in Paragraph 4.01(b) for up to two further periods of not more than one additional year each.
- (6) In the event that:
- (a) an Entitlement First Nation has Selected land within the period of time set out in Paragraph 4.01(a) or Acquired land within the period of time set out in Paragraph 4.01(b);
 - (b) Canada or Manitoba have not confirmed that the land is eligible to be set apart as Reserve in accordance with the Principles or Canada has not set the land apart as Reserve; and
 - (c) the applicable period of time set out in Paragraph 4.01(a) or (b) has expired or is about to expire
- the Entitlement First Nation may refer the matter to the Implementation Monitoring Committee.

- (7) Where the Entitlement First Nation refers a matter to the Implementation Monitoring Committee in accordance with Subsection (6), the Implementation Monitoring Committee shall extend the period of time set out in Paragraph 4.01(a) or (b) or both (as the case may be) for a reasonable period of time for the purpose of permitting the Entitlement First Nation to Select or Acquire another parcel or parcels of land of a similar area in replacement for the land Selected or Acquired, except where Canada advises the Implementation Monitoring Committee in writing that it intends to set the Selection or Acquisition apart as Reserve.

4.03 Principles not Applicable after Periods

- (1) In the event an Entitlement First Nation does not Select its Crown Land Amount in the Period of Selection and Acquire its Other Land Amount (if applicable) within the Period of Acquisition, the Principles shall not be applicable to any Selection or Acquisition of land by the Entitlement First Nation after the expiration of that period or those periods.
- (2) Despite Subsection (1), the right of an Entitlement First Nation to Select its Crown Land Amount and Acquire its Other Land Amount (if applicable) in accordance with this Agreement shall continue, except that the policy of the Department of Indian Affairs and Northern Development relating to Reserve creation and additions in effect on the date a Selection or Acquisition is made shall apply.

4.04 Dates of Selection and Acquisition

- (1) A Selection is deemed to be made at the Date of Selection.
- (2) An Acquisition is deemed to be made at the Date of Acquisition.

5. **Community Interest Zones**

5.01 Identification of Community Interest Zone

- (1) A Community Interest Zone for each Entitlement First Nation will be established based on the area within 30 kilometers from the exterior boundaries of the Reserve of the Entitlement First Nation at which its main administrative office is located.
- (2) A map defining the Community Interest Zone of an Entitlement First Nation, ordinarily drawn along section or township lines, will be attached as a schedule to the Treaty Entitlement Agreement for that Entitlement First Nation.

5.02 Purpose and Effect of Community Interest Zone

- (1) During the Period of Selection, Manitoba will provide an Entitlement First Nation with written notice of any proposed Disposition within the Community Interest Zone identified for that Entitlement First Nation.
- (2) Manitoba shall not make the proposed Disposition referred to in Subsection (1) for a period of 180 days after the Entitlement First Nation receives the notice referred to in Subsection (1) provided:
 - (a) the Entitlement First Nation advises Manitoba in writing within 60 days of receipt of the notice from Manitoba, that the Entitlement First Nation may be interested in Selecting the land; and
 - (b) where the Entitlement First Nation does not advise Manitoba of its interest in accordance with Paragraph (a), Manitoba may make the Disposition without further notice to the Entitlement First Nation.
- (3) Where an Entitlement First Nation provides notice to Manitoba in accordance with Paragraph (2)(a), an Entitlement First Nation shall have the right to Select the Crown Land or any portion of the land which is the subject of the proposed Disposition within 180 days from the date of receipt of notice from Manitoba.
- (4) During the Period of Acquisition, Manitoba will provide an Entitlement First Nation identified in Schedule "B" notice of any proposed Disposition of Mines and Minerals owned by or under the administration and control of Manitoba in land the surface interest of which is held by a Third Party within the Community Interest Zone established for that Entitlement First Nation.
- (5) Manitoba shall not make the proposed Disposition referred to in Subsection (4) for a period of 180 days after the Entitlement First Nation receives the notice referred to in Subsection (4) provided:
 - (a) the Entitlement First Nation advises Manitoba in writing within 60 days of receipt of the notice from Manitoba, that the Entitlement First Nation may be interested in Acquiring the surface interest in the land;

- (b) where the Entitlement First Nation does not advise Manitoba of its interest in accordance with Paragraph (a), Manitoba may make the Disposition without further notice to the Entitlement First Nation; and
 - (c) where the Entitlement First Nation has advised Manitoba of its interest in Acquiring the surface interest in the land in accordance with Paragraph (a) but does not thereafter provide to Manitoba a copy of an agreement between the Entitlement First Nation or a Person on behalf of the Entitlement First Nation and the owner of that surface interest for the Acquisition of that surface interest within 180 days after the Entitlement First Nation receives the notice referred to in Subsection (4), Manitoba may proceed to make the Disposition without further notice to the Entitlement First Nation.
- (6) This Section does not apply to the Disposition of Surplus Provincial Land.

6. Land Selection and Acquisition Process

6.01 General

The process for Selection and Acquisition of land, land transfer and the creation of Reserves will be in accordance with this Article and Articles 7 and 8.

6.02 Process for Land Selection and Acquisition

- (1) Concurrent with commencing a Community Approval Process, an Entitlement First Nation will undertake or cause to be undertaken a Land Selection Study.
- (2) Each Entitlement First Nation will consider all of the applicable Principles in the course of completion of its Land Selection Study and in Selecting Crown Land and Acquiring Other Land.

- (3) An Entitlement First Nation will Select Crown Land and give notice of Other Land which it has Acquired by delivering to Canada a Council Resolution requesting that the land be set apart as Reserve together with:
- (a) in the case of Crown Land, a 1:50,000 scale National Topographical Series map on which the land has been clearly identified by fine point pen; or
 - (b) in the case of Other Land:
 - (i) a legal description of the land;
 - (ii) a copy of the certificate of title of the land; and
 - (iii) a binding offer to purchase or option by which the Entitlement First Nation or any Person on behalf of the Entitlement First Nation may Acquire the land where the Entitlement First Nation or any Person for or on behalf of the Entitlement First Nation does not hold title to the land.
- (4) Canada shall within seven days of receipt of the Council Resolution referred to in Subsection (3) forward to Manitoba copies of that Council Resolution, a description of the land by actual or theoretical section, township and range determined by Universal Transverse Mercator Coordinates (based on North American Datum, 1983) and including the documents referred to in Paragraph (3)(a) or (b) provided to Canada by the Entitlement First Nation.
- (5) Canada shall consider the eligibility of the Selection or Acquisition to be set apart as Reserve in accordance with the Principles and provide its written reply to Manitoba and the Entitlement First Nation within 45 to 60 days of receipt of the Council Resolution referred to in Subsection (3).
- (6) Forthwith upon receipt by Manitoba of the items referred to in Subsection (4), Manitoba will enter the Selection or Acquisition on the Crown Land register maintained by Manitoba, where applicable, and upon that entry, Manitoba will not make any further Dispositions or Mineral Dispositions or issue any further quarry leases or quarry permits under *The Mines and Minerals Act* in respect of the Selection or Acquisition unless and until it is determined that the Selection or

Acquisition is not eligible to be set apart as Reserve in accordance with the Principles.

- (7) Manitoba shall consider the eligibility of the Selection or Acquisition to be set apart as Reserve in accordance with the Principles and provide its written reply to Canada and the Entitlement First Nation within 45 to 60 days of receipt of the items referred to in Subsection (4).
- (8) In the event that either or both of Canada or Manitoba in the replies provided in accordance with Subsections (5) and (7) advise that, in their opinion, the Selection or Acquisition is not eligible to be set apart as Reserve in accordance with the Principles, and the matter is not resolved within 120 to 180 days from the date of the later of those replies, the matter may be referred to the Implementation Monitoring Committee.

6.03 Crown Land Use Permit

- (1) Upon Canada and Manitoba confirming that land Selected is eligible to be set apart as Reserve in accordance with the Principles, Manitoba shall issue to the Entitlement First Nation which Selected the land a Crown Land use permit which will provide the Entitlement First Nation with the exclusive right to use and occupy the land, subject to any existing Third Party Interests, until:
 - (a) Canada and the Entitlement First Nation advise Manitoba that they are both not satisfied with the results of the Environmental Audit of the land;
 - (b) Canada determines that the Selection does not meet the requirements of the Additions to Reserve Policy; or
 - (c) the acceptance by Canada of administration and control of the Selection from Manitobawhichever shall first occur.
- (2) Upon the issuance of a Crown Land use permit in accordance with Subsection (1), the Selection shall not be subject to change by the Entitlement First Nation.
- (3) Upon the acceptance by Canada of administration and control of the Selection from Manitoba the Crown Land use permit issued in accordance with Subsection (1) will terminate and Canada will issue

to the Entitlement First Nation a licence to occupy the land on the same terms until such time as:

- (a) the land is set apart as Reserve; or
- (b) Canada satisfies its obligations under Section 8.06

whichever shall first occur.

- (4) A Crown Land use permit may be in an Agreed Form.

6.04 Land Transfer and Reserve Creation Process Manual

- (1) The parties have, as of the Date of Execution, prepared a “Land Transfer and Reserve Creation Process Manual”, which will be revised from time to time to reflect the procedure to be used in implementing the provisions of this Article and Articles 7 and 8.
- (2) The “Land Transfer and Reserve Creation Process Manual” and any amendment to that manual or any similar or other manual developed by the parties do not form part of this Agreement.

7. Transfer of Lands and Interests from Manitoba to Canada

7.01 Manitoba to Transfer Crown Land and Interests to Canada

- (1) Where land is Selected or Acquired by an Entitlement First Nation which Canada and Manitoba confirm is eligible to be set apart as Reserve in accordance with the Principles, Canada will:
 - (a) undertake or cause to be undertaken an Environmental Audit of the land in accordance with Article 23;
 - (b) upon Canada and the Entitlement First Nation both being satisfied with the results of that Environmental Audit, determine whether the Selection or Acquisition satisfies the requirements of the Additions to Reserves Policy;
 - (c) upon Canada determining the Selection or Acquisition satisfies the requirements of the Additions to Reserves Policy, undertake or cause to be undertaken a survey of the boundaries of the land in accordance with Article 23; and
 - (d) upon the Council of the Entitlement First Nation by Council Resolution confirming the boundaries of the Selection or

Acquisition as determined by the survey, provide Manitoba with a legal description of the land based on a registered plan of survey reflecting the survey undertaken in accordance with Paragraph (c).

- (2) Subject to Subsection 10.01(2), upon Manitoba receiving from Canada a legal description of land Selected or Acquired by an Entitlement First Nation in accordance with Paragraph (1)(d), Manitoba undertakes to transfer to Canada, by order in council, administration and control of all interests of Manitoba in that land, including any Crown Reservations and Residual Crown Interests.
- (3) Where land is set apart as Reserve under this Agreement which is subject to a Third Party Interest at the time it is set apart, Manitoba undertakes to transfer to Canada, by order in council, administration and control of all interests of Manitoba in the Third Party Interest, including any Crown Reservations and Residual Crown Interests which:
 - (a) revert to Manitoba; or
 - (b) are purchased or otherwise obtained by the Entitlement First Nationafter the land is set apart as Reserve.
- (4) Where Manitoba has transferred administration and control of the interests of Manitoba in a Selection or Acquisition in accordance with Subsection (2) or (3), Canada undertakes to accept administration and control of those interests by instrument under the *Federal Real Property Act* or otherwise.
- (5) An order in council and an instrument under the *Federal Real Property Act* referred to in this Section may be in an Agreed Form.

8. Setting Apart of Land as Reserve by Canada

8.01 Canada to Set Apart Land as Reserve

(1) Where:

(a) in the case of Crown Land:

- (i) Manitoba has transferred to Canada administration and control of the interests of Manitoba in the Selection in accordance with Subsection 7.01(2) or (3); and
- (ii) Canada has accepted administration and control of the interests transferred to it by Manitoba in accordance with Subsection 7.01(4); or

(b) in the case of Other Land:

- (i) Canada and Manitoba have confirmed that the land is eligible to be set apart as Reserve in accordance with the Principles;
- (ii) Canada and the Entitlement First Nation are both satisfied with the results of the Environmental Audit;
- (iii) Canada has determined that the Acquisition satisfies the requirements of the Additions to Reserve Policy;
- (iv) a survey of the boundaries of the land has been undertaken in accordance with Article 23;
- (v) the Entitlement First Nation has, by Council Resolution, confirmed the boundaries of the Acquisition as determined by the survey;
- (vi) subject to Subsection 10.01(2), the Entitlement First Nation or a Person on behalf of the Entitlement First Nation has provided to Canada a registerable transfer of the title and all other documents necessary to vest title to the land in Canada;
- (vii) Manitoba has transferred to Canada, by order in council, administration and control of all interests of Manitoba in that land, including any Crown

Reservations and Residual Crown interests in accordance with Subsection 7.01(2) or (3);

- (viii) Canada has accepted the transfer of title to the land by instrument under the *Federal Real Property Act*; and
- (ix) Canada has accepted administration and control of the interests transferred to it by Manitoba in accordance with Subparagraph (vii)

Canada undertakes to proceed with due diligence and to use its best efforts to set apart that land as Reserve for the Entitlement First Nation which has Selected or Acquired that land.

- (2) Canada's undertaking in Subsection (1) to set land apart as Reserve shall be limited to setting apart:
 - (a) an amount of Crown Land up to the Crown Land Amount for an Entitlement First Nation to the extent that Entitlement First Nation Selects Crown Land;
 - (b) where an Entitlement First Nation is identified in Schedule "B", an amount of Other Land up to the Other Land Amount for that Entitlement First Nation to the extent that Entitlement First Nation Acquires Other Land; and
 - (c) the amount any land referred to at Subsections 3.02(9), 3.03(23), 12.07(1), 13.06(1) and 13.07(3)

provided that the amount of land set apart as Reserve for that Entitlement First Nation, not including the amount of land referred to in Paragraph (c), shall not exceed the Total Land Amount for that Entitlement First Nation.

- (3) Where land is Selected or Acquired by an Entitlement First Nation in respect of which the requirements of Paragraph (1)(a) or (b) have been met and which is held by Canada or Manitoba under a certificate of title, the holder of the title shall request the District Registrar of the proper Land Titles Office to cancel the certificate of title in accordance with Section 57 of *The Real Property Act*.
- (4) Upon the setting apart of land as Reserve under this Agreement, survey plans of the land and instruments by which the land was set

apart as Reserve shall be registered by Canada in the proper Land Titles Office.

8.02 Application of Additions to Reserves Policy

- (1) For the purposes of the Additions to Reserves Policy, land which an Entitlement First Nation has Selected or Acquired which Canada and Manitoba confirm is eligible to be set apart as Reserve in accordance with the Principles shall be deemed to be land Selected or Acquired by that Entitlement First Nation pursuant to a "treaty or land claims agreement" within the meaning of the Additions to Reserves Policy.
- (2) Subject to Subsections (3) and (4), the Additions to Reserves Policy as at the Date of Execution shall apply to the setting apart of land as Reserve in accordance with this Agreement.
- (3) The Additions to Reserves Policy may be amended by Canada after the Date of Execution, but any amendment to that policy will apply to land to be set apart as Reserve in accordance with this Agreement only with the written agreement of the parties.
- (4) Where Canada proposes any amendment to the Additions to Reserves Policy after the Date of Execution, Canada may not delay a determination of whether a Selection or Acquisition satisfies the Additions to Reserves Policy pending the written agreement of the parties to the amendment of the Additions to Reserves Policy in accordance with Subsection (3).
- (5) In the event of any inconsistency between the Additions to Reserves Policy and this Agreement, the Additions to Reserves Policy shall be modified to the extent of the inconsistency and the terms of this Agreement shall apply.

8.03 Authority of Minister to Set Land Apart as Reserve

The Minister of Indian Affairs and Northern Development will recommend legislation or other measures to provide that Reserves to be established in accordance with this Agreement may be set apart for an Entitlement First Nation by order, declaration or other instrument made or issued by the Minister.

8.04 Canada not Responsible for Land Selection or Acquisition Costs

- (1) Except as provided in this Section 8.06 and Part IV, Canada will not be responsible for the payment of:
 - (a) any costs associated with the identification of land and the approval of the Selection or Acquisition of any land by an Entitlement First Nation, or its Trustees, agents or other representatives, including the TLE Committee;
 - (b) any costs paid or payable by an Entitlement First Nation, or its Trustees, agents or other representatives, including the TLE Committee, in relation to or arising out of the Selection or the Acquisition of any land by the Entitlement First Nation including, without limitation, the purchase price paid or payable to the vendor of that land, real estate agent or broker commissions, legal fees and disbursements, applicable taxes, land search and transfer costs; and
 - (c) any costs associated with removing, discharging or accommodating Third Party Interests.
- (2) Nothing in this Agreement constitutes any undertaking or commitment by Canada to provide an Entitlement First Nation with any funds, other than the amounts which may be expressly payable by Canada under Part IV to that Entitlement First Nation, for the purpose of Selecting or Acquiring land or for purposes incidental to Selecting or Acquiring land (including, without limitation, payment of all costs associated with Selecting or Acquiring land).

8.05 No Representation or Warranty by Canada that a Particular Parcel of Land will be Set Apart as Reserve

- (1) Nothing in this Agreement constitutes any representation or warranty of any kind or nature whatsoever by Canada that any particular parcel of land Selected or Acquired by an Entitlement First Nation will, with certainty, be set apart as Reserve for the Entitlement First Nation, and Canada shall not be liable for any losses, damages or expenses of any kind or nature (direct or indirect) howsoever incurred by the Entitlement First Nation as a result of or in any way arising from Canada not setting a particular parcel of land apart as Reserve for the Entitlement First Nation, except as provided in Section 8.06.

- (2) Nothing in Subsection (1) shall in any manner diminish, absolve or otherwise affect:
 - (a) Canada's undertaking in Section 8.01 to proceed with due diligence and to use its best efforts to set apart as Reserve land Selected or Acquired by an Entitlement First Nation; and
 - (b) any other obligation or undertaking of Canada under this Agreement.

8.06 Effect of Canada not Setting Apart Land as Reserve

- (1) In the event:
 - (a) an Entitlement First Nation has Selected or Acquired land;
 - (b) the administration and control of the land has been accepted by Canada or title to the land has been transferred to and accepted by Canada; and
 - (c) the land is not set apart as Reserve despite a recommendation by the Minister of Indian Affairs and Northern Development of Canada to do so

Subsections (2) to (13) inclusive shall, unless otherwise agreed between Canada and the Entitlement First Nation, apply.

- (2) Canada shall provide to the Entitlement First Nation a written statement of the reasons why the land has not been and will not be set apart as Reserve and the Entitlement First Nation may refer the matter to the Implementation Monitoring Committee.
- (3) Where an Entitlement First Nation has referred Canada's decision not to set land apart as Reserve to the Implementation Monitoring Committee in accordance with Subsection (2), Canada shall:
 - (a) consider the representations of the Entitlement First Nation at the meeting of the Implementation Monitoring Committee at which the matter is addressed; and
 - (b) within 30 days after the date of the meeting of the Implementation Monitoring Committee at which the matter is addressed, advise the Implementation Monitoring Committee

and the Entitlement First Nation whether it will set the land apart as Reserve.

- (4) Where:
- (a) Canada does not advise the Implementation Monitoring Committee and the Entitlement First Nation that it will set the land apart as Reserve within 30 days after the date of the meeting of the Implementation Monitoring Committee referred to in Subsection (3);
 - (b) the Entitlement First Nation is an Entitlement First Nation identified in Schedule "B"; and
 - (c) the land is Other Land,
- the Entitlement First Nation shall advise Canada if it wishes to retain an interest in the land (whether legal or beneficial).
- (5) Where an Entitlement First Nation advises Canada in accordance with Subsection (4) that it wishes to retain an interest in the land, Canada shall forthwith:
- (a) return the transfer of the land provided by the Entitlement First Nation or any Person on behalf of the Entitlement First Nation; or
 - (b) at its cost, transfer the land to the Entitlement First Nation or any Person on behalf of the Entitlement First Nation, where title to the land is vested in Canada.
- (6) Where an Entitlement First Nation advises Canada in accordance with Subsection (4) that it does not wish to retain an interest in the land:
- (a) the Entitlement First Nation shall, within 60 days of receiving the advice of Canada referred to in Paragraph (3)(b), provide Canada with any invoices or receipts evidencing the purchase price of the land paid by or on behalf of the Entitlement First Nation and all other actual costs paid or payable by or on behalf of the Entitlement First Nation in respect of the Acquisition, including the resolution of any Third Party Interests;
 - (b) Canada shall, within 120 days of receiving the invoices and receipts referred to in Paragraph (a), reimburse the Entitlement

First Nation or any Person at the direction of the Entitlement First Nation or as provided in this Section the purchase price of the land paid by or on behalf of the Entitlement First Nation and all other actual costs paid or payable by or on behalf of the Entitlement First Nation in respect of the Acquisition, including the resolution of any Third Party Interests; and

- (c) the Entitlement First Nation shall, upon Canada satisfying its obligations under Paragraph (b), provide a release in favour of Canada (which release may be in an Agreed Form) releasing Canada from any and all claims of the Entitlement First Nation arising from Canada refusing to set the land apart as Reserve (including releasing in favour of Canada any interest of the Entitlement First Nation in the land) and authorizing Canada to register the transfer of the land, where title to the land is not vested in Canada.

(7) Where:

- (a) Canada does not advise the Implementation Monitoring Committee and the Entitlement First Nation that it will set the land apart as Reserve within 30 days after the date of the meeting of the Implementation Monitoring Committee referred to in Subsection (3); and

- (b) the land is Crown Land

the Entitlement First Nation shall, within 60 days of receiving the advice of Canada referred to in Paragraph (a), provide Canada with any invoices or receipts evidencing all actual costs paid or payable by or on behalf of the Entitlement First Nation in respect of the Selection, including the resolution of any Third Party Interests and Canada shall:

- (c) within 120 days of receiving the invoices and receipts referred to in Paragraph (a), reimburse the Entitlement First Nation or any Person at the direction of the Entitlement First Nation or as provided in this Section all actual costs paid or payable by or on behalf of the Entitlement First Nation in respect of the Selection, including the resolution of any Third Party Interests; and
- (d) proceed to obtain land acceptable to the Entitlement First Nation in substitution for the Selection.

- (8) All amounts to be paid in accordance with Paragraph (6)(b) in respect of the purchase price of the land shall, if not paid to any other Person, be deposited to the Entitlement First Nation's Land Acquisition Account and shall be thereafter dealt with in the same manner as any other funds administered by the Trustees on behalf of the Entitlement First Nation in accordance with the Trust Agreement.
- (9) All amounts to be paid in accordance with Paragraph (6)(b) in respect of actual costs other than the purchase price of the land or in accordance with Subsection (7) shall, if not paid to any Person other than the Entitlement First Nation or TLE Committee, be deposited to the respective accounts originally withdrawn from, and be thereafter dealt with in the same manner as any other funds administered in accordance with this Agreement.
- (10) For greater certainty, any amounts paid in accordance with Paragraph (6)(b) in respect of actual costs other than the purchase price of the land or in accordance with Subsection (7) to the TLE Committee as reimbursement for the actual cost of the resolution of any Third Party Interest for and on behalf of any Entitlement First Nation shall be paid into the TPI Account.
- (11) In addition to the amounts referred to in Subsections (6) and (7), Canada will pay simple interest on such amounts calculated between the date the costs were incurred until the date of payment by Canada at a rate equal to the rate paid on Canada Savings Bonds as of the last date of issue prior to the date of payment by Canada and the interest shall be deposited into the same account from which the payment was withdrawn.
- (12) Upon Canada satisfying its obligations under Subsections (6) to (11) inclusive, Canada shall be entitled to deal with the land in any manner whatsoever, including selling or otherwise disposing of the land, and retaining the proceeds of any sale of the land, and the Entitlement First Nation, its Members or Trustees shall have no legal, equitable or other claim against Canada of any kind or nature.
- (13) Despite the definition of "Surplus Federal Land", land that Canada sells or otherwise disposes of in accordance with Subsection (12) shall be deemed not to be Surplus Federal Land.

8.07 Land Not Treated as Acquired under this Agreement

Where land is purchased or otherwise obtained by:

- (a) an Entitlement First Nation which is not identified in Schedule "B"; or
- (b) an Entitlement First Nation which is identified in Schedule "B" in an amount greater than the Other Land Amount for that Entitlement First Nation

which the Entitlement First Nation wishes Canada to set apart as Reserve, the land shall not be considered or treated as land Acquired in accordance with this Agreement.

9. **Land In Severalty, Land Outside Manitoba and Land of Cultural and Historical Significance in Existing Provincial Parks, Ecological Reserves, Wildlife Refuges and National Parks**

Land in Severalty:

9.01 Election by Members

- (1) Certain Members of the Barren Lands First Nation and the Northlands First Nation may have a right to Land in Severalty.
- (2) Canada confirms that independent legal advice was provided to Members of the Barren Lands First Nation and Northlands First Nation on the provisions of Treaty No. 10 with regard to Land in Severalty.
- (3) A Member of the Barren Lands First Nation or the Northlands First Nation (or, where that Member is a minor or has been declared incapable of managing his or her own affairs by a court of competent jurisdiction, the legal representative of that Member for and on behalf of that Member) may assert a right to Land in Severalty by giving written notice to Canada at any time prior to the completion of the Selection of 50 per cent of the Crown Land Amount by that Member's Entitlement First Nation or one year from the date the parties and that Member's Entitlement First Nation execute a Treaty Entitlement Agreement, whichever is the earlier date.
- (4) Canada will, as soon as reasonably practicable, upon receiving written notice in accordance with Subsection (3) from any Member

of either of the Barren Lands First Nation or the Northlands First Nation, enter into discussions with that Member, any other Members of those Entitlement First Nations who have similarly given notice in accordance with Subsection (3) and their respective Entitlement First Nation concerning the nature and extent of the right asserted, it being intended that those discussions will be concluded within one year of the date Canada receives the last notice in accordance with Subsection (3).

- (5) Canada undertakes and agrees to enter into discussions as referred to in Subsection (4) in good faith in accordance with the principles of treaty interpretation as determined by law.
- (6) In the event Canada, any Member of the Barren Lands First Nation or Northlands First Nation who has given notice in accordance with Subsection (3) and that Member's Entitlement First Nation fail to reach agreement on the nature and extent of the right of that Member to Land in Severalty, if any, the matter may be referred to the Implementation Monitoring Committee and the Implementation Monitoring Committee shall, among other matters, extend the period of discussion referred to in Subsection (4) as appropriate.
- (7) Where Canada enters into discussions with any Member of the Barren Lands First Nation or Northlands First Nation and that Member's Entitlement First Nation in accordance with Subsection (4), Canada may also enter into discussions with Manitoba with respect to any obligation of Manitoba under the MNRTA to provide unoccupied Crown land to Canada to enable Canada to fulfill the terms of Treaty No. 10 respecting Land in Severalty.

9.02 Procedure to Take Land in Severalty

Where it is determined or agreed pursuant to the discussions referred to in Subsection 9.01(4) that any Member of the Barren Lands First Nation or Northlands First Nation may exercise a right to Land in Severalty, and where it is further determined or agreed pursuant to the discussions referred to in Subsection 9.01(7) that Manitoba has an obligation to provide unoccupied Crown Land to Canada under the MNRTA to enable Canada to fulfill any obligation in that regard:

- (a) Crown Land in the amount of 160 acres for Land in Severalty shall be provided to the Member who elects to take Land in Severalty;

- (b) the Total Land Amount and Crown Land Amount of the Entitlement First Nation to which the Member belongs shall be reduced by the amount of 128 acres for the Member who so elects and who selects Land in Severalty in accordance with this Section;
- (c) the Member who so elects shall, within one year of the date on which it is determined that the Member has a right to Land in Severalty, select 160 acres of Crown Land as Land in Severalty and the Principles shall apply with necessary modifications;
- (d) Articles 6 and 7 shall apply with necessary modifications;
- (e) upon Manitoba transferring to Canada by order in council administration and control of the Land in Severalty and all interests of Manitoba in that land, Canada shall hold legal title to that land for the benefit of the Member who so elects;
- (f) the Member who so elects shall provide a release and indemnity to Canada in a form satisfactory to Canada and the Member with respect to that Member's election to take Land in Severalty; and
- (g) Canada shall provide a release and indemnity to Manitoba in a form satisfactory to Canada and Manitoba.

9.03 Effect of Not Taking Land in Severalty

A Member of the Barren Lands First Nation or the Northlands First Nation (or, where that Member is a minor or has been declared incapable of managing his or her own affairs by a court of competent jurisdiction, the legal representative of that Member for and on behalf of that Member) who:

- (a) does not assert the right to take Land in Severalty in accordance with Subsection 9.01(3);
- (b) gives notice to Canada in accordance with Subsection 9.01(3), but who does not thereafter enter into the discussions referred to in Subsection 9.01(4) through no action or inaction attributable to Canada; or
- (c) does not select land in accordance with Paragraph 9.02(c)

shall be deemed to have elected not to exercise any right to Land in Severalty.

9.04 Right to and Status of Land in Severalty

- (1) The legal status of Land in Severalty will be determined in the course of the discussions referred to in Subsection 9.01(4) among Canada, those Members of the Barren Lands First Nation and Northlands First Nation who gave notice to Canada in accordance with Subsection 9.01(3) and the Barren Lands First Nation and Northlands First Nation.
- (2) Land in Severalty provided to a Member of the Barren Lands First Nation or Northlands First Nation in accordance with Sections 9.01 and 9.02 shall not be alienable by the Member without the consent of the Governor General in Council.
- (3) Nothing in this Agreement constitutes any admission, representation or warranty by Canada that:
 - (a) any Member of the Barren Lands First Nation or Northlands First Nation has a right to Land in Severalty; or
 - (b) Land in Severalty selected by any Member will be set apart as Reserve.
- (4) This Agreement shall not be interpreted or applied in any manner whatsoever so as to affect the ability of a Member of the Barren Lands First Nation or Northlands First Nation to assert a right to Land in Severalty or to assert that Land in Severalty be set apart as Reserve, except in accordance with Sections 9.01 to 9.03 inclusive in the event the parties and that Member's Entitlement First Nation execute a Treaty Entitlement Agreement.

Land Outside Manitoba:

9.05 Land in Saskatchewan and Ontario

- (1) An Entitlement First Nation that has a Treaty Area or Traditional Territory which extends into the province of Saskatchewan or Ontario may purchase or otherwise secure land in those areas in the province of Saskatchewan or Ontario, which land may be set apart as Reserve with the consent of the government of the province in which the land is located, and in which case the Crown Land Amount and the Total Land Amount of that Entitlement First Nation shall be reduced by an amount equal to the amount of land so purchased or otherwise secured.

- (2) Nothing in this Agreement:
- (a) affects the ability of an Entitlement First Nation with a Treaty Area or Traditional Territory which extends into the province of Saskatchewan or Ontario and which purchases or otherwise secures land within that area or territory in the province of Saskatchewan or Ontario to assert in any discussions with Canada or the province in which that land is located an existing aboriginal or treaty right to have that land set apart as Reserve; or
 - (b) affects the ability of Canada, or the province of Saskatchewan or Ontario (as the case may be) to assert in any discussions with an Entitlement First Nation which has a Treaty Area or Traditional Territory which extends into that province that the consent of that province is required before Canada sets land that is located in that province and within the Treaty Area or Traditional Territory of the Entitlement First Nation and which has been purchased or otherwise secured by the Entitlement First Nation apart as Reserve.

9.06 Land in Northwest Territories

- (1) An Entitlement First Nation that has a Treaty Area or Traditional Territory which extends into the Northwest Territories (as that area is now known) may purchase or otherwise secure land in that area with the consent of the jurisdiction in which the land is located.
- (2) The Sayisi Dene First Nation and Northlands First Nation, plaintiffs in Federal Court Trial Division Suit No. T-703-93, have agreed with Canada, among other defendants, in "Terms of Settlement" dated April 23, 1993, relating to interim proceedings in that suit that:

"1. The ratification, implementation and enactment of the TFN Final Agreement is and shall be without prejudice to any rights, titles and interests, whether by way of treaty or aboriginal rights that the Plaintiffs might have in and to the Nunavut Settlement Area.

....

5. The Plaintiffs agree that they have no treaty right to require the Crown to set aside as a reserve any particular area of land which they have selected, or might select in the future. The

Plaintiffs reserve their right to allege that the Crown is subject to a fiduciary obligation in respect of the TLE selection process.”

- (3) In the event, following the final determination or settlement of the suit referred to in Subsection (2) or any similar suit as may be commenced by the Barren Lands First Nation with the effect that any or all of the Sayisi Dene First Nation, Northlands First Nation or Barren Lands First Nation have the right to request Canada to lay aside and reserve tracts of land for their use and benefit in the Northwest Territories (as that area is now known) pursuant to Treaties No. 5 or 10 or otherwise:

- (a) those Entitlement First Nations (or such of them as the decision or settlement includes, if not all of them) may request Canada to set apart as Reserve land purchased or otherwise secured in that area; and
- (b) that land may be set apart as Reserve

in accordance with that final determination or settlement, and in that case, the Crown Land Amount and Total Land Amount of that Entitlement First Nation or those Entitlement First Nations shall be reduced by the amount equal to the amount of land set apart as Reserve or an amount as may be agreed.

- (4) Nothing in this Agreement:

- (a) creates or constitutes an admission by Canada of an aboriginal or treaty right of any Entitlement First Nation that has a Treaty Area or Traditional Territory which extends into the Northwest Territories (as that area is now known) to have land in the Northwest Territories (as that area is now known) set apart as Reserve; or
- (b) affects the right or the ability of any Entitlement First Nation that has a Treaty Area or Traditional Territory which extends into the Northwest Territories (as that area is now known) to assert an existing aboriginal or treaty right to have land in the Northwest Territories (as that area is now known) set apart as Reserve.

9.07 Objections by Other First Nations

Where an Entitlement First Nation purchases or secures land outside the province of Manitoba and that land is eligible to be set apart as Reserve in accordance with Section 9.05 or 9.06 and another First Nation provides notice in writing to Canada objecting to the land being set apart as Reserve:

- (a) Canada will provide the Entitlement First Nation with written notice of the objection; and
- (b) the land will not be set apart as Reserve under this Agreement until the objection of the other First Nation is withdrawn or is otherwise resolved.

9.08 Process for Setting Land Outside Manitoba apart as Reserve

Where an Entitlement First Nation purchases or otherwise secures land outside the province of Manitoba and that land is eligible to be set apart as Reserve in accordance with Section 9.05 or 9.06, and Section 9.07, Articles 6 to 8 inclusive shall apply with necessary modifications.

Land of Cultural or Historical Significance in an Existing Provincial Park, Ecological Reserve, Wildlife Refuge and National Park:

9.09 Land of Cultural or Historical Significance in an Existing Provincial Park, Ecological Reserve, Wildlife Refuge and National Park

- (1) Where an Entitlement First Nation identifies a specific parcel of land in any provincial park, ecological reserve or a wildlife refuge other than those referred to in Paragraph 3.03(6)(a) or (b), as Land of Cultural or Historical Significance for the Entitlement First Nation, it is intended that Manitoba and the Entitlement First Nation will enter into an agreement providing for the cooperative management of the parcel of land designed to protect the parcel of land in a manner that reflects that significance to the Entitlement First Nation.
- (2) Where Rolling River First Nation identifies a specific parcel of land in the Riding Mountain National Park which is Land of Cultural or Historical Significance, it is intended that Canada and Rolling River First Nation will enter into discussions with a view to the negotiation of an agreement providing for special access to that

parcel of land for ceremonial or commemorative activities of Rolling River First Nation that reflects that significance within the context of the overall management of the national park in accordance with the *National Parks Act*.

(3) Nothing in this Agreement:

- (a) creates or constitutes an admission by Canada or Manitoba of an aboriginal or treaty right of any Entitlement First Nation to have Land of Cultural or Historical Significance in any provincial park, ecological reserve, wildlife refuge or national park set apart as Reserve; or
- (b) affects the right or the ability of any Entitlement First Nation to assert in any discussions with Canada or Manitoba an existing aboriginal or treaty right to have Land of Cultural or Historical Significance in any provincial park, ecological reserve, wildlife refuge or national park set apart as Reserve.

PART III: THIRD PARTY INTERESTS

10. Third Party Interests

10.01 Requirement to Resolve Third Party Interests

- (1) It is anticipated that some or all of the Crown Land Selected and Other Land Acquired by an Entitlement First Nation may be encumbered by one or more Third Party Interests.
- (2) Third Party Interests which affect any land which is otherwise eligible to be set apart as Reserve in accordance with the Principles must be resolved to the satisfaction of Canada, Manitoba, the Entitlement First Nation which has Selected or Acquired the land and the holder of the Third Party Interest prior to:
 - (a) the transfer by Manitoba to Canada of administration and control of the Crown Land or any interest in the Crown Land; or
 - (b) the Entitlement First Nation or a Person on behalf of the Entitlement First Nation providing to Canada a registerable transfer of title to the Other Land.

10.02 Methods of Resolving Third Party Interests

- (1) Without limiting the generality of Subsection 10.01(2), a Third Party Interest may be resolved in any of the following ways:
 - (a) the Third Party Interest may be purchased by the Entitlement First Nation which has Selected or Acquired the land;
 - (b) the Third Party may consent to the cancellation of the Third Party Interest;
 - (c) the Third Party Interest may continue until it expires;
 - (d) where the Third Party Interest is under a permit, licence, lease or other authorization issued by Manitoba, the Third Party Interest may be withdrawn, cancelled or not renewed by Manitoba, where Manitoba determines that:

- (i) the Third Party is not using the land as required under the permit, licence, lease or other authorization;
- (ii) the land is no longer required by the Third Party for the purpose intended or has been abandoned; or
- (iii) the Third Party has failed to meet any conditions or requirements necessary to maintain the Third Party Interest in good standing

on the Date of Selection or the Date of Acquisition or at any time thereafter;

- (e) where the Third Party Interest is an interest in land at common law, the interest may continue or may be replaced with a Replacement Interest to come into force upon the administration and control of the land being transferred to and accepted by Canada or legal title to the land being vested in Canada and continue upon the land being set apart as Reserve;
- (f) where the Third Party Interest is not an interest in land at common law, but is issued in accordance with legislation of Manitoba, the interest may be replaced with a Replacement Interest where legislation of Canada authorizes the issuance of a similar interest in land under the administration and control of Canada, to come into force upon the administration and control of the land being transferred to and accepted by Canada or legal title to the land being vested in Canada and continue upon the land being set apart as Reserve;
- (g) where the Third Party Interest is not an interest in land at common law, but is issued in accordance with legislation of Manitoba, the interest may be replaced with a Replacement Interest where the *Indian Act* authorizes the issuance of a similar interest in Reserve, to come into force upon the land being set apart as Reserve and any requirements provided for in the *Indian Act* being satisfied; or
- (h) in any other way which Canada, Manitoba, the Entitlement First Nation which has Selected or Acquired the land and the Third Party may agree.

- (2) Where a Third Party Interest is to be replaced with a Replacement Interest in accordance with Paragraph (1)(e) or (f), the process may be as follows:
- (a) the Third Party Interest will be cancelled by the parties to that interest executing the appropriate documents;
 - (b) upon acceptance by Canada of administration and control of the land or title to the land being accepted by Canada, Canada will grant to the Third Party a Replacement Interest in a form satisfactory to Canada, the Entitlement First Nation which has Selected or Acquired the land and the Third Party pursuant to the *Federal Real Property Act* or other legislation of Canada which authorizes the issuance of the Replacement Interest; and
 - (c) upon the land being set apart as Reserve, Canada and the Entitlement First Nation will consider converting the Replacement Interest to an interest authorized under the *Indian Act*, provided that where a conversion of the interest cannot be readily achieved, the Replacement Interest shall remain as an interest in the land pursuant to the *Federal Real Property Act* or other legislation of Canada which authorizes the issuance of the Replacement Interest.
- (3) The Minister of Indian Affairs and Northern Development will recommend legislation to the Parliament of Canada to enable the Members of an Entitlement First Nation to “designate” within the meaning of the *Indian Act* land Selected or Acquired by an Entitlement First Nation prior to that land being set apart as Reserve for the purposes of authorizing Canada to issue a Replacement Interest.

10.03 Agreed Form of Replacement Interest

The parties may develop Agreed Forms for Replacement Interests.

11. **Mines and Minerals**

11.01 Manitoba to Transfer to Canada Unencumbered Mines and Minerals

Manitoba’s undertaking:

- (a) in Subsection 7.01(2) to transfer to Canada, by order in council, administration and control of all interests of Manitoba in land Selected

or Acquired by an Entitlement First Nation includes an undertaking to transfer to Canada administration and control of all unencumbered Mines and Minerals in or on the land; and

- (b) in Subsection 7.01(3) to transfer to Canada, by order in council, administration and control of all interests of Manitoba in a Third Party Interest to which land that is set apart as Reserve is subject at the time it is set apart as Reserve includes an undertaking to transfer to Canada administration and control of encumbered Mines and Minerals in land Selected or Acquired by an Entitlement First Nation that:
 - (i) subsequently revert to Manitoba after the land is set apart as Reserve; or
 - (ii) are subsequently purchased or otherwise obtained by the Entitlement First Nation after the land is set apart as Reserve.

11.02 Encumbered Mines and Minerals to be Treated as Third Party Interests

Where Crown Land is Selected or Other Land is Acquired by an Entitlement First Nation and a Third Party has an interest in the Mines and Minerals in the land, Article 10 applies with necessary modifications.

11.03 Land Subject to a Mineral Disposition

- (1) Without limiting the generality of Section 11.02, where land is Selected or Acquired by an Entitlement First Nation which is subject to a Mineral Disposition, quarry lease or quarry permit, the Entitlement First Nation may notify Canada and Manitoba in writing that either:
 - (a) the Entitlement First Nation intends to pursue the replacement of the Mineral Disposition, quarry lease or quarry permit by a Replacement Mining Interest pursuant to an agreement with the Third Party; or
 - (b) the Entitlement First Nation requests that Canada set the land apart as Reserve, subject to the interest in the Mineral Disposition, quarry lease or quarry permit.
- (2) Where an Entitlement First Nation has notified Canada and Manitoba that the Entitlement First Nation is proceeding in accordance with Paragraph (1)(a), Manitoba shall not grant or dispose of any further interest in that land pending the replacement of the Mineral Disposition,

quarry lease or quarry permit by a Replacement Mining Interest.

- (3) Where an Entitlement First Nation has notified Canada and Manitoba that the Entitlement First Nation is proceeding in accordance with Paragraph (1)(b), Manitoba shall not grant or dispose of any further interest in that land, except any interest that the Third Party may have or may be entitled to under any applicable legislation.
- (4) Subject to Subsections (5) and (6), where the Entitlement First Nation notifies Canada and Manitoba in accordance with either Paragraph (1)(a) or (b), the land will not be eligible to set apart as Reserve in accordance with this Principle until an agreement has been entered into between Canada, the Entitlement First Nation and the Third Party providing the Third Party a right of access on or across the land to exercise its rights in the Mineral Disposition, quarry lease or quarry permit, which agreement may be in an Agreed Form.
- (5) Where the Third Party fails to enter an agreement referred to in Subsection (4) for reasons which the Entitlement First Nation consider to be unreasonable, the Entitlement First Nation may refer the matter to the Implementation Monitoring Committee.
- (6) Where the Implementation Monitoring Committee determines that the failure of a Third Party to enter into an agreement referred to in Subsection (4) is unreasonable:
 - (a) the Implementation Monitoring Committee may determine the terms and conditions of an interest in land to be granted to the Third Party providing the Third Party with reasonable access to the surface of the land in order to protect the rights of the Third Party in the Mineral Disposition, quarry lease or quarry permit; and
 - (b) upon the determination of the Implementation Monitoring Committee, the Selection or Acquisition will be eligible to be set apart as Reserve in accordance with this Principle subject to the terms and conditions of an interest in the land determined by the Implementation Monitoring Committee in accordance with Paragraph (a).

11.04 Mines and Minerals Not to be Set Apart as Reserve Without Surface Interest

Mines and Minerals, or any interests in Mines and Minerals, will not be eligible to be set apart as Reserve in accordance with the Principles until:

- (a) the corresponding interest in the surface of the land relating to the Mines and Minerals or any interests in Mines and Minerals has been Selected or Acquired by the Entitlement First Nation; and
- (b) the Selection or Acquisition of the corresponding interest in the surface of the land is confirmed by Canada and Manitoba as eligible to be set apart as Reserve in accordance with the Principles.

11.05 Relinquishment of Claim or Right to Royalties by Manitoba

Manitoba hereby relinquishes and waives any claim or right that it may have to any payment pursuant to paragraph 12 of the MNRTA and the provisions of the agreement between the Government of the Dominion of Canada and the Government of the Province of Ontario dated April 24, 1924, incorporated therein, in respect of any sale, lease or other disposition of any Mines and Minerals or any royalties there from on or in any land set apart as Reserve in accordance with this Agreement.

11.06 Soldier Settlement Board Mines and Minerals

Manitoba hereby relinquishes and waives any claim or right that it may have in respect of any Mines and Minerals in land surrendered to Canada from a Reserve for the purposes of transferring those Mines and Minerals to the Soldier Settlement Board, title to which Mines and Minerals are currently held by Canada or its agents, and in the event that land is Selected or Acquired by any Entitlement First Nation.

12. Water Interests

12.01 Selection or Acquisition of Non-navigable Waterways

An Entitlement First Nation may Select or Acquire land which includes the beds of Non-navigable Waterways.

12.02 Reserve Boundaries on Navigable Waterways

Where land Selected or Acquired by an Entitlement First Nation is adjacent to a Navigable Waterway:

- (a) the water boundaries of the Reserve shall be the Ordinary High Water Mark for that body of water; and
- (b) the Reserve shall not include within its boundaries any portion of the bed or the banks of the body of water below the Ordinary High Water Mark.

12.03 Acquisition of Private Water Lots

Subject to Section 12.04, an Entitlement First Nation identified in Schedule "B" may Acquire water lots.

12.04 Consultations Regarding Developed Waterways

- (1) During the Period of Selection of an Entitlement First Nation whose Treaty Area or Traditional Territory includes a Developed Waterway, Manitoba, along with Manitoba Hydro, will, at the request of that Entitlement First Nation, provide information to that Entitlement First Nation concerning the effects of an existing Water Project on land adjacent to the Developed Waterway which the Entitlement First Nation is considering Selecting.

- (2) During the Period of Selection of an Entitlement First Nation whose Treaty Area or Traditional Territory includes a Developed Waterway, Manitoba along with Manitoba Hydro, will consult with that Entitlement First Nation concerning:

- (a) any proposed Water Projects not physically constructed as of the Date of Execution; and
- (b) any proposed major redevelopment or reconstruction of a Water Project in existence as of the Date of Execution

which may have a reasonable likelihood of having a material and continuing physical, chemical or biological impact upon a water body in the Treaty Area or Traditional Territory of that Entitlement First Nation.

- (3) Where an Entitlement First Nation Selects or Acquires land adjacent to a Developed Waterway which is confirmed as eligible to be set apart as

Reserve in accordance with the Principles, Manitoba, along with Manitoba Hydro, will consult with that Entitlement First Nation concerning:

- (a) the construction of any proposed Water Projects not physically constructed as of the Date of Execution; and
- (b) any proposed major redevelopment or reconstruction of a Water Project in existence as of the Date of Execution

which may have a reasonable likelihood of having a material and continuing physical, chemical or biological impact upon that Developed Waterway which may affect that land.

- (4) Without prejudice to the right of any Entitlement First Nation who is a signatory to the "Northern Flood Agreement" or any "Comprehensive Implementation Agreement" relating to the "Northern Flood Agreement", the consultations referred to in Subsections (2) and (3) shall be undertaken in a manner consistent with articles 8.2 and 8.3 of the agreement known as the "Nelson House Comprehensive Implementation Agreement" relating to the "Northern Flood Agreement" effective as of March 15, 1996, with necessary modifications.
- (5) Subject to Paragraph 12.09(6)(b), if at any future date Manitoba considers the development of a hydro-electric power development on the Fox River, Hayes River or God's River system, Manitoba undertakes to ensure full and meaningful consultation with the affected Entitlement First Nations and Subsections (2), (3) and (4) shall apply with necessary modifications.

12.05 Hydro Easement and Determination of Easement Line

- (1) Subject to Subsection 12.09(4), an Entitlement First Nation may Select or Acquire land adjacent to a Developed Waterway subject to a Hydro Easement.
- (2) Where land is Selected or Acquired which will be subject to a Hydro Easement, Manitoba Hydro shall determine the location of an Easement Line in accordance with Subsection (5).

- (3) Where land is Selected or Acquired which is to be subject to a Hydro Easement, Manitoba shall, in its reply in accordance with Subsection 6.02(7), advise Canada and the Entitlement First Nation:
 - (a) that the land is to be subject to a Hydro Easement; and
 - (b) the anticipated time period for the determination of the Easement Line in accordance with Subsections (4) and (5).
- (4) The Easement Line will ordinarily be determined within 18 months from the date that Canada and Manitoba confirm that the land is eligible to be set apart as Reserve in accordance with the Principles, except where impractical due to weather or other conditions and in that event as soon thereafter as may be reasonably practicable.
- (5) The Easement Line shall be determined by a professional engineer registered to practise in Manitoba identified by Manitoba Hydro and which process and methodology shall:
 - (a) be based on a process and methodology developed to consider the flooding, erosion and, where appropriate, ice formations and effects relating to a Water Project on a Developed Waterway;
 - (b) be based on a combination of flood and wind events having a probability of occurrence of once every 100 years;
 - (c) apply a methodology developed by the United States Army Corps of Engineers in calculating wind setup and wave uprush values; and
 - (d) include estimates of erosion based on geotechnical studies to provide sufficient shoreline offset to accommodate long-term erosion.
- (6) As soon as reasonably practicable after the determination of the Easement Line in accordance with Subsection (5), Manitoba shall, subject to Section 12.06:
 - (a) undertake or cause to be undertaken a survey of the Easement Line by photogrammetric methods;
 - (b) produce or cause to be produced explanatory plans of the Easement Line of a nature referred to in section 31 of the *Canada Lands Surveys Act*; and

- (c) provide copies of the explanatory plans to Canada and the Entitlement First Nation.
- (7) The Entitlement First Nation shall, as soon as reasonably practicable after receipt of the explanatory plans referred to in Subsection (6), affirm, if that is the case, that the description of the land below the Easement Line is approved by the Entitlement First Nation.
- (8) A Hydro Easement may be in one or more Agreed Forms.

12.06 Field Survey of Land to be Developed

Where an Easement Line is located in an area that is developed by an Entitlement First Nation or in an area proposed to be developed by an Entitlement First Nation, Manitoba will, at its cost, cause the Easement Line to be demarcated on the land by field survey methods:

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

except where impractical due to weather or other conditions, and in that event, as soon thereafter as may be reasonably practicable.

12.07 Land Below Easement Line Not to be Part of Total Land Amount

- (1) Where an Entitlement First Nation Selects or Acquires land adjacent to a Developed Waterway that is subject to a Hydro Easement, the area of land below the Easement Line and subject to the Hydro Easement shall not be applied against the Crown Land Amount or Other Land Amount and the Total Land Amount of the Entitlement First Nation, and the Entitlement First Nation shall be entitled to Select Additional Land of equal area to the area of land below the Easement Line.
- (2) Any Additional Land to be Selected shall, to the extent reasonably practicable, be contiguous to the Selection or Acquisition and located above the Easement Line, provided that suitable land is available contiguous to the Selection or Acquisition.

- (3) At least 50 per cent of the area of each parcel of land Selected or Acquired by an Entitlement First Nation shall be located above the Easement Line, before Additional Land is added to the parcel.

12.08 Limit on Liability for Certain Land to be Selected or Acquired

- (1) Land may be Selected or Acquired which adjoins Lake Winnipeg, Lake of the Woods, Lake of the Prairies, Dauphin Lake or Lake Manitoba being bodies of water which are regulated for multiple purposes.
- (2) Where an Entitlement First Nation Selects or Acquires land that adjoins Lake of the Prairies, Dauphin Lake or Lake Manitoba, the land shall not be subject to a Hydro Easement and the Entitlement First Nation and its Members shall have no right to make any claim for any losses associated with the raising or lowering the water levels on the land as long as the water levels continue to be regulated in accordance with the operating guidelines and procedures for that body of water established as of the Date of Selection.
- (3) Where an Entitlement First Nation Selects or Acquires land that adjoins Lake Winnipeg, the land shall not be subject to a Hydro Easement and the Entitlement First Nation and its Members shall have no right to make any claim for any losses associated with the raising or lowering the water levels on the land as long as the water levels continue to be regulated in accordance with the licence issued to Manitoba Hydro under *The Water Power Act*.
- (4) Where an Entitlement First Nation Selects or Acquires land that adjoins Lake of the Woods, the land shall not be subject to a Hydro Easement and the Entitlement First Nation and its Members shall have no right to make any claim for any losses associated with the raising or lowering the water levels on the land as long as the water levels continue to be regulated in accordance with the operating guidelines and procedures established by the Lake of the Woods Control Board as of the Date of Selection.
- (5) Canada and Manitoba may consider whether federal or provincial legislation is desirable to give effect to the limit on liability set out in Subsections (2), (3) and (4) and, if after consideration by Canada or Manitoba or both it is determined that legislation of that nature is desirable, Canada or Manitoba or both will:

- (a) consult with the TLE Committee on the form of the legislation; and
- (b) recommend the legislation to the Parliament of Canada and the Legislature of Manitoba.

12.09 Land Physically Required by Manitoba Hydro

- (1) Land physically required by Manitoba Hydro for a Water Project may not be Selected by an Entitlement First Nation except with the agreement of Manitoba Hydro.
- (2) Where land is Selected in an area which Manitoba Hydro is authorized by a licence under *The Water Power Act* to use and occupy in conjunction with a Water Project which is not physically required by Manitoba Hydro for the Water Project, as determined by consultation among the Entitlement First Nation, Manitoba and Manitoba Hydro, the land not physically required shall be removed from the area under the licence and shall be available for Selection.
- (3) Land consisting of the specific geographic sites reasonably required by Manitoba or Manitoba Hydro for potential hydro-electric development identified as “1” to “16” inclusive on the map attached as Schedule “E” may not be Selected by an Entitlement First Nation except with the agreement of Manitoba Hydro.
- (4) Subject to Subsection (5), for the purposes of Subsections (1), (2) and (3), the land physically required by Manitoba or Manitoba Hydro for potential hydro-electric development may include land required for:
 - (a) dams and dikes;
 - (b) approach channels and diversions;
 - (c) forebay;
 - (d) tailrace;
 - (e) houses and outbuildings;
 - (f) reasonable requirements for maintenance of the works and operations;
 - (g) generating stations and powerhouses;

- (h) substations, transfer stations, converter stations or switching stations;
- (i) airports and landing strips;
- (j) telecommunications towers; and
- (k) roads internal to the land physically required

but for the purposes of Subsection (3) will not be greater than 10 square miles in area for each site.

- (5) The land physically required by Manitoba or Manitoba Hydro for any potential hydro-electric development at the specific geographic sites identified as “14”, “15” and “16” on the Hayes River system on the map attached as Schedule “E” may include land, required for:

- (a) dams;
- (b) houses and outbuildings;
- (c) generating stations and powerhouses;
- (d) telecommunications towers at the site;
- (e) roads internal to the land physically required; and
- (f) reasonable requirements for maintenance of its works and operations

but will not be greater than two square miles in area at each site.

- (6) Manitoba affirms that:

- (a) neither Manitoba nor Manitoba Hydro have any present plans to propose hydro-electric development at the sites identified as “14”, “15” and “16” on the Hayes River system on the map attached as Schedule “E” and
- (b) neither Manitoba nor Manitoba Hydro will engage in hydro-electric development at the sites identified as “14”, “15” and “16” on the Hayes River system on the map attached as Schedule “E” without the approval of each Entitlement First Nation for which a Reserve has been set apart on the Fox

River, Hayes River or God's River system which would be affected by the hydro-electric development.

- (7) Except as provided at Subsections (3) and (5), Manitoba and Manitoba Hydro shall not be entitled to a Hydro Easement or any other reservation to Manitoba or Manitoba Hydro on the Fox River, Hayes River or God's River system.
- (8) Nothing in this Section shall be construed as any form of concurrence, approval or consent by the TLE Committee or any Entitlement First Nation for any proposed hydro-electric development on the Fox River, Hayes River or God's River system, nor abrogate or derogate from any existing aboriginal or treaty right of any Entitlement First Nation.

12.10 Riparian Rights

An Entitlement First Nation shall have the same riparian rights in land set apart as Reserve under this Agreement as it may have in respect of its existing Reserves.

13. **Roads, Highways and Airports**

13.01 Exclusion of Certain Land

Land Selected or Acquired by an Entitlement First Nation will ordinarily exclude:

- (a) Provincial Trunk Highways;
- (b) Provincial Roads;
- (c) roads other than Provincial Trunk Highways and Provincial Roads which are under the jurisdiction of the Department of Highways and Transportation of Manitoba;
- (d) municipal roads, unless the Municipality in which the land is located agrees to the transfer of the land comprising the road to Canada to be set apart as Reserve as a term of a Municipal Development and Services Agreement;
- (e) Developed Road Allowances, unless the Municipality in which the land is located agrees to the transfer of the land comprising the Developed Road Allowance to Canada to be set apart as Reserve as a term of a Municipal Development and Services Agreement;

- (f) ferry landings;
- (g) airports operated by Manitoba;
- (h) land withdrawn from Disposition to the extent reasonably required and presently used by the Department of Highways and Transportation of Manitoba for gravel, sand and borrow to maintain a road of the class referred to in Paragraphs (a), (b) and (c) and ferry landings

and will ordinarily include:

- (i) winter roads which are part of a winter road plan approved by the Department of Highways and Transportation of Manitoba, subject to Section 13.02; and
- (j) Undeveloped Road Allowances unless required for public access in accordance with Section 13.05.

13.02 Easement for Winter Roads

- (1) Manitoba shall be entitled to retain an easement over the land Selected or Acquired by an Entitlement First Nation which is required for a winter road and the easement shall authorize Manitoba to construct and maintain a winter road during those months of the year when a winter road is possible, the form of which easement may be in an Agreed Form.
- (2) The Treaty Entitlement Agreement for the Oxford House First Nation may contain specific provisions to deal with concerns about winter roads easements for winter roads at Oxford House Reserve I.R. No. 24.

13.03 Widths of Road Right of Way

The width of the Road Right of Way for land excluded under Paragraphs 13.01 (a) to (e) inclusive will be of sufficient width to include:

- (a) the road surface;
- (b) lateral drainage ditches;
- (c) “controlled areas” as defined in *The Highways Protection Act*;
- (d) any power lines, telephone lines or natural gas lines which are located adjacent to the road

and without limiting the generality of Paragraphs (a) to (d) inclusive, the width of the Road Right of Way will ordinarily be:

- (e) 335 meters (about 1,099 feet) for a divided Provincial Trunk highway;
- (f) 140 meters (about 459 feet) for an undivided Provincial Trunk Highway;
- (g) 130 meters (about 427 feet) for an undivided Provincial Road and other roads under the jurisdiction of the Department of Highways and Transportation;
- (h) 30 meters (about 98 feet) for an undivided municipal road;
- (i) 100 meters (about 328 feet) for the easement interest for a winter road;
- (j) 150 meters (about 492 feet) for a ferry landing; and
- (k) 30 meters (about 98 feet) for off-take ditches, where because of terrain conditions off-take ditches cannot otherwise be included in the Road Right of Way.

13.04 Identification of Road Right of Way and Survey of Road Right of Way for Winter Road

- (1) Where land is Selected or Acquired which is adjacent to a Road Right of Way, Manitoba shall identify the location of the Road Right of Way within 12 months of the Date of Selection or Date of Acquisition and before the land is surveyed.
- (2) Manitoba shall, at its cost, survey the right of way for a winter road within 12 months of the Date of Selection or Date of Acquisition of land which is to be subject to an easement for a winter road, except where impractical due to weather conditions, and in that event, as soon thereafter as may be reasonably practicable.

13.05 Undeveloped Road Allowances

- (1) Where land is Selected which includes an Undeveloped Road Allowance or where land is Acquired through which runs an Undeveloped Road Allowance and which is not required to provide ongoing essential public access:

- (a) Manitoba shall request the Municipality in which the road is located to enact a bylaw in accordance with section 215 of *The Municipal Act* closing that portion of the Undeveloped Road Allowance within the Selection or that runs through the Acquisition;
 - (b) upon the enactment of that bylaw, the Entitlement First Nation may, by Council Resolution, request that that portion of the Undeveloped Road Allowance be set apart as Reserve; and
 - (c) upon the Entitlement First Nation making the request in accordance with Paragraph (b), the Undeveloped Road Allowance shall be considered a Selection for the purposes of Articles 6, 7 and 8.
- (2) Where a Municipality does not enact a by-law closing that part of the Undeveloped Road Allowance in accordance with Paragraph (1)(a), the Minister of Highways and Transportation of Manitoba will close that Undeveloped Road Allowance in accordance with section 17 of *The Highways and Transportation Department Act* and Paragraphs (1)(b) and (c) shall apply with necessary modifications.

13.06 Land Adjacent to a Road Right of Way

- (1) Where:
- (a) an Entitlement First Nation Selects or Acquires land which is located immediately adjacent to and on both sides of a Road Right of Way;
 - (b) Canada sets the land apart as Reserve;
 - (c) the road is subsequently closed; and
 - (d) the Entitlement First Nation has Selected and has had all its Crown Land Amount set apart as Reserve
- the Entitlement First Nation may, by Council Resolution, request the land be set apart as Reserve within 90 days after receipt of notice from Manitoba that the road has been closed.
- (2) Despite Section 2.01, where the Entitlement First Nation has requested land in accordance with Subsection (1), that land shall be considered a Selection for the purposes of Articles 6, 7 and 8.

13.07 Land Required for Highway Construction

- (1) Where land is Selected by an Entitlement First Nation which Manitoba requires for a road of the class described at Paragraphs 13.01(a) to (c) inclusive for which construction will begin within four years of the Date of Selection, the following process shall apply:
 - (a) Manitoba shall, in the written reply provided in accordance with Subsection 6.02(7), notify Canada and the Entitlement First Nation that the land is required for a road and shall advise of the proposed time period for the design and construction of the road;
 - (b) Manitoba shall, as soon as reasonably practicable after the notice referred to in Paragraph (a), develop a preliminary Road Right of Way and provide a copy to Canada and the Entitlement First Nation and should Manitoba not provide a copy of the preliminary Road Right of Way within a reasonable period of time, Canada or the Entitlement First Nation may refer the matter to the Implementation Monitoring Committee;
 - (c) Canada and the Entitlement First Nation may, within a reasonable period after receiving the proposed Road Right of Way in accordance with Paragraph (b), comment in writing to Manitoba on the location of the proposed preliminary Road Right of Way; and
 - (d) Manitoba shall take the comments referred to in Paragraph (c) into account in making its decision as to the location of the Road Right of Way having regard for the right of the Entitlement First Nation to Select land under this Agreement.
- (2) The land contained within the preliminary Road Right of Way will be excluded from the Selection, but the remainder of the Selection will be eligible to be set apart as Reserve in accordance with this Principle.
- (3) The land in the preliminary Road Right of Way may be larger than the ordinary width of a Road Right of Way referred to in Section 13.03 to allow for variances in planning and construction and in that event, when the road is complete:
 - (a) Manitoba shall survey a final Road Right of Way; and

- (b) in the event the land Selected by the Entitlement First Nation in accordance with Subsection (2) has been set apart as Reserve, the Entitlement First Nation may, by Council Resolution, request any land between the boundaries of that land and the Road Right of Way be set apart as Reserve.
- (4) Where an Entitlement First Nation has made a request in accordance with Paragraph (3)(b):
 - (a) any land between the boundaries of the Selection and the Road Right of Way shall be considered a Selection for the purposes of Articles 6, 7 and 8; and
 - (b) the amount of land referred to in Paragraph (a) shall not be applied against the Crown Land Amount or Total Land Amount of the Entitlement First Nation.

13.08 Airports Operated by Manitoba

An Entitlement First Nation may Select Crown Land in the vicinity of an airport operated by Manitoba, provided that the land available for the use of the airport is or will be of sufficient area to include:

- (a) runways, including planned extensions;
- (b) runway strips;
- (c) restricted areas;
- (d) apron, terminal area and fuel storage areas;
- (e) gravel storage areas;

and without limiting the generality of Paragraphs (a) to (e) inclusive, the land available for use of the airport is or will ordinarily be:

- (f) 2,900 meters x 300 meters (about 9,515 feet x 984 feet) for runways, including planned extensions, runway strips and restricted areas; and
- (g) 100 meters x 300 meters (about 328 feet x 984 feet) for apron, terminal area, fuel storage and gravel storage areas.

14. Municipal and School Taxes

14.01 Municipal and School Taxes

- (1) Manitoba will consider on a case by case basis the relevant implications on Municipal and School Taxes, if any, of the setting apart of land as Reserve, following the conclusion of a Municipal Development and Services Agreement.
- (2) Manitoba shall indemnify and save harmless Canada and the Entitlement First Nation from and against any claims, liabilities and demands of any nature whatsoever brought by a Municipality or School Division for any loss of Municipal and School Taxes arising from the setting apart of land as Reserve under this Agreement except to the extent that the claim arises from a failure of Canada to apply the practice of the Manitoba Regional Office of the Department of Indian Affairs and Northern Development set out in Schedule "D" (or any amendment to Schedule "D" made in accordance with Subsection 3.06(2)) where land Selected or Acquired by an Entitlement First Nation is located in an Urban Area, and in that event Canada indemnifies and saves harmless the Entitlement First Nation from and against any claims, liabilities, demands or costs of any nature whatsoever arising from its default in its obligations.
- (3) Nothing in this Agreement shall create any right of any Municipality or School Division to make a claim for any loss of Municipal and School Taxes resulting from the setting apart of land as Reserve under this Agreement.

PART IV: FINANCIAL PROVISIONS

15. Payments and Contributions by Canada

15.01 Canada to make Payments and Contributions

Canada agrees to make the following payments and contributions:

- (a) a contribution toward the costs incurred or anticipated to be incurred by the Entitlement First Nations and the TLE Committee in the negotiation of this Agreement, including legal fees, in the total amount of \$6,301,930.00, to be advanced in accordance with Article 16;
- (b) a contribution toward the costs anticipated to be incurred by each Entitlement First Nation in completing a Community Approval Process and by the TLE Committee in assisting each Entitlement First Nation in that process up to the total amount of \$1,000,000.00, to be advanced and administered in accordance with Article 17;
- (c) Federal Payments up to the total amount of \$26,783,339.00, to be advanced and administered in accordance with Article 18;
- (d) Land Acquisition Payments up to the total amount of \$24,461,735.00, to be advanced and administered in accordance with Article 19;
- (e) a contribution toward the costs anticipated to be incurred by Entitlement First Nations in discharging, replacing or accommodating Third Party Interests that affect land Selected or Acquired by Entitlement First Nations, up to the total amount of \$8,862,171.00, to be advanced and administered in accordance with Article 20; and
- (f) a contribution toward the costs anticipated to be incurred by Entitlement First Nations and the TLE Committee in implementing this Agreement and any Treaty Entitlement Agreement up to the total amount of \$8,590,825.00, to be advanced and administered in accordance with Article 21.

15.02 Canada to Contribute to Cost of Land Selection Study

Canada agrees to make a contribution toward the costs anticipated to be incurred by each Entitlement First Nation in completing a Land Selection Study, to be advanced in accordance with Article 22.

15.03 Cost of Environmental Audit and Surveys

Canada will be responsible for the cost of the Environmental Audit and surveying of the boundaries of land Selected and Acquired by an Entitlement First Nation in accordance with Article 23.

15.04 Canada to Settle Trusts

(1) Upon the coming into force of the Treaty Entitlement Agreement of an Entitlement First Nation, Canada shall constitute the Trust for that Entitlement First Nation by executing the Trust Agreement and settling upon the Trustees:

- (a) the Federal Payment set out in Schedule "A" for that Entitlement First Nation; and
- (b) the Land Acquisition Payment set out in Schedule "B" for that Entitlement First Nation, where the Entitlement First Nation is identified in Schedule "B"

in accordance with Articles 18 and 19.

(2) Each Entitlement First Nation will acknowledge and agree in the Treaty Entitlement Agreement for that Entitlement First Nation that the creation of the interest in the Trust by Canada for the benefit of the Entitlement First Nation in accordance with Subsection (1) is received in partial consideration of the release given by the Entitlement First Nation in favour of Canada under that Treaty Entitlement Agreement.

(3) Default by the Trustees in any of their obligations under the Trust Agreement or any other failure of the Trust of any kind or nature whatsoever shall not constitute a failure or insufficiency of consideration at law.

15.05 Deferred Payments with Interest

- (1) Subject to Subsection (2), Canada may defer any payment, contribution or advance of any contribution payable in accordance with this Part by providing at least 30 days written notice prior to the date the payment, contribution or advance is due to any Entitlement First Nation to which the payment, contribution or advance is directly payable and to the TLE Committee.
- (2) Canada shall not be entitled to defer any payment, contribution or advance referred to in Paragraphs 15.01(a), (b) and (c) or the first advance of its contribution toward the costs of implementation referred to in Subsection 21.02(2).
- (3) Subject to Subsection (5), where Canada defers any payment, contribution or advance of any contribution in accordance with Subsection (1), Canada, the TLE Committee and any affected Entitlement First Nation will arrange for a new date of payment not later than 13 months after the date the payment, contribution or advance was due under this Part.
- (4) Where Canada defers any payment, contribution or advance of any contribution in accordance with Subsection (1), Canada shall pay simple interest on the amount of the deferred payment, contribution or advance at a rate equal to the rate paid on Canada Savings Bonds in effect for the last issue prior to the date the payment, contribution or advance was due, calculated from the date payment, contribution or advance was due under this Part until the date of payment.
- (5) No payment, contribution or advance of any contribution which Canada may defer in accordance with Subsection (1) shall remain outstanding longer than 13 months from the date the payment, contribution or advance was due under this Part, unless otherwise agreed to in writing between Canada and the TLE Committee or Canada and any Entitlement First Nation to which the payment, contribution or advance is directly payable.

15.06 Canada to Provide National Topographical Series Maps

Canada will provide to the TLE Committee on request 1:50,000 National Topographical Series maps of the province of Manitoba for the purposes of enabling the Entitlement First Nations to identify Selections.

16. Contribution to Negotiating Costs

16.01 Contribution by Canada

Canada shall make a contribution toward the costs incurred or anticipated to be incurred by the Entitlement First Nations and the TLE Committee in the negotiation of this Agreement referred to in Paragraph 15.01(a).

16.02 Amount of Negotiating Loans

The TLE Committee acknowledges that it has, from time to time, received loans from Canada for the purpose of enabling the TLE Committee to pay a reasonable portion of its costs, including legal fees, in connection with the negotiation and conclusion of this Agreement (including paying a portion of the legal fees and the negotiating costs incurred by each Entitlement First Nation) and that as of the Date of Execution, the total amount of all loans is \$4,551,930.00.

16.03 Authorization to Set Off Amount from Contribution and Direction

- (1) The TLE Committee hereby irrevocably authorizes and directs Canada:
 - (a) to set off and deduct the amount of \$4,551,930.00 from the amount to be paid to the TLE Committee as a contribution for its negotiating costs, including legal fees, referred to in Paragraph 15.01(a) for the repayment in full of the loans described in Section 16.02; and
 - (b) to pay to the TLE Committee the balance of Canada's contribution to its negotiation costs referred to in Paragraph 15.01(a), being the amount of \$1,750,000.00.
- (2) Canada shall advance the contribution referred to in Paragraph (1)(b) within 30 days of the Date of Execution.

16.04 No Further Liability of TLE Committee or Entitlement First Nations for Negotiating Costs

Canada agrees that following the setoff of the amount referred to in Paragraph 16.03(1)(a), the TLE Committee and the Entitlement First Nations shall be released and discharged for and in respect of all liability for any loans or contributions by Canada to the TLE Committee pertaining to the negotiation of this Agreement.

16.05 No Further Liability of Canada for Negotiating Costs

- (1) The TLE Committee agrees that upon payment of the contribution referred to in Paragraph 15.01(a) in accordance with Section 16.03, Canada shall not be liable for any further or other costs incurred by the TLE Committee or any Entitlement First Nation in negotiating this Agreement.
- (2) Except as provided in Article 17, Canada shall not be responsible for any costs incurred by an Entitlement First Nation in approving a Treaty Entitlement Agreement.

17. Contribution to Costs of Community Approval Process

17.01 Contribution to Costs of Community Approval Process

- (1) Within 30 days of the last of:
 - (a) the Date of Execution;
 - (b) the date Canada receives the notice referred to in Paragraph 17.02(1)(b); or
 - (c) the date the TLE Committee satisfies its obligations under Subsection 28.03(1)

Canada shall make a contribution as provided in Paragraph 15.01(b) toward the costs anticipated to be incurred by the Entitlement First Nations in conducting Community Approval Processes and by the TLE Committee in providing technical support to any Entitlement First Nation which requests that support in conducting a Community Approval Process.

- (2) The contribution of Canada referred to in Subsection (1) shall be advanced to and administered by the TLE Committee in accordance with this Article.

17.02 Community Approval Process Account

- (1) Within 30 days of the Date of Execution, the TLE Committee shall:
 - (a) establish the CAP Account with an Eligible Financial Institution, which account shall be kept separate and apart from all other accounts operated by the TLE Committee; and

- (b) give Canada notice in writing as to the name and address of the Eligible Financial Institution at which the CAP Account has been established and the account number of the CAP Account.
- (2) The TLE Committee hereby irrevocably authorizes and directs Canada to advance the contribution referred to in Subsection 17.01(1) to the CAP Account.
- (3) The TLE Committee shall at all times:
 - (a) keep the contribution made by Canada in accordance with Subsection 17.01(1) (and any income earned on those funds) separate and apart from all other funds the TLE Committee holds or acquires; and
 - (b) maintain the CAP Account with an Eligible Financial Institution.

17.03 Eligible Investments

Except as provided in Section 17.04, the TLE Committee shall at all times invest the contribution made by Canada in accordance with Subsection 17.01(1) and reinvest any income earned on those funds only in Eligible Investments.

17.04 Authorized Disbursements

- (1) Within 30 days of the date an Entitlement First Nation provides Canada and the TLE Committee with a Council Resolution initiating a Community Approval Process in accordance with Subsection 29.01(2), the TLE Committee shall advance the amount set out in Schedule "F" for that Entitlement First Nation to that Entitlement First Nation from the CAP Account.
- (2) The TLE Committee may, on application in writing by an Entitlement First Nation that is conducting a Community Approval Process, advance an additional amount to the amount referred to in Subsection (1) from the CAP Account to that Entitlement First Nation for the purposes of assisting that Entitlement First Nation with:

- (a) any unforeseen or unusual but otherwise reasonable costs actually incurred by that Entitlement First Nation in conducting its Community Approval Process; or
- (b) the reasonable and foreseeable costs anticipated to be incurred by that Entitlement First Nation in carrying out a second vote when required by the Community Approval Process

provided that the total amount advanced by the TLE Committee under this Subsection shall not exceed the sum of \$102,000.00 unless the TLE Committee has first provided Canada with a resolution of the TLE Committee confirming that the TLE Committee is satisfied that advancing more than that amount to the Entitlement First Nations will not affect the ability of the TLE Committee to carry out its obligations under Subsections (1), (3) and (4).

- (3) The TLE Committee may disburse out of the CAP Account an amount up to \$125,000.00 for the sole purpose of paying any costs incurred by the TLE Committee in providing technical support to any Entitlement First Nation that requests support in conducting a Community Approval Process.
- (4) The TLE Committee shall disburse out of the CAP Account:
 - (a) amounts necessary to satisfy all charges assessed by the Eligible Financial Institution in connection with the operation of the CAP Account, the investment of the contribution referred to in Subsection 17.01(1) and the reinvestment of any income earned by those funds; and
 - (b) any other amount properly due and payable as a result of the investment of the contribution referred to in Subsection 17.01(1) and the reinvestment of any income earned by those funds.
- (5) Upon:
 - (a) the expiration of the period within which the Entitlement First Nations may initiate a Community Approval Process in accordance with Subsection 29.01(2); or

- (b) all the Entitlement First Nations completing a Community Approval Process

whichever shall first occur, the TLE Committee shall transfer those funds, if any, as remain in the CAP Account (including, without limitation, any amounts identified in Schedule "F" for any Entitlement First Nation which did not initiate a Community Approval Process within the period referred to in Paragraph (a)) into the Implementation Account.

- (6) The TLE Committee shall not disburse any amount out of the CAP Account except for a purpose expressly provided in this Section.
- (7) The TLE Committee shall not:
 - (a) make any loans with the funds deposited in the CAP Account;
or
 - (b) pledge, mortgage, hypothecate, charge or in any other manner borrow money using some or all of the funds in the CAP Account as security:
 - (i) in an amount greater than the contribution made by Canada in accordance with Subsection 17.01(1);
and
 - (ii) other than for the purpose of disbursing the borrowed money in satisfaction or partial satisfaction of its obligations under this Section.

17.05 Conflict of Interest

- (1) The TLE Committee shall ensure that at all times it has in place administrative practices and policies to ensure that no Member of an Entitlement First Nation that has made an application in accordance with Subsection 17.04(2) makes, participates directly in or in any way materially influences the decision on that application.
- (2) Without limiting the generality of Subsection (1), the TLE Committee undertakes to ensure that no Member of an Entitlement First Nation that has made an application in accordance with Subsection 17.04(2) shall participate in or be present during any discussion regarding, make or second any motion with respect to,

or vote on any motion on behalf of the Entitlement First Nation involving that application.

- (3) Subsections (1) and (2) do not apply to an employee of the TLE Committee acting in the normal course of his or her employment.

17.06 Right to and Use of Funds by Entitlement First Nation

- (1) Except as provided in Subsections 17.04(1) and (2), no Entitlement First Nation has any legal interest in or right to a distribution of any portion of the contribution made by Canada in accordance with Subsection 17.01(1) or to any portion of the income earned by those funds.
- (2) An Entitlement First Nation receiving an advance of funds from the CAP Account shall use those funds for the sole purpose of conducting a Community Approval Process (including, without limitation, obtaining independent legal advice and such other expert advice as it may require in connection with conducting a Community Approval Process).

17.07 Decision of the TLE Committee Final

A decision of the TLE Committee with respect to an application by an Entitlement First Nation for an advance from the CAP Account in accordance with Subsection 17.04(2) may not be referred to the Implementation Monitoring Committee as an issue or matter in dispute.

17.08 Interim Reports and Final Audit

- (1) On June 30, 1998, and again on the date the TLE Committee may transfer the funds in the CAP Account to the Implementation Account in accordance with Subsection 17.04(5), the TLE Committee shall provide to Canada and the Entitlement First Nations an unaudited statement setting out the following:
 - (a) the amount of the contribution made by Canada in accordance with Subsection 17.01(1);
 - (b) the amount of any income earned by that contribution from the date of the advance of funds by Canada to the date of the statement;

- (c) the amount advanced out of the CAP Account to each Entitlement First Nation in accordance with each of Subsections 17.04(1) and (2);
 - (d) the amount advanced out of the CAP Account to the TLE Committee in accordance with Subsection 17.04(3);
 - (e) the amount advanced out of the CAP Account in accordance with Subsection 17.04(4);
 - (f) the amount, if any, advanced out of the CAP Account in accordance with Subsection 17.04(5); and
 - (g) the existing balance of the CAP Account as of the date of the statement.
- (2) Within 90 days of the date the TLE Committee may transfer the funds in the CAP Account to the Implementation Account in accordance with Subsection 17.04(5), the TLE Committee shall provide to Canada and each Entitlement First Nation that has executed a Treaty Entitlement Agreement, an audited statement of its administration of the CAP Account, prepared in accordance with generally accepted accounting principles, consistently applied, by a chartered accountant licensed to practise in the province of Manitoba.
- (3) The audit referred to in Subsection (2) shall, among other matters, contain:
- (a) certification by the auditor of information contained in the reports provided by the TLE Committee in accordance with Subsection (1); and
 - (b) an opinion by the auditor as to whether the TLE Committee has administered the CAP Account in accordance with the provisions of this Article.
- (4) Each Entitlement First Nation which receives a copy of the audit referred to in Subsection (2) will post the audit in a prominent location in its administrative offices upon receipt for a period of 60 days.

17.09 No Further Liability of Canada

- (1) Subject to Subsection (2), upon Canada making the contribution referred to in Paragraph 15.01(b) in accordance with Subsection

17.02(2), Canada shall not be liable for any costs incurred by any Entitlement First Nation in conducting a Community Approval Process or in approving a Treaty Entitlement Agreement or by the TLE Committee in providing technical support to assist any Entitlement First Nation in conducting a Community Approval Process.

- (2) In the event a second vote is required in accordance with any Community Approval Process as a result of any negligent act or omission of Canada, Canada undertakes that it will pay the reasonable costs of the second vote and agrees that the costs shall not be paid out of or deducted from the funds payable to the TLE Committee referred to in Paragraph 15.01(b).
- (3) Canada shall not be deemed to have any responsibility of any kind or nature whatsoever for the administration of the CAP Account.

17.10 Contribution for Community Approval Process not "Indian Moneys"

Canada's contribution to the costs of the Community Approval Process of each Entitlement First Nation and the TLE Committee and any income generated or produced by that contribution are not "Indian moneys" as defined in the *Indian Act*.

18. Federal Payment

18.01 Payment of Federal Payment

Upon the coming into force of the Treaty Entitlement Agreement of an Entitlement First Nation, Canada shall pay the Federal Payment set out in Schedule "A" for that Entitlement First Nation into the Trust for that Entitlement First Nation for deposit into the Capital Account.

18.02 Federal Payment Used for Authorized Uses Only

The Trust Agreement for each Entitlement First Nation shall at all times provide that any portion of the Federal Payment distributed to the Entitlement First Nation or to any Person by the Trustees shall only be used for the purposes of permitting the Entitlement First Nation to undertake or participate in Authorized Uses.

18.03 No Distribution of Federal Payment to Individual Members

- (1) The Trust Agreement for each Entitlement First Nation shall at all times provide that the Trustees shall not make a distribution from

the Capital Account to individual Members of the Entitlement First Nation or to any other Person for that purpose.

- (2) For greater certainty, in the event the Entitlement First Nation receives a distribution from the Capital Account, neither that distribution, nor any portion of that distribution, shall be used either directly or indirectly for an individual distribution to any Member of the Entitlement First Nation or to any other Person for that purpose.

18.04 Federal Payment to be Managed in Accordance with Trust Agreement

The use, management, withdrawal, payment, administration and any other dealing with respect to the Federal Payment deposited into the Capital Account shall be in accordance with the Trust Agreement.

18.05 No Variation of Trust Agreement

The Trust Agreement for each Entitlement First Nation shall at no time be amended, redrafted or varied in any way that is inconsistent with this Article.

18.06 Federal Payment not "Indian Moneys"

The Federal Payment and any income generated or produced by that payment are not "Indian moneys" as defined in the *Indian Act*.

19. Land Acquisition Payment

19.01 Payment of Land Acquisition Payment

Subject to Section 15.05, upon the coming into force of the Treaty Entitlement Agreement of an Entitlement First Nation identified in Schedule "B", Canada shall pay the Land Acquisition Payment set out in Schedule "B" for that Entitlement First Nation into the Trust for that Entitlement First Nation for deposit into the Land Acquisition Account.

19.02 No Distribution of Land Acquisition Payment until Minimum Entitlement Acres Set Apart as Reserve

The Trust Agreement of each Entitlement First Nation identified in Schedule "B" shall at all times provide that unless and until the amount of land set apart as Reserve for the Entitlement First Nation has been increased by its Minimum Entitlement Acres, no portion of the Land Acquisition Payment shall be distributed to the Entitlement First Nation or to any other Person except for

the purposes of permitting the Entitlement First Nation or any Person acting for and on behalf of the Entitlement First Nation to Acquire Other Land.

19.03 Use of Payment After Minimum Entitlement Acres Set Apart

The Trust Agreement of each Entitlement First Nation identified in Schedule "B" shall provide that:

- (a) at any time after the date the amount of land set apart as Reserve for that Entitlement First Nation has been increased by its Minimum Entitlement Acres but less than its Other Land Amount, any Trust Property in the Land Acquisition Account may, in the discretion of the Entitlement First Nation, be transferred from the Land Acquisition Account to the Capital Account in accordance with the Trust Agreement; and
- (b) where the amount of land set apart as Reserve for that Entitlement First Nation has been increased by its Other Land Amount, the Trustees shall transfer any Trust Property remaining in the Land Acquisition Account to the Capital Account.

19.04 Land Acquisition Payment Used for Authorized Uses Only

Subject to Sections 19.02 and 19.03, the Trust Agreement for each Entitlement First Nation identified in Schedule "B" shall at all times provide that any portion of the Land Acquisition Payment distributed to the Entitlement First Nation or to any other Person by the Trustees shall only be used for the purposes of permitting the Entitlement First Nation or any Person acting for or on behalf of the Entitlement First Nation to undertake or participate in the Authorized Uses after the amount of land set apart as Reserve for that Entitlement First Nation has been increased by its Minimum Entitlement Acres.

19.05 No Distribution of Land Acquisition Payment to Individual Members

- (1) The Trust Agreement for each Entitlement First Nation identified in Schedule "B" shall at all times provide that the Trustees shall not make a distribution from the Land Acquisition Account to individual Members of the Entitlement First Nation or any other Person for that purpose.
- (2) For greater certainty, in the event the Entitlement First Nation receives a distribution from the Land Acquisition Account, neither that distribution, nor any portion of that distribution, shall be used either directly or indirectly for an individual distribution to any Member of the Entitlement First Nation or to any other Person for that purpose.

19.06 Land Acquisition Payment to be Managed in Accordance with Trust Agreement

The use, management, withdrawal, payment, administration or any other dealing with respect to the Land Acquisition Payment deposited into the Land Acquisition Account shall be in accordance with the Trust Agreement.

19.07 No Variation of Trust Agreement

The Trust Agreement for each Entitlement First Nation identified in Schedule "B" shall at no time be amended, redrafted or varied in any way that is inconsistent with this Article.

19.08 No Representation or Warranty by Canada that Land Acquisition Payment is Sufficient

Nothing in this Agreement constitutes any representation or warranty of any kind on the part of Canada that the Land Acquisition Payment will provide an Entitlement First Nation identified in Schedule "B" with sufficient funds to Acquire its Other Land Amount or for purposes incidental to Acquiring that land.

19.09 Land Acquisition Payment not "Indian Moneys"

The Land Acquisition Payment and any income generated or produced by that payment are not "Indian moneys" as defined in the *Indian Act*.

20. Contribution to Cost of Resolving Third Party Interests

20.01 Contribution to Cost of Resolving Third Party Interests

- (1) Canada shall make a contribution toward the cost of discharging, replacing or accommodating Third Party Interests affecting land Selected or Acquired by the Entitlement First Nations referred to in Paragraph 15.01(e).
- (2) The contribution by Canada referred to in Subsection (1) shall be advanced to the TLE Committee for the Entitlement First Nations in the manner and administered by the TLE Committee in accordance with this Article.

20.02 Advance of Contribution

- (1) The contribution to be made by Canada in accordance with Paragraph 15.01(e) shall be made by way of up to three advances.
- (2) Subject to Section 15.05, Canada shall make an initial advance in accordance with Paragraph 15.01(e) in the amount of \$3,000,000.00 within 30 days of the last of the following events occurring:
 - (a) at least four Entitlement First Nations have executed Treaty Entitlement Agreements;
 - (b) the sum of the Total Land Amounts of all Entitlement First Nations that have executed Treaty Entitlement Agreements is at least 225,000 acres;
 - (c) Canada has received the notice referred to in Paragraph 20.04(1)(b); and
 - (d) the TLE Committee has satisfied its obligations under Subsection 28.03(1);
- (3) Subject to Section 15.05, Canada shall make a further advance in accordance with Paragraph 15.01(e) in the amount of \$3,000,000.00 within 30 days of the last of the following events occurring:
 - (a) at least eight Entitlement First Nations have executed Treaty Entitlement Agreements; and
 - (b) the sum of the Total Land Amounts of all Entitlement First Nations that have executed Treaty Entitlement Agreements is at least 450,000 acres.
- (4) Subject to Section 15.05, Canada shall make a final advance in accordance with Paragraph 15.01(e) in the amount of \$2,862,171.00 within 30 days of the last of the following events occurring:
 - (a) at least 12 Entitlement First Nations have executed Treaty Entitlement Agreements; and
 - (b) the sum of the Total Land Amounts of all Entitlement First Nations that have executed Treaty Entitlement Agreements is at least 675,000 acres.
- (5) Where Canada has satisfied its obligations under this Section, Canada shall be deemed to have satisfied its obligations under Paragraph 15.01(e).

20.03 Repayment of a Portion of Contribution in Specified Circumstances

In the event Canada has advanced the funds referred to in Subsection 20.02(4) and less than 19 Entitlement First Nations have executed a Treaty Entitlement Agreement within 24 months from the Date of Execution, the TLE Committee shall, within 30 days of the expiration of that period (or as soon thereafter as is reasonably practicable), repay to Canada (without interest), an amount equal to the result obtained when the following calculation is performed:

$$[\$3,000,000.00] \times (19 - N)$$

19

where "N" is the number of Entitlement First Nations that have executed a Treaty Entitlement Agreement within 24 months of the Date of Execution.

20.04 Third Party Interest Account

- (1) Within 30 days after the Date of Execution, the TLE Committee shall:
 - (a) establish the TPI Account with an Eligible Financial Institution, which account shall be kept separate and apart from all other accounts operated by the TLE Committee; and
 - (b) give Canada notice in writing as to the name and address of the Eligible Financial Institution at which the TPI Account has been established and the account number of the TPI Account.
- (2) The TLE Committee hereby irrevocably authorizes and directs Canada to make all advances referred to in Section 20.02 to the TPI Account.
- (3) The TLE Committee shall at all times:
 - (a) keep all advances made by Canada in accordance with Section 20.02 and any income earned on those funds separate and apart from all other funds the TLE Committee holds or acquires; and
 - (b) maintain the TPI Account with an Eligible Financial Institution.

20.05 Eligible Investments

Except as provided in Section 20.06, the TLE Committee shall at all times invest all advances made by Canada in accordance with Section 20.02 and reinvest any income earned on those funds only in Eligible Investments.

20.06 Authorized Disbursements

(1) The TLE Committee shall use the funds in the TPI Account solely for the purposes of satisfying:

- (a) applications for advances that have been made by Entitlement First Nations and approved by the TLE Committee in accordance with Section 20.07 for the purposes of discharging, replacing or accommodating Third Party Interests affecting land Selected or Acquired by Entitlement First Nations;
- (b) all charges assessed by the Eligible Financial Institution in connection with the operation of the TPI Account;
- (c) all fees and charges incurred as a result of the investment of the contribution or any advance or portion of that contribution and any reinvestment of the proceeds from any investment;
- (d) any other amount properly due and payable as a result of the investment of the contribution or any advance or portion of that contribution; and
- (e) any obligation of the TLE Committee under Section 20.03.

(2) Upon:

- (a) the amount of land set apart as Reserve for all Entitlement First Nations which execute a Treaty Entitlement Agreement being increased by their respective Total Land Amounts; or
- (b) the date which is 25 years from the Date of Execution

whichever occurs first, the TLE Committee shall disburse any funds remaining in the TPI Account to those Entitlement First Nations so that each of those Entitlement First Nations receives a payment of a portion of the funds then remaining in the TPI Account equal to the proportion that its Total Land Amount bears to the sum of the Total Land Amounts of all the Entitlement First Nations which have executed a Treaty Entitlement Agreement.(3) The TLE Committee shall not disburse funds from the TPI Account except in accordance with this Section.

- (4) The TLE Committee shall not:
- (a) make any loans with the funds deposited in the TPI Account, except to the extent that such loans constitute Eligible Investments;
 - (b) pledge, mortgage, hypothecate, charge or in any other manner borrow money using some or all of any of the funds in the TPI Account as security:
 - (i) in an amount greater than the amount Canada has advanced in accordance with Section 20.02 at that time; and
 - (ii) other than for the purpose of disbursing the borrowed money in satisfaction or partial satisfaction of its obligations under this Section; or
 - (c) advance any funds from the TPI Account to an Entitlement First Nation for the purpose of satisfying any obligations of that Entitlement First Nation under a Municipal Development and Services Agreement.

20.07 Advances from the Third Party Interest Account

- (1) An Entitlement First Nation which has Selected or Acquired land that is subject to a Third Party Interest may make application to the TLE Committee for an advance from the TPI Account for the purpose of discharging, replacing or accommodating that Third Party Interest.
- (2) Despite the definition of "Third Party Interest", an Entitlement First Nation may make an application under Subsection (1) in respect of resolving the interests of the holder of a trapping licence or permit who will be materially impacted by a Selection of the Entitlement First Nation and for the purpose of this Section, "Third Party Interest" shall be deemed to include a trapping licence or permit.
- (3) An application for an advance from the TPI Account made by an Entitlement First Nation under Subsection (1) will:
 - (a) be made in a written form as the TLE Committee may from time to time prescribe; and
 - (b) include:
 - (i) where the land is Crown Land, a copy from the Crown Land register in respect of that land;
 - (ii) where the land is Other Land, a copy of the certificate of title of that land;
 - (iii) full particulars of the nature and extent of the Third Party Interest;

- (iv) written confirmation from:
 - A. Canada and Manitoba that the land is eligible to be set apart as Reserve in accordance with the Principles, subject to the resolution of the Third Party Interest;
 - B. Canada and the Entitlement First Nation that they are both satisfied with the results of the Environmental Audit of the land; and
 - C. Canada that the land satisfies the requirements of the Additions to Reserves Policy, subject to the resolution of the Third Party Interest;
 - (v) the proposal of the Entitlement First Nation for resolving the Third Party Interest in a manner consistent with Article 10;
 - (vi) a copy of any agreement between the Entitlement First Nation and the Third Party relating to the proposed resolution of the Third Party Interest;
 - (vii) the amount of the advance sought by the Entitlement First Nation from the TPI Account to effect a resolution of the Third Party Interest in the manner the Entitlement First Nation proposes and the manner in which the amount has been determined;
 - (viii) when and to whom the advance from the TPI Account should be made;
 - (ix) a Council Resolution authorizing the application by the Entitlement First Nation;
 - (x) such further or other material in support of the application as the Entitlement First Nation considers relevant; and
 - (xi) any other information or material as the TLE Committee may request to support the application.
- (4) The TLE Committee, upon receipt of an application by an Entitlement First Nation for an advance in accordance with Subsection (1):
- (a) will consider the application using the following criteria:
 - (i) the manner of resolution of the Third Party Interest proposed by the Entitlement First Nation (and as evidenced in any proposed agreement between the Entitlement First Nation and the Third Party) having regard to:
 - A. the nature and extent of the Third Party Interest;

- B. the potential impact of the Third Party Interest on the use of the land Selected or Acquired by the Entitlement First Nation;
 - C. the provisions of Article 10;
 - D. the manner in which similar Third Party Interests affecting land Selected or Acquired by the Entitlement First Nation or other Entitlement First Nations have been dealt with in previous applications; and
 - E. prevailing market conditions, if relevant;
- (ii) funds available to the TLE Committee for the resolution of Third Party Interests immediately and over the long term;
 - (iii) other existing or anticipated applications for advances from the TPI Account by the Entitlement First Nation and by other Entitlement First Nations; and
 - (iv) any other matters as the TLE Committee may deem relevant; and
- (b) may, in its sole discretion:
 - (i) approve the application in whole or in part;
 - (ii) refuse the application; or
 - (iii) request further or other information from the Entitlement First Nation prior to making a decision in accordance with Subparagraph (i) or (ii).
- (5) Upon the TLE Committee dealing with an application by an Entitlement First Nation for an advance from the TPI Account in the manner provided in Paragraph (4)(b), the TLE Committee shall:
 - (a) advise the Entitlement First Nation of its decision in writing; and
 - (b) subject to Subsection (6) and where the TLE Committee has approved the application in whole or in part, make an advance to the Entitlement First Nation, the Third Party or to some other Person for and on behalf of the Entitlement First Nation or Third Party from the TPI Account in the approved amount.
 - (6) Any funds advanced from the TPI Account by the TLE Committee as a result of an application by the Entitlement First Nation approved in accordance with Subparagraph (4)(b)(i) shall be advanced on the following conditions:
 - (a) the funds are to be used by the recipient of those funds referred to in Paragraph (5)(b) solely for the purpose of discharging, removing or accommodating the Third Party Interest for and in respect of which the application was made by the Entitlement First Nation;

- (b) in the event the recipient of those funds referred to in Paragraph (5)(b) is not the Third Party Interest holder, the funds so advanced, or any unexpended portion thereof, shall be held in an interest bearing account until disbursed by the recipient in accordance with Paragraph (a);
 - (c) in the event some or all of the funds are not required for the purpose of discharging, removing or accommodating the Third Party Interest, those funds (or that portion of those funds) together with any accrued interest thereon, are to be returned to the TLE Committee;
 - (d) upon the recipient of the funds referred to in Paragraph (5)(b) either disbursing the funds for the purpose set out in Paragraph (a) or returning all or any portion of the funds to the TLE Committee in accordance with Paragraph (c), the recipient shall provide to the TLE Committee a full accounting of the funds while under the recipient's control; and
 - (e) in the event the recipient of the funds referred to in Paragraph (5)(b) is unwilling or unable to comply with the conditions set out in Paragraphs (a) through (d) inclusive, the funds are to be returned immediately to the TLE Committee.
- (7) In the event funds are received by the TLE Committee in accordance with Paragraph (6)(c) or (e), the TLE Committee shall deposit those funds into the TPI Account.
- (8) Despite Subsection (6), where:
 - (a) the Trustees of an Entitlement First Nation identified in Schedule "B":
 - (i) have provided the TLE Committee with an irrevocable direction executed by the Entitlement First Nation to the TLE Committee that, in the event an application of the Entitlement First Nation should be approved in accordance with Subsection (4)(b)(i), the TLE Committee is to direct the amount to be advanced to the Trustees; or
 - (ii) have made an application to the TLE Committee for an advance from the TPI Account on behalf of the Entitlement First Nation in accordance with Subsection 5.05(3) of the Trust Agreement; and
 - (b) the TLE Committee approves that application in accordance with Subparagraph (4)(b)(i) no funds shall be advanced from the TPI Account by the TLE Committee:
 - (c) until:
 - (i) the Third Party Interest has been discharged, removed or

accommodated; and

- (ii) satisfactory evidence of the amount expended to discharge, remove or accommodate the Third Party Interest has been provided to the TLE Committee; and
 - (d) in an amount greater than the amount expended to discharge, remove or accommodate the Third Party Interest.
- (9) The TLE Committee shall:
 - (a) maintain a register of:
 - (i) the particulars of all applications for advances from the TPI Account including the name of the applicant, the date of the application, the amount of the advance from the TPI Account sought by the applicant and the nature of the Third Party Interest; and
 - (ii) the action taken by the TLE Committee on each application, including the amount of any advance made by the TLE Committee from the TPI Account; and
 - (b) permit any Entitlement First Nation which has executed a Treaty Entitlement Agreement, Canada, Manitoba and the Chairperson reasonable access to the register, upon reasonable notice during normal business hours.

20.08 Conflict of Interest

- (1) The TLE Committee shall ensure that at all times it has in place administrative practices and policies to ensure that no Member of an Entitlement First Nation that has made an application in accordance with Subsection 20.07(1) makes, participates directly in or in any way materially influences the decision on that application.
- (2) Without limiting the generality of Subsection (1), the TLE Committee undertakes to ensure that no Member of an Entitlement First Nation that has made an application in accordance with Subsection 20.07(1) shall participate in or be present during any discussion regarding, make, or second any motion with respect to or vote on any motion on behalf of the Entitlement First Nation involving that application.
- (3) Subsections (1) and (2) do not apply to an employee of the TLE Committee acting in the normal course of his or her employment.

20.09 Right to and Use of the Third Party Interest Account

- (1) Except as provided in Subsection 20.06(2), no Entitlement First Nation has any legal interest in or right to a distribution of any portion of the contribution made by Canada in accordance with Section 20.02 or to any portion of the income earned by those funds and, without limitation, an application by an Entitlement First Nation in accordance with

Subsection 20.07(1) shall in no way create any right or entitlement of the Entitlement First Nation to a distribution of any portion of the contribution made by Canada in accordance with Section 20.02 or to any portion of the income earned by those funds unless and to the extent that application has been approved by the TLE Committee in accordance with Subparagraph 20.07(4)(b)(i), in whole or in part.

- (2) An Entitlement First Nation receiving an advance of funds from the TPI Account as a result of an application approved in accordance with Subsection 20.07(4)(b)(i) shall receive and utilize those funds in accordance with the conditions set out in Subsection 20.07(6).

20.10 Decision of the TLE Committee Final

A decision of the TLE Committee with respect to an application for advance by an Entitlement First Nation in accordance with Subsection 20.07(1) may not be referred to the Implementation Monitoring Committee as an issue or matter in dispute.

20.11 Annual Audit

- (1) Each year until:
 - (a) the TLE Committee has advanced all funds in the TPI Account in accordance with Subsection 20.06(1); or
 - (b) the TLE Committee advances the funds remaining in the TPI Account (if any) to the Entitlement First Nations in accordance with Subsection 20.06(2)

the TLE Committee shall have an annual audit conducted of the TPI Account, prepared in accordance with generally accepted accounting principles, consistently applied, by a chartered accountant licensed to practise in the province of Manitoba.

- (2) Each annual audit prepared in accordance with Subsection (1) will contain the following information:
 - (a) the amount of all advances of the contribution referred to in Paragraph 15.01(e) made by Canada in accordance with Sections 20.02 and 20.03;
 - (b) the amount of any income earned by those advances from the date of the advance of funds by Canada to the end of the audit period;
 - (c) the amount advanced out of the TPI Account in accordance with Subsection 20.06(1), both during the audit period and cumulatively from the Date of Execution (and including, in the case of advances in accordance with Paragraph 20.06(1)(a) or Subsection 20.06(2), the amount advanced to each Entitlement First Nation, both during the audit period and cumulatively from the Date of Execution);

- (d) the existing balance of the TPI Account as of the end of the audit period; and
 - (e) an opinion of the auditor as to whether the TLE Committee has administered the TPI Account during the audit period in accordance with this Article.
- (3) For the purposes of Subsection (1):
 - (a) the first audit conducted of the TPI Account shall be for the period from the Date of Execution to and including the end of the fiscal year of the TLE Committee ending March 31, 1998; and
 - (b) each subsequent audit shall be for the period corresponding to the fiscal year of the TLE Committee.
- (4) Copies of the annual audit referred to in Subsection (1) will be provided by the TLE Committee to Canada, Manitoba, the Chairperson and each Entitlement First Nation which has executed a Treaty Entitlement Agreement without charge and not later than 90 days following the end of the period to be covered by that audit.
- (5) Each Entitlement First Nation which receives a copy of the audit referred to in Subsection (1) will post the audit in a prominent location in its administrative offices upon receipt for a period of 60 days.
- (6) Where the opinion of the auditor referred to in Paragraph (2)(e) is otherwise than unqualified or is to the effect that the TLE Committee is not operating the TPI Account in accordance with this Article, the matter may be referred to the Implementation Monitoring Committee.

20.12 No Further Liability of Canada for Costs Respecting Third Party Interests

- (1) Nothing in this Agreement constitutes any representation or warranty of any kind or nature whatsoever that the contribution to be made by Canada toward the anticipated costs of discharging, replacing or accommodating Third Party Interests will be sufficient for that purpose.
- (2) Upon Canada making the contribution referred to in Paragraph 15.01(e) in accordance with Sections 20.02 and 20.03, Canada shall not be liable for any costs incurred by the TLE Committee or any Entitlement First Nation with respect to discharging, replacing or accommodating any Third Party Interest that may affect land Selected or Acquired by an Entitlement First Nation.
- (3) The provision to Canada of a copy of each annual audit of the TPI Account by the TLE Committee in accordance with Subsection 20.11(4) is solely for the purpose of assisting Canada in assessing the progress of the implementation of this Agreement and any Treaty Entitlement

Agreement and Canada, in receiving and reviewing the audit, shall not be deemed to have assumed any responsibility of any kind or nature whatsoever with respect to the administration of the TPI Account.

20.13 Contribution for Resolution of Third Party Interests not “Indian Moneys”

Canada’s contribution to the anticipated costs of discharging, replacing or accommodating Third Party Interests and any income generated or produced by that contribution are not “Indian moneys” as defined in the *Indian Act*.

21. Contribution to Costs of Implementation

21.01 Contribution to Costs of Implementation

- (1) Canada shall make a contribution toward the costs anticipated to be incurred by the TLE Committee and the Entitlement First Nations in the implementation of this Agreement and any Treaty Entitlement Agreement in accordance with Paragraph 15.01(f).
- (2) The contribution by Canada referred to in Subsection (1) shall be advanced to the TLE Committee as provided in this Article.

21.02 Advance of Contribution

- (1) The contribution to be made by Canada in accordance with Paragraph 15.01(f) shall be made by way of up to three advances.
- (2) Within 30 days of the last of:
 - (a) the Date of Execution;
 - (b) the date Canada receives the notice referred to in Paragraph 21.04(1)(b); or
 - (c) the date the TLE Committee satisfies its obligations under Subsection 28.03(1)

Canada shall make an initial advance in accordance with Paragraph 15.01(f) in the amount of \$4,500,000.00.

- (3) Subject to Section 15.05, Canada shall make a further advance in accordance with Paragraph 15.01(f) in the amount of \$2,250,000.00 within 30 days after the eighth Entitlement First Nation executes a Treaty Entitlement Agreement.
- (4) Subject to Section 15.05, Canada shall make a final advance in accordance with Paragraph 15.01(f) in the amount of \$1,840,825.00 within 30 days after the twelfth Entitlement First Nation executes a Treaty Entitlement Agreement.
- (5) Where Canada has satisfied its obligations under this Section, Canada

shall be deemed to have satisfied its obligations under Paragraph 15.01(f).

21.03 Repayment of a Portion of Contribution in Specified Circumstances

- (1) In the event Canada has advanced the funds referred to in Subsection 21.02(3) and less than 12 Entitlement First Nations have executed a Treaty Entitlement Agreement within 24 months from the Date of Execution, the TLE Committee shall, within 30 days of the expiration of that period (or as soon thereafter as is reasonably practicable), repay to Canada (without interest), an amount equal to the result obtained when the following calculation is performed:

$$[\$1,500,000.00] \times \frac{(12 - N)}{12}$$

12

where “N” is the number of Entitlement First Nations that execute a Treaty Entitlement Agreement within 24 months of the Date of Execution.

- (2) In the event Canada has advanced the funds referred to in Section 21.01(4) and less than 19 Entitlement First Nations have executed a Treaty Entitlement Agreement within 24 months from the Date of Execution, the TLE Committee shall, within 30 days of the expiration of that period (or as soon thereafter as is reasonably practicable), repay to Canada (without interest), an amount equal to the result obtained when the following calculation is performed:

$$[\$3,000,000.00] \times \frac{(19 - N)}{19}$$

19

where “N” is the number of Entitlement First Nations that execute a Treaty Entitlement Agreement within 24 months of the Date of Execution.

21.04 Implementation Account

- (1) Within 30 days of the Date of Execution, the TLE Committee shall:
- (a) establish the Implementation Account with an Eligible Financial Institution, which account shall be kept separate and apart from all other accounts operated by the TLE Committee; and
 - (b) give Canada notice in writing as to the name and address of the Eligible Financial Institution at which the Implementation Account has been established and the account number of the Implementation Account.
- (2) The TLE Committee hereby irrevocably authorizes and directs Canada to make all advances referred to in Section 21.02 to the Implementation Account.

- (3) The TLE Committee shall at all times:
- (a) keep all advances made by Canada in accordance with Section 21.02 and any income earned on those funds separate and apart from all other funds the TLE Committee holds or acquires; and
 - (b) maintain the Implementation Account with an Eligible Financial Institution.

21.05 Eligible Investments

Except as provided in Section 21.06, the TLE Committee shall at all times invest all advances made by Canada in accordance with Section 21.02 and reinvest any income earned on those funds only in Eligible Investments.

21.06 Authorized Disbursements

- (1) The TLE Committee shall use the funds in the Implementation Account solely for the purposes of satisfying:
- (a) subject to Paragraph (4)(c) and Subsection 21.07(4), the reasonable costs incurred by the Entitlement First Nations and the TLE Committee in carrying out their respective obligations under this Agreement and under any Treaty Entitlement Agreement (including paying the portion of the costs of the Implementation Monitoring Committee for which the TLE Committee is responsible in accordance with Sections 24.01 and 24.04);
 - (b) all charges assessed by the Eligible Financial Institution in connection with the operation of the Implementation Account;
 - (c) all fees and charges incurred as a result of the investment of the contribution or any advance or portion of that contribution and any reinvestment of the proceeds from any investment;
 - (d) any other amount properly due and payable as a result of the investment of the contribution or any advance or portion of that contribution; and
 - (e) any obligation of the TLE Committee under Section 21.03.
- (2) Upon:
- (a) the amount of land set apart as Reserve for all Entitlement First Nations which execute a Treaty Entitlement Agreement being increased by their respective Total Land Amounts; or
 - (b) the date which is 25 years from the Date of Execution

whichever occurs first, the TLE Committee shall disburse any funds remaining in the Implementation Account to those Entitlement First Nations so that each of those Entitlement First Nations receives a payment of a portion of the funds then remaining in the Implementation Account equal to the proportion that its Total Land Amount bears to the sum of the Total Land Amounts of all the Entitlement First Nations which have executed a Treaty Entitlement Agreement.

- (3) The TLE Committee shall not disburse funds from the Implementation Account except in accordance with this Section.
- (4) The TLE Committee shall not:
 - (a) make any loans with the funds deposited in the Implementation Account, except to the extent that those loans constitute Eligible Investments;
 - (b) pledge, mortgage, hypothecate, charge or in any other manner borrow money using some or all of the funds in the Implementation Account as security:
 - (i) in an amount greater than the amount Canada has advanced in accordance with Section 21.02 at that time; and
 - (ii) other than for the purpose of disbursing the borrowed money in satisfaction or partial satisfaction of its obligations under this Section; and
 - (c) advance any funds from the Implementation Account for the purpose of:
 - (i) satisfying any obligation of an Entitlement First Nation or the TLE Committee the costs of which are provided for in Article 17 or 22;
 - (ii) satisfying any obligation of an Entitlement First Nation under a Municipal Development and Services Agreement; or
 - (iii) removing, discharging or accommodating a Third Party Interest.

21.07 Annual Budget for Operation of TLE Committee

- (1) Each year until:
 - (a) the TLE Committee has advanced all of the funds in the Implementation Account in accordance with Subsection 21.06(1); or
 - (b) the TLE Committee advances the funds remaining in the Implementation Account (if any) to the Entitlement First Nations in accordance with Subsection 21.06(2)

the TLE Committee shall establish an annual budget consistent with Section

21.06 to permit it to satisfy the reasonable costs incurred by the Entitlement First Nations and the TLE Committee in carrying out their respective obligations under this Agreement and under any Treaty Entitlement Agreement.

- (2) For the purposes of Subsection (1):
 - (a) the initial budget shall be effective on the Date of Execution for the period from that date to and including the end of the fiscal year of the TLE Committee ending March 31, 1998; and
 - (b) each subsequent annual budget shall be for the period corresponding to the fiscal year of the TLE Committee.
- (3) Each annual budget referred to in Subsection (1) shall be approved by the directors of the TLE Committee at a duly convened meeting held for that purpose.
- (4) The TLE Committee shall not disburse funds from the Implementation Account under Paragraph 21.06(1)(a) except in accordance with its approved annual budget.
- (5) Where circumstances warrant, the directors of the TLE Committee may, during the year and by resolution passed at a duly convened meeting, amend the annual budget and the amendment shall form part of the annual budget, provided that an annual budget may not be amended more than twice in any year.
- (6) Copies of each annual budget (and any amendment to an annual budget made in accordance with Subsection (5)) shall be provided by the TLE Committee:
 - (a) until 24 months from the Date of Execution, to all Entitlement First Nations except any Entitlement First Nation that does not approve a Treaty Entitlement Agreement in accordance with Subsection 29.03(1) during that period; and
 - (b) thereafter, to each Entitlement First Nation which has executed a Treaty Entitlement Agreement.

21.08 Conflict of Interest

The TLE Committee shall ensure that at all times it has in place, administrative practices and policies to ensure that any material conflict of interest involving its directors, members, partners or employees is identified and dealt with in a manner consistent with its administrative practices and policies.

21.09 Right to and Use of the Implementation Account

- (1) Except as provided in Subsection 21.06(2) and despite Paragraph 21.06(1)(a) and Subsection 21.07(1), no Entitlement First Nation has any legal interest in or right to a distribution of any portion of the contribution made by Canada in accordance with Section 21.02 or to any portion of the income earned by those funds.
- (2) An Entitlement First Nation receiving funds from the Implementation Account in accordance with Paragraph 21.06(1)(a) shall receive and utilize those funds solely for the purpose of satisfying the reasonable costs incurred by the Entitlement First Nation in carrying out its obligations under a Treaty Entitlement Agreement provided that no portion of those funds shall be used for the purpose of:
 - (a) satisfying any obligation of the Entitlement First Nation the costs of which are provided for in Article 17 or 22;
 - (b) satisfying any obligation of the Entitlement First Nation under a Municipal Development and Services Agreement; or
 - (c) removing, discharging or accommodating a Third Party Interest.

21.10 Decision of the TLE Committee Final

A decision of the TLE Committee regarding the use of funds in the Implementation Account may not be referred to the Implementation Monitoring Committee as an issue or matter in dispute, provided the TLE Committee has satisfied its obligations under Section 21.07.

21.11 Annual Audit

- (1) Each year until:
 - (a) the TLE Committee has advanced all funds in the Implementation Account in accordance with Subsection 21.06(1); or
 - (b) the TLE Committee advances the funds remaining in the Implementation Account (if any) to the Entitlement First Nations in accordance with Subsection 21.06(2)

the TLE Committee shall have an annual audit conducted of the Implementation Account, prepared in accordance with generally accepted accounting principles, consistently applied, by a chartered accountant licensed to practise in the province of Manitoba.
- (2) The audit referred to in Subsection (1) shall, among other matters, contain an opinion by the auditor as to whether the TLE Committee has administered the Implementation Account during the audit period in accordance with the provisions of this Article.

- (3) For the purposes of Subsection (1):
- (a) the first audit conducted shall be for the period from the Date of Execution to and including the end of the fiscal year of the TLE Committee ending March 31, 1998; and
 - (b) each subsequent audit shall be for the period corresponding to the fiscal year of the TLE Committee.
- (4) Copies of the annual audit referred to in Subsection (1) will be provided by the TLE Committee:
- (a) until 24 months from the Date of Execution, to all Entitlement First Nations except any Entitlement First Nation that does not approve a Treaty Entitlement Agreement in accordance with Subsection 29.03(1) during that period; and
 - (b) thereafter, to each Entitlement First Nation which has executed a Treaty Entitlement Agreement
- without charge and not later than 90 days following the end of the period to be covered by that audit.
- (5) Each Entitlement First Nation which receives a copy of the audit referred to in Subsection (1) will post the audit in a prominent location in its administrative offices upon receipt for a period of 60 days.
- (6) The TLE Committee shall at all times ensure that the auditor's instructions include an irrevocable direction that where the opinion of the auditor referred to in Subsection (2) is otherwise than unqualified and to the effect that the TLE Committee is operating the Implementation Account in accordance with this Article, the auditor is to forward a copy of the audit upon completion (whether or not approved by the TLE Committee) to Canada, Manitoba and the Chairperson.
- (7) Where the opinion of the auditor referred to in Subsection (2) is otherwise than unqualified or is to the effect that the TLE Committee is not operating the Implementation Account in accordance with this Article, the matter may be reviewed by the Implementation Monitoring Committee.

21.12 No Further Liability of Canada

- (1) Nothing in this Agreement constitutes any representation or warranty of any kind or nature whatsoever that the contribution to be made by Canada toward the anticipated costs of the implementation of this Agreement and any Treaty Entitlement Agreement will be sufficient for that purpose.

- (2) Upon Canada making the contribution referred to in Paragraph 15.01(f) in accordance with Sections 21.02 and 21.03, Canada shall not be liable for any costs incurred by the TLE Committee or any Entitlement First Nation with respect to the implementation of this Agreement or any Treaty Entitlement Agreement.
- (3) Canada shall not be deemed to have any responsibility of any kind or nature whatsoever for or in respect of the administration of the Implementation Account.

21.13 Contribution for Implementation not "Indian Moneys"

Canada's contribution to the costs of implementation and any income generated or produced by that contribution are not "Indian moneys" as defined in the *Indian Act*.

22. Contribution to Costs of Land Selection Study

22.01 Contribution by Canada

- (1) Within 30 days of receipt by Canada of a Council Resolution initiating a Community Approval Process in accordance with Subsection 29.01(2), Canada shall make a contribution to the Entitlement First Nation toward the costs anticipated to be incurred by the Entitlement First Nation in completing a Land Selection Study.
- (2) The contribution referred to in Subsection (1) shall be a reasonable amount determined by Canada in consultation with the Entitlement First Nation.

22.02 Use of Funds by Entitlement First Nation

- (1) An Entitlement First Nation which has received a contribution from Canada in accordance with Section 22.01 shall use those funds solely for the purpose of completing a Land Selection Study.
- (2) The Land Selection Study will include a community planning and development process with the objective of determining, in consultation with its Members, the best interests of the Entitlement First Nation in the Selection or Acquisition of land and to identify suitable land for Selection or Acquisition which will address those interests.

23. Costs of Environmental Audit and Survey of Land

23.01 Environmental Audit and Survey of Land

Canada shall undertake or cause to be undertaken at its cost:

- (a) an Environmental Audit of land Selected or Acquired by an Entitlement First Nation in accordance with this Agreement that Canada and Manitoba have confirmed is eligible to be set apart as Reserve in accordance with the Principles; and
- (b) subject to Section 23.02, all surveys of the boundaries of land Selected or

Acquired by an Entitlement First Nation in accordance with this Agreement:

- (i) that Canada and Manitoba have confirmed is eligible to be set apart as Reserve in accordance with the Principles;
- (ii) with respect to which Canada and the Entitlement First Nation are both satisfied with the results of the Environmental Audit referred to in Paragraph (a); and
- (iii) that Canada has determined satisfies the requirements of the Additions to Reserves Policy.

23.02 Canada not Responsible for Certain Surveys or Survey Costs

Canada shall not be responsible for the completion of any surveys or survey costs which are the responsibility of Manitoba or any Third Party in accordance with this Agreement.

23.03 Period for Completion of Survey of Land

- (1) Canada shall commence the process of completing the survey of a Selection or Acquisition for which it is responsible in accordance with Paragraph 23.01(b) as soon as practicable (but in any event not later than 12 months) after the last of the following events have occurred:
 - (a) Canada and Manitoba have confirmed that the Selection or Acquisition is eligible to be set apart as Reserve in accordance with the Principles;
 - (b) Canada and the Entitlement First Nation are both satisfied with the results of the Environmental Audit of the Selection or Acquisition;
 - (c) Canada has determined that the Selection or Acquisition satisfies the requirements of the Additions to Reserves Policy; and
 - (d) in the case of Crown Land, Canada, Manitoba and the Entitlement First Nation have signed a Regional Surveyor (Manitoba) Plan of the Selection.
- (2) Canada undertakes to complete the survey of a Selection or Acquisition as soon as reasonably practicable after the last of the events described in Paragraphs (1)(a) to (d) inclusive occurs in respect of the Selection or Acquisition but in any event within three years of the last of those events, having due consideration for:
 - (a) the location of the parcel or the location and number of other parcels of land Selected or Acquired by the Entitlement First Nation or other Entitlement First Nations;
 - (b) the seasonal accessibility of the parcel or other parcels of land Selected or Acquired by the Entitlement First Nation or other

Entitlement First Nations;

- (c) the availability of surveyors; and
- (d) weather conditions.

23.04 Survey to Meet Standards

All surveys of land conducted under this Agreement shall meet the requirements set from time to time by the Surveyor General of Canada and, if applicable, the requirements of the Director of Surveys of Manitoba.

23.05 Canada not responsible for Remediation or "Environmental Assessment"

- (1) Where an Environmental Audit of land Selected or Acquired by an Entitlement First Nation determines that remediation or other improvement or work is required prior to the environmental condition of the land being satisfactory to Canada or the Entitlement First Nation, Canada shall not be responsible for the costs of that remediation or other improvement or work.
- (2) Where a "project", as defined in the *Canadian Environmental Assessment Act*, is located, or is intended by an Entitlement First Nation to be undertaken, on land Selected or Acquired by an Entitlement First Nation, Canada shall not be responsible for the costs of any:
 - (a) "environmental assessment";
 - (b) "screening report";
 - (c) "mitigation" measures; or
 - (d) "follow-up program"

as defined in the *Canadian Environmental Assessment Act* that Canada may require for and in respect of the "project" in accordance with the *Canadian Environmental Assessment Act* before Canada is prepared to set the land apart as Reserve.

24. Costs of the Implementation Monitoring Committee

24.01 Share of Costs

Subject to Section 24.04, the reasonable costs of the Implementation Monitoring Committee shall be shared equally by the parties in accordance with this Article.

24.02 Reasonable Costs

The reasonable costs of the Implementation Monitoring Committee shall include:

- (a) reasonable fees of and expenses incurred by the Chairperson,

- (b) office or meeting space, administrative support and expenses which may be required;
- (c) reasonable fees of and expenses incurred by any technical support and independent professional advisors retained by the Chairperson under Section 34.08; and
- (d) other reasonable costs necessary for the effective operation of the Implementation Monitoring Committee.

24.03 Contribution to Costs in Kind

- (1) Any party shall be entitled to contribute all or a portion of its share of the reasonable costs of the Implementation Monitoring Committee in kind, in the form of office or meeting space, administrative and technical support or other services required.
- (2) The value of any contribution in kind to the reasonable costs of the Implementation Monitoring Committee shall be determined by the Implementation Monitoring Committee.

24.04 Costs of Representation

Each party shall be responsible for the costs of the representatives on the Implementation Monitoring Committee which it appoints.

24.05 Payment of Costs

The parties shall pay their respective share of the costs of the Implementation Monitoring Committee within 30 days of the receipt of an invoice from the Implementation Monitoring Committee.

PART V: RELEASE AND INDEMNITY

25. Release in Favour of Canada by Entitlement First Nation

25.01 Form of General Release

I.

Each Treaty Entitlement Agreement shall contain a Release in the following form, provided that the provisions of the Release set out within square brackets shall appear in the Treaty Entitlement Agreement of only the Entitlement First Nations identified in Schedule "B":

"X.01 Release to Canada

In consideration of this Treaty Entitlement Agreement, the Entitlement First Nation, on its own behalf, and on behalf of all past, present and future Members of the Entitlement First Nation, any Predecessor Band, all past, present and future Members of any Predecessor Band and on behalf of their respective heirs, successors, administrators and assigns does hereby:

- (a) release to Canada all claims, rights, title and interest the Entitlement First Nation or any Predecessor Band ever had, now has or may hereafter have by reason of or in any way arising out of the Per Capita Provision; and
- (b) release and forever discharge Canada, Her servants, agents and successors from:
 - (i) all obligations imposed on, and promises and undertakings made by, Canada relating to land entitlement under the Per Capita Provision;
 - (ii) without limiting the generality of Paragraph (a), all other claims of any kind or nature whatsoever against Canada under or pursuant to the Per Capita Provision based on membership of or in any Predecessor Band, the Entitlement First Nation or any other successor to the Predecessor Band including past, present or future Members of any Predecessor Band or the Entitlement First Nation;
 - (iii) without limiting the generality of Paragraph (a), all other claims of any kind or nature whatsoever against Canada under or pursuant to the Per Capita Provision based on the

amount of land set apart by Canada as Reserve for any Predecessor Band or the Entitlement First Nation;

- (iv) all claims of any kind or nature whatsoever related to or arising from Canada not being able, due to land becoming occupied, to request Manitoba to set aside out of the unoccupied crown lands transferred to the administration and control of Manitoba under the *Manitoba Natural Resources Transfer Act* such areas of land as necessary to enable Canada to fulfill its obligations under the Per Capita Provision;
- (v) all claims of any kind or nature whatsoever related to or arising from the existence of any Third Party Interest in land Selected [or Acquired] and set apart as Reserve pursuant to this Treaty Entitlement Agreement;
- (vi) all claims of any kind or nature whatsoever the Entitlement First Nation or any Predecessor Band (or any Member of the Entitlement First Nation or any Predecessor Band) has had, has now or may hereafter have relating to or arising from the fact that the Entitlement First Nation or any Predecessor Band or any Member thereof did not receive or have use and benefit of the land to which the Entitlement First Nation, the Predecessor Band or any Members thereof were entitled under the Per Capita Provision including, without limitation, all claims for damage of any kind or nature whatsoever alleged to have been suffered by the Entitlement First Nation, any Predecessor Band or any Members thereof as a result;
- (vii) all obligations or liability, whether fiduciary or otherwise, and all claims of any kind or nature whatsoever relating to or arising from:
 - A. Canada executing the Trust Agreement, settling the Trust for the benefit of the Entitlement First Nation and paying the Federal Payment [and the Land Acquisition Payment] to the Trust;
 - B. the deposit, use, management or administration of, and any other dealing with respect to the "trust property", as defined in the Trust Agreement, including without limitation the Federal Payment [and the Land Acquisition Payment];
 - C. the use, management, administration or operation of or any other dealing with respect to all accounts established by the Trustees;
 - D. any actions, inactions, malfeasance or negligence of the Trustees;

- E. the deposit, use, management or administration of, or any other dealing with respect to the contributions paid or loans made by Canada to the TLE Committee for the purpose of negotiating the Framework Agreement and this Treaty Entitlement Agreement, assisting in the completion of the Community Approval Process, removing, discharging or accommodating Third Party Interests and implementing the Framework Agreement and this Treaty Entitlement Agreement; and
 - F. any actions, inactions, malfeasance or negligence of the TLE Committee, its officers, employees or agents with respect to the use of the funds referred to in Clause E;
- (viii) all claims for or in respect of expenses incurred by the Entitlement First Nation or the Trustees:
 - A. associated with the Land Selection Study undertaken by the Entitlement First Nation and the approval of a Selection [or Acquisition] by the Entitlement First Nation, the Members of the Entitlement First Nation, its Council or the Trustees;
 - B. in relation to or arising out of the Selection [or Acquisition] of land by the Entitlement First Nation including, without limitation, [the purchase price paid or payable to the vendor of land, real estate agent or broker commissions,] legal fees and disbursements, applicable taxes and land search and transfer costs;

- C. associated with discharging, replacing or accommodating Third Party Interests;
 - D. associated with the implementation of this Treaty Entitlement Agreement including all costs incurred by the Entitlement First Nation in completing the Community Approval Process, in executing and delivering this Treaty Entitlement Agreement and carrying out its obligations under this Treaty Entitlement Agreement; and
 - E. except as otherwise expressly provided for in Subsection 35.05(2) and Section 35.07 of the Framework Agreement, associated with the resolution of any issue or matter in dispute under this Treaty Entitlement Agreement;
- (ix) all claims of any kind or nature whatsoever in the event:
- [A. the Land Acquisition Payment does not provide the Entitlement First Nation with sufficient funds to Acquire its Other Land Amount and for the costs associated with the Acquisition of that amount of land;]
 - B. the amount contributed by Canada towards the satisfaction of Third Party Interests does not prove sufficient to discharge, replace or accommodate any or all Third Party Interests that may affect land the Entitlement First Nation Selects [or Acquires]; or
 - C. the amount contributed by Canada towards the satisfaction of costs associated with the implementation of this Treaty Entitlement Agreement or the Framework Agreement does not prove sufficient for that purpose;
- (x) all claims of any kind or nature whatsoever in respect of any losses, damages or expenses of any kind or nature (direct or indirect) howsoever incurred by the Entitlement First Nation or the Trustees as a result of or in any way arising from any delay or failure by Canada to set a particular parcel of land apart as Reserve for the

Entitlement First Nation either within any certain period of time or at all, except as provided in Section 8.06 of the Framework Agreement, provided that nothing in this Subparagraph shall in any manner diminish, absolve or otherwise affect:

- A. Canada's undertaking in Section 8.01 of the Framework Agreement to proceed with due diligence and use its best efforts to set apart as Reserve land Selected [or Acquired] by the Entitlement First Nation; or
- B. any other obligation or undertaking of Canada under this Treaty Entitlement Agreement

unless and until those undertakings and obligations have been fulfilled and those liabilities have been discharged;

[(xi) all claims of any kind or nature whatsoever in the event the Entitlement First Nation desires to Acquire land under the administration and control of Canada and:

- A. Canada declines to make that land available to the Entitlement First Nation, provided, in the case of Surplus Federal Land, Canada meets its obligations under Section 3.10 of the Framework Agreement;
- B. Canada agrees to make that land available but the Entitlement First Nation and Canada cannot or do not agree on the fair market value of that land; or
- C. in the case of Surplus Federal Land, the Entitlement First Nation, any Person on behalf of the Entitlement First Nation (including the Trustees) or the TLE Committee fail to meet their respective obligations with respect to pursuing the Acquisition of such land provided Canada has met its obligations under Section 3.10 of the Framework Agreement;]

(xii) all claims for or in respect of all costs, legal fees and disbursements, travel and expenses expended or incurred by the Entitlement First Nation, the Trustees or their representatives (including the TLE Committee) in relation to the negotiation, approval, execution and implementation of the Framework Agreement, this Treaty Entitlement Agreement and the Trust Agreement;

(xiii) all obligations or liability, whether fiduciary or otherwise, and all claims of any kind or nature whatsoever relating to or arising from the Community Approval Process; and

(xiv) all claims of any kind or nature whatsoever arising out of or relating to any letter or letters or written or oral statements made by Canada to the Entitlement First Nation or its agents validating, accepting or acknowledging any claim of the Entitlement First Nation to land entitlement under the Per Capita Provision to the extent such claims are expressly released in this Article.

X.02 Other Matters Unaffected

(1) For greater certainty, Section X.01 shall not release or waive, nor be construed as releasing or in any way waiving or otherwise affecting, any rights, actions, causes of action, claims, demands, damages, costs, expenses, liability, or entitlement, promises, undertakings or grievances of any nature or kind whatsoever the Entitlement First Nation, any Predecessor Band or any past, present or future Member of the Entitlement First Nation or any Predecessor Band may have against Canada arising from any oral promises, assurances, undertakings, explanations, representations or inducements of any kind or nature whatsoever made or offered by Canada, its agents, servants or representatives to the Entitlement First Nation or any Predecessor Band to enter into Treaty, and without limiting the generality of the foregoing, includes:

- (a) variations in the amount of land entitlement provided under Treaties No. 1, 3, 4, 5, 6 and 10; and
- (b) additional land entitlement based upon a growth of population of the Entitlement First Nation, as evidenced by, but not limited to, the record of a verbal exchange between the Lieutenant Governor of Manitoba, Adams Archibald, and an individual named Wa-sus-koo-koon during the negotiations leading up to the signing of Treaty No. 1, reported in The Manitoban on August 5, 1871, as follows:

Wa-sus-koo-koon -

'I understand thoroughly that every 20 people get a mile square; but if an Indian with a family of five, settles down, he may have more children. Where is their land?'

His Excellency -

'Whenever his children get more numerous than they are now, they will be provided for further West. Whenever the reserves are found too small the Government will sell the land, and give the Indians land elsewhere.'

- (2) Canada expressly denies the existence of or validity of any of the rights, claims, grievances or other legal rights of the Entitlement First Nation described in Subsection (1).

X.03 Right of Setoff by Canada Regarding Other Matters Unaffected

In the event the Entitlement First Nation advances any claim based on any matter described in Subsection X.02(1), Canada shall be entitled to set off from any amount which may be agreed, determined or adjudged to be owing or payable to the Entitlement First Nation in respect of that matter (whether expressed as entitlement to land or money in lieu of or in addition to entitlement to land):

- (a) the amount of land set apart as Reserve by Canada for the Entitlement First Nation prior to the date this Treaty Entitlement Agreement comes into force;
- (b) the amount of the Federal Payment [and the Land Acquisition Payment, to the extent the Entitlement First Nation has not used the Land Acquisition Payment to Acquire Other Land]; and
- (c) the Crown Land Amount [and the Other Land Amount] to the extent the Entitlement First Nation has Selected Crown Land [and Acquired Other Land] and that land has been set apart as Reserve by Canada

to the extent only that it is agreed, determined or adjudged that the claim would otherwise result in the Entitlement First Nation being compensated for the claim (or any portion thereof) more than once having regard to this Treaty Entitlement Agreement.

X.04 Effective Date of Release

The Release becomes fully effective and may be relied upon by Canada immediately upon the date of payment in full by Canada of the Federal Payment to the Trust.

X.05 Suspension of Release

- (1) Subject to Subsections (2) and (3), the right of Canada to rely on the Release and Indemnity shall be suspended in the event Canada has committed an Event of Default.
- (2) Upon Canada remedying an Event of Default referred to in Subsection (1), Canada shall again be entitled to rely upon the Release and Indemnity, subject to Subsection (4).

- (3) For the purposes of Subsection (2), where the Event of Default is as described in Paragraph 36.02(b) of the Framework Agreement, Canada shall be deemed not to have remedied that Event of Default unless and until the Implementation Monitoring Committee or an Adjudicator in binding arbitration has determined that Canada has taken reasonable steps to remedy the default.
- (4) In the event Canada has committed an Event of Default and that Event of Default continues for a period of 180 days, the Entitlement First Nation shall be entitled to request a declaration before a court of competent jurisdiction that the Release and Indemnity is void or ineffective in whole or in part and that Canada is barred from relying on the Release and Indemnity.
- (5) In the event Canada breaches any of its obligations under this Treaty Entitlement Agreement, other than its obligation to make any payment or contribution under Part IV of the Framework Agreement when due (except as provided in that Part), the Entitlement First Nation:
 - (a) may refer the issue or matter in dispute to the Implementation Monitoring Committee; and
 - (b) subject to Subsection (4), shall have no right to and shall not assert in any manner or in any forum (including, without limitation, seeking a declaration before any court of competent jurisdiction) that the Release and Indemnity are void or ineffective, whether in whole or in part, or that Canada is in any way barred from relying upon the Release and Indemnity.

X.06 No Claims and Rights of Action by Entitlement First Nation

The Entitlement First Nation, on its own behalf, on behalf of any Predecessor Band and on behalf of all past, present and future Members of any Predecessor Band and of the Entitlement First Nation and their heirs, successors, administrators and assigns hereby:

- (a) subject to Section X.05(4), agrees not to assert any cause of action, action or a declaration, claim or demand of any kind or nature whatsoever in respect of any of the matters released in Section X.01; and
- (b) agrees not to assert any cause of action, action for a declaration, claim or demand whatsoever against any servant, employee or agent of Canada who has participated or assisted in the negotiation of this Treaty Entitlement Agreement or the Framework Agreement.”

25.02 Clauses Specific to Sayisi Dene First Nation

The Treaty Entitlement Agreement for Sayisi Dene First Nation will also contain clauses in the following form:

“X.07 Additional Matters Unaffected

For greater certainty, Section X.01 and Paragraph X.06(a) shall not release or waive nor be construed as releasing or in any way waiving or otherwise affecting any rights, actions, causes of action, claims, demands, damages, costs, expenses, liability or entitlement, promises, undertakings or grievances of any nature or kind whatsoever in respect of:

- (a) the relocation of Members of the Entitlement First Nation from the community of Duck Lake to Churchill, Manitoba, in or about 1956; and
- (b) the claim presently being advanced for and on behalf of the Entitlement First Nation in the Federal Court of Canada (Trial Division) in a Statement of Claim dated March 9, 1993, initiating Suit No. T-703-93 against the Minister of Indian Affairs and Northern Development and the Attorney General of Canada (among other defendants).

X.08 No Admission by Canada

Canada expressly denies the existence of or the validity of either of the claims or grievances the Entitlement First Nation alleges it has suffered as described in Section X.07.”

25.03 Clauses Specific to Northlands First Nation

The Treaty Entitlement Agreement for the Northlands First Nation will also contain clauses in the following form:

X.07 Additional Matters Unaffected

For greater certainty, Section X.01 and Paragraph X.06(a) shall not release or waive nor be construed as releasing or in any way waiving or otherwise affecting any rights, actions, causes of action, claims, demands, damages, costs, expenses, liability or entitlement, promises, undertakings or grievances of any nature or kind whatsoever in respect of the claim presently being advanced for and on behalf of the Entitlement First Nation in the Federal Court of Canada (Trial Division) in a Statement of Claim dated March 9, 1993, initiating Suit No. T-703-93 against the Minister of Indian Affairs and Northern Development and the Attorney General of Canada (among other defendants).

X.08 No Admission by Canada

Canada expressly denies the existence of or the validity of the claim or grievance the Entitlement First Nation alleges it has suffered as described in Section X.07.”

25.04 Clauses Specific to Barren Lands First Nation

The Treaty Entitlement Agreement for Barren Lands First Nation will also contain clauses in the following form:

“X.07 Additional Matters Unaffected

For greater certainty, Section X.01 and Paragraph X.06(a) shall not release or waive nor be construed as releasing or in any way waiving or otherwise affecting any rights, actions, causes of action, claims, demands, damages, costs, expenses, liability or entitlement, promises, undertakings or grievances of any nature or kind whatsoever in respect of the same subject matter of the claim presently being advanced for and on behalf of the Predecessor Band of the Barren Lands First Nation, being the Northlands First Nation, in the Federal Court of Canada (Trial Division) by a Statement of Claim dated March 9, 1993, initiating Suit No. T-703-93 against the Minister of Indian Affairs and Northern Development and the Attorney General of Canada (among other defendants).

X.08 No Admission by Canada

Canada expressly denies the existence of or the validity of the claim or grievance the Entitlement First Nation alleges it has suffered as described in Section X.07.”

25.05 Claim of Sapotaweyak Cree First Nation and Wuskwi Sipiik Cree First Nation

The Treaty Entitlement Agreement for each of the Sapotaweyak Cree First Nation and the Wuskwi Sipiik Cree First Nation will also contain clauses in the following form:

“X.07 Undertaking to Amend Claim

The Entitlement First Nation undertakes to amend the Statement of Claim filed by it, or on its behalf, in Court of Queen’s Bench Suit No. CI-95-01-90864 in the following respects:

- (a) at paragraph 15 of the Statement of Claim the last sentence will be deleted and replaced as follows:

‘These Plaintiffs say that they have not been able to select their full land entitlement as granted by Treaty’; and

- (b) paragraphs 17 to 21 of the Statement of Claim will be deleted and replaced with the following:

‘From May 1984 and continuing after the date of this Claim, Manitoba, Canada and a number of First Nations in Manitoba, including the Plaintiff Cree First Nations, have conducted negotiations with the intent of reaching a comprehensive and contemporary Treaty land entitlement settlement.’

X.08 Undertaking on Position in Proceedings

The Entitlement First Nation further undertakes and agrees that its position in any further proceedings in the Statement of Claim in the Court of Queen's Bench Suit No. CI-95-01-90864 will be as follows:

'Where Canada had validated a claim to Treaty land entitlement, whether or not the claim was correctly validated, and the claim was under active negotiation in the double bilateral process including Manitoba, Canada and the TLE Committee, a fiduciary duty was imposed on Manitoba'."

26. Indemnity in Favour of Canada from Entitlement First Nation

26.01 Form of Indemnity

Each Treaty Entitlement Agreement will provide that the Entitlement First Nation will provide Canada with an indemnity in the following form:

"Y.01 Indemnity in Favour of Canada

The Entitlement First Nation hereby agrees to indemnify and forever save harmless Canada from all claims, liabilities and demands, initiated, brought or incurred by or on behalf of the Entitlement First Nation or any Predecessor Band, the Council of the Entitlement First Nation, the Trustees or any Member of the Entitlement First Nation, including any successors or assigns of the Entitlement First Nation, any Predecessor Band, the Trustees or any Members of the Entitlement First Nation or any Predecessor Band after the date this Treaty Entitlement Agreement comes into force against Canada in respect of any or all of the matters in respect of which the Entitlement First Nation has released Canada under the Release, provided that in the case of any legal proceedings commenced by a Member of the Entitlement First Nation or any Predecessor Band (other than a Trustee acting in that capacity) in respect of any claims, liabilities or demands alleged to have been made or incurred by or on behalf of the Entitlement First Nation or any Predecessor Band, the Council of the Entitlement First Nation, the Trustees or any Member of the Entitlement First Nation, including any successors or assigns of the Entitlement First Nation, any Predecessor Band, the Trustees or any Members of the Entitlement First Nation or any Predecessor Band, the decision to commence those legal proceedings has been endorsed by the Eligible Members in a community vote or by a Council Resolution.

Y.02 Recovery of Judgment by Canada

If Canada, its successors or assigns should be held liable as a result of a judgment obtained in any proceedings of the type described in Section Y.01, Canada may have recourse to subsection 4(2) of the *Indian Act* for the purpose of declaring section 89 of that act inapplicable to the Entitlement First Nation that and to the extent Canada may recover from the Entitlement First Nation any judgment against Canada to satisfy the Indemnity.”

27. Release and Indemnity in Favour of Manitoba

27.01 Release and Indemnity

- (1) In consideration of this Agreement, Canada shall release and forever discharge, and agrees to indemnify Manitoba, Her servants and agents and successors from and against any and all claims, liabilities and demands relating to the obligations of Manitoba arising out of paragraph 11 of the MNRTA for Manitoba to provide to Canada unoccupied Crown land to enable Canada to fulfill Canada's obligations under a Per Capita Provision to an Entitlement First Nation which executes a Treaty Entitlement Agreement.
- (2) The release and indemnity contained in Subsection (1) shall continue to apply in the event that:
 - (a) the release in favour of Canada from an Entitlement First Nation is suspended in accordance with Subsection X.05(1) of the Release; or
 - (b) Canada is barred from relying on the Release in accordance with Subsection X.05(4) of the Release.

27.02 Limit on Release and Indemnity for MNRTA Obligations

- (1) Manitoba agrees to indemnify and save harmless Canada from and against all claims, liabilities and demands in respect of the failure of Manitoba to fulfill its obligations under this Agreement.
- (2) The release and indemnity given by Canada in favour of Manitoba under Subsection 27.01(1) shall not extend to any claims, liabilities or demands made against Manitoba by Canada, the TLE Committee or any Entitlement First Nation in respect of or arising out of the failure of Manitoba to fulfill its obligations under this Agreement.

- (3) Section 27.01 shall not bar Canada from making further requests of Manitoba for land or from selecting, in agreement with Manitoba, further Crown land pursuant to paragraph 11 of the MNRTA, in the event a court of competent jurisdiction determines, or Canada and an Entitlement First Nation agree, that the Entitlement First Nation is entitled to land arising out of or by virtue of a provision of a treaty, other than a Per Capita Provision, including any entitlement to land which may arise from the subject matter referred to in Section X.02 of the Release to the extent of that entitlement.
- (4) Where a court of competent jurisdiction determines, or Canada and the Entitlement First Nation agree, that the Entitlement First Nation is entitled to land arising out of or by virtue of a provision of a treaty, other than a Per Capita Provision, Canada may enter into discussions with Manitoba concerning any obligation Manitoba may have to provide unoccupied Crown land to Canada to fulfill that provision of that treaty.
- (5) The release and indemnity provided by Canada in favour of Manitoba in Subsection 27.01(1) is subject to any obligation Manitoba may have to Canada in accordance with Subsection 9.01(7) and Section 9.02.

27.03 Suspension of Release and Indemnity in Favour of Manitoba

- (1) Subject to Subsections (2) and (3), the right of Manitoba to rely on the release and indemnity provided in Subsection 27.01(1) shall be suspended in the event Manitoba has committed an Event of Default.
- (2) Upon Manitoba remedying an Event of Default referred to in Subsection (1), Manitoba shall again be entitled to rely upon the release and indemnity, subject to Subsection (4).
- (3) For the purposes of Subsection (2), where the Event of Default is as described in Paragraph 36.02(b), Manitoba shall be deemed not to have remedied that Event of Default unless and until the Implementation Monitoring Committee or an Adjudicator in binding arbitration has determined that Manitoba has taken reasonable steps to remedy the default.
- (4) In the event Manitoba has committed an Event of Default and that Event of Default continues for a period of 180 days, Canada shall be entitled to request a declaration before a court of competent jurisdiction that the release and indemnity provided in Subsection

27.01(1) is void or ineffective in whole or in part and that Manitoba is barred from relying on the release and indemnity.

- (5) In the event Manitoba breaches any of its obligations under this Agreement, Canada or any Entitlement First Nation:
 - (a) may refer the issue or matter in dispute to the Implementation Monitoring Committee; and
 - (b) subject to Subsection (4), shall have no right to and shall not assert in any manner or in any forum (including, without limitation, seeking a declaration before any court of competent jurisdiction) that the release and indemnity given by Canada in favour of Manitoba in Subsection 27.01(1) is void or ineffective, whether in whole or in part, or that Manitoba is in any way barred from relying upon that release and indemnity.

PART VI: IMPLEMENTATION

28. Warranties

28.01 Warranties of TLE Committee

- (1) Treaty Land Entitlement Committee of Manitoba Inc., on its own behalf, warrants that:
 - (a) it is a body corporate duly incorporated and in good standing under the laws of Manitoba;
 - (b) it is not aware of any legal impediment to its continuation as a body corporate after the Date of Execution;
 - (c) it was established by and authorized to represent the Entitlement First Nations in the negotiation of this Agreement;
 - (d) this Agreement (including all Schedules) and the Agreed Forms of Treaty Entitlement Agreement and Trust Agreement have been approved by the members of the TLE Committee;
 - (e) it has been authorized to enter into this Agreement and to approve the Agreed Forms of the Treaty Entitlement Agreement and the Trust Agreement:
 - (i) by resolution of its members, passed at a duly convened meeting held in accordance with its bylaws and *The Corporations Act*, a certified true copy of which resolution is attached as Schedule "G" to this Agreement; and
 - (ii) as general partner on behalf of the TLEC Limited Partnership, in accordance with the partnership agreement referred to in Section 28.03;
 - (f) there are no actions or proceedings outstanding against it seeking orders or judgments of any kind from any court to prohibit it from executing this Agreement and approving the Agreed Forms of the Treaty Entitlement Agreement and the Trust Agreement nor are there any existing orders or judgments to that effect; and

- (g) the execution and delivery of this Agreement and the compliance with its terms will not conflict with or breach any terms of any other agreement to which it is now a party.
- (2) Treaty Land Entitlement Committee of Manitoba Inc., as general partner on behalf of TLEC Limited Partnership, warrants that:
 - (a) TLEC Limited Partnership is a limited partnership formed in accordance with the laws of Manitoba;
 - (b) it is not aware of any legal impediments to the continuation of TLEC Limited Partnership after the Date of Execution;
 - (c) TLEC Limited Partnership was formed, among other things, to manage, supervise and conduct the “investment business and implementation activity” as defined in the partnership agreement referred to in Section 28.03;
 - (d) there are no actions or proceedings outstanding against TLEC Limited Partnership seeking orders or judgments of any kind from any court to prohibit Treaty Land Entitlement Committee of Manitoba Inc., as general partner of TLEC Limited Partnership, from executing this Agreement and approving the Agreed Forms of the Treaty Entitlement Agreement and the Trust Agreement nor are there any existing orders or judgments to that effect; and
 - (e) the execution and delivery of this Agreement and compliance with its terms will not conflict with or breach any terms of any other agreement to which TLEC Limited Partnership is now a party.

28.02 Undertakings of TLE Committee

The TLE Committee undertakes to:

- (a) remain a corporation in good standing; and
- (b) maintain the TLEC Limited Partnership;

for as long as necessary to fully implement this Agreement and all Treaty Entitlement Agreements.

28.03 Creation of the TLEC Limited Partnership

- (1) The TLE Committee and the Founding Limited Partner have formed the TLEC Limited Partnership in accordance with Subsection (2).
- (2) The agreement evidencing the formation of the TLEC Limited Partnership shall, at all times, among other things, provide that:
 - (a) the TLE Committee shall be the general partner and shall be authorized to:
 - (i) manage the business and affairs of the TLEC Limited Partnership; and
 - (ii) take all actions necessary to meet the obligations of the TLEC Limited Partnership under this Agreement and any Treaty Entitlement Agreement, including without limitation, receiving, holding, and disbursing funds into, in and out of the CAP Account, TPI Account and Implementation Account;
 - (b) no Person other than the TLE Committee shall be permitted to be the general partner;
 - (c) the Founding Limited Partner shall:
 - (i) be the only limited partner, until other Entitlement First Nations become limited partners in accordance with Paragraph (e);
 - (ii) subscribe for 1,000 partnership units forthwith upon the execution of the partnership agreement, which units the TLEC Limited Partnership shall be entitled to repurchase at the original subscription price if the Founding Limited Partner does not execute a Treaty Entitlement Agreement within 24 months from the Date of Execution; and
 - (iii) forthwith upon the Treaty Entitlement Agreement and Trust Agreement for that Entitlement First Nation being approved by its Eligible Members in accordance with Article 29, subscribe for additional limited partnership units such that the total number of limited partnership units held by it shall be equal to the number of acres that is its Total Land Amount;
 - (d) the capital of the TLEC Limited Partnership shall be unitized and it shall be authorized to issue up to 1,100,626 limited partnership units at a price of \$0.0001 for each unit in accordance with Subparagraphs (c)(ii) and (iii) and Paragraph (e);
 - (e) forthwith upon the Treaty Entitlement Agreement and Trust

Agreement for an Entitlement First Nation being approved by its Eligible Members in accordance with Article 29, an Entitlement First Nation, other than the Founding Limited Partner, shall become a limited partner by subscribing for that number of limited partnership units which is equal to the number of acres that is its Total Land Amount;

- (f) the allocation of the income and losses of the TLEC Limited Partnership shall be:
 - (i) 0.0001% to the TLE Committee as general partner; and
 - (ii) 99.9999% to those Entitlement First Nations which are limited partners, in accordance with Paragraph (g);
- (g) the proportion of the allocation of the income and losses of the TLEC Limited Partnership to an Entitlement First Nation which is a limited partner shall be the proportion that the limited partnership units held by the Entitlement First Nation bears to all the limited partnership units that have been issued as of the date of the allocation of the income or loss;
- (h) no distribution of property to the limited partners or the general partner will be permitted except in accordance with Sections 17.04, 20.06 and 21.06;
- (i) the activities of TLEC Limited Partnership shall be limited to fulfilling its obligations under this Agreement and any Treaty Entitlement Agreement;
- (j) the TLEC Limited Partnership shall not be dissolved, terminated or wound up until this Agreement and all Treaty Entitlement Agreements have been fully implemented; and
- (k) the TLEC Limited Partnership shall be registered under *The Business Names Registration Act* and maintained in good standing in accordance with that act until this Agreement and all Treaty Entitlement Agreements have been fully implemented.

29. Community Approval Process

29.01 Procedures and Initiation of Community Approval Process

- (1) The Community Approval Process is set out at Schedule "H".
- (2) An Entitlement First Nation shall have the right, for a period of 18 months from the Date of Execution, to initiate the Community Approval Process by submission of a Council Resolution to Canada in the form provided for in Appendix "B" of Schedule "H".
- (3) Canada shall, upon receipt of a Council Resolution from an Entitlement First Nation referred to in Subsection (2), appoint a "process officer" as

defined in the Community Approval Process to proceed in accordance with Schedule "H".

29.02 Explanation to Members of Treaty Entitlement Agreement and Trust Agreement

During the Community Approval Process, an Entitlement First Nation, with the assistance of the TLE Committee, will be responsible for ensuring that its Eligible Members are provided with a full explanation of the land entitlement of the Entitlement First Nation under the Per Capita Provision and the provisions and purpose of this Agreement, the Treaty Entitlement Agreement and Trust Agreement prior to voting on the ballot question set out in Appendix "A" of Schedule "H".

29.03 Vote of Eligible Members

- (1) The Treaty Entitlement Agreement and a Trust Agreement of an Entitlement First Nation shall be approved in accordance with the Community Approval Process where the question asked on the "ballot question" (as defined in the Community Approval Process) has been answered in the affirmative by the Eligible Members of the Entitlement First Nation in accordance with Article 19 of the Community Approval Process.
- (2) Where the Eligible Members of an Entitlement First Nation do not approve a Treaty Entitlement Agreement and a Trust Agreement in accordance with Subsection (1), the Entitlement First Nation shall have no right to receive any benefit from or participate in this Agreement or execute a Treaty Entitlement Agreement.

29.04 Effect of Failure to Commence Community Approval Process within 18 Months

In the event an Entitlement First Nation does not initiate its Community Approval Process on or before the day which is 18 months from the Date of Execution, that Entitlement First Nation shall have no right to receive any benefit from or participate in this Agreement or execute a Treaty Entitlement Agreement.

30. Coming into Force

30.01 Effective Date of Agreement

This Agreement shall come into force as between the parties on the Date of Execution.

30.02 Requirements for Execution of Treaty Entitlement Agreement

The parties and an Entitlement First Nation will execute a Treaty Entitlement Agreement when all of the following have been completed:

- (a) the Eligible Members of the Entitlement First Nation have approved of a Treaty Entitlement Agreement and a Trust Agreement in accordance within the period set out in Subsection 29.01(2);
- (b) the Entitlement First Nation has subscribed for limited partnership units in the TLEC Limited Partnership equal in number to the number of acres

that is its Total Land Amount;

- (c) Initial Trustees have been appointed in accordance with the Trust Agreement;
- (d) the Trust Agreement has been executed by Canada and the Initial Trustees;
- (e) the Initial Trustees have established the Capital Account and Land Acquisition Account (if applicable) in accordance with the Trust Agreement;
- (f) the Eligible Financial Institution at which the Capital Account and Land Acquisition Account (if applicable) are established has provided written confirmation to Canada that:
 - (i) it is in possession of an executed copy of the Trust Agreement;
 - (ii) the Initial Trustees and the Eligible Financial Institution have executed a "banking arrangement" as defined in the Trust Agreement;
 - (iii) the Capital Account and Land Acquisition Account (if applicable) have been established; and
 - (iv) it is an Eligible Financial Institution

and has advised Canada as to where Canada should direct payment of the Federal Payment and the Land Acquisition Payment (if applicable) in accordance with Sections 18.01 and 19.01;

- (g) the Entitlement First Nation has provided to Canada a certificate of independent legal advice in a form acceptable to Canada by a lawyer entitled to practise law in the Province of Manitoba, certifying that the lawyer has been retained by and has advised the Entitlement First Nation of the land entitlement of the Entitlement First Nation under the Per Capita Provision and its rights and obligations under this Agreement and the Treaty Entitlement Agreement and, without limiting the generality of the foregoing, the release and indemnity to be given by the Entitlement First Nation in favour of Canada in accordance with the Treaty Entitlement Agreement;
- (h) the Initial Trustees have provided to Canada a certificate of independent legal advice in a form acceptable to Canada executed by a lawyer entitled to practise law in the Province of Manitoba certifying that the lawyer has been retained by and has advised the Trustees of their rights and obligations under the Trust Agreement;
- (i) the Initial Trustees have provided to Canada a certificate of independent financial advice in a form acceptable to Canada, executed by the financial advisor to the Trustees, certifying that the advisor has been retained by and has advised the Trustees of their

options for the investment and management of the Federal Payment and (if applicable) the Land Acquisition Payment;

- (j) the Entitlement First Nation has provided to Canada a Council Resolution authorizing the Council to execute the Treaty Entitlement Agreement; and
- (k) the Initial Trustees have provided to Canada a resolution passed at a duly convened meeting of the Initial Trustees authorizing the Initial Trustees to execute the Trust Agreement.

30.03 Effective Date of Treaty Entitlement Agreement

The Treaty Entitlement Agreement for an Entitlement First Nation comes into force on the date executed by the parties and the Entitlement First Nation.

31. Best Efforts and Undertakings

31.01 Undertaking of Parties

The TLE Committee, Canada and Manitoba agree that they will, in good faith, use their best efforts to fulfil the terms of this Agreement.

31.02 Best Efforts of TLE Committee

The TLE Committee will use its best efforts:

- (a) to ensure that appropriate personnel are assigned to fully and effectively discharge obligations under this Agreement and any Treaty Entitlement Agreements;
- (b) to provide technical support and assistance on a timely basis to any Entitlement First Nation which initiates a Community Approval Process;
- (c) to provide, as requested, ongoing technical support and assistance in the course of land Selection and Acquisition to any Entitlement First Nation that executes a Treaty Entitlement Agreement;
- (d) to assist each Entitlement First Nation that executes a Treaty Entitlement Agreement in the establishment of an effective local system of implementation of that Treaty Entitlement Agreement;

- (e) to provide promptly to Canada and Manitoba information and materials required to facilitate the fulfilment of the terms of this Agreement;
- (f) to provide technical support and assistance to its representatives on the Implementation Monitoring Committee and to the Entitlement First Nations as appropriate in the process of dispute resolution by the Implementation Monitoring Committee;
- (g) to establish appropriate accounting, financial administration and audit procedures for the due and proper management and expenditure of the funds to be administered by it under this Agreement; and
- (h) to provide ongoing orientation of its personnel and the personnel and Council of any Entitlement First Nation as requested to the requirements of this Agreement to encourage and foster a positive and productive working relationship between and among its personnel, Canada, Manitoba and the Entitlement First Nations.

31.03 Best Efforts of Canada

Canada will use its best efforts:

- (a) to ensure that appropriate personnel are assigned to fully and effectively discharge Canada's obligations under this Agreement and any Treaty Entitlement Agreement;
- (b) to provide promptly to the TLE Committee and Manitoba relevant information and materials required to facilitate the fulfilment of the terms of this Agreement, the release of which is not prohibited by law;
- (c) to undertake or cause to be undertaken Environmental Audits and surveys in accordance with Article 23;
- (d) to comply with the requirements of any laws, policies, procedures or other requirements to set land apart as Reserve;
- (e) to expedite the timely preparation and execution of any instruments under the *Federal Real Property Act*, orders in council or departmental or ministerial approvals required for the acceptance of administration and control of land or to set land apart as Reserve; and
- (f) to provide ongoing orientation of departmental personnel to the requirements of this Agreement to encourage and foster a positive and productive working relationship between and among its

personnel, the TLE Committee, Manitoba and the Entitlement First Nations.

31.04 Best Efforts of Manitoba

Manitoba will use its best efforts:

- (a) to ensure that appropriate personnel are assigned to fully and effectively discharge Manitoba's obligations under this Agreement and any Treaty Entitlement Agreements;
- (b) to provide promptly to Canada and the TLE Committee relevant information and materials required to facilitate the fulfillment of the terms of this Agreement, the release of which is not otherwise prohibited by law;
- (c) to provide timely notice of proposed Dispositions in Community Interest Zones;
- (d) to provide information in a timely manner concerning Crown interests in land Selected or Acquired by an Entitlement First Nation;
- (e) to expedite the timely preparation of any orders in council, departmental or ministerial approvals required for the resolution of Third Party Interests or the transfer to Canada of administration and control of Crown Land or interests;
- (f) to assist the Entitlement First Nations and Municipalities in the negotiation of issues relating to Municipal Services and Development Agreements;
- (g) to review and revise any departmental policy, systems and practices as required to facilitate and enable the timely achievement of the implementation of this Agreement; and
- (h) to provide ongoing orientation of departmental personnel to the requirements of this Agreement to encourage and foster a positive and productive working relationship between and among its personnel, the TLE Committee, Canada and the Entitlement First Nations.

32. Entitlement First Nation's Implementation Responsibilities

32.01 Responsibility of Entitlement First Nation

Each Entitlement First Nation that executes a Treaty Entitlement Agreement will have the responsibility for the Selection and, in the case of an Entitlement First Nation identified in Schedule "B", Acquisition of up to its Total Land Amount and for the performance of its obligations under a Treaty Entitlement Agreement.

32.02 Best Efforts of Entitlement First Nations in Implementation

During the course of performing its obligations under its Treaty Entitlement Agreement, an Entitlement First Nation will, where necessary, use its best efforts to:

- (a) undertake or cause to be undertaken a Land Selection Study;
- (b) physically inspect land to be Selected or Acquired;
- (c) Select or Acquire land in accordance with the Principles;
- (d) negotiate and conclude legal arrangements for the purchase of Other Land to be Acquired (if applicable);
- (e) identify and resolve Third Party Interests;
- (f) negotiate a Municipal Development and Services Agreement with a Municipality where land has been Selected or Acquired in a Municipality;
- (g) establish and maintain a working relationship with the appropriate personnel of Canada and Manitoba involved in the implementation process;
- (h) ensure the timely provision of information to the TLE Committee, Canada and Manitoba;
- (i) participate in the Implementation Monitoring Committee and dispute resolution processes as required; and
- (j) request the technical support of the TLE Committee, as the Entitlement First Nation deems necessary to ensure the achievement of its responsibilities under its Treaty Entitlement Agreement.

33. TLE Committee Implementation Responsibilities

33.01 Provision of Assistance to Entitlement First Nations

The TLE Committee will, upon request, assist the Entitlement First Nations in the implementation of this Agreement and each Treaty Entitlement Agreement:

- (a) by providing required technical and professional support to the Entitlement First Nations in the discharge of their respective responsibilities under any Treaty Entitlement Agreement as requested from time to time; and
- (b) by administering the funds provided to it by Canada for the benefit of the Entitlement First Nations in accordance with Articles 16, 17, 20 and 21.

33.02 General Responsibilities of TLE Committee

The TLE Committee will assist with the implementation of this Agreement and each Treaty Entitlement Agreement, including:

- (a) the establishment of a technical and professional capacity to effectively assist an Entitlement First Nation in planning and conducting a Community Approval Process;
- (b) the development and delivery of a communications program to inform an Entitlement First Nation of the contents of this Agreement and the Treaty Entitlement Agreement for that Entitlement First Nation and the preparation of newsletters and releases and video presentations as appropriate from time to time;
- (c) the provision of suitable technical support to an Entitlement First Nation in explaining the provisions of this Agreement and the Treaty Entitlement Agreement and in implementing those agreements;
- (d) the establishment of a working relationship with the departments and staff of each of Canada and Manitoba to support the implementation of this Agreement;
- (e) the provision of technical and professional assistance to an Entitlement First Nation in all aspects of the Selection or Acquisition of land to be set apart as Reserve, including:

- (i) the review of and comment on the Land Selection Study to be undertaken by the Entitlement First Nation;
- (ii) liaison with Manitoba in the process of review of proposed Dispositions and Mineral Dispositions within each Community Interest Zone;
- (iii) reviewing the application of the Principles to a Selection or Acquisition;
- (iv) the preparation and negotiation of agreements necessary for the Selection or Acquisition of land;
- (v) the monitoring of the land transfer process;
- (vi) the monitoring of the process of setting apart of land as Reserve;
- (vii) the negotiation of Municipal Development and Services Agreements as required;
- (viii) the removal, discharge or accommodation of Third Party Interests;
- (ix) the provision of advice and assistance to the members of the Implementation Monitoring Committee appointed by the TLE Committee; and
- (x) the provision of advice and assistance on issues or matters in dispute to the members of the Implementation Monitoring Committee appointed by the TLE Committee;
- (f) the preparation of information, documents and manuals in support of the implementation of this Agreement and any Treaty Entitlement Agreement; and
- (g) the preparation of reports on the progress of implementation of this Agreement and any Treaty Entitlement Agreement.

33.03 Non-Performance by TLE Committee

In the event the TLE Committee is unable to perform its duties or responsibilities under this Agreement, each Entitlement First Nation shall be responsible for the performance of those duties and responsibilities as they relate to that Entitlement First Nation.

34. Implementation Monitoring and Senior Advisory Committees

34.01 Establishment of the Implementation Monitoring Committee

- (1) The Implementation Monitoring Committee will be established comprised of five members, consisting of two representatives appointed by the TLE Committee, one representative appointed by Canada and one representative appointed by Manitoba and an independent Chairperson appointed in accordance with Sections 34.03 and 34.05.
- (2) The Implementation Monitoring Committee will remain in existence until the parties agree that:
 - (a) the provisions of this Agreement and any Treaty Entitlement Agreement have been substantially performed; or
 - (b) the Implementation Monitoring Committee is no longer required.

34.02 Appointment of Implementation Monitoring Committee Members and Quorum

- (1) The TLE Committee, Canada and Manitoba and shall each appoint their respective members of the Implementation Monitoring Committee by notice in writing to the other parties no later than 30 days following the Date of Execution.
- (2) A member of the Implementation Monitoring Committee appointed by the TLE Committee, Canada and Manitoba may designate in writing an alternate to attend a meeting of the Implementation Monitoring Committee.
- (3) The TLE Committee, Canada and Manitoba may each change their respective members of the Implementation Monitoring Committee from time to time by notice in writing to the other parties.
- (4) A quorum of the Implementation Monitoring Committee shall be four members, with at least one member representing each of the parties and the Chairperson in attendance, unless a member not in attendance has agreed otherwise.

34.03 Appointment of Independent Chairperson

- (1) The members of the Implementation Monitoring Committee representing the TLE Committee, Canada and Manitoba shall

consider the availability of persons resident in Manitoba that may have the appropriate qualifications and experience to undertake and effectively discharge the responsibilities of Chairperson and shall, within 90 days of the Date of Execution or such longer period as the parties may agree, recommend to the Senior Advisory Committee a person to be appointed Chairperson.

- (2) The Senior Advisory Committee shall, within 30 days of the date of receipt of the recommendation referred to in Subsection (1), appoint a person as Chairperson.

34.04 Terms of Appointment of Chairperson and Vacancy

- (1) Subject to Subsection 34.01(2), the Chairperson will be appointed on terms and conditions, including remuneration, as the parties may agree, for a term of two years from the date of appointment and any person so appointed will be eligible for re-appointment.
- (2) A Chairperson shall serve until:
 - (a) his or her term of appointment or re-appointment expires;
 - (b) he or she dies;
 - (c) he or she resigns;
 - (d) he or she is declared incapable of managing his or her own affairs by a Court of competent jurisdiction; or
 - (e) the parties agree in writing to withdraw his or her appointment.

34.05 Appointment of Chairperson upon Vacancy

- (1) In the event of a vacancy in the position of Chairperson, the members of the Implementation Monitoring Committee representing the TLE Committee, Canada and Manitoba shall consider the availability of persons resident in Manitoba that may have the appropriate qualifications and experience to undertake and effectively discharge the responsibilities of Chairperson and shall, within 90 days of the vacancy occurring or such longer period as the parties may agree, recommend to the Senior Advisory Committee a person to be appointed Chairperson.

- (2) The Senior Advisory Committee shall, within 30 days of the date of receipt of the recommendation referred to in Subsection (1), appoint a person as Chairperson.

34.06 Consensus Model Decision Making

- (1) Except in matters requiring the direction of the Chairperson under this Article and Articles 35 and 36, the Implementation Monitoring Committee will operate with and by the consensus of all of its members.
- (2) Where the Implementation Monitoring Committee is unable to resolve an issue or matter in dispute on a consensus basis, it shall refer the issue or matter in dispute for resolution as further provided under this Article and Article 35.
- (3) The members of the Implementation Monitoring Committee will be guided by the principle that the parties each have a continuing obligation to act in good faith in implementing this Agreement and any Treaty Entitlement Agreement including the resolution of any issue or matter in dispute.
- (4) The Implementation Monitoring Committee may from time to time make rules of procedure to govern its operation not inconsistent with this Article.

34.07 Responsibilities of the Implementation Monitoring Committee

- (1) The Implementation Monitoring Committee shall be generally responsible for facilitating the implementation of this Agreement and any Treaty Entitlement Agreements, including:
 - (a) establishing a budget of the reasonable estimated costs of its operation in each fiscal year, being the period from April 1 to March 31 in any year, or any part of a fiscal year in which it operates;
 - (b) monitoring of the progress of implementation;
 - (c) making recommendations to the parties for the resolution of any issue or matter in dispute relating to the implementation of this Agreement or any Treaty Entitlement Agreement;
 - (d) resolving any issue or matter in dispute relating to the implementation of this Agreement or any Treaty Entitlement

Agreement which is referred to it by a party or an Entitlement First Nation under this Agreement or that Treaty Entitlement Agreement; and

- (e) considering the appropriate method of resolution of an issue or matter in dispute relating to the implementation of this Agreement or any Treaty Entitlement Agreement in accordance with Article 35.
- (2) Subject to Subsections 34.03(1) and 34.05(1), the Implementation Monitoring Committee shall meet upon the call of the Chairperson in accordance with Subsections 34.09(2) and (3).
- (3) The Implementation Monitoring Committee shall operate within the budget established in accordance with Paragraph (1)(a), unless the parties agree otherwise.

34.08 Technical Support and Independent Professional Advice

- (1) The Chairperson may, where the members of the Implementation Monitoring Committee agree, retain technical support and independent professional advisors, including legal counsel, as necessary from time to time to assist in the proper discharge of the responsibilities of the Implementation Monitoring Committee, including the responsibilities of the Chairperson.
- (2) Technical support and independent professional advisors retained by the Chairperson on behalf of the Implementation Monitoring Committee will provide advice, guidance and opinions to the Implementation Monitoring Committee and the Chairperson as required to assist in the interpretation of this Agreement or any Treaty Entitlement Agreement or to assist in the resolution of any issue or matter in dispute.
- (3) Where the members of the Implementation Monitoring Committee do not agree to retain technical support and independent professional advisors in accordance with Subsection (1), the Chairperson may, within the established budget of the Implementation Monitoring Committee unless the parties agree otherwise, on behalf of himself or herself, retain technical support and independent professional advisors, including legal counsel, as required to assist the Chairperson in the proper discharge of his or her responsibilities, and Subsection (2) applies with necessary modifications.

34.09 Responsibilities of Chairperson

- (1) In addition to the specific and other responsibilities of the Chairperson set out in this Article and Articles 35 and 36, the Chairperson will be responsible for the general administration of the Implementation Monitoring Committee including:
 - (a) subject to Subsections 34.03(1) and 34.05(1), calling meetings of the Implementation Monitoring Committee in accordance with Subsections (2) and (3);
 - (b) subject to Subsections 34.03(1) and 34.05(1), chairing all meetings of the Implementation Monitoring Committee;
 - (c) ensuring that written minutes and records are kept of:
 - (i) meetings and decisions of the Implementation Monitoring Committee;
 - (ii) decisions and notices of the Senior Advisory Committee;
 - (iii) decisions and Awards of Adjudicators; and
 - (iv) all other information necessary to complete the annual reports referred to in Paragraph (10)(b);
 - (d) distributing the minutes of the Implementation Monitoring Committee to the members of the Implementation Monitoring Committee on a timely basis;
 - (e) recommending a budget of the estimated costs of the operation of the Implementation Monitoring Committee in each fiscal year;
 - (f) submitting to each of the parties an invoice for the reasonable costs incurred by the Implementation Monitoring Committee or the Chairperson in each month, including receipts and supporting documents as the parties may reasonably request;
 - (g) maintaining records of all costs incurred by the Implementation Monitoring Committee and the Chairperson and the preparing of the annual financial statements referred to in Paragraph (10)(d);

- (h) ensuring timely payment of the expenditures of the Implementation Monitoring Committee upon the receipt of payment from parties; and
 - (i) if directed by the parties, engaging an independent auditor to complete an audit of the financial affairs of the Implementation Monitoring Committee.
- (2) The Chairperson shall call a meeting of the Implementation Monitoring Committee:
 - (a) at least once every three months; and
 - (b) at the request of at least two members of the Implementation Monitoring Committee representing at least two of the parties.
- (3) A meeting of the Implementation Monitoring Committee shall be called by the Chairperson upon at least 14 days notice in writing to the members of the Implementation Monitoring Committee or upon a lesser period of notice where all members are in agreement.
- (4) The Chairperson will assist the Implementation Monitoring Committee in determining the sufficiency of information relating to the implementation of the Agreement and any Treaty Entitlement Agreement provided to the Implementation Monitoring Committee, and, if necessary, may request any of the members of the Implementation Monitoring Committee to take steps the Chairperson deems appropriate to ensure the sufficiency of that information.
- (5) In order to facilitate the resolution of issues or matters in dispute, the Chairperson may:
 - (a) propose time periods for the parties to respond to an issue or matter in dispute;
 - (b) direct any member to submit to the Implementation Monitoring Committee a report about any issue or matter in dispute and propose solutions to that issue or matter in dispute within a time period identified by the Chairperson;
 - (c) identify strengths and weaknesses of proposed solutions to an issue or matter in dispute;

- (d) direct the members of the Implementation Monitoring Committee to assist in resolving an issue or matter in dispute by consensus; and
 - (e) propose solutions to an issue or matter in dispute.
- (6) Where the Implementation Monitoring Committee makes a decision on a means to resolve an issue or matter in dispute, the Chairperson will record the decision in the minutes or records of the Implementation Monitoring Committee and provide notice of the decision to the parties and any Entitlement First Nation specifically affected by the issue or matter in dispute.
- (7) Where the Chairperson determines that the Implementation Monitoring Committee is unable to make a decision on a means to resolve an issue or matter in dispute, the Chairperson will record in the minutes or records of the Implementation Monitoring Committee:
 - (a) that the Implementation Monitoring Committee has not been able to resolve the issue or matter in dispute;
 - (b) any means recommended by the Chairperson to resolve the issue or matter in dispute for the consideration of the members of the Implementation Monitoring Committee and any direction to the members to consider the recommendation within a specified time period; and
 - (c) any response by the members of the Implementation Monitoring Committee to a recommendation of the Chairperson made in accordance with Paragraph (b).
- (8) Where an issue or matter in dispute is not resolved by the Implementation Monitoring Committee, the Chairperson, on behalf of the Implementation Monitoring Committee, will refer the issue or matter in dispute to the Senior Advisory Committee.
- (9) The Chairperson may, when referring a matter to the Senior Advisory Committee on behalf of the Implementation Monitoring Committee in accordance with Subsection (8), set out in writing to the Senior Advisory Committee:
 - (a) any means recommended by the Chairperson for resolving the issue or matter in dispute made in accordance with Paragraph (7)(b);

- (b) any response of the members of the Implementation Monitoring Committee provided in accordance with Paragraph (7)(c); and
- (c) his or her recommendation on the proposed time period within which the Senior Advisory Committee should attempt to resolve the issue or matter in dispute.

(10) The Chairperson:

- (a) may request and receive recommendations from any of the members of the Implementation Monitoring Committee concerning any aspect of implementation of this Agreement and any Treaty Entitlement Agreement;
- (b) will, on behalf of the Implementation Monitoring Committee, provide to the President of the TLE Committee, the Minister of Indian Affairs and Northern Development of Canada and the Minister of Northern Affairs of Manitoba an annual written report including:
 - (i) a summary of the progress of implementation of this Agreement and any Treaty Entitlement Agreement;
 - (ii) the recommendations of the Implementation Monitoring Committee for the improvement of the implementation of this Agreement and any Treaty Entitlement Agreement;
 - (iii) a summary of the issues or matters in dispute which have been resolved during the reporting period;
 - (iv) a summary of the issues or matters in dispute still outstanding at the end of the reporting period; and
 - (v) recommendations for improvement of the implementation of this Agreement and any Treaty Entitlement Agreement;
- (c) may, on behalf of the Implementation Monitoring Committee, provide to the President of the TLE Committee, the Minister of Indian Affairs and Northern Development of Canada and the Minister of Northern Affairs of Manitoba other reports from time to time as the Chairperson deems appropriate; and

- (d) will, on behalf of the Implementation Monitoring Committee, provide to the President of the TLE Committee, the Minister of Indian Affairs and Northern Development of Canada and the Minister of Northern Affairs of Manitoba an unaudited annual financial statement including:
 - (i) all funds received by the Implementation Monitoring Committee from the parties during the fiscal year;
 - (ii) a statement of how those funds were disbursed; and
 - (iii) a statement of all contributions in kind to the costs of the Implementation Monitoring Committee.
- (11) The first annual report of the Chairperson referred to in Paragraph (10)(b) and the first annual financial statement referred to in Paragraph (10)(d) shall be delivered on or before June 30, 1998 and subsequent annual reports and annual financial statements shall be delivered on or before June 30 of each year thereafter during the period the Implementation Monitoring Committee exists in accordance with Subsection 34.01(2).

34.10 Establishment of the Senior Advisory Committee

- (1) A Senior Advisory Committee representing the parties will be established consisting of:
 - (a) the President of the TLE Committee for the TLE Committee;
 - (b) the Regional Director General (Manitoba Region) or the Assistant Deputy Minister (Claims and Indian Government) of the Department of Indian Affairs and Northern Development for Canada; and
 - (c) the Deputy Minister of Northern Affairs for Manitoba.
- (2) One member of the Council of an Entitlement First Nation specifically affected by an issue or matter in dispute may also participate in any meetings of the Senior Advisory Committee at which that issue or matter in dispute is addressed.
- (3) A meeting of the Senior Advisory Committee shall not be held without all members in attendance, unless a member not in attendance has agreed otherwise.

- (4) Decisions of the Senior Advisory Committee shall be by consensus of all of the members in attendance.
- (5) Where the Senior Advisory Committee makes a decision on a means to resolve an issue or matter in dispute, the Senior Advisory Committee will set out in writing the decision and will send it to the Chairperson who will record the decision in the minutes or records of the Implementation Monitoring Committee.
- (6) Where the Senior Advisory Committee does not make a decision on a means to resolve an issue or matter in dispute within the time period proposed by the Chairperson or such longer time period as the Senior Advisory Committee may agree, the Senior Advisory Committee will give notice in writing to the Chairperson who will record in the minutes or records of the Implementation Monitoring Committee:
 - (a) that the Senior Advisory Committee has not made a decision on a means to resolve the issue or matter in dispute; and
 - (b) the appropriate dispute resolution mechanism to be used to resolve the issue or matter in dispute in accordance with Section 35.02, where the Senior Advisory Committee agrees on the mechanism to be used.
- (7) Where the Chairperson receives a notice from the Senior Advisory Committee in accordance with Subsection (6), the Implementation Monitoring Committee will, within 30 days of notice from the Senior Advisory Committee:
 - (a) where there is an agreement among the members of the Senior Advisory Committee on the appropriate method of dispute resolution to be used, refer the issue or matter in dispute to be resolved in accordance with that agreement; or
 - (b) where there is no agreement among the members of the Senior Advisory Committee on the appropriate method of dispute resolution to be used, refer the matter to an appropriate method of dispute resolution in accordance with Section 35.02.
- (8) Where the Implementation Monitoring Committee does not refer the issue or matter in dispute to an appropriate dispute resolution process within 30 days in accordance with Subsection (7), the Chairperson shall, within 30 days, refer the issue or matter in dispute to an Adjudicator to be resolved in accordance with Section 35.02.

35. Dispute Resolution

35.01 Identification of Adjudicators

- (1) An issue or matter in dispute referred to a method of dispute resolution in accordance with Subsection 34.10(7) or (8) shall be resolved in accordance with this Article.
- (2) The Implementation Monitoring Committee will identify persons qualified in the techniques of alternate dispute resolution to act as Adjudicators.
- (3) Adjudicators identified in accordance with Subsection (2) shall be available to resolve issues or matters in dispute arising in the implementation of this Agreement or any Treaty Entitlement Agreement as may be referred to them from time to time upon reasonable notice for a period as may be agreed by the Implementation Monitoring Committee and the Adjudicator.
- (4) The rates of remuneration for services to be provided by an Adjudicator shall be as determined by the Implementation Monitoring Committee having regard to the experience and qualifications of that Adjudicator.
- (5) The Implementation Monitoring Committee or the Chairperson shall appoint an Adjudicator to resolve an issue or matter in dispute in accordance with this Article.

35.02 Methods of Dispute Resolution

- (1) The methods of dispute resolution will be:
 - (a) “fact finding”, being the review of the issue or matter in dispute by an Adjudicator who shall conduct the review and assist the parties in resolving the issue or matter in dispute by the determination of relevant facts bearing upon the issue or matter in dispute;
 - (b) “mediation”, being the exploration of the positions of the parties to the issue or matter in dispute by an Adjudicator as a means of increasing the level of understanding of the positions of the parties, reconciling their positions to the extent possible and assisting the parties in reaching a consensus on the resolution of the issue or matter in dispute and the Adjudicator may offer

suggestions, recommendations and alternatives for consideration by the parties and, if requested, assist in preparing a written agreement on the means of resolving an issue or matter in dispute;

- (c) “non-binding arbitration”, being a hearing before an Adjudicator at which all parties to the issue or matter in dispute have an opportunity to be fully heard (orally or in writing) on an issue or matter in dispute after which the Adjudicator will make a decision in writing on the understanding that the parties will give serious regard to the decision, but the resulting decision is not legally binding on them; and
 - (d) “binding arbitration”, being a hearing in accordance with the *Commercial Arbitration Act* before an Adjudicator at which all parties to the issue or matter in dispute have an opportunity to be fully heard (orally or in writing) on the issue or matter in dispute after which the Adjudicator will make a decision in writing and the resulting decision is legally binding on them.
- (2) Subject to Subsection 36.01(5), the resolution of issues or matters in dispute shall be a progressive process, from fact finding to binding arbitration, unless determined otherwise by the Senior Advisory Committee in accordance with Paragraph 34.10(6)(b), the Implementation Monitoring Committee in accordance with Subsection 34.10(7) or the Chairperson in accordance with Paragraph 34.10(7)(b).
 - (3) All issues or matters resolved by non-binding arbitration or binding arbitration will be addressed by written decision of the Adjudicator.
 - (4) An Adjudicator who has provided dispute resolution services for one method of dispute resolution may not be appointed as an Adjudicator for the same issue or matter in dispute for another method of dispute resolution unless all parties to the issue or matter in dispute, including any Entitlement First Nation, agree.

35.03 Procedure for Dispute Resolution other than Binding Arbitration

Subject to any directions provided by the Implementation Monitoring Committee or Senior Advisory Committee, except where binding arbitration is being used to resolve the issue or matter in dispute, the Chairperson has the responsibility, in consultation with the members of the Implementation Monitoring Committee:

- (a) to prepare appropriate written directions to the Adjudicator for the completion of the dispute resolution process;
- (b) to provide the Adjudicator with information about the issue or matter in dispute, including a written definition of the issue or matter in dispute, any report on or proposed solution of the issue or matter in dispute submitted to the Implementation Monitoring Committee by any party, and any means of resolving the issue or matter in dispute recommended by the Chairperson;
- (c) to determine a time period for the completion of the method of dispute resolution recognizing the parties agree that the following time frames should apply for each method unless an issue or matter in dispute is of a complex nature:
 - (i) fact finding should be completed in no more than three days of review;
 - (ii) mediation should be completed in no more than five days of meetings; and
 - (iii) non-binding and binding arbitration should be completed in no more than seven days of hearing; and
- (d) to determine other appropriate procedures in order to ensure the issue or matter in dispute is resolved in a timely and cost efficient manner.

35.04 Procedure for Binding Arbitration

- (1) Subject to Subsections (2) and (4), where binding arbitration is used as a means to resolve an issue or matter in dispute, the Implementation Monitoring Committee shall prepare and submit to the Adjudicator a reference setting out in writing:
 - (a) a question or the questions for the Adjudicator to determine; and
 - (b) any other terms of reference to define the jurisdiction of the Adjudicator.
- (2) Subject to Subsection (4), where the Implementation Monitoring Committee does not prepare and submit to the Adjudicator a reference referred to in Subsection (1) on a timely basis or the Chairperson refers a matter to binding arbitration in accordance with Subsection

34.10(8) or 36.01(5), the Chairperson shall, after consultation with the other members of the Implementation Monitoring Committee, prepare and submit a reference of the nature referred to in Subsection (1) to the Adjudicator.

- (3) Subject to Subsection (4), on an issue or matter in dispute submitted to binding arbitration, an Adjudicator shall make an Award which addresses the issue or matter in dispute in accordance with the reference, and which may include:
 - (a) the determination of facts relating to the issue or matter in dispute;
 - (b) an interpretation of this Agreement or a Treaty Entitlement Agreement;
 - (c) a determination that one or more of the parties or one or more Entitlement First Nations is required to take certain action to give effect to this Agreement or a Treaty Entitlement Agreement; or
 - (d) a finding that an Event of Default has occurred.
- (4) An Adjudicator on an issue or matter in dispute submitted to binding arbitration shall not have jurisdiction to make an Award which:
 - (a) requires any of the parties or an Entitlement First Nation to change any of its policies, provided that:
 - (i) the Adjudicator may identify and determine any inconsistencies or deficiencies in the policies of any party or Entitlement First Nation and make recommendations to that party or any Entitlement First Nation concerning its policies affecting the due implementation of this Agreement or any Treaty Entitlement Agreement; and
 - (ii) a party or an Entitlement First Nation which receives a recommendation from the Adjudicator made in accordance with Subparagraph (i) shall have due regard for its obligations under this Agreement or a Treaty Entitlement Agreement in the consideration of any determination or recommendation of the Adjudicator; or

- (b) subject to Subsection 36.04(2), requires any of the parties or an Entitlement First Nation to make a payment to any other party or Entitlement First Nation for or in respect of damages or loss alleged to have been suffered by that other party or Entitlement First Nation as a result of any action or inaction of that party or Entitlement First Nation.
- (5) The resolution of an issue or matter in dispute referred to binding arbitration that is resolved by the consent of the parties and any Entitlement First Nation involved in that issue or matter in dispute shall issue as an Award.

35.05 Appeal of Binding Arbitration Awards

- (1) An Award, other than an Award issued in accordance with Subsection 35.04(5), may be appealed to the Manitoba Court of Queen's Bench within 30 days of the date of the Award by a party to the issue or matter in dispute on the grounds of:
 - (a) failure of the Adjudicator to consider the matter fairly;
 - (b) bias of the Adjudicator;
 - (c) failure of the Adjudicator to act within the jurisdiction provided to the Adjudicator; or
 - (d) error of law committed by the Adjudicator, including an error in interpretation of the Agreement or a Treaty Entitlement Agreement.
- (2) Where an Award is appealed in accordance with Subsection (1), the Manitoba Court of Queen's Bench may:
 - (a) dismiss the appeal;
 - (b) allow the appeal and remit the issue or matter in dispute to the Adjudicator or to the Implementation Monitoring Committee to appoint a different Adjudicator to be reconsidered based on the decision of the Court; or
 - (c) allow the appeal and substitute the decision of the Court in place of the Award where the determination of the appeal would reasonably resolve the issue or matter in dispute

and may make an order for costs.

- (3) There shall be no right of appeal from a decision of the Manitoba Court of Queen's Bench made in accordance with Subsection (2).

35.06 Default of Obligations in Dispute Resolution Methods

- (1) Where an issue or matter in dispute has been referred to a method of dispute resolution and the party which has submitted the issue or matter in dispute to the Implementation Monitoring Committee withdraws the issue or matter in dispute, the method of dispute resolution will end.
- (2) Where a party to an issue or matter in dispute does not comply with any time period for the provision of information to the Adjudicator which is part of a method of dispute resolution, the method of dispute resolution may proceed.
- (3) Where any party to an issue or matter in dispute does not appear at any hearing, the method of dispute resolution will proceed based on the information before the Adjudicator and a finding, direction, decision or Award may be rendered with respect to the issue or matter in dispute.

35.07 Costs of Dispute Resolution

- (1) Subject to Subsection (2), the costs of fact finding, mediation and non-binding arbitration will be paid equally by the parties involved based upon invoices for services rendered by the Adjudicator.
- (2) Where in a method of dispute resolution, a party does not comply with time periods for the provision of information or does not appear at a hearing and the method of dispute resolution proceeds in accordance with Subsection 35.06(3), the Adjudicator may determine the payment of costs in accordance with Subsection (5) as may be reasonable in the circumstances and Subsection (3) shall apply with necessary modifications.
- (3) In matters referred to binding arbitration, the Adjudicator may, in addition to determining an Award on the issue or matter in dispute, determine:
 - (a) the allocation of the costs of arbitration; and
 - (b) the payment of costs of the parties to the proceedings.

- (4) Where an issue or matter in dispute is resolved in accordance with Subsection 35.04(5), the Adjudicator may determine costs in accordance with Subsection (3) unless the parties and any Entitlement First Nation involved in that issue or matter in dispute otherwise agree.
- (5) The Adjudicator shall be guided in making an Award relating to the payment of costs in accordance with Subsection (3) by the Manitoba Court of Queen's Bench rules relating to the award of costs in litigation, including the principle that ordinarily the unsuccessful party to the proceedings would be required to pay reasonable costs of the proceedings and of the other parties.

35.08 Record and Report of Issues or Matters in Dispute and Events of Default

- (1) The Chairperson will maintain a record of all issues or matters in dispute and Events of Default and the means identified to resolve any issue or matter in dispute and any Event of Default.
- (2) The record maintained by the Chairperson in accordance with Subsection (1) may be used:
 - (a) as a means of identifying problem areas in implementation which may require consideration by the parties or amendment of this Agreement or any Treaty Entitlement Agreement;
 - (b) as information which may be considered by an Adjudicator in determining if an Event of Default has occurred; and
 - (c) for inclusion in the annual report of the Implementation Monitoring Committee issued in accordance with Paragraph 34.09(10)(b) or other reports issued in accordance with Paragraph 34.09(10)(c).

36. Material Failure and Events of Default

36.01 Material Failure to Comply with Fundamental Term or Condition

- (1) Where a party or an Entitlement First Nation alleges that another party or Entitlement First Nation has materially failed to comply with a fundamental term or condition of this Agreement or a Treaty Entitlement Agreement, the party or Entitlement First Nation making that allegation may submit a notice in writing to the other party or Entitlement First Nation containing:
 - (a) an identification of the fundamental term or condition of this Agreement or the Treaty Entitlement Agreement;
 - (b) a description of the circumstances of that alleged material failure; and
 - (c) a statement that:

- (i) the party or Entitlement First Nation receiving the notice may within 30 days of the receipt of the notice:
 - A. remedy that material failure; or
 - B. refer the matter to the Implementation Monitoring Committee; and
 - (ii) where the alleged material failure to comply with the fundamental term or condition identified in Paragraph (a) is not remedied within 30 days of the receipt of the notice, the matter may be referred to binding arbitration to determine whether the party or Entitlement First Nation has failed to materially comply with that fundamental term or condition.
- (2) A party or an Entitlement First Nation which receives a notice in accordance with Subsection (1) may within 30 days of the receipt of the notice:
 - (a) remedy the alleged material failure; or
 - (b) refer the matter to the Implementation Monitoring Committee.
- (3) Where a party or an Entitlement First Nation which receives a notice in accordance with Subsection (1) refers the matter to the Implementation Monitoring Committee in accordance with Paragraph (2)(b), the Implementation Monitoring Committee shall consider the matter on a priority basis within 30 days of the matter being referred to it.
- (4) Where a party or an Entitlement First Nation which receives a notice in accordance with Subsection (1) does not remedy the alleged failure or refer the matter to the Implementation Monitoring Committee in accordance with Subsection (2), the party or Entitlement First Nation which has been given that notice may by notice in writing refer the matter directly to the Chairperson.
- (5) Where the Implementation Monitoring Committee does not resolve the matter on a priority basis in accordance with Subsection (3), or a matter is referred to the Chairperson in accordance with Subsection (4), the Chairperson shall refer the matter directly to binding arbitration to determine whether the party or Entitlement First Nation against which the allegation has been made has failed to materially comply with a fundamental term or condition of this Agreement or a Treaty Entitlement Agreement.

36.02 Matters Constituting Events of Default

The following constitute Events of Default by a party or an Entitlement First Nation:

- (a) a party or Entitlement First Nation has failed to comply with any Award of an Adjudicator in binding arbitration within the time period specified in an Award or, where no time period is specified, within a reasonable period of time, provided that:
 - (i) the party or an Entitlement First Nation has not filed an appeal of that Award in accordance with Subsection 35.05(1); or
 - (ii) the failure of that party or Entitlement First Nation to comply with the Award does not result from the failure of any other party, an Entitlement First Nation or any Person to undertake or perform any action as an obligation under this Agreement or any Treaty Entitlement Agreement or a condition precedent to the party or an Entitlement First Nation complying with the terms of the Award;
- (b) an Adjudicator in binding arbitration has determined:
 - (i) that a party or an Entitlement First Nation has, repeatedly and in a manner which clearly establishes a pattern, materially failed to comply with its obligations under this Agreement or any Treaty Entitlement Agreement; and
 - (ii) the failure of a party or an Entitlement First Nation to comply with its obligations under this Agreement or any Treaty Entitlement Agreement was not the result of the failure of a party, an Entitlement First Nation or any Person to undertake or perform any action as an obligation under this Agreement or the Treaty Entitlement Agreement or as a condition precedent to a party or Entitlement First Nation complying with its obligations under this Agreement or the Treaty Entitlement Agreement;
- (c) a party or Entitlement First Nation has failed to comply with a decision of the Manitoba Court of Queen's Bench made in accordance with Subsection 35.05(2) within the time period specified in that decision or, where no time period is specified, within a reasonable period of time, provided that the failure of the party or an Entitlement First Nation to comply with the decision of the Manitoba Court of Queen's Bench does not result from the failure of any other party, an Entitlement First Nation or any Person to undertake or perform any action as an obligation under this Agreement or any Treaty Entitlement Agreement or a condition precedent to the party or an Entitlement First Nation complying with the terms of the decision; or
- (d) an Adjudicator in binding arbitration has determined that a party or an Entitlement First Nation has materially failed to comply with a fundamental term or condition of this Agreement or any Treaty Entitlement Agreement and has not remedied that material failure within 30 days of receipt of notice in writing from another party or Entitlement First Nation in accordance with Subsection 36.01(1).

Any party or Entitlement First Nation that admits, or is determined by an Adjudicator in binding arbitration to have committed, an Event of Default shall determine and identify reasonable means of remedying the Event of Default.

36.04 Loss or Damage as a Result of an Event of Default

- (1) Where an Adjudicator in binding arbitration has determined that a party or Entitlement First Nation has committed an Event of Default, a party or an Entitlement First Nation which has suffered loss or damages as a result of that Event of Default may refer the matter of that loss or damage to the Implementation Monitoring Committee as an issue or matter in dispute.
- (2) Where an issue or matter in dispute of the nature referred to in Subsection (1) is referred to an Adjudicator to be resolved by binding arbitration, the Adjudicator may make an Award setting damages to be paid by the party or Entitlement First Nation committing the Event of Default to the party or Entitlement First Nation suffering the loss or damages.

37. **Taxation**

37.01 Goods and Services Tax

Canada shall remit any tax under Part IX of the *Excise Tax Act*, or any other identical or substantially similar tax imposed under an act of Parliament, that is paid or payable in respect of:

- (a) a supply to an Entitlement First Nation of land Selected or Acquired by the Entitlement First Nation; or
- (b) a supply that is a purchase by or on behalf of an Entitlement First Nation, or a cancellation in favour of an Entitlement First Nation, of a Third Party Interest in land so Selected or Acquired by the Entitlement First Nation where the land is Selected or Acquired before the Entitlement First Nation has Selected its Crown Land Amount or Acquired its Other Land Amount, and Canada shall remit any penalties or interest relating to any such tax that is so remitted.

37.02 Land Transfer Tax, Retail Sales Tax or Other Value-Added Tax

Manitoba shall ensure that an Entitlement First Nation that, either directly or indirectly by its agent, lawyer or trustee, Acquires Acquired Property shall not, with respect to the Acquired Property, be subject, directly or indirectly, to land transfer tax imposed by Manitoba pursuant to *The Revenue Act* and retail sales tax imposed by Manitoba pursuant to *The Retail Sales Tax Act* or any other value-added tax, sales tax or other form of tax or fee calculated with reference to either:

- (a) the consideration paid or payable for the Acquired Property by the

purchasing Entitlement First Nation to the vendor of the Acquired Property or any part thereof; or

- (b) the value, fair market value or fair value of the Acquired Property or any part thereof

imposed by any other applicable act now in effect or subsequently enacted.

37.03 Municipal or School Tax Assessment

- (1) Manitoba shall ensure that Acquired Property of an Entitlement First Nation shall not be subject to municipal tax, school tax or any other form of tax or fee pursuant to *The Municipal Assessment Act* or any other applicable statutory enactment in effect or subsequently enacted during the period when the Acquired Property is held by or on behalf of the Entitlement First Nation prior to that land being set apart by Canada as Reserve upon:
 - (a) the Entitlement First Nation and the Municipality entering into a Municipal Development and Services Agreement; or
 - (b) Canada confirming that the land is eligible to be set apart as Reserve without a Municipal Development and Services Agreement.
- (2) Subsection (1) will not apply after the date Canada advises Manitoba and the Entitlement First Nation that, in accordance with this Agreement, the Acquired Property will not be set apart as Reserve.

38. **Agreed Forms**

38.01 Use of Agreed Forms

- (1) Agreed Forms to be used in the implementation of this Agreement will be prepared from time to time as required.
- (2) Agreed Forms shall be approved by agreement in writing of the representatives of each of the parties on the Implementation Monitoring Committee.
- (3) Despite Subsection (2), concurrent with the execution of this Agreement, the parties have approved Agreed Forms of:
 - (a) the Treaty Entitlement Agreement; and
 - (b) the Trust Agreement.
- (4) The parties are committed to the approval of the following Agreed Forms in accordance with Subsection (2) as soon as is reasonably practicable:

- (a) the order in council by which Manitoba will transfer to Canada administration and control of Crown Land referred to in Subsection 7.01(2);
- (b) the instrument under the *Federal Real Property Act* by which Canada will accept administration and control of Crown Land transferred to Canada by Manitoba referred to in Subsection 7.01(4); and
- (c) the Hydro Easement referred to in Subsection 12.05(1).

PART VII: GENERAL PROVISIONS

39. No Effect on Existing or Future Funding of Programs

- 39.01 (1) Nothing in this Agreement shall affect the ability of an Entitlement First Nation to have access to programs and services offered by Canada and Manitoba on the same basis as other First Nations in Canada in accordance with the laws and policies established from time to time for those programs and services.
- (2) For greater certainty, neither the amount of the Federal Payment, nor the income from the Federal Payment shall be factored into or considered in any negative manner in the determination of any amount of funding for any programs or services of Canada or Manitoba for which an Entitlement First Nation qualifies under the criteria for those programs or services.
- (3) An Entitlement First Nation may make application for programs and services offered by Canada and Manitoba in accordance with the normal practices of Canada or Manitoba and shall not be entitled to any preferential treatment solely as a result of the Entitlement First Nation having executed a Treaty Entitlement Agreement.
- (4) Nothing in this Agreement creates any financial obligations of Canada towards an Entitlement First Nation, except:
- (a) as provided in Part IV; or
- (b) as may be otherwise required by law
- as a result of the Entitlement First Nation executing a Treaty Entitlement Agreement or Canada setting land apart as Reserve for that Entitlement First Nation in accordance with this Agreement and that Treaty Entitlement Agreement.

40. Miscellaneous Provisions

40.01 Entire Agreement

- (1) Subject to Subsection (2), this Agreement constitutes the entire agreement between the parties and there are no undertakings, representations or promises express or implied, other than those expressly set out in this Agreement.

- (2) Upon execution by Canada, Manitoba, the TLE Committee and an Entitlement First Nation of a Treaty Entitlement Agreement, this Agreement and the Treaty Entitlement Agreement, jointly, shall constitute the entire agreement between the parties and the Entitlement First Nation relating to:
 - (a) the fulfillment of Canada's obligation to lay aside and reserve tracts of land under the Per Capita Provision for that Entitlement First Nation or its Predecessor Band in the manner and to the extent herein provided; and
 - (b) Manitoba's obligations arising out of paragraph 11 of the MNRTA to provide Canada with unoccupied Crown land to permit Canada to satisfy its obligation to that Entitlement First Nation under the Per Capita Provision in the manner and to the extent herein provided.
- (3) This Agreement supersedes, merges and cancels any and all pre-existing agreements and understandings in the course of negotiations between the parties including, without limitation, the Protocol on negotiations dated October 14, 1993.

40.02 Severability

- (1) In the event any provision of this Agreement should be found to be invalid, the provision shall be severed and the Agreement read without reference to that provision.
- (2) Where any provision of this Agreement has been severed in accordance with Subsection (1) and that severance materially affects the implementation of this Agreement, the parties agree to meet to resolve any issues as may arise as a result of that severance and to amend this Agreement accordingly.

40.03 Applicable Law

This Agreement shall be governed by and construed in accordance with all applicable laws of Manitoba and Canada.

40.04 Currency and Current Dollars

All references in this Agreement to dollars are expressed and shall be payable in Canadian currency and determined in the year of expenditure.

40.05 Place of Delivery

(1) The address for delivery of any notice or other written communication required or permitted to be given in accordance with this Agreement, including any notice advising another party of any change of address, will be as follows:

(a) to CANADA:
Regional Director General
Manitoba Regional Office
Department of Indian Affairs and Northern Development
1100 - 275 Portage Avenue
Winnipeg, Manitoba R3B 3A3

Fax: (204) 983-6500
with a copy to:

Assistant Deputy Minister
Claims and Indian Government
Department of Indian Affairs and Northern Development
Les Terrasses de la Chaudiere
10 Wellington Street
Hull, Quebec K1A 0H4
Fax: (819) 953-3246;

(b) to MANITOBA:
Deputy Minister of Northern Affairs
Room 337, Legislative Building
Winnipeg, Manitoba R3C 0V8
Fax: (204) 945-8374; and

(c) to the TLE COMMITTEE:
President
300-A 153 Lombard Avenue
Winnipeg, Manitoba R3B 0T4
Fax: (204) 942-3202.

(2) The parties may change their address for delivery of any notice or other written communication in accordance with Subsection (1).

40.06 Effective Date of Notice

Any notice or other written communication shall be sufficient if delivered personally, or if delivered by registered mail, postage prepaid or if delivered

by facsimile transmission to the facsimile number provided by the party to whom the notice or other written communication is addressed in accordance with Section 40.05, and shall be deemed to be effective on the last of the following dates:

- (a) the date stated in the notice as the effective date of the notice;
- (b) if mailed by prepaid registered mail, that date five business days after mailing;
- (c) if delivered personally, on the date of the delivery; and
- (d) if delivered by facsimile transmission, on the date of receipt of the transmission

provided that during an actual or anticipated postal disruption or stoppage, postal delivery shall not be used by any party.

40.07 Amendment

This Agreement shall not be varied or amended except by written agreement of the parties.

40.08 Assignment

The parties agree that the rights and obligations of the parties may not be assigned or otherwise transferred without the prior written consent of the other parties.

40.09 No Presumptions at Law

There shall be no presumption at law that any ambiguity in this Agreement should be interpreted in favour of or against the interests of any of the parties.

40.10 No Creation of New Treaty Rights

This Agreement is not a treaty and does not create any new treaty rights for any Entitlement First Nation within the meaning of subsection 35(1) of the *Constitution Act, 1982*.

40.11 No Effect on Existing Aboriginal or Treaty Rights

- (1) Except as to matters dealt with in Section X.01 of the Release, neither this Agreement nor any Treaty Entitlement Agreement shall be construed so as to abrogate or derogate from any existing aboriginal or treaty right of an Entitlement First Nation or any Member of an Entitlement First Nation.

- (2) Except as to matters dealt with in Section X.01 of the Release, neither this Agreement nor any Treaty Entitlement Agreement shall be construed so as to abrogate or derogate from the application of subsection 35(1) of the *Constitution Act, 1982* to any aboriginal or treaty right of an Entitlement First Nation or any Member of an Entitlement First Nation that may accrue after the Date of Execution.
- (3) Any provision of this Agreement or a Treaty Entitlement Agreement which is found by a court of competent jurisdiction to be invalid or void as being inconsistent with the recognition and affirmation of any existing aboriginal or treaty right within the meaning of subsection 35(1) of the *Constitution Act, 1982* or any such right that may accrue after the Date of Execution to any Entitlement First Nation or its Members shall, to the extent of that inconsistency, be dealt with in accordance with Section 40.02.

40.12 Constitutional or Legislative Changes

Where any amendment not contemplated by this Agreement is enacted to the *Constitution Act, 1982*, the *Indian Act* or to any other legislation, the result of which amendment is inconsistent with the legal rights or obligations of the parties under this Agreement and which, in turn, materially affects the implementation, operation or effect of this Agreement, the parties agree to enter into good faith negotiations designed to determine and implement any necessary amendments to this Agreement required to remedy or alleviate the effect of such constitutional or legislative changes.

40.13 Further Assurances

The parties covenant each with the other to do such things and to execute such further documents and take all necessary measures to carry out and implement the terms of this Agreement.

40.14 Enurement

This Agreement enures to the benefit of and is binding upon:

- (a) the TLE Committee, its successors and permitted assigns;
- (b) Her Majesty the Queen in the right of Canada, Her heirs, successors and permitted assigns; and
- (c) Her Majesty the Queen in the right of Manitoba, Her heirs, successors and permitted assigns.

40.15 Enurement of Treaty Entitlement Agreement

A Treaty Entitlement Agreement enures to the benefit of and is binding upon the TLE Committee, Canada, Manitoba and the Entitlement First Nation that executed the Treaty Entitlement Agreement, any Predecessor Band, their

heirs, successors and on all past, present, and future Members of the Entitlement First Nation and any Predecessor Band.

40.16 Members of Senate and House of Commons and Legislative Assembly

No member of:

- (a) the House of Commons or Senate of Canada; or
- (b) the Legislative Assembly of Manitoba

shall be admitted to any share or part of this Agreement or to any benefit which may arise out of this Agreement not enjoyed by any other Member of an Entitlement First Nation of which he or she is a Member.

40.17 Payments Subject to Appropriations

Despite any other provision of this Agreement or any Treaty Entitlement Agreement, any obligation on the part of Canada to make any payment of money is subject to the appropriation of sufficient funds from Parliament.

40.18 Use of Agreement in Interpretation of Other Agreements

This Agreement shall not be used in the interpretation of any agreement other than any Treaty Entitlement Agreement, any Trust Agreement, any other Agreed Form or any other agreement necessarily incidental to implementing the provisions of this Agreement.

40.19 No Agency

This Agreement does not create the relationship of employee and employer or principal and agent between Canada or Manitoba and the TLE Committee or any Entitlement First Nation or between Canada and Manitoba and any of the employees or agents of the TLE Committee or any Entitlement First Nation.

40.20 Effect of Amalgamation and Creation of First Nations

- (1) Where two or more Entitlement First Nations are amalgamated in accordance with paragraph 17(1)(a) of the *Indian Act* before the amount of land set apart as Reserve for any of those Entitlement First Nations has been increased by the Total Land Amount of that Entitlement First Nation:
 - (a) the amalgamated First Nation shall be an Entitlement First Nation for the purposes of this Agreement, despite the definition of "Entitlement First Nation";
 - (b) any specific reference in this Agreement to one of the Entitlement First Nations which was amalgamated to form the

amalgamated First Nation shall be a reference to the amalgamated First Nation; and

- (c) any benefits that the Entitlement First Nations individually have the right to receive from this Agreement shall be combined and accrue to the benefit of the amalgamated First Nation.
- (2) Where an Entitlement First Nation is amalgamated with another First Nation which is not an Entitlement First Nation in accordance with paragraph 17(1)(a) of the *Indian Act* before the amount of land set apart as Reserve for the Entitlement First Nation has been increased by its Total Land Amount:
- (a) the amalgamated First Nation shall be an Entitlement First Nation for the purposes of this Agreement, despite the definition of “Entitlement First Nation”;
 - (b) any specific reference in this Agreement to the Entitlement First Nation which was amalgamated to form the amalgamated First Nation shall be a reference to the amalgamated First Nation; and
 - (c) any benefits that the Entitlement First Nation has the right to receive from this Agreement shall accrue to the benefit of the amalgamated First Nation.
- (3) Where a new First Nation is established from an Entitlement First Nation or any part thereof in accordance with paragraph 17(1)(b) of the *Indian Act* prior to the Entitlement First Nation conducting a Community Approval Process:
- (a) the new First Nation shall be an Entitlement First Nation for the purposes of this Agreement, despite the definition of “Entitlement First Nation”;
 - (b) any specific reference in this Agreement to the Entitlement First Nation shall be a reference to both the Entitlement First Nation and the new First Nation, unless the context requires that the reference should properly be to only one of the First Nations; and
 - (c) the Entitlement First Nation and the new First Nation shall allocate their respective entitlements to:
 - (i) the Total Land Amount, Crown Land Amount and interest in the Federal Payment of the Entitlement First Nation;
 - (ii) where the Entitlement First Nation is an Entitlement First Nation identified in Schedule “B”, the Other Land Amount, interest in the Land Acquisition Payment and Minimum Entitlement Acres of the Entitlement First Nation; and

- (iii) the contribution to be made to assist the Entitlement First Nation in conducting the Community Approval Process set out in Schedule “F”

and each First Nation shall provide to the parties a Council Resolution evidencing that allocation, prior to either First Nation initiating a Community Approval Process in accordance with Subsection 29.01(2).

- (4) Where a new First Nation is established from an Entitlement First Nation or any part thereof in accordance with paragraph 17(1)(b) of the *Indian Act* after the Entitlement First Nation has conducted a Community Approval Process and before the parties and the Entitlement First Nation have executed a Treaty Entitlement Agreement:

- (a) the new First Nation shall be an Entitlement First Nation for the purposes of this Agreement, despite the definition of “Entitlement First Nation”;
- (b) any specific reference in this Agreement to the Entitlement First Nation shall be a reference to both the Entitlement First Nation and the new First Nation, unless the context requires that the reference should properly be to only one of the First Nations;
- (c) the Entitlement First Nation and the New First Nation shall allocate their respective entitlements to:
 - (i) the Total Land Amount, Crown Land Amount and interest in the Federal Payment of the Entitlement First Nation;
 - (ii) where the Entitlement First Nation is an Entitlement First Nation identified in Schedule “B”, the Other Land Amount, interest in the Land Acquisition Payment and Minimum Entitlement Acres for the Entitlement First Nation; and
 - (iii) the limited partnership units in the TLEC Limited Partnership to which the Entitlement First Nation may subscribe, provided that this allocation shall be consistent with Paragraph 30.02(a) and the allocation the two First Nations make of the Total Land Amount of the Entitlement First Nation

and each First Nation shall provide to the parties a Council Resolution evidencing that allocation, prior to the parties executing a Treaty Entitlement Agreement with either First Nation.

- (5) Where a new First Nation is established from an Entitlement First

Nation or any part thereof in accordance with paragraph 17(1)(b) of the *Indian Act* after the parties and the Entitlement First Nation have executed a Treaty Entitlement Agreement and before the Entitlement First Nation has Selected or Acquired any land:

- (a) the new First Nation shall be an Entitlement First Nation for the purposes of this Agreement, despite the definition of "Entitlement First Nation";
- (b) any specific reference in this Agreement to the Entitlement First Nation shall be a reference to both the Entitlement First Nation and the new First Nation, unless the context requires that the reference should properly be to only one of the First Nations;
- (c) the Entitlement First Nation and the new First Nation shall allocate their respective entitlements to:
 - (i) the Total Land Amount and Crown Land Amount of the Entitlement First Nation;
 - (ii) where the Entitlement First Nation is an Entitlement First Nation identified in Schedule "B", the Other Land Amount and Minimum Entitlement Acres of the Entitlement First Nation;
 - (iii) the interest of the Entitlement First Nation in Trust Property; and
 - (iv) the limited partnership units in the TLEC Limited Partnership to which the Entitlement First Nation has subscribed, provided that this allocation shall be consistent with Paragraph 30.02(a) and the allocation the two First Nations make of the Total Land Amount of the Entitlement First Nation;
- (d) each First Nation shall provide to the parties a Council Resolution evidencing the allocation referred to in Paragraph (c); and
- (e) upon the First Nation satisfying the requirements of Paragraphs 30.02(b), (g) and (j):
 - (i) the parties and the Entitlement First Nation shall amend the Treaty Entitlement Agreement for that Entitlement First Nation to reflect the allocations referred to in Subparagraphs (c)(i) and (ii); and
 - (ii) the parties and the new First Nation shall enter into a Treaty Entitlement Agreement which, among other things:

- A. reflects the allocation referred to in Subparagraph (c)(i) and (ii); and
 - B. has been modified in form to reflect any payment of the Federal Payment and, in the case of an Entitlement First Nation identified in Schedule “B”, the Land Acquisition Payment that has been previously made by Canada.
- (6) Where a new First Nation is established from an Entitlement First Nation or any part thereof in accordance with paragraph 17(1)(b) of the *Indian Act* after the parties and the Entitlement First Nation have executed a Treaty Entitlement Agreement, the Entitlement First Nation has Selected or Acquired some land and the amount of land set apart as Reserve for the Entitlement First Nation has not been increased by its Total Land Amount:
 - (a) the new First Nation shall be an Entitlement First Nation for the purposes of this Agreement, despite the definition of “Entitlement First Nation”;
 - (b) any specific reference in this Agreement to the Entitlement First Nation shall be a reference to both the Entitlement First Nation and the new First Nation, unless the context requires that the reference should properly be to only one of the First Nations;
 - (c) the Entitlement First Nation and the new First Nation shall allocate between themselves their respective entitlements to:
 - (i) the Total Land Amount of the Entitlement First Nation less the amount of land Selected and, in the case of an Entitlement First Nation identified in Schedule “B”, less the amount of land Acquired by the Entitlement First Nation that has been set apart as Reserve;
 - (ii) the Crown Land Amount of the Entitlement First Nation, less the amount of land Selected by the Entitlement First Nation that has been set apart as Reserve;
 - (iii) where the Entitlement First Nation is an Entitlement First Nation identified in Schedule “B”:
 - A. the Other Land Amount of the Entitlement First Nation, less the amount of land Acquired by the Entitlement First Nation that has been set apart as Reserve; and
 - B. the Minimum Entitlement Acres of the Entitlement First Nation, less the amount of land Selected and Acquired by the Entitlement First Nation that has been set

apart as Reserve;

- (iv) the interest of the Entitlement First Nation in Trust Property;
 - (v) any Selections or Acquisitions made by the Entitlement First Nation which have not yet been set apart as Reserve, provided that this allocation shall be consistent with Section 2.01 and the allocation the two First Nations make of the Total Land Amount of the Entitlement First Nation; and
 - (vi) the limited partnership units in the TLEC Limited Partnership to which the Entitlement First Nation has subscribed, provided that this allocation shall be consistent with Paragraph 30.02(a) and the allocation the two First Nations make of the Total Land Amount of the Entitlement First Nation;
- (d) each First Nation shall provide to the parties a Council Resolution evidencing the allocation referred to in Paragraph (c); and
- (e) upon the new First Nation satisfying the requirements of Paragraphs 30.02(b), (g) and (j):
- (i) the parties and the Entitlement First Nation shall amend the Treaty Entitlement Agreement for that Entitlement First Nation to reflect the allocations referred to in Subparagraphs (c)(i) to (iii) inclusive; and
 - (ii) the parties and the new First Nation shall enter into a Treaty Entitlement Agreement which, among other things,:
 - A. reflects the allocations referred to in Subparagraphs (c)(i) to (iii) inclusive; and
 - B. has been modified in form to reflect any payment of the Federal Payment and, in the case of an Entitlement First Nation identified in Schedule "B", the Land Acquisition Payment that has been previously made by Canada.

(7) The allocation of:

- (a) the interest in Trust Property, between an Entitlement First Nation and a new First Nation referred to in Subparagraph (5)(c)(iii) or (6)(c)(iv) shall be dealt with in the manner set out in the Trust Agreement; and

- (b) the limited partnership units of the Entitlement First Nation in the TLEC Limited Partnership referred to in Subparagraph (5)(c)(iv) or (6)(c)(vi) shall be dealt with in the manner set out in the limited partnership agreement constituting the TLEC Limited Partnership.
- (8) Where an Entitlement First Nation and a new First Nation established from the Entitlement First Nation or any part thereof cannot agree on the allocation referred to in Paragraph (5)(c) or (6)(c), the matter may be referred to the Implementation Monitoring Committee.
- (9) The form of:
 - (a) the amendment of a Treaty Entitlement Agreement of the nature referred to in Subparagraphs (5)(e)(i) and (6)(e)(i); and
 - (b) the modified Treaty Entitlement Agreement referred to in Subparagraphs (5)(e)(ii) and (6)(e)(ii)may be Agreed Forms.

Part VIII - SCHEDULES

41. Schedules

41.01 Schedules to Agreement

(1) The following schedules are attached to and form part of this Agreement:

"A" Total Land Amount, Crown Land Amount and Federal Payment;

"B" Other Land Amount, Land Acquisition Payment and Minimum Entitlement Acres;

"C" Map of "Limestone Point Planning Area";

"D" Practice of the Manitoba Regional Office of the Department of Indian Affairs and Northern Development Relating to the Application of the Additions to Reserves Policy in Urban Areas;

"E" Map of Sites with Hydro-Electric Development Potential on Developed Waterways and Hayes River;

"F" Contribution for Community Approval Process;

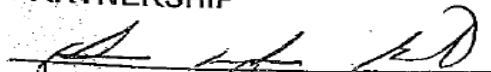
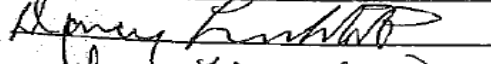
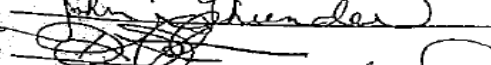

"G" Certified Resolution of TLE Committee; and

"H" Community Approval Process.

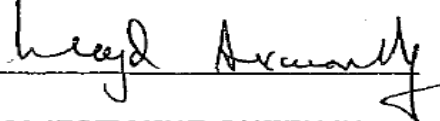
(2) In the event of a conflict between the text of this Agreement and the Schedules, the text of this Agreement shall apply.

IN WITNESS WHEREOF, the parties have executed this Agreement this 29th day of May, 1997 by their respective officers.

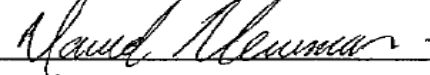
TREATY LAND ENTITLEMENT
COMMITTEE OF MANITOBA INC.
on its own behalf and as general
partner on behalf of TLEC LIMITED
PARTNERSHIP

HER MAJESTY THE QUEEN IN
RIGHT OF CANADA



HER MAJESTY THE QUEEN IN
RIGHT OF MANITOBA



SCHEDULE "A"

TOTAL LAND AMOUNT, CROWN LAND AMOUNT AND FEDERAL PAYMENT

<i>Entitlement First Nation</i>	<i>Total Land Amount (Acres)</i>	<i>Crown Land Amount (Acres)</i>	<i>Federal Payment</i>
Barren Lands	66,420	66,420	\$1,616,313
Northlands	94,084	94,084	2,289,482
Brokenhead	14,481	4,344	352,395
Buffalo Point	4,039	3,432	98,247
Fox Lake	26,391	26,391	642,217
God's Lake	42,600	42,600	1,036,657
God's River	8,725	8,725	212,327
Mathias Colomb	234,371	234,371	5,703,346
Nelson House	79,435	79,435	1,933,017
Norway House	104,784	104,784	2,549,892
Opaskwayak	56,068	47,658	1,364,397
Oxford House	35,434	35,434	862,264
Rolling River	47,112	2,356	1,146,457
Sapotaweyak	144,179	108,134	3,508,548
Wuskwi Sipihk	58,890	44,168	1,433,069
Sayisi Dene	22,372	22,372	544,409
Shamattawa	24,912	24,912	606,234
War Lake	7,156	7,156	174,149
York Factory	<u>29,173</u>	<u>29,173</u>	<u>709,919</u>
TOTAL	1,100,626	985,949	\$26,783,339

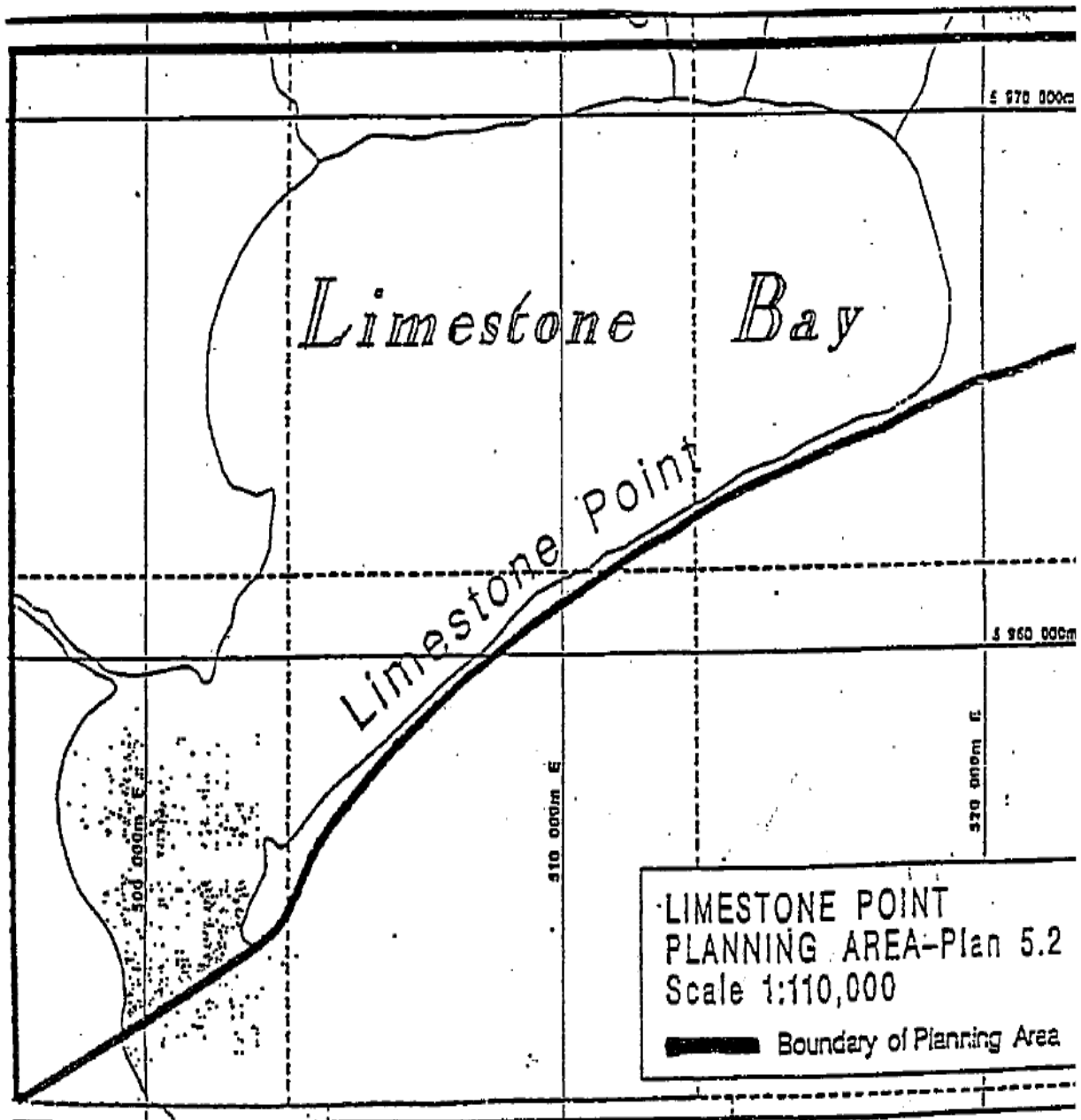
SCHEDULE "B"

OTHER LAND AMOUNT, LAND ACQUISITION PAYMENT AND MINIMUM ENTITLEMENT ACRES

<i>Entitlement First Nation</i>	<i>Other Land Amount (Acres)</i>	<i>Land Acquisition Payment</i>	<i>Minimum Entitlement Acres (Acres)</i>
Brokenhead	10,137	\$3,679,671	2,049
Buffalo Point	607	124,148	2,348
Opaskwayak	8,410	2,153,015	3,095
Rolling River	44,756	8,503,742	5,152
Sapotaweyak	36,045	7,100,823	9,633
Wuskwi Sipihk	<u>14,722</u>	<u>2,900,336</u>	<u>3,934</u>
TOTAL	114,677	\$ 24,461,735	26,211

SCHEDULE "C"

MAP OF "LIMESTONE POINT PLANNING AREA"



SCHEDULE "D"

PRACTICE OF THE MANITOBA REGIONAL OFFICE OF THE DEPARTMENT OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT RELATING TO THE APPLICATION OF THE ADDITIONS TO RESERVES POLICY IN URBAN AREAS

1. Practice of the Manitoba Region of DIAND

- 1.01 The Additions to Reserves Policy of the Department of Indian Affairs and Northern Development is found at Chapter 9 of its "Land Management Manual".
- 1.02 This Schedule sets out the practice of the Manitoba Regional Office of the Department of Indian Affairs and Northern Development in applying the Additions to Reserves Policy with respect to land an Entitlement First Nation proposes be set apart by Canada as Reserve where that land is located in an Urban Area.

2. Definitions

2.01 In this Schedule:

- (a) **"Acquire"** means to purchase or otherwise obtain title to Other Land which an Entitlement First Nation wishes to be set apart as Reserve in accordance with the Framework Agreement;
- (b) **"Canada"** means Her Majesty the Queen in right of Canada;
- (c) **"Crown Land"** means land which is owned by, or is under the administration and control of, Manitoba and is within the Province of Manitoba, but does not include:
 - (i) land that at the date on which the Framework Agreement was executed is administered by Manitoba on behalf of a "local government district" as defined in *The Local Government Districts Act* under a "Memorandum of Understanding" between the Minister of Municipal Affairs and the Minister of Mines and Natural Resources of Manitoba dated May 11, 1964; or
 - (ii) land with or without improvements of value which is owned by, or is under the administration and control of, Manitoba which has been used or occupied, is no longer required and is declared surplus by Manitoba;

- (d) **"Department"** means the Manitoba Regional Office of the Department of Indian Affairs and Northern Development;
- (e) **"Entitlement First Nation"** means a "band" of Indians, as defined in the *Indian Act*, listed in Schedule "A" of the Framework Agreement which has executed a "Treaty Entitlement Agreement" (as defined in the Framework Agreement);
- (f) **"Framework Agreement"** means an agreement entered into among Treaty Land Entitlement Committee of Manitoba Inc., on its own behalf and as general partner on behalf of TLEC Limited Partnership, Canada and Manitoba dated May 29, 1997;
- (g) **"Manitoba"** means Her Majesty the Queen in right of Manitoba;
- (h) **"Minister"** means the Minister of Indian Affairs and Northern Development or the Governor-in-Council;
- (i) **"Municipal Development and Services Agreement"** means an agreement between an Entitlement First Nation and a Municipality, concluded in anticipation of a parcel of land located in the Municipality being set apart as Reserve and which may provide for, among other matters:
 - (i) the ownership of infrastructure (including sewer and water facilities, roads, sidewalks and waste disposal sites) located on the land after the land is set apart as Reserve;
 - (ii) the continuation or extension of services, (including sewer and water, garbage collection, snow removal, fire protection, policing, public utilities, infrastructure maintenance and other similar municipal services) to that land after the land is set apart as Reserve;
 - (iii) the rates of payment or the means of determining rates of payment for the actual and direct costs incurred by the Municipality in permitting the Entitlement First Nation to use its infrastructure (in the event that the infrastructure should remain the property of the Municipality) or in providing services to that land (in the event the Municipality is to provide services) and the timing and enforcement of payment for the use of that infrastructure and the provision of those services;

- (iv) any need for joint planning and development between the Entitlement First Nation and the Municipality;
- (v) the maintenance of reasonably compatible use of that land and of adjoining land in the Municipality by the enactment of bylaws for zoning and development; and
- (vi) the resolution of disputes between the Entitlement First Nation and the Municipality;
- (j) **"Municipal and School Taxes"** means all taxes levied in respect of land and improvements by a Municipality or a "school division" or "school district" as defined in *The Public Schools Act*, including taxes, charges or levies against occupants of the land and grants-in-lieu of taxes paid by either Canada or Manitoba;
- (k) **"Municipality"** means a "municipality" as defined in *The Municipal Act* or "local government district" as defined in *The Local Government Districts Act* in which land Selected or Acquired by an Entitlement First Nation is located;
- (l) **"Other Land"** means land that is not Crown Land and as further defined in the Framework Agreement;
- (m) **"Reserve"** means land which is set apart by the Minister for the use and benefit of an Entitlement First Nation as a "reserve" as defined in the *Indian Act*;
- (n) **"Select"** means to identify Crown Land that the Entitlement First Nation wishes to be set apart as Reserve in accordance with the Framework Agreement; and
- (o) **"Urban Area"** means land within the boundaries of a "city", "town" or "village" as defined in *The Municipal Act*.

2.02 In this Schedule:

- (a) words or phrases which are defined under Section 2.01 have been identified in the text by the capitalization of the first letter of the words or the first letter of each word in phrases;
- (b) the definition of words or phrases which are defined under Section 2.01 in one tense shall apply to all tenses as the context so requires;
- (c) the singular includes the plural and vice versa; and

- (d) headings used in this Schedule are for ease of reference only and do not form part of this Schedule.
- 2.03 The following acts are referred to in this Schedule, and when described by the title set out in this Section shall be interpreted to include the act as cited in this Section:
- (a) acts of the Parliament of Canada:
Indian Act, R.S.C. 1985, c. I-5; and
 - (b) acts of the Legislature of Manitoba:
The Local Government Districts Act, CCSM, c. L190;
The Municipal Act, CCSM, c. M225; and
The Public Schools Act, CCSM, c. P250.
- 2.04 All references to an act referred to in Section 2.03 shall include all regulations made in accordance with that act and any amendment, re-enactment or replacement from time to time of that act.

3. Obligations of an Entitlement First Nation

- 3.01 Where an Entitlement First Nation Selects or Acquires land in an Urban Area in accordance with the Framework Agreement, the Entitlement First Nation shall:
- (a) give the Department, Manitoba and the Municipality notice in writing of the intention of the Entitlement First Nation to request that the Minister set the land apart as Reserve;
 - (b) provide the Municipality with a copy of this Schedule;
 - (c) request that the Municipality, immediately following the giving of the notice referred to in Paragraph (a), enter into negotiations with the Entitlement First Nation with the objective of concluding a Municipal Development and Services Agreement, and:
 - (i) where the Entitlement First Nation and the Municipality thereafter enter into negotiations and reach agreement, the Entitlement First Nation shall enter into a Municipal Development and Services Agreement with the Municipality; or
 - (ii) where the Municipality refuses to enter into a Municipal Development and Services Agreement, the Entitlement First Nation shall give the Municipality notice in writing that:
 - A. the Municipality must provide the Entitlement First Nation, the Department and Manitoba with written reasons for refusing to enter into a Municipal Development and Services Agreement; and

- B. in the event the Municipality fails to provide the reasons referred to in Clause A within 60 days of the notice, the Minister may set the land apart as Reserve without further notice to the Municipality.

4. Effect of Response by Municipality

4.01 Where an Entitlement First Nation has Selected or Acquired land in an Urban Area and the Entitlement First Nation and the Municipality enter into a Municipal Development and Service Agreement, the Department shall:

- (a) determine whether the land satisfies the Additions to Reserves Policy; and
- (b) thereafter, proceed in accordance with the provisions of the Framework Agreement.

4.02 Where an Entitlement First Nation has Selected or Acquired land in an Urban Area and has satisfied its obligations under Section 3.01 of this Schedule, but the Municipality refuses to enter into a Municipal Development and Services Agreement and:

- (a) the Municipality fails to provide written reasons for refusing to enter into a Municipal Development and Services Agreement within 60 days of receiving the notice referred to in Clause 3.01(c)(ii)A:
 - (i) the Department may confirm that the land satisfies the requirements of the Additions to Reserves Policy; and
 - (ii) the Minister may, subject to the provisions of the Framework Agreement, set the land apart as Reserve; or
- (b) the Municipality provides written reasons for refusing to enter into a Municipal Development and Services Agreement and where, following a meeting between the Entitlement First Nation, the Department, Manitoba and the Municipality:
 - (i) it is the opinion of the Department that the reasons of the Municipality for refusing to enter into a Municipal Development and Services Agreement are unreasonable or unfounded, the Department shall give notice in writing to the Municipality that:

- A. in the Department's opinion the reasons of the Municipality for refusing to enter into a Municipal Development and Services Agreement are unreasonable or unfounded;

- B. the Department will be confirming that the land satisfies the requirements of the Additions to Reserves Policy; and
- C. the Department will be recommending to the Minister that the land be set apart as Reserve

provided that where, upon the Municipality receiving that notice, the Municipality agrees to enter into a Municipal Development and Services Agreement with the Entitlement First Nation, the Department shall not proceed in accordance with Clauses B or C and the Minister shall not proceed to set the land apart as Reserve until:

- D. a Municipal Development and Services Agreement has been entered into between the Municipality and the Entitlement First Nation; or
- E. the expiration of 90 days from the date the Department gave the Municipality the notice

whichever date occurs first; or

- (ii) it is the opinion of the Department that the reasons for the Municipality refusing to enter into a Municipal Development and Services Agreement are reasonable:

- A. the Department shall give notice in writing to the Entitlement First Nation that in the Department's opinion, the reasons for the Municipality refusing to enter into a Municipal Development and Services Agreement are reasonable;
- B. the Entitlement First Nation shall attempt to address the reasons the Municipality is refusing to enter into a Municipal Development and Services Agreement; and
- C. subject to Subparagraph (iii), the Department shall not confirm that the land satisfies the requirements of the Additions to Reserves Policy and the Minister shall not set the land apart as Reserve until the reasons the Municipality is refusing to enter into a Municipal Development and Services Agreement have been addressed in a manner satisfactory to the Municipality and a Municipal Development and Services Agreement has been entered into between the Entitlement First Nation and the Municipality; or

- (iii) it is the opinion of the Department that the reasons for the Municipality refusing to enter into a Municipal Development and Services Agreement are reasonable and the Entitlement First Nation has attempted to address those reasons with the Municipality in a manner which in the Department's

opinion is reasonable but the Municipality thereafter refuses to enter into a Municipal Development and Services Agreement, the Department shall give notice in writing to the Municipality that:

- A. in the Department's opinion, the Entitlement First Nation has made a reasonable attempt to address the refusal of the Municipality to enter into a Municipal Development and Services Agreement;
- B. the Department will be confirming that the land satisfies the requirements of the Additions to Reserves Policy; and
- C. the Department will be recommending to the Minister that the land be set apart as Reserve

provided that where, upon the Municipality receiving that notice, the Municipality agrees to enter into a Municipal Development and Services Agreement with the Entitlement First Nation, the Department shall not proceed as set out in Clauses B or C and the Minister shall not proceed to set the land apart as Reserve until:
- D. a Municipal Development and Services Agreement has been entered into between the Municipality and the Entitlement First Nation; or
- E. the expiration of 90 days from the date the Department gave the Municipality the notice

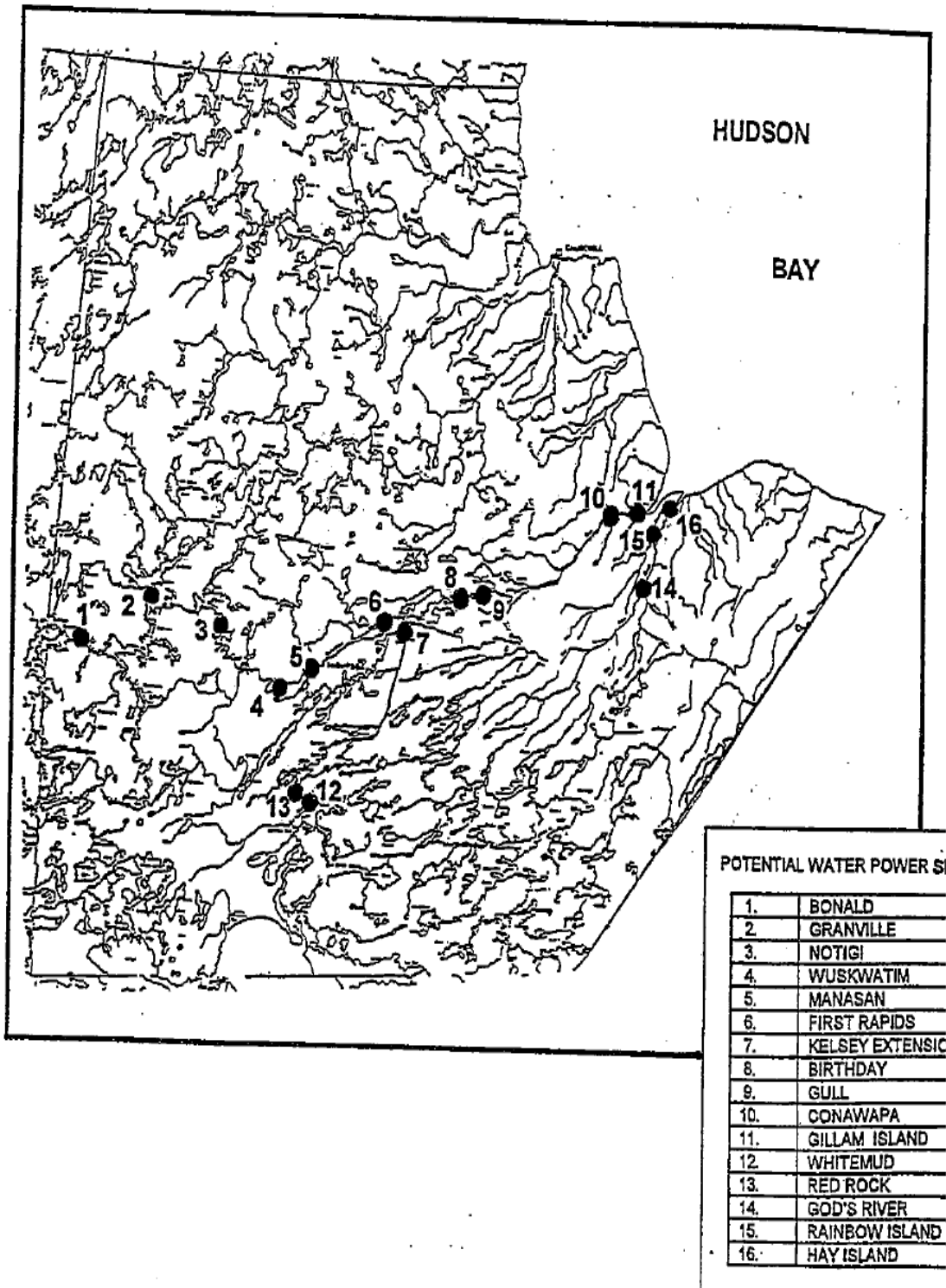
whichever date occurs first.

5. Assertions of Loss of Municipal and School Taxes

- 5.01 An assertion by a Municipality that the setting apart of land Selected or Acquired by an Entitlement First Nation as Reserve will result in a loss of Municipal and School Taxes shall be deemed not to be a reasonable reason for a Municipality to refuse to enter into a Municipal Development and Services Agreement.

SCHEDULE "E"

SITES WITH HYDRO-ELECTRIC DEVELOPMENT
POTENTIAL ON DEVELOPED WATERWAYS AND HAYES RIVER



SCHEDULE "F"

CONTRIBUTION FOR COMMUNITY APPROVAL PROCESS

	AMOUNT
ENTITLEMENT FIRST NATION	
Buffalo Point	\$ 15,000
Rolling River	30,000
Brokenhead	30,000
God's River	32,500
War Lake	32,500
Wuskwi Sipihk	32,500
Fox Lake	37,500
God's Lake	37,500
Oxford House	37,500
Sapotaweyak	37,500
York Factory	37,500
Nelson House	47,500
Norway House	47,500
Opaskwayak	47,500
Barren Lands	52,500
Northlands	52,500
Sayisi Dene	52,500
Shamattawa	52,500
Mathias Colomb	<u>60,000</u>
	\$ 772,500
TLE Committee	125,000
Contingency Reserve	102,000
TOTAL	\$1,000,000

SCHEDULE “G”
SPECIAL RESOLUTION
OF THE MEMBERS OF
TREATY LAND ENTITLEMENT COMMITTEE OF MANITOBA INC.

(herein referred to as the “TLE COMMITTEE”)

.....

WHEREAS:

- A. A meeting of the members of the Treaty Land Entitlement Committee of Manitoba Inc. (hereafter referred to as “the TLE Committee”) has been properly called this “1st” day of May, 1997 in accordance with the by laws of the TLE Committee and *The Corporations Act*;
- B. The members of the TLE Committee have reviewed and considered the proposed agreement among the TLE Committee (on it’s own behalf and on behalf of the TLEC Limited Partnership), Her Majesty the Queen in right of Canada and Her Majesty the queen in Right of Manitoba (hereafter referred to as “the Framework Agreement”), pursuant to which the unfulfilled land entitlement of the Entitlement First Nations under the respective Per Capita Provisions (as defined in the Framework Agreement) is to be addressed including the form of a release and indemnity in favour of Canada on the terms therein set out is to be provided by each Entitlement First Nation which approves of the terms of the Framework Agreement in a Community Approval Process as provided in the Framework Agreement;
- C. The members of the TLE Committee have also reviewed and considered the proposed form of Treaty Entitlement Agreement and proposed form of Trust Agreement, by which documents an Entitlement First Nation which undertakes and completes a Community Approval Process as provided in the Framework Agreement may secure the rights and benefits of the Framework Agreement.

BE IT AND IT IS HEREBY RESOLVED:

1. The TLE Committee is hereby authorized to enter into:
 - a) a Framework Agreement substantially in the form of the proposed Framework Agreement reviewed and considered by the members on this date; and
 - b) any other agreements as may be necessary to give effect to the Framework Agreement.
2. The TLE Committee hereby approves of the execution fo the proposed Agreed Forms of:
 - a) Treaty Entitlement Agreement; and
 - b) Trust Agreementsubstantially in the form reviewed and considered by the members on this date.
3. Any two of the executive officers of the TLE Committee be and are hereby authorized to:
 - a) execute the final form of agreements referred to in Section 1 of this Resolution; and
 - b) approve the final form of agreement of the Agreed Forms of Treaty Entitlement Agreement and Trust Agreement.
4. for and on behalf of the TLE Committee.

THIS SPECIAL RESOLUTION passed at this duly called meeting of the members of the TLE Committee , this 1st day of May, 1997.



Chief D. White Bird, President

SCHEDULE "H"
Framework Agreement
COMMUNITY APPROVAL PROCESS

1. Definitions

1.01 In this Community Approval Process:

- (a) **"Advance Poll"** means a poll which is open to permit voting prior to the Voting Day;
- (b) **"Assistant Deputy Minister"** means the Assistant Deputy Minister, Claims and Indian Government, of the Department;
- (c) **"Ballot"** means the instrument by which a Voter casts his or her vote on the Ballot Question;
- (d) **"Ballot Question"** means the question set out in Appendix "A" to this Community Approval Process, which is the question upon which the Voters shall cast their Ballots in the Vote;
- (e) **"Council"** means the "council" of the Entitlement First Nation as defined in the *Indian Act*;
- (f) **"Council Resolution"** means a written resolution signed by a quorum of the Council adopted at a duly convened meeting of the Council;
- (g) **"Department"** means the Department of Indian Affairs and Northern Development;
- (h) **"Director"** means:
 - (i) the Director of Land Entitlement and Claims Implementation of the Manitoba region of the Department; or
 - (ii) any other official of the Department designated by the Minister in substitution for the Director of Land Entitlement and Claims Implementation of the Manitoba region of the Department;

- (i) **"Eligible Member"** means a person:
 - (i) whose name appears on the Membership List or whose name does not appear but who has submitted an application to have his or her name entered on the Membership List and that application has been approved;
 - (ii) is over the age of 18 years; and
 - (iii) has not been found mentally incompetent or otherwise unable to manage his or her own affairs by a court of competent jurisdiction

as of the Voting Day;

- (j) **"Entitlement First Nation"** means the First Nation utilizing this Community Approval Process for the purpose of determining whether its Eligible Members approve a Treaty Entitlement Agreement and Trust Agreement;
- (k) **"Indian Act"** means the *Indian Act*, R.S.C., c. I-5, and as amended;
- (l) **"Information Meeting"** means a meeting held in accordance with Section 5.01 for the purpose set out in Section 5.02;
- (m) **"List of Voters"** means either the preliminary list containing the names of the Voters for the purpose of the Vote or the revised list of Voters as the context may require;
- (n) **"Mail In Ballot Package"** means the package of materials consisting of those items set out in Section 8.04 to be provided to any Voter entitled to request to receive that package in accordance with Section 8.01 or 8.02;
- (o) **"Membership List"** means:
 - (i) the list of persons maintained by the Department as the "Band List" in accordance with section 8 of the *Indian Act* for the Entitlement First Nation; or
 - (ii) where the Entitlement First Nation has assumed control of its own membership in accordance with section 10 of the *Indian Act*, the list of persons maintained by the Entitlement First Nation as its "Band List";

- (p) **"Minister"** means the Minister of Indian Affairs and Northern Development;
- (q) **"Ordinary Residence"** means the place which has always been, or which has been adopted as, the place of habitation or home of a Voter, where, when away from, he or she intends to return;
- (r) **"Poll"** means the place at which the Voters vote and includes, where appropriate, any Advance Poll;
- (s) **"Process Officer"** means the person appointed by the Minister to oversee the conduct of the Vote and includes, where applicable, any assistant appointed by the Process Officer in accordance with Section 3.03;
- (t) **"Reserve"** means a "reserve" as defined in the *Indian Act* set apart for the use and benefit of the Entitlement First Nation;
- (u) **"Spoiled Ballot"** means a Ballot:
 - (i) that was not supplied by the Process Officer or that does not bear his or her initials;
 - (ii) that has not been marked by a Voter in accordance with Section 11.06 as either "YES" or "NO";
 - (iii) that has been marked by a Voter as both "YES" and "NO";
 - (iv) upon which there is any writing or mark by which a Voter can be identified; or
 - (v) which, in the case of Ballot which has been mailed in or sent by facsimile transmission by a Voter who has received a Mail In Ballot Package, is rejected by the Process Officer pursuant to Subparagraph 15.01(c)(ii), Paragraph 15.02(c) or Clause 15.03(g)(iii)(B);
- (v) **"Treaty Entitlement Agreement"** means the proposed agreement among the Entitlement First Nation, Treaty Land Entitlement Committee of Manitoba Inc., as general partner on behalf of TLEC Limited Partnership, Her Majesty the Queen in right of Canada and Her Majesty the Queen in right of Manitoba pursuant to which the unfulfilled land entitlement of the Entitlement First Nation under the Per Capita Provision (as therein defined) is to be addressed and a release and indemnity on the terms therein set out provided to Canada;

- (w) **"Trust Agreement"** means the proposed agreement between Her Majesty the Queen in right of Canada and the Initial Trustees (as defined) pursuant to which the terms for the administration and management of certain monies to be paid by Canada to the Trust to be established thereunder for the benefit of the Entitlement First Nation in accordance with the Treaty Entitlement Agreement are set out;
- (x) **"Vote"** means the vote by the Voters on the Ballot Question;
- (y) **"Voter"** means any one of the Eligible Members who appear on the List of Voters; and
- (z) **"Voting Day"** means the date set for the Vote to approve the Treaty Entitlement Agreement and Trust Agreement.

2. **Preliminary Matters**

2.01 By Council Resolution, in the form set out in Appendix "B", the Council shall resolve to:

- (a) call the Vote, to be conducted in accordance with this Community Approval Process including setting the date, time and place of the Vote;
- (b) set the date, time and place of all Information Meetings in accordance with Section 5.01;
- (c) set the date, time and place of any Advance Polls in accordance with Section 9.01; and
- (d) request the Minister to designate a Process Officer and order that the Vote be taken by secret Ballot.

2.02 An original, executed copy of the Council Resolution referred to in Section 2.01 shall be provided to the Minister by the Council at least 35 days before the Voting Day.

2.03 Concurrent with the delivery of the Council Resolution referred to in Section 2.02, the Council shall further:

- (a) provide the Minister with a list of the mailing address of each Eligible Member whose Ordinary Residence is not on a Reserve; and
- (b) advise the Minister whether, in the opinion of the Council, it is anticipated that an interpreter will be required at any Information Meeting (and if so,

which Information Meeting) or at any Poll for the purpose of providing translation services to Eligible Members.

2.04 In the event the Council is not aware of the mailing address of an Eligible Member whose Ordinary Residence is not on a Reserve, the Council shall provide to the Minister:

- (a) the mailing address of a parent of that Eligible Member;

- (b) if the parents of that Eligible Member are unknown or deceased or the mailing address of the parents are unknown, the mailing address of an adult sibling or adult offspring of that Eligible Member; or
- (c) if the Council cannot provide a mailing address for an adult sibling or adult offspring of that Eligible Member, a mailing address where the Council reasonably believes that Eligible Member may be contacted, if any,

and shall further advise the Minister that the address is one given in substitution for the mailing address of that Eligible Member.

2.05 In the event the Council is not aware of the mailing address of an Eligible Member whose Ordinary Residence is not on a Reserve and the Council is unable to provide a substitutional address for that Eligible Member in accordance with Section 2.04, the Council shall advise the Minister that the whereabouts of that Eligible Member is unknown.

2.06 The Council shall ensure that a sufficient number of copies of the Treaty Entitlement Agreement and Trust Agreement are available for the Eligible Members whose Ordinary Residence is on a Reserve who may request a copy and shall ensure that each Eligible Member who requests a copy of the Treaty Entitlement Agreement and Trust Agreement receives a copy.

3. Designation and Duties of Process Officer

3.01 Prior to the posting of the "Notice of Vote" in accordance with Article 4, the Minister shall designate a Process Officer to oversee the conduct of the Vote and advise the Council of the name of the Process Officer.

3.02 The Process Officer, with the cooperation of the Council, shall:

- (a) prepare the List of Voters from the list of Eligible Members to be provided to the Minister by the Council in accordance with Section 2.03 and make any required revisions to the List of Votes in accordance with Article 6;
- (b) designate the location of the Polls in consultation with the Council;
- (c) appoint and empower any assistants as he or she determines appropriate, by completing and executing and having each assistant execute an "Appointment of Assistant" in the form attached as Appendix "I", provided that there shall be at least one assistant who has been identified by the Council;
- (d) appoint any interpreters as the Council has advised may be required to provide translation services for Eligible Members at any Information Meeting or at any Poll and, in that case, the Process Officer shall complete and execute and have each interpreter execute an "Appointment of Interpreter" in the form attached as Appendix "J";
- (e) post the Notice of Vote in accordance with Section 4.01;

- (f) ensure the Mail In Ballot Packages are prepared and sent out in accordance with Article 8;
- (g) attend all Information Meetings, make reasonable efforts to keep minutes of those meetings and circulate the minutes in accordance with Section 5.05;
- (h) prepare or cause to be prepared Ballots in accordance with Section 7.01 and ensure there are a sufficient number of Ballots to permit each Voter to vote;
- (i) obtain a sufficient number of Ballot boxes;
- (j) arrange to provide a polling booth or booths at the Polls where a Voter can mark his or her Ballot free from observation;
- (k) arrange to provide at the Polls a sufficient number of lead pencils for marking the Ballots;
- (l) ensure that samples of the Ballot Question are posted or available for examination by Voters at the Polls;
- (m) conduct any Advance Polls in accordance with Article 9;
- (n) subject to Section 17.04, ensure that a Commissioner for Taking Oaths, Notary Public or Magistrate or Justice of the Peace in and for the Province of Manitoba will be available when and as required at any Advance Poll and on the Voting Day;
- (o) conduct the Vote in accordance with this Community Approval Process or as amended in accordance with Section 17.01; and
- (p) respond to any objections to the conduct of the Vote as may be filed with the Assistant Deputy Minister in accordance with Section 18.04.

3.03 The Process Officer may delegate to any assistant any of his or her duties under this Community Approval Process as he or she determines appropriate or necessary.

4. **Notice of Vote**

4.01 The Process Officer:

- (a) shall post a copy of the Notice of Vote at least 28 days prior to Voting Day and at least 13 days prior to the first Advance Poll (if any) in a prominent location in the Entitlement First Nation's administrative offices; and
- (b) may post a copy of the Notice of Vote in such other prominent, public places and at such other times as he or she determines (in consultation with the Council) will provide the maximum exposure of Notice of the Vote to the Voters.

4.02 The Notice of Vote shall be in the form set out in Appendix "C".

4.03 The following shall be attached to the Notice of Vote:

- (a) a copy of the Treaty Entitlement Agreement;
- (b) a copy of the Trust Agreement; and
- (c) a copy of the List of Voters.

4.04 Despite Sections 4.02 and 4.03, in the event the Process Officer intends to post a copy of the Notice of Vote in accordance with Paragraph 4.01(b):

(a) the form of the Notice of Vote so posted shall be amended in the following respects:

(i) by deleting in the form of Notice of Vote set out in Appendix "C" the following words:

"A copy of the Treaty Entitlement Agreement is attached to this Notice of Vote and marked 'A'. A copy of the Trust Agreement is attached to this Notice of Vote and marked 'B'";

(ii) by deleting in the form of Notice of Vote set out in Appendix "C" the following words:

"Attached to this Notice of Vote and marked 'C' is a List of Voters which has been prepared from information supplied by the Council of the Entitlement First Nation"

and substituting for those words the following:

"Attached to this Notice of Vote and marked 'A' is a List of Voters which has been prepared from information supplied by the Council of the Entitlement First Nation"; and

(iii) by deleting in the form of Notice of Vote set out in Appendix "C" the following words:

"The following are attached to this Notice of Vote and marked as indicated:

'A' Treaty Entitlement Agreement

'B' Trust Agreement

'C' List of Voters

and substituting for those words the following:

'A' List of Voters"; and

(b) only the List of Voters shall be attached to copies of the Notice of Vote so posted.

5. Information Meetings

5.01 Information Meetings shall be held at the time and place as the Council may determine, provided that:

- (a) at least one Information Meeting shall be held;
- (b) the date, time and place of all Information Meetings shall be stated in the Notice of Vote; and
- (c) no Information Meeting shall be held earlier than 13 days prior to the Voting Day or later than two days prior to the Voting Day.

5.02 The purpose of each Information Meeting is to provide an opportunity for the Council, the Entitlement First Nation's legal counsel and financial advisor and any other persons as requested by the Council to explain the land entitlement of the Entitlement First Nation under the Per Capita Provision (as defined in the Treaty Entitlement Agreement) and the provisions of the Treaty Entitlement

Agreement and the Trust Agreement to all Eligible Members in attendance, with a view to ensuring that they are fully informed prior to casting their votes on the Ballot Question in the Vote.

5.03 Each Information Meeting shall be open to all Eligible Members to attend and shall be attended by a quorum of the Council, the Process Officer and any interpreter as may be required.

5.04 An interpreter appointed in accordance with Paragraph 3.02(d) shall be the means of communicating the information disseminated at the Information Meeting to those Eligible Members who require translation services.

5.05 The Process Officer shall:

- (a) make reasonable efforts to keep or cause to be kept minutes of each Information Meeting, including questions asked and answers given; and
- (b) provide a copy of the minutes so kept to the Council and to the Director no more than 14 days after the Voting Day.

5.06 Despite the provisions of this Article, an Entitlement First Nation may have further or other meetings for the same purposes as an Information Meeting at times and places as the Council may determine appropriate.

6. Revisions to the List of Voters

6.01 Any Eligible Member may apply to the Process Officer at least 14 days prior to the Voting Day to have the List of Voters revised if that Eligible Member believes that:

- (a) the name of a Voter has been omitted from the List of Voters; or
- (b) the name of a Voter is incorrectly set out or should not be included on the List of Voters.

- 6.02 An Eligible Member may, up to and including the Voting Day, apply to the Process Officer to have his or her name added to the List of Voters if that Eligible Member can:
- (a) produce adequate and current identification;
 - (b) provide adequate proof of age;
 - (c) provide evidence that he or she is on the Membership List or has submitted an application to the Department to have his or her name entered on the Membership List and that application has been approved; and
 - (d) if required, obtain corroborating testimony from another Voter who is willing to make oath in the form of an statutory declaration as to the identity of the applicant.
- 6.03 Where the Process Officer is satisfied that a revision is necessary to the List of Voters, he or she shall make the revision, and the decision of the Process Officer shall be final and not subject to further review.
- 6.04 Where the Process Officer revises the List of Voters such that the name of a person who appears on the list is removed from the list, the Process Officer shall draw a line through the name of that person where it appears on the List of Voters and make a notation that that person's name has been removed on that date.

7. Ballots

- 7.01 The Ballots to be used in the Vote shall:
- (a) be printed on paper of a quality, weight and size determined and supplied by the Process Officer;
 - (b) be of similar description, one to another;
 - (c) contain a stub on the top edge which shall be one half inch in width, with a perforation lying immediately beneath such stub so as to separate the stub from the rest of the Ballot;
 - (d) be consecutively numbered on the back of each Ballot;
 - (e) contain the Ballot Question in the area beneath the stub; and
 - (f) contain a statement immediately beneath the Ballot Question instructing the Voter to mark his or her Ballot with a cross (an "X") in the box beneath the word "Yes" or "No" as he or she considers appropriate.

8. Mail in Ballots

- 8.01 At least 21 days prior to the Voting Day, the Process Officer shall send or cause to be sent by registered mail, with a request for confirmation of receipt, a Mail In Ballot Package to each Voter who does not have his or her Ordinary Residence

on a Reserve other than those Voters whose whereabouts the Council has advised the Minister are unknown.

8.02 In addition, any Voter who has his or her Ordinary Residence on a Reserve but informs the Process Officer at least two days prior to the Voting Day that, due to a planned absence or for medical reasons, he or she will not be available to vote in person at any Advance Poll or on the Voting Day, shall be entitled to request a Mail In Ballot Package, and upon that request being made, the Process Officer shall:

- (a) satisfy himself or herself that the Voter has not already voted in person at any Advance Poll; and
- (b) thereafter either:
 - (i) deliver a Mail In Ballot Package by hand to the Voter and obtain a signed receipt of delivery; or
 - (ii) provided the request is made at least seven days before the Voting Day, send or cause to be sent by registered mail, with a request for confirmation of receipt, a Mail In Ballot Package to the Voter at such address as the Voter may advise the Process Officer at the time the request is made.

8.03 The Vote shall be held notwithstanding, and may not be impinged on the grounds, that:

- (a) the Process Officer having sent or causing to be sent the Mail In Ballot Package to a Voter who is entitled to receive a Mail in Ballot in accordance with Section 8.01 at the address given for that Voter on the list of Eligible Members provided by the Council in accordance with Paragraph 2.03(a) or to a Voter who requested a Mail in Ballot in accordance with Section 8.02 at the address provided to him or her by the Voter:
 - (i) the Voter does not receive the Mail In Ballot Package sent to him or her;
 - (ii) no confirmation of receipt is received confirming the Voter received the Mail In Ballot Package sent to him or her; or
 - (iii) no Ballot is received from the Voter;
- (b) the Process Officer having delivered by hand a Mail In Ballot Package to a Voter who requested a Mail in Ballot package in accordance with Section 8.02, no Ballot is received from the Voter; or

- (c) a Voter who does not have his or her Ordinary Residence on a Reserve is not sent a Mail In Ballot Package as the Council has advised the Minister that his or her whereabouts is unknown as provided for in accordance with Section 2.05.

8.04 The Mail In Ballot Package shall consist of:

- (a) a letter from the Council providing any information the Council determines appropriate relating to the land entitlement of the Entitlement First Nation under the Per Capita Provision (as defined in the Treaty Entitlement Agreement), the Treaty Entitlement Agreement and the Trust Agreement with a view to ensuring that the Voters receiving Mail In Ballot Packages are fully informed;
- (b) a copy of the Notice of Vote, including all attachments;
- (c) a letter of instruction from the Process Officer explaining the procedure for casting a Ballot by mail;
- (d) a Ballot, with the initials of the Process Officer affixed;
- (e) a Ballot envelope in which the Ballot may be enclosed after use by the Voter; and
- (f) a pre-addressed return envelope with postage prepaid in which the Ballot may be returned by the Voter to the Process Officer.

8.05 The Process Officer shall record the number of the Ballot beside the name of the each Voter to whom a Mail In Ballot Package is sent or provided on the List of Voters.

8.06 Despite a Voter having been sent or provided a Mail In Ballot Package, that Voter may vote in person at any Advance Poll or on the Voting Day.

8.07 In the event such a Voter attends at a Poll and:

- (a) desires to vote in person, the Process Officer shall proceed in accordance with Section 11.03; and
- (b) votes in person and subsequently mails in the Ballot provided to him or her in the Mail In Ballot Package, the Process Officer shall proceed in accordance with Clause 15.01(c)(ii)(D).

9. **Advance Polls**

9.01 Advance Polls may be held at the times and places the Council may determine, provided that no Advance Poll shall be held:

- (a) unless the time, date and place of any Advance Poll is set out in the Notice of Vote;
- (b) earlier than 13 days after the Notice of Vote is posted;
- (c) in the same place and before or at the same time as an Information Meeting is being conducted, provided that an Advance Poll may be held:
 - (i) before or at the same time as an Information Meeting but in a place so distant from the place where the Information Meeting is being held that it is unlikely a Voter would be faced with a conflicting choice of attending the Information Meeting or voting at the Advance Poll; or
 - (ii) in the same place as an Information Meeting but following the conclusion of an Information Meeting; or
- (d) later than two days prior to the Voting Day.

9.02 Subject to Sections 9.03 to 9.05 inclusive, every Advance Poll shall be conducted in the same manner as the Vote is conducted on the Voting Day.

9.03 Voting hours for every Advance Poll shall be:

- (a) determined by the Council; and
 - (b) set out in the Notice of Vote
- but, in any event, shall not be:
- (c) less than two consecutive hours in duration; or
 - (d) held between the hours of 12 p.m. and 8 a.m.

9.04 Immediately after the close of every Advance Poll, the Process Officer, in front of those persons who may be present, shall seal each Ballot box in such a manner that no further Ballots may be deposited into the Ballot box or that none of the Ballots contained within the Ballot box may be removed.

9.05 Each Ballot box used in any Advance Poll shall not be opened until the Polls are closed on the Voting Day.

10. Voting Hours

10.01 The Polls shall be kept open from 9:00 a.m. until 8:00 p.m. on the Voting Day.

11. Voting Procedures

11.01 The Process Officer shall, immediately before the time of commencement of the Vote:

- (a) open each Ballot box and ask any person who may be present to witness that the Ballot box is empty;
- (b) lock and properly seal each Ballot box;
- (c) place each Ballot box in view for the reception of the Ballots;
- (d) prepare a "Declaration of Process Officer" and make oath in the form set out in Appendix "D"; and
- (e) ensure that a "Declaration of Witness" is prepared and that the person confirming that each Ballot box was empty makes oath in the form set out in Appendix "E".

11.02 During the hours the Polls are open, the Process Officer, shall ensure that a person presenting himself or herself for the purpose of voting:

- (a) is a Voter; and
- (b) is not a Voter who has previously voted, either at an Advance Poll or on the Voting Day

and, except as provided in Section 11.03, shall thereafter:

- (c) provide the Voter with a Ballot;
- (d) affix his or her initials to the back of the Ballot in a manner so that when the Ballot is folded the initials can be seen without unfolding the Ballot;
- (e) place a line through the name of the Voter on the List of Voters;
- (f) explain the method of voting to the Voter when requested to do so by any Voter.

and

11.03 In the event a person presenting himself or herself for the purpose of voting is someone who was sent a Mail In Ballot Package, the Process Officer shall:

- (a) ensure that the person:
 - (i) is not someone whose name was removed from the List of Voters after the Mail In Ballot Packages was sent out or provided as a result of a revision to the List of Voters in accordance with Article 6; and
 - (ii) is not a Voter who has previously voted, either at an Advance Poll or on the Voting Day;
- (b) thereafter determine if the Voter has in his or her possession the Ballot which was sent or provided to him or her in the Mail In Ballot Package; and
- (c) in the event:
 - (i) the Voter does have the Ballot in his or her possession:
 - (A) satisfy himself or herself that the Ballot is the Ballot provided to that Voter, has not been marked in any way and still has the stub attached; and
 - (B) thereafter instruct the Voter that he or she is to utilize the Ballot in his or her possession for the purpose of casting his or her vote;
 - (ii) the Voter does have the Ballot in his or her possession but the Process Officer is not satisfied that the Ballot is the Ballot provided to that Voter, has been marked in some way or does not still have the stub attached, proceed in accordance with Paragraphs 11.02(c) to (f) inclusive; or
 - (iii) the Voter does not have the Ballot in his or her possession, proceed in accordance with Paragraphs 11.02(c) to (f) inclusive.

11.04 If requested by a Voter who:

- (a) is not able to read;
- (b) is incapacitated by blindness or other physical cause; or
- (c) requires translation service

the Process Officer shall:

- (d) assist that Voter by marking his or her Ballot in the manner directed by the Voter or request the Interpreter to assist that Voter by marking his or her Ballot in the manner directed by that Voter, as the case may require;
- (e) thereafter immediately fold and place that Voter's Ballot into the Ballot box;
- (f) make an entry on the List of Voters opposite the name of the Voter to indicate that the Ballot was marked by the Process Officer or the interpreter at the request of the Voter; and
- (g) indicate the reason for the Voter's request for assistance.

11.05 Except as provided in Section 11.04, every Voter receiving a Ballot shall without undue delay:

- (a) proceed immediately to a polling booth provided for marking his or her Ballot;
- (b) mark his or her Ballot in accordance with Section 11.06;
- (c) fold his or her Ballot so as to conceal his or her mark on the face of the Ballot and so as to expose the Process Officer's initials on the back of the Ballot; and
- (d) immediately give his or her folded Ballot to the Process Officer who without unfolding it shall tear off the stub and deposit the Ballot into the Ballot box after verifying his or her initials.

11.06 Despite Paragraph 7.01(f), a Ballot marked in any of the following ways shall be counted as being validly marked:

- (a) a cross (an "X") in the box beneath the word "YES" or the word "NO";
- (b) a checkmark in the box beneath the word "YES" or the word "NO";
- (c) a cross (an "X") or a checkmark immediately adjacent to the word "YES" or the word "NO" or one of the boxes beneath the words "YES" and "NO", provided the mark is positioned in a manner as to clearly show the intent of the Voter;
- (d) the printed or written word "YES" in the box beneath the word "YES" or the printed or written word "NO" in the box beneath the word "NO"; or
- (e) circling or otherwise enclosing the word "YES" or the word "NO", provided the intent of the Voter is clearly shown.

12. Replacement of Defective Ballots and Forfeiture of Right to Vote

12.01 A Voter who receives a Ballot which, in the opinion of the Process Officer, cannot be used by the Voter, owing to a printing error or otherwise, or who accidentally spoils his or her Ballot when marking it, shall, upon returning that Ballot to the Process Officer, be entitled to receive another Ballot.

12.02 A Voter who has received a Ballot and who:

- (a) leaves the polling booth without delivering his or her Ballot to the Process Officer in accordance with Section 11.05; or
- (b) refuses to vote

shall forfeit his or her right to cast a vote in the Vote, and the Process Officer shall make an entry on the List of Voters opposite the name of that Voter stating that the Voter did not return his or her Ballot or refused to vote.

12.03 The Vote may not be impinged as a result of a Voter forfeiting his or her right to Vote in accordance with Section 12.02.

13. Orderly Voting

13.01 The Process Officer shall allow only one Voter at any one time into the polling booth for marking his or her Ballot.

13.02 No person shall:

- (a) interfere or attempt to interfere with a Voter when he or she is marking his or her Ballot; or
- (b) obtain, or attempt to obtain, information as to how a Voter is about to vote or has voted at the Polls.

13.03 The Council with the assistance of the Process Officer shall ensure that peace and good order are maintained at the Polls.

14. Closing of the Polls

14.01 At the time set for closing the Polls, the Process Officer shall declare the Polls closed and thereafter, entry to the Polls shall be denied and the location shall be secured or locked, as the case may be.

14.02 Despite Section 14.01, a Voter who is inside a Poll at the time fixed for closing the Polls and who has not cast a vote, shall be entitled to vote before the Poll is closed.

15. Processing Mail in, Facsimile and Other Ballots

15.01 Immediately after the closing of the Polls, the Process Officer, in the presence of at least two Council members and any Voters who may be present, shall:

- (a) open the envelopes in which those Voters who were sent Mail In Ballot Packages have returned their Ballots;
- (b) without unfolding the Ballot or in any other way disclosing the manner in which the Ballot has been marked:
 - (i) ascertain by examination of the initials appearing on the Ballot and the number on the stub that it appears to be the same Ballot that was mailed to a Voter; and
 - (ii) examine the List of Voters to determine if the Voter:
 - (A) is someone whose name was removed from the List of Voters after the Mail In Ballot Packages was sent out or provided as a result of a revision to the List of Voters in accordance with Article 6; or
 - (B) voted in person at any Advance Poll or on the Voting Day;
- (c) in the event:
 - (i) the Process Officer is satisfied the Ballot appears to be the same Ballot that was provided to the Voter and the Voter is not someone to whom Clause (b)(i)(A) or (B) applies:
 - (A) tear off the stub from the Ballot;
 - (B) draw a line through the name on the List of Voters to which the number on the stub relates; and
 - (C) destroy the stuband deposit the Ballot in the Ballot box; or
 - (ii) the Process Officer:
 - (A) cannot determine that the Ballot is the same Ballot that was provided to the Voter;

- (B) notes that the stub has been removed from the Ballot;
- (C) determines the Voter is someone whose name was removed from the List of Voters as a result of a revision to the List of Voters in accordance with Article 6 or after the Mail In Ballot Package was sent out or provided; or
- (D) determines that the Voter voted in person at any Advance Poll or on the Voting Day

return the Ballot to the envelope in which it was mailed and endorse the words "Spoiled Ballot" on the outside of the envelope.

15.02 Despite Section 15.01, in the event one or more Mail in Ballots are transmitted to the Process Officer by a Voter by means of facsimile transmission, the Process Officer shall:

- (a) upon receipt of such a ballot, deposit the Ballot into a sealed Ballot box marked "Facsimile Ballots" together with any information which identifies the Voter and that may have been transmitted with that Ballot;
- (b) upon the closing of the polls, open the Ballot box marked "Facsimile Ballots" and examine each Ballot contained in the Ballot box; and
- (c) upon the examination of each Ballot:
 - (i) where it is possible for the Process Officer to determine, from the Ballot or any additional information which may have accompanied the Ballot, the identity of the Voter who has sent the Ballot by facsimile:
 - (A) examine the List of Voters to determine if the Voter is someone whose name was removed from the List of Voters after the Mail In Ballot Package was sent out or provided as a result of a revision to the List of Voters in accordance with Article 6, or voted in person at any Advance Poll or on the Voting Day;
 - (B) in the event the Process Officer is satisfied the Voter is not someone to whom Clause (A) applies, count the Ballot and draw a line through the Voter's name on the List of Voters; and
 - (C) in the event the Process Officer determines the Voter is someone to whom Clause (A) applies, endorse the words "Spoiled Ballot" on that Ballot; or
 - (ii) where it is not possible for the Process Officer to determine, from the Ballot or any additional information which may have

accompanied the Ballot, the identity of the Voter who has sent the Ballot by facsimile, endorse the words "Spoiled Ballot" on the Ballot.

15.03 Where on Voting Day a Voter whose Ordinary Residence is not within the Province of Manitoba attends at an office of the Department during the normal business hours of that office and advises that he or she wishes to vote but did not receive a Mail In Ballot Package, received a Spoiled Ballot in that Mail In Ballot Package or lost the Ballot contained in that Mail In Ballot Package, upon the Process Officer being advised by an official of the Department in that office that:

- (a) the Voter has so presented himself or herself;
- (b) the official is satisfied with the identity of the Voter;
- (c) in a case where the Voter claims to have received a Spoiled Ballot, the Ballot so received has been examined by the official and cannot be used by the Voter, whether owing to a printing error or otherwise; and
- (d) in the case where the Voter claims to have lost the Ballot sent to him or her in the Mail In Ballot Package, a statutory declaration has been taken from the Voter to that effect

the Process Officer shall:

- (e) examine the List of Voters to determine if that Voter:
 - (i) is someone whose name was removed from the List of Voters after the Mail In Ballot Package was sent out or provided as a result of a revision to the List of Voters under Article 6; or
 - (ii) voted in person at any Advance Poll or on the Voting Day;
- (f) where the Voter is asserting that he or she did not receive a Mail In Ballot Package, satisfy himself that the Voter is someone who:
 - (i) was sent a Mail In Ballot Package and that Mail in Ballot package was returned as undeliverable; or
 - (ii) is someone who did not receive a Mail In Ballot Package as the Council had advised that Voter's whereabouts were unknown; and
- (g) in the event the Process Officer is satisfied the Voter is not someone to whom Paragraph (e) applies and, where the Voter is asserting that he or she did not receive a Mail In Ballot Package, is further satisfied the Voter is someone to whom Paragraph (f) applies:

- (i) transmit to the official by facsimile a Ballot with a sequential number endorsed thereon for the purpose of permitting the Voter to vote;
- (ii) record the number of the Ballot against the name of the Voter sent the Ballot on the Voter's List and the reason such a Ballot was sent to the Voter; and
- (iii) upon receipt of the marked Ballot by facsimile from the office of the Department where the Voter attended, match the number on the Ballot against the number recorded on the Voter's List against the name of the Voter; and:
 - (A) where the numbers correspond, deposit the Ballot into a Ballot box for facsimile ballots and draw a line through the name of the Voter on the Voter's List; or
 - (B) where the numbers do not correspond, endorse the words "Spoiled Ballot" on the Ballot.

16. Certification of Results of Voting

16.01 Immediately after the close of the Polls, the Process Officer, in the presence of at least two members of the Council and any Voters who may be present, shall:

- (a) examine all Ballots contained in each Ballot box;
- (b) count and reject all Spoiled Ballots;
- (c) count the votes in which a Voter has voted "YES" or "NO" in accordance with Section 11.06; and
- (d) count the number of Ballots that were returned to the Process Officer in accordance with Section 12.01.

16.02 When the results of the Vote have been determined by the Process Officer, he or she shall:

- (a) immediately prepare a "Statement of Vote Results" in the form set out in Appendix "F" indicating:
 - (i) the number of Voters who were entitled to vote;
 - (ii) the total number of Ballots cast, including any Spoiled Ballots;
 - (iii) the number of Voters who voted "YES" in accordance with Section 11.06;

- (iv) the number of Voters who voted "NO" in accordance with Section 11.06;
- (v) the number of Spoiled Ballots;
- (b) prepare a "Certification of Vote" and make oath in the form set out in Appendix "G";
- (c) ensure that a "Certification of Vote" is prepared and that a member of Council makes oath in the form set out in Appendix "H"; and
- (d) immediately deliver a copy of the "Statement of Vote Results" to the Council and the Director.

16.03 The Process Officer shall separately seal in envelopes:

- (a) the Ballots referred to in Paragraph 16.01(c);
- (b) any Spoiled Ballots;
- (c) any Ballots returned to the Process Officer in accordance with Section 12.01; and
- (d) any unused Ballots.

and shall affix his signature to the seal and deliver the envelopes to the Director.

16.04 The Director shall retain the material provided to him or her by the Process Officer in accordance with Section 16.03 for 60 days, after which time, and no legal proceeding concerning the Vote having been initiated or commenced, he or she may, in the presence of at least two witnesses, destroy the Ballots.

17. Procedural Amendments

17.01 In the event circumstances are such as to suggest discretion should be exercised in the implementation of this Community Approval Process, the Process Officer and the assistant Process Officer identified by the Council may agree on a departure from the procedural requirements set out in this Community Approval Process, where such departure will not result in a substantive change in the Community Approval Process and where it is determined necessary for the proper and sufficient completion of the Community Approval Process.

17.02 Where this Community Approval Process has been amended in accordance with Section 17.01, the Process Officer shall post the amendment:

- (a) before the Vote, in the Entitlement First Nation's administrative offices;
- (b) at any Advance Poll; and
- (c) at each Poll on Voting Day.

17.03 Where this Community Approval Process has been amended in accordance with Section 17.01, the Process Officer shall further cause to be recorded a report setting out:

- (a) the circumstances which gave rise to the need to amend this Community Approval Process;
- (b) the amendment made;
- (c) the reasons why any amendment was considered necessary; and
- (d) confirmation that the assistant Process Officer identified by the Council consented to the amendment

and a copy of the report shall be provided by the Process Officer to the Director and the Council within 15 days of the Voting Day.

17.04 In the event the Process Officer is unable to arrange for a Commissioner for Taking Oaths, Notary Public, Magistrate or Justice of the Peace in and for the Province of Manitoba to be available when and as required at any Advance Poll or on the Voting Day, any declarations otherwise required by this Community Approval Process to be completed at an Advance Poll or on the Voting Day may be completed and executed not later than three days after the Voting Day.

18. Objections

18.01 Any Voter who voted and has reasonable grounds for believing that:

- (a) there was a violation of this Community Approval Process that may affect the results of the Vote; or
- (b) there was corrupt practice in connection with the Vote

may, not later than seven days from the Voting Day, file an objection by forwarding by registered mail to the Assistant Deputy Minister in accordance with Section 18.02:

- (c) notice of his or her objection; and
- (d) a statutory declaration containing the grounds for the objection and full particulars of the objection.

18.02 An objection made in accordance with Section 18.01 shall be sent addressed as follows:

Assistant Deputy Minister (Claims and Indian Government)
Department of Indian Affairs and Northern Development
Wellington Street
Hull, Quebec K1A 0H4

18.03 Where an objection is filed in accordance with Section 18.01, the Assistant Deputy Minister shall, not later than 21 days from the receipt of the objection, forward a copy of the objection by registered mail to the Process Officer.

18.04 The Process Officer shall, not later than 11 days from the receipt of the objection, forward to the Assistant Deputy Minister by registered mail a statutory declaration containing an answer to the particulars stated in the objection.

18.05 The Assistant Deputy Minister shall, not later than two days from the receipt of the response from the Process Officer, forward to the Minister the material filed by the Voter in accordance with Section 18.01 and the response of the Process Officer in accordance with Section 18.04.

18.06 The Minister may, if the material provided in accordance with this Article is not sufficient to decide the validity of the grounds of the objection, conduct any further investigations as the Minister deems necessary.

18.07 The Minister may dispose of an objection by:

- (a) allowing it, in which case the Minister shall call another Vote; or
- (b) dismissing it, where the Minister is of the opinion that the grounds of the objection:
 - (i) are not established; or
 - (ii) do not affect the results of the Vote.

18.08 In the event the Minister allows an objection and calls another Vote, Sections 20.01 through 20.03 inclusive shall apply with necessary modifications unless the Minister otherwise orders.

18.09 The Minister may delegate the Minister's responsibilities under this Article to the Assistant Deputy Minister or any other assistant deputy minister of the Department.

19. Minimum Requirements for Approval

19.01 In order for it to be determined the question asked on the Ballot Question has been answered in the affirmative:

- (a) a majority of the Voters must Vote; and
- (b) of those voting "YES" or "NO" in accordance with Section 11.06, a majority must vote "YES".

19.02 In the event a majority of Voters do not Vote, a second Vote shall be held not later than 60 days after the Voting Day and in order for it to be determined the question asked on the Ballot Question has been answered in the affirmative, a majority of those Voters voting "YES" or "NO" in accordance with Section 11.06 must vote "YES".

20. Procedure on Second Vote

20.01 In the event a second vote is required, this Community Approval Process shall apply to that second Vote, provided that:

- (a) the Council shall not be required to undertake any of the actions set out in Sections 2.01 to 2.05 inclusive;
- (b) the Process Officer shall prepare the List of Voters from the List of Voters used in the first Vote (as may have been revised), provided that the Process Officer shall make any required revisions to that list in accordance with Article 6; and
- (c) the Process Officer shall not send or cause to be sent a Mail In Ballot Package to any Voter who does not have his or her Ordinary Residence on a Reserve and:
 - (i) whose whereabouts the Council previously advised the Minister were unknown; or
 - (ii) whose Mail In Ballot Package previously sent was returned endorsed to the effect that the Voter did not reside at the address to which that Mail In Ballot Package was addressed or that the address was otherwise incorrect or did not exist

and the Vote shall be held notwithstanding, and may not be impinged on the grounds that, that Voter does not receive a Mail In Ballot Package.

20.02 The Mail In Ballot Package shall consist of:

- (a) a letter from the Council providing information as the Council determines appropriate relating to the matter of the second Vote, the land entitlement of the Entitlement First Nation under the Per Capita Provision (as defined in the Treaty Entitlement Agreement) and the provisions of the Treaty Entitlement Agreement and Trust Agreement with a view to ensuring that the Voters receiving Mail In Ballot Packages are fully informed;
- (b) a letter from the Process Officer stating:
 - (i) why a second Vote is necessary under the Community Approval Process;
 - (ii) that copies of the Treaty Entitlement Agreement and List of Voters were previously provided to the Voter;
 - (iii) where further copies of the Treaty Entitlement Agreement and List of Voters may be obtained by the Voter; and
 - (iv) the procedure for casting a Ballot by mail;
- (c) a copy of the Notice of Vote, but without any of the attachments thereto;
- (d) a Ballot, with the initials of the Process Officer affixed;
- (e) a Ballot envelope in which the Ballot may be enclosed after use by the Voter; and
- (f) a pre-addressed return envelope with postage prepaid in which the Ballot may be returned by the Voter to the Process Officer.

20.03 The Notice of Vote for the second vote shall be amended by deleting in Appendix "C" the words "TAKE NOTICE that a vote of the Eligible Members (as hereinafter described) of the _____ First Nation will be held on _____" where those words appear in the first Subparagraph and substituting for those words the following:

"TAKE NOTICE that as a majority of the Eligible Members did not vote in the Vote held _____, a second vote of the Eligible Members (as hereinafter described) of the _____ First Nation will be held on _____".

20.04 The Statement of Vote Results for the second vote shall be amended by deleting in Appendix "F" the words "We declare therefore that a majority (over 50%) of all of the Voters did (not) vote in the Vote and" where those words appear in the final Subparagraph and substituting for those words "We declare therefore".

21. Calculation of Time

21.01 Where in this Community Approval Process there is a reference to a number of days between an event and the Voting Day (or an Advance Poll), the number of days shall in all cases be counted including the day on which the event is to occur but excluding the Voting Day (or Advance Poll).

22. Appendices

The following Appendices form part of this Community Approval Process:

A" Ballot Question

"B " Council Resolution

"C" Notice of Vote

"D" Declaration of Process Officer

"E" Declaration of Witness

"F" Statement of Vote Results

"G" Certification of Vote by Process Officer

"H" Certification of Vote by Member of Council

"I" Appointment of Assistant

"J" Appointment of Interpreter.

APPENDIX "A"

BALLOT QUESTION

As a Voter of the _____ First Nation do you authorize and direct:

1. the Council of the _____ First Nation to execute the proposed Treaty Entitlement Agreement among the _____ First Nation ("the Entitlement First Nation"), Treaty Land Entitlement Committee of Manitoba Inc., as general partner on behalf of TLEC Limited Partnership, Her Majesty the Queen in right of Canada ("Canada") and Her Majesty the Queen in right of Manitoba pursuant to which the unfulfilled land entitlement of the Entitlement First Nation under the Per Capita Provision (as therein defined) is to be addressed and a release and indemnity on the terms therein set out provided to Canada;

AND

2. the persons to be appointed as Initial Trustees to execute the proposed Trust Agreement with Canada pursuant to which the terms for the administration and management of certain monies to be paid by Canada to the Trust established under the Trust Agreement for the benefit of the Entitlement First Nation (as provided for in the Treaty Entitlement Agreement) are set out;

AND

3. the Council of the Entitlement First Nation and the Initial Trustees and their successors to execute all other necessary documents to give effect to the Treaty Entitlement Agreement and the Trust Agreement?

YES

☐

NO

☐

Mark this Ballot by placing a **Cross (an "X")** in the box under the word "YES" or "NO".

APPENDIX "B"

COUNCIL RESOLUTION

Pursuant to the consent of a majority of the Council of the _____ First Nation ("the Council") present at a duly convened meeting held on the ____ day of _____, 199_, THE COUNCIL RESOLVES AS FOLLOWS:

1. THAT the Council does hereby recommend to the Members of the _____ First Nation the acceptance of the proposed Treaty Entitlement Agreement among the _____ First Nation ("the Entitlement First Nation"), Treaty Land Entitlement Committee of Manitoba Inc., as general partner on behalf of TLEC Limited Partnership ("the TLE Committee"), Her Majesty the Queen in right of Canada ("Canada") and Her Majesty the Queen in right of Manitoba ("Manitoba") pursuant to which the unfulfilled land entitlement of the Entitlement First Nation under the Per Capita Provision (as therein defined) is to be addressed and a release and indemnity on the terms therein set out provided to Canada;
2. THAT the Council does hereby further recommend to the members of the Entitlement First Nation the acceptance of a proposed agreement (the "Trust Agreement"), between Canada and the persons to be appointed as Initial Trustees pursuant to which terms for the administration and management of certain monies to be paid by Canada to the Trust established under the Trust Agreement for the benefit of the Entitlement First Nation (in accordance with the Treaty Entitlement Agreement) are set out;
3. THAT the Council does hereby call a Vote to determine whether a majority of the Eligible Members (as defined in the Community Approval Process) of the Entitlement First Nation are in favour of approving the Treaty Entitlement Agreement and the Trust Agreement, which vote shall be conducted pursuant to the Community Approval Process attached as Schedule "H" to the Framework Agreement among the TLE Committee, Canada and Manitoba;
4. THAT the Council, by copy of this resolution to the Minister of Indian Affairs and Northern Development ("the Minister"), does hereby request that the Minister order that the Vote be conducted by means of a secret Ballot, and also that the Minister designate a Process Officer for the purpose of conducting the Vote;

5. THAT the Vote of the Entitlement First Nation shall be held at Indian Reserve No. _____ in the Province of Manitoba on _____, and that the Polls shall be open from 9:00 a.m. until 8:00 p.m. on that date and further that Advance Polls be held at the times, places and on the dates set out below:

DATE

TIME

LOCATION

6. THAT the Council does hereby approve of:

- (a) the Community Approval Process;
- (b) the Ballot Question for the Vote in the form as set out in Appendix "A" to the Community Approval Process; and
- (c) the Notice of Vote in the form set out in Appendix "C" to the Community Approval Process;

7. THAT Information Meetings be held for the purpose of providing an opportunity for the Council, the Entitlement First Nation's legal counsel and financial advisor and any other persons as requested by the Council to explain the land entitlement of the Entitlement First Nation under the Per Capita Provision (as defined in the Treaty Entitlement Agreement) and the provisions of the proposed Treaty Entitlement Agreement and the Trust Agreement to all Eligible Members in attendance, with a view to ensuring that they are fully informed prior to casting their votes on the Ballot Question in the Vote at the following dates, times and places:

DATE

TIME

LOCATION

8. THAT the Council of the First Nation provide the Minister with:
- (a) an original, executed copy of this Resolution; and
 - (b) a list of the mailing address of each Eligible Member whose Ordinary Residence is not on a Reserve or such substitutional address as may be available (or where no such address is available, a notation indicating that the whereabouts of that Eligible Member is unknown); and
9. THAT, in the Council's opinion, it is anticipated that an interpreter will (not) be required at any Information Meetings (and if so, at those meetings indicated with an asterisk in Subparagraph 7 above), any Advance Polls (and, if so, at the Advance Polls indicated with an asterisk in Subparagraph 5) and at the Polls on the Voting Day for the purpose of providing translation services to Eligible Members.

_____ **FIRST NATION, by**
its Chief and Councillors

Chief

Councillor

Councillor

A quorum for the _____ First Nation consists of _____ Council members.

APPENDIX "C"

NOTICE OF VOTE

TO: THE MEMBERS OF THE _____ FIRST NATION

NOTICE OF VOTE

TAKE NOTICE that a vote of the Eligible Members (as hereinafter described) of the _____ First Nation will be held on _____ at Indian Reserve No. _____ between the hours of 9:00 a.m. and 8:00 p.m. for the purpose of determining if the Eligible Members approve and assent to:

1. A proposed agreement among the _____ First Nation ("the Entitlement First Nation"), Treaty Land Entitlement Committee of Manitoba Inc., as general partner on behalf of TLEC Limited Partnership, Her Majesty the Queen in right of Canada ("Canada") and Her Majesty the Queen in right of Manitoba pursuant to which the unfulfilled land entitlement of the Entitlement First Nation under the Per Capita Provision (as therein defined) is to be addressed and a release and indemnity on the terms therein set out provided to Canada (the "Treaty Entitlement Agreement");
2. A further proposed agreement (the "Trust Agreement") between Canada and the persons to be appointed as Initial Trustees pursuant to which terms for the administration and management of certain monies to be paid by Canada to the Trust established under the Trust Agreement for the benefit of the Entitlement First Nation, in accordance with the Treaty Entitlement Agreement are set out.
3. the Council of the Entitlement First Nation and the Initial Trustees and their successors to execute all other necessary documents to give effect to the Treaty Entitlement Agreement and the Trust Agreement.

A copy of the Treaty Entitlement Agreement is attached to this Notice of Vote and marked "A". A copy of the Trust Agreement is attached to this Notice of Vote and marked "B".

YOU ARE ENTITLED TO ASK FOR AND RECEIVE A COPY OF THE TREATY ENTITLEMENT AGREEMENT AND TRUST AGREEMENT IF YOU WISH. REQUESTS SHOULD BE DIRECTED TO THE COUNCIL OF THE ENTITLEMENT FIRST NATION .

VOTING PROCEDURE

The Eligible Members will be asked to vote on the following question:

As a Voter of the _____ First Nation do you authorize and direct:

1. the Council of the _____ First Nation to execute the proposed Treaty Entitlement Agreement among the _____ First Nation ("the Entitlement First Nation"), Treaty Land Entitlement Committee of Manitoba Inc., as general partner on behalf of TLEC Limited Partnership, Her Majesty the Queen in right of Canada ("Canada") and Her Majesty the Queen in right of Manitoba pursuant to which the unfulfilled land entitlement of the Entitlement First Nation under the Per Capita Provision (as therein defined) is to be addressed and a release and indemnity on the terms therein set out provided to Canada;

AND

2. the persons to be appointed as Initial Trustees to execute the proposed Trust Agreement with Canada pursuant to which the terms for the administration and management of certain monies to be paid by Canada to the Trust established under the Trust Agreement for the benefit of the Entitlement First Nation (as provided for in the Treaty Entitlement Agreement) are set out;

AND

3. the Council of the Entitlement First Nation and the Initial Trustees and their successors to execute all other necessary documents to give effect to the Treaty Entitlement Agreement and the Trust Agreement?

The Vote will be conducted in accordance with the Community Approval Process. The Community Approval Process forms Schedule "H" to the document titled "Framework Agreement" which is attached to the Treaty Entitlement Agreement and marked "Attachment 'J'".

ELIGIBLE MEMBERS

All members of the Entitlement First Nation who:

- (a) appear on the Membership List maintained by [*the Department of Indian Affairs and Northern Development or the Entitlement First Nation*];
- (b) are over the age of 18 years; and

- (c) have not been found mentally incompetent or otherwise unable to manage their own affairs by a court of competent jurisdiction

as of _____ are eligible to vote.

Attached to this Notice of Vote and marked "C" is a List of Voters which has been prepared from information supplied by the Council of the Entitlement First Nation. The List of Voters should contain the names of all Eligible Members. In addition to the criteria set out above, the name of an Eligible Member must appear on the List of Voters for that Eligible Member to be entitled to vote.

An Eligible Member may, up to and including the Voting Day, apply to the Process Officer to have his or her name added to the List of Voters if it does not appear, provided that person can:

- (a) produce adequate and current identification;
- (b) provide adequate proof of age;
- (c) provide evidence that he or she is registered as an "Indian" within the meaning of the *Indian Act* or has submitted an application to be so registered and such application has been approved;
- (d) provide evidence that he or she is on the Membership List maintained by [the Department of Indian Affairs and Northern Development or the Entitlement First Nation] or has submitted an application to have his or her name entered on the Membership List and such application has been approved; and
- (e) if required, obtain corroborating testimony from another Eligible Member who is willing to make oath in the form of a statutory declaration as to the identity of that person.

Any Eligible Member may apply to the Process Officer by no later than _____, 199_, to have the List of Voters revised if such he or she believes that:

- (a) the name of an Eligible Member has been omitted from the List of Voters; or
- (b) the name of an Eligible Member is incorrectly set out or should not be included on the List of Voters.

MAIL IN BALLOTS AND ADVANCE POLLS

Eligible Members whose Ordinary Residence is off the Reserve need not be in attendance at Indian Reserve No. _____ on _____ in order to cast their vote. These Eligible Members will be sent a Mail in Ballot package by registered mail to their last address known to the Council (or to a specified substitutional address, if their mailing address is not known) which will permit them to mail in their vote. These persons cannot be sent such a package if their whereabouts are not known and, if no substitutional address is known, will have to vote in person.

In addition, Eligible Members whose Ordinary Residence is on the Reserve but who, due to a planned absence or for medical reasons, will not be available to Vote in person on _____, may cast their vote by mail provided they make such a request to the Process Officer no later than _____, 199_.

Alternatively, any Eligible Member may vote at an Advance Poll if he or she so chooses. Advance Polls will be open at the following locations and on the dates and at the times indicated:

DATE

TIME

LOCATION

INFORMATION MEETINGS

Information Meetings for purposes of providing an opportunity for the Entitlement First Nation Council, the Entitlement First Nation's legal counsel and financial advisor and any other persons as requested by the Council to explain the land and entitlement of the Entitlement First Nation under the Per Capita Provision (as defined in the Treaty Entitlement Agreement) and the provisions of the Treaty Entitlement Agreement and the Trust Agreement to all Eligible Members in attendance, with a view to ensuring that they are fully informed prior to casting their votes on the Ballot Question in the Vote will be held at the following dates, times, and places:

DATE

TIME

LOCATION

QUESTIONS

Any questions concerning the Treaty Entitlement Agreement or the Trust Agreement should be directed to the Council of the Entitlement First Nation.

Any questions concerning the manner in which the vote is to be conducted, including requests for revisions to the List of Voters and requests for Mail In Ballots, should be directed to the Process Officer.

PROCESS OFFICER

The Process Officer is _____ and may be reached by calling (204) 983-_____
(collect calls will be accepted).

ATTACHMENTS

The following are attached to this Notice of Vote marked as indicated:

- A. Treaty Entitlement Agreement
- B. Trust Agreement
- C. List of Voters

IN THE EVENT OF ANY DISCREPANCIES BETWEEN THE INFORMATION CONTAINED IN THIS NOTICE OF VOTE AND THE COMMUNITY APPROVAL PROCESS, THE COMMUNITY APPROVAL PROCESS SHALL GOVERN.

DATED at Winnipeg, Manitoba this day of , 199

Process Officer

APPENDIX "D"

DECLARATION OF PROCESS OFFICER

C A N A D A)
PROVINCE OF MANITOBA) }
TO WIT: }

I, _____, (Assistant) Process Officer, of _____, in the Province of Manitoba, DO SOLEMNLY DECLARE:

1. THAT I was personally present at Indian Reserve No. _____ on _____ (at _____ on _____) when the Eligible Members of the _____ First Nation voted in a Vote concerning a proposed Treaty Entitlement Agreement and a proposed Trust Agreement.
2. THAT immediately before the opening of the poll on that date, I opened the Ballot box to be used in connection with the Vote.
3. THAT the Ballot box was seen by me to be empty and I called upon persons who were present to witness that the Ballot box was empty.
4. THAT I then locked and properly sealed the Ballot box and placed it in view for the reception of Ballot papers.

AND I make this solemn declaration conscientiously and believing it to be true and knowing it is of the same force and effect as if made under oath and by virtue of the *Canada Evidence Act*.

DECLARED before me
at the _____ of _____
in the Province of Manitoba this
_____ day of
_____, 199__

My Commission expires:

DECLARATION OF WITNESS

My Commission expires:

APPENDIX "F"

STATEMENT OF VOTE RESULTS

We, the undersigned, severally state that the Eligible Members of the _____ First Nation voted in a Vote concerning a proposed Treaty Entitlement Agreement and a proposed Trust Agreement on _____ in accordance with the Community Approval Process and the results of this Vote were as follows:

- (a) the names of _____ Voters appeared on the List of Voters prepared by the (Assistant) Process Officer in accordance with Paragraph 3.02(a) and Article 6 of the Community Approval Process, and the number of Voters who were entitled to cast a vote on the Vote was therefore _____;
- (b) _____ Ballots were cast in the Vote in accordance with the Community Approval Process (including Spoiled Ballots);
- (c) _____ Voters voted "YES" in accordance with Section 11.06 of the Community Approval Process;
- (d) _____ Voters voted "NO" in accordance with Section 11.06 of the Community Approval Process; and
- (e) _____ Ballots were rejected as Spoiled Ballots as defined in Paragraph 1.01(u) of the Community Approval Process, in accordance with Paragraph 16.01(b) of the Community Approval Process.

We declare therefore that a majority (over 50%) of all of the Voters did (not) vote in the Vote and that a majority (over 50%) of those Voters who did vote "YES" or "NO" in accordance with Section 11.06 of the Community Approval Process did (not) vote "YES" thereby (approving)(failing to approve) and (not) authorizing the execution of the proposed Treaty Entitlement Agreement and the proposed Trust Agreement.

Dated at _____, in the Province of Manitoba this ____ day of _____, 199_.

(Assistant) Process Officer
First Nation

(Chief)(Councillor) of the _____

APPENDIX "G"

CERTIFICATION OF VOTE BY PROCESS OFFICER

CANADA)
PROVINCE OF MANITOBA) }
TO WIT: }

I, _____, (Assistant) Process Officer, of _____, in the Province of Manitoba, DO SOLEMNLY DECLARE:

1. THAT I was present at Indian Reserve No. _____ on _____, when Eligible Members of the _____ First Nation voted in a Vote concerning a proposed Treaty Entitlement Agreement and a proposed Trust Agreement in accordance with the Community Approval Process.
2. THAT a true copy of the Notice of Vote to the Eligible Members of the _____ First Nation to ratify and approve the proposed Treaty Entitlement Agreement and proposed Trust Agreement is attached as Exhibit "1" to this my Declaration.
3. THAT I did cause the said Notice of Vote to be posted in accordance with Paragraph 4.01(a) of the Community Approval Process at least 28 days prior to the Voting Day.
4. THAT (I did attend)(I or an assistant appointed by me attended) every Information Meeting set out in the Notice of Vote and made reasonable efforts to ensure that minutes of each information meeting were prepared in accordance with Sections 5.03 and 5.05 of the Community Approval Process.
5. THAT the voting procedure was conducted in accordance with the Community Approval Process.
6. THAT the proposed Treaty Entitlement Agreement and proposed Trust Agreement was (not) approved by the Vote, the results of which are set out in a true copy of the Statement of Vote Results attached as Exhibit "2" to this my Declaration.

AND I make this solemn declaration conscientiously and believing it to be true and knowing it is of the same force and effect as if made under oath and by virtue of the *Canada Evidence Act*.

DECLARED before me at the
_____ of _____, in
the Province of Manitoba this
day of _____,
199_.

(Assistant) Process Officer

My commission expires:

APPENDIX "H"

CERTIFICATION OF VOTE BY MEMBER OF COUNCIL

C A N A D A)
PROVINCE OF MANITOBA)
TO WIT:)

I, _____, member of the Council of the _____ First Nation, in the Province of Manitoba, DO SOLEMNLY DECLARE:

1. THAT I was present at Indian Reserve No. on _____ when Eligible Members of the _____ First Nation voted in the Vote concerning a proposed Treaty Entitlement Agreement and a proposed Trust Agreement in accordance with the Community Approval Process.
2. THAT a true copy of the Notice of Vote to the Eligible Members to approve and ratify the proposed Treaty Entitlement Agreement and a proposed Trust Agreement is attached as Exhibit "1" to this my Declaration.
3. THAT the (Assistant) Process Officer did cause to be posted a Notice of Vote in accordance with Paragraph 4.01(a) of the Community Approval Process at least 28 days prior to the Voting Day.
4. THAT a quorum of the Council did attend every Information Meeting set out in the Notice of Vote in accordance with Section 5.03 of the Community Approval Process.
5. THAT the proposed Treaty Entitlement Agreement and proposed Trust Agreement was (not) approved by the Vote, the results of which are set out in a true copy of the Statement of Vote Results attached as Exhibit "2" to this my Declaration.

AND I make this solemn declaration conscientiously and believing it to be true and knowing it is of the same force and effect as if made under oath and by virtue of the *Canada Evidence Act*.

DECLARED before me at _____ in
the Province of Manitoba this _____
day of _____,
199_.

Member of the Council of the _____
First Nation

My commission expires:

APPENDIX "I"

APPOINTMENT OF ASSISTANT

I, _____, Process Officer, appoint _____ to act as an Assistant for the purpose carrying out such duties and assignments under the Community Approval Process as delegated by me.

Date

Process Officer

I, _____, hereby agree to act as an Assistant to carry out such duties and assignments under the Community Approval Process as delegated by Community Approval Process to me and I do hereby solemnly undertake to carry out such tasks to the best of my ability and in accordance with the Community Approval Process.

Date

APPENDIX "J"

APPOINTMENT OF INTERPRETER

I, _____, Process Officer, appoint _____ to act as an Interpreter for the purpose of providing translation services to such Eligible Members at any information meeting or to assist such Voters who require translation services to cast their Votes at the Polls.

Date

Process Officer

I, _____, hereby agree to act as an Interpreter for the purpose of providing translation services to such Eligible Members at any information meeting or to assist such Voters who require translation services to cast their Votes at the Polls and I do hereby solemnly undertake to carry out such task accurately, honestly and to the best of my ability.

Date

FRAMEWORK AGREEMENT DRAFTED BY:

ROD McLEOD
James R. McLeod
Law Office

THOMAS A. SAUNDERS
Department of Justice
(Canada)
Winnipeg Regional Office

BRUCE G. HILCHEY
Department of Justice
(Canada)
DIAND Legal Services

GORDON E. HANNON
Department of Justice
(Manitoba)
Civil Legal Services

Solicitors for the
TLE Committee

Solicitors for Canada

Solicitors for Canada

Solicitors for Manitoba