

1. DEFINITIONS

In this Memorandum of Understanding including the Recitals, Schedule 1 and the Annex thereto:

"Board" means the Board which is appointed pursuant to Section 63 of the EPA and the terms of this agreement;

"Contingency Plan" means a program intended to address malfunctions, accidents or unplanned events that may occur in connection with the Undertaking;

"Consult" means to provide:

- a. to the person being consulted, notice of a matter to be decided in sufficient form and detail to allow that person to prepare its views on the matter;
- b. a reasonable period of time in which the person being consulted may prepare its views on the matter, an opportunity to present its views to the person obliged to consult;
- c. full and fair consideration by the person obliged to consult of any views presented; and,
- d. discussion with the Innu Nation where the views of the Innu Nation are not proposed to be substantially incorporated as well as provision of written reasons if any views are not substantially incorporated;

"Cumulative Environmental Effect" means the additive and interactive effects of an undertaking in combination with other projects or activities that have been or will be carried out;

"Day" means a calendar day;

"EIS Guidelines" mean the direction provided to the Proponent by the Minister on matters which must be addressed in the Proponent's Environmental Impact Statement;

"Environment" means the components of the earth and includes

- a) land, water and air, including all layers of the atmosphere,
- b) all organic and inorganic matter and living organisms,
- c) the social, economic, recreational, cultural, spiritual and aesthetic conditions and factors that influence the life of humans and communities, and
- d) a part or combination of those things referred to in paragraphs (a) to (c) and the interrelationships between two or more of them;

"Environmental Assessment" (hereinafter "EA") means an assessment of the Environmental Effects of the Undertaking that is conducted in accordance with this Memorandum of Understanding;

"Environmental Effect" means, in respect of an undertaking

- a) any change that the Undertaking may cause in the Environment, including any change on health and socio-economic conditions, on physical and cultural heritage, on the current use of lands and resources for traditional purposes by aboriginal persons, or on any structure, site or thing that is of historical, archaeological, paleontological or architectural significance, and
- b) any change to the Undertaking that may be caused by the Environment;

"Environmental Impact Statement (hereinafter "EIS") means the report prepared by the Proponent in accordance with the EIS Guidelines and which includes the elements required by section 57 of the EPA;

"EPA" means the Newfoundland and Labrador Environmental Protection Act, SNL 2002 c.E.-14.2;

Follow-up Program means a program for:

- a) verifying the accuracy of the EA of the undertaking
- b) determining the effectiveness of any measures taken to Mitigate the adverse Environmental Effects of an undertaking, and
- c) implementing measures to Mitigate adverse Environmental Effects identified in (a) or (b).

"Innu Nation" means the corporation by that name which represents the Innu of Labrador;

"Memorandum of Understanding" (hereinafter "MOU") means this Memorandum of Understanding including Schedule 1 and the Annex to Schedule 1 attached hereto;

"Minister" means Minister of Environment of Newfoundland and Labrador;

"Ministerial Recommendation" means the recommendation to the Lieutenant-Governor in Council by the Minister pursuant to either section 67 (2) (a) or section 67 (2) (b) of the EPA;

"Mitigation" means in respect of the Undertaking, the elimination, reduction or control of the adverse Environmental Effects of the Undertaking, and includes restitution for any damage to the Environment caused by such effects through replacement, restoration, compensation or any other means, and "Mitigate" has a corresponding meaning;

"Newfoundland and Labrador" means the Government of Newfoundland and Labrador;

"Parties" mean signatories to this MOU;

"Proponent" means Department of Works, Services and Transportation of Newfoundland and Labrador;

"Provincial Ministers" mean the Minister of Environment of Newfoundland and Labrador and the Minister Responsible for Labrador and Aboriginal Affairs;

"Public Hearings" means the public hearings to be conducted by the Board in accordance with this MOU;

"Residual Effect" means an Environmental Effect remaining after all mitigative measures have been applied;

"Secretariat" means the Secretariat which is established pursuant to Section 2.5 of this MOU;

"Terms of Reference" mean the Terms of Reference for the Board, as set out in Schedule 1;

"Undertaking" means the proposed undertaking as described in the EIS.

2. GENERAL

2.1 Purpose: The purpose of this MOU is to establish an effective and efficient process for assessing the Environmental Effects of the Undertaking.

2.2 Land Claim Agreements and Self-Government Agreements: The Parties will enter into negotiations to consider appropriate amendments to the MOU to reflect any agreements-in-principle, interim measures agreements or final agreements reached in the comprehensive land claims negotiations now proceeding among Canada, Newfoundland and Labrador and Innu Nation.

2.3 Board Hearings: A Board will be appointed to conduct the Public Hearings for the Undertaking.

2.4 Board Budget: The Parties will consult with each other to ensure the Board has adequate financial resources to conduct the Public Hearings of the Undertaking.

2.5 Board Secretariat: A Secretariat will be established to assist the Board in its duties, including the public information function. The Board office will be established at Happy Valley-Goose Bay.

- 2.6 Information Center: A public information center will be established by the Board at Happy Valley- Goose Bay. This public information center will be administered by the Board Secretariat.
- 2.7 Translation: All materials required to be translated in accordance with this MOU will be placed in the information centre. Translations into Innu-aimun will normally be available within seven (7) days of the completion of the English version. Translations will be made available as an audio or video tape or in written form at the same time as the English version is publicly released and will be provided on request to individuals and organizations.
- 2.8 Participation by Officials of the Parties: Nothing in this MOU will be construed as restricting participation in the review of the Undertaking by representatives of departments and agencies of Newfoundland and Labrador or by Innu Nation, any of its organizations or arms, or any member of Innu Nation.
- 2.9 Announcements: The Parties or their designates will coordinate any announcements regarding the matters addressed in this MOU.

3. INNU NATION PARTICIPATION IN DEVELOPMENT OF EIS GUIDELINES

- 3.1 After the draft EIS guidelines have been translated into Innu-aimun at the cost of Newfoundland and Labrador and notice, including notice in Innu-aimun, of the public review of the draft EIS guidelines in accordance with Section 59 (1) of the EPA has been provided, Innu Nation shall have an opportunity to review the draft guidelines prepared by the EA Committee and provide comments on the draft EIS guidelines to the Minister through the process described in this section 3.
- 3.1.1 The EA Committee and the Innu Nation will meet within 30 days of receipt by the Innu Nation of the draft EIS Guidelines from the EA Committee to Consult on all views presented by the Innu Nation following completion of the review of the draft EIS guidelines.
- 3.2 In relation to providing the draft EIS guidelines to the Minister:
- 3.2.1 if the EA Committee and the Innu Nation reach consensus on all views presented by the Innu Nation under section 3.1, the EA Committee shall submit draft EIS guidelines to the Minister reflecting the consensus, or
- 3.2.2 if the EA Committee and the Innu Nation fail to reach a consensus on all views presented by the Innu Nation under section 3.1, the EA Committee shall submit

the draft EIS Guidelines to the Minister, together with any submission prepared by the Innu Nation on the matters on which consensus was not reached.

- 3.3 If the draft EIS Guidelines are submitted to the Minister under:
- 3.3.1 section 3.2.1, then after receipt and consideration of the draft EIS Guidelines and any responses and written comments received from interested persons pursuant to section 59 (1) of the EPA, the Innu Nation shall be Consulted where the views of the Innu Nation are not proposed to be substantially incorporated, or
 - 3.3.2 section 3.2.2, then after receipt and consideration of the draft EIS Guidelines, the submission prepared by Innu Nation referred to in section 3.2.2, and any responses and written comments received from interested persons pursuant to section 59 (1) of the EPA, the Innu Nation shall be Consulted where the views of the Innu Nation are not proposed to be substantially incorporated.
- 3.5 The public announcement of the Minister's approval of the EIS Guidelines and the approved EIS Guidelines shall be translated into Innu-aimun.

4. INNU NATION PARTICIPATION IN DETERMINATION OF EIS ADEQUACY

- 4.1 The Innu Nation shall provide the Minister with advice concerning key sections of the EIS for translation into Innu-aimun and the Proponent shall translate key sections of the EIS as requested by the Minister, prior to submission of the EIS to the Minister.
- 4.2 On receipt of the EIS from the Proponent, the Minister shall provide the EIS to the EA committee, interested persons, and the Innu Nation for examination.
- 4.3 Following the 50 day public review period during which, for greater certainty, Innu Nation may also provide the Minister with any comments on whether there are any deficiencies in the EIS, the Minister shall provide the Innu Nation with any responses or comments received by persons other than Innu Nation, as permitted by the *Freedom of Information Act* or its successor legislation.
- 4.4 The Innu Nation and the EA Committee shall meet to consider the EIS and any responses or comments received from the public and Innu Nation, and shall Consult on the adequacy of the EIS and concerning any deficiencies that require further work by the Proponent, within 10 days of Innu Nation's receipt of the responses or comments provided by the Minister under section 4.3. Following this consultation:

- 4.4.1 if the EA Committee and the Innu Nation reach consensus on whether the EIS is adequate or whether to recommend that the Minister should require the Proponent to do any of the things set out in section 61 of the EPA because the EIS is deficient (collectively, the “adequacy of the EIS”), the EA Committee shall make recommendations to the Minister reflecting the consensus, or
- 4.4.2 if the EA Committee and the Innu Nation fail to reach consensus on the adequacy of the EIS, the EA Committee shall make recommendations to the Minister, together with any submission prepared by the Innu Nation on the matters on which consensus was not reached.
- 4.5 Prior to making a determination under section 60 (1) (b) of the EPA, the Minister shall consider the recommendations of the EA Committee made under either 4.4.1 or 4.4.2 and the submissions of the Innu Nation, if any, made under 4.4.2.
- 4.6 If the Minister intends to substantially vary or reject either the consensus recommendations under 4.4.1, or the submission of the Innu Nation under 4.4.2, the Innu Nation shall be Consulted where the views of the Innu Nation are not proposed to be substantially incorporated.
- 4.7 Once the Minister is satisfied that the EIS complies with the approved EIS Guidelines and is adequate for the purposes of Public Hearings, the Minister shall notify the President of the Innu Nation of this determination no later than the Proponent is notified.

5. APPOINTMENT OF AN ENVIRONMENTAL ASSESSMENT BOARD AND CONDUCT OF PUBLIC HEARINGS

- 5.1 Membership of Board: The Board will consist of three persons. Board members will not be employed by the Public Service of Newfoundland and Labrador or of Canada, or by the Innu Nation.
- 5.2 Criteria for Board Members: Each Board member will be unbiased and free of any conflict of interest relative to the Undertaking and have knowledge or experience relevant to the anticipated Environmental Effects of the Undertaking.
- 5.3 Selection and Appointment of Board Members: Each of the Parties will nominate a list of three for members of the Board and a list of three for Chair. The nominees for Chair shall not be residents of the geographical area of the Undertaking. At least one of the members of the Board shall be a resident of the geographical area of the Undertaking. The Parties will mutually agree on two Board members and the Chair to be recommended for appointment by the Lieutenant-Governor in Council.

- 5.4 Public Notice: Upon the appointment of the Board, the Parties will give public notice of the appointment.
- 5.5 Board Hearings: Upon appointment, the Board will conduct Public Hearings on the Undertaking in accordance with the Terms of Reference.
- 5.6 Powers and Duties: The Board will carry out its duties and have the powers in Sections 64 and 65 of the EPA and the applicable Regulations.

6. BOARD REPORT

- 6.1 Reporting: Upon completion of Public Hearings on the EIS for the Undertaking, the Board will concurrently convey its Board report to the Minister and to the President of the Innu Nation.
- 6.2 Reporting to the Public: The Board report will be published and, prior to the announcement of its release to the public, the Secretariat will place embargoed copies of the report in the communities of Sheshatshiu, Happy Valley-Goose Bay, Cartwright and Port Hope Simpson as appropriate to ensure timely availability on public release. The Board report will be made available to the residents of the named communities immediately following the announcement of the public release of the Board report. Copies will be available to the general public on request.
- 6.3 Prior to the Minister providing the Ministerial Recommendation, and within 30 days of receipt of the Board report under section 6.1, the Minister and the President of the Innu Nation shall meet and the President shall advise the Minister of Innu Nation's views on:
 - 6.3.1 the recommendations of the Board contained in the Board report;
 - 6.3.2 whether the Minister should make a Ministerial Recommendation under section 67 (2) (a) or under section 67 (2) (b); and
 - 6.3.3 any terms and conditions that Innu Nation recommends be contained in a Ministerial Recommendation that the Minister may determine to make under section 67 (2) (a).

7. AMENDMENTS

- 7.1 Amendments: This MOU may be amended only with the written consent of all the Parties. Unless another day is agreed, an amendment will become effective upon its execution by the Parties.

8. FINAL PROVISIONS

- 8.1 This MOU is made without prejudice to the positions taken by the Parties in any other forum. This MOU is not to be construed as conferring, recognizing, denying or derogating from any aboriginal, treaty, constitutional or other rights, benefits, claims or privileges that may be claimed by any of the Parties or any other aboriginal group. This MOU will not be interpreted to be a land claim agreement or treaty within the meaning of Section 25 of the *Constitution Act, 1982*. Nothing in this MOU is to be construed as providing any consent, approval or authorization whatsoever by the Innu Nation, in connection with the Undertaking or any part thereof.
- 8.2 Change to the Undertaking: If the Proponent proposes to change the Undertaking, the Parties will reconsider and may amend this MOU and may redirect the Board as to changes to the Public Hearings.
- 8.3 Consultation: The Parties will consult on the implementation of this MOU as required.
- 8.4 Term of Agreement: This MOU shall expire at the conclusion of the meeting between the Minister and the President of the Innu Nation under Section 6.3

9. LEGAL

- 9.1 This Agreement shall be governed by and construed in accordance with the laws of Newfoundland and Labrador.
- 9.2 This Agreement may be assigned on consent of the Parties provided that such consent cannot be unreasonably withheld and provided that such assignment has no effect on the operation of this Agreement.
- 9.3 This Agreement is the entire agreement and there is no representation, warranty, collateral agreement or condition affecting this Agreement unless otherwise provided in this Agreement.
- 9.4 Any written communication required pursuant to this Agreement shall be:
1. delivered personally or by courier;
 2. transmitted by fax;

3. mailed by prepaid registered post; or
4. transmitted by email

and addressed as follows:

- i) To Newfoundland and Labrador at:

Attn: Minister
Department of Environment
Government of Newfoundland and Labrador
P.O. Box 8700
St. John's, Newfoundland and Labrador
A1B 4J6

- ii) To the Innu Nation at:

Attn: President
P.O. Box 119
Sheshatshiu
Newfoundland and Labrador
A0P 1M0

- iii) To the Chair of the Board at an address to be provided to the Parties upon the establishment of the Board.

9.5 A written communication shall be deemed to have been received:

- A) if delivered personally or by courier before 4 p.m. at the delivery location, on the day it was delivered;
- B) if transmitted by fax and the sender received confirmation of the transmission before 4 p.m. at the delivery location, on the date of receipt;
- C) if mailed by prepaid registered post in Canada, on the day the postal receipt is acknowledged by the addressee; or
- D) if sent by email and the sender received a delivery or a 'read' receipt or an email acknowledgment of receipt before 4 p.m. at the delivery location, on the date of receipt, or if after 4 p.m., on the day following the date of receipt.

- 9.6 A provision of this Agreement, or the performance by a Party of an obligation under this Agreement, may not be waived unless the waiver is in writing and signed by the Party or Parties giving the waiver.
- 9.7 No written waiver of a provision of this Agreement, or performance by a Party of an obligation under this Agreement, or of default by a party of an obligation under this Agreement, shall be a waiver of any other provision, obligation or subsequent default.
- 9.8 This Agreement shall enure to the benefit of, and be binding upon the Parties and their respective successors and assigns.
- 9.9 If any provision of this Agreement is found to be void, voidable, invalid, illegal or unenforceable for whatever reason, then the particular provision shall be deemed to be severed from the remainder of this Agreement and all other provision of this Agreement shall remain in full force and effect.
- 9.10 If a severance occurs under Section 9.9, the Parties shall use best efforts to negotiate in good faith an enforceable replacement provision that to the greatest extent possible captures the intent or serves the purpose of the severed provision.

IN WITNESS WHEREOF our signatures are hereunto inscribed.

Original signed by _____

Peter Penashue
President, Innu Nation
Date:

Original signed by _____

Kevin Aylward
Minister of Environment
Government of Newfoundland and Labrador
Date: 03 October 2002

Original signed by _____

Ernest McLean
Minister of Labrador and Aboriginal Affairs
Government of Newfoundland and Labrador
Date: 03 October 2002

SCHEDULE 1

TERMS OF REFERENCE

PUBLIC HEARINGS ON THE PROPOSED TRANS LABRADOR HIGHWAY (PHASE III)

INTRODUCTION

Pursuant to the Memorandum of Understanding on Environmental Assessment of the Proposed Trans Labrador Highway (Phase III), the "MOU", an Environmental Assessment Board is appointed to conduct Public Hearings on the EIS associated with the Undertaking proposed by the Proponent and to exchange information between the Proponent and the Public.

These Terms of Reference are developed by the Parties and are approved by the Ministers of Environment and Labrador and Aboriginal Affairs.

The Undertaking may change as further studies and work are conducted. If, during the hearing process, the Board becomes aware of a proposal by the Proponent to change the Undertaking, the Board will, if it considers the change significant, advise the Parties forthwith.

For purposes of the hearings, the Department of Environment of Newfoundland and Labrador is the lead Provincial Department.

SCOPE OF THE HEARINGS

In carrying out the Public Hearings and in its report, the Board will address the factors outlined in the Annex to Schedule 1 and will give full consideration to local knowledge whether presented orally or in writing. Although a review of the substance or definition of aboriginal rights or a determination of the scope or substance of land claims negotiations are not within the Board's Terms of Reference, the Board shall consider submissions regarding the relationship between the Undertaking and land claims negotiations presently underway between the Innu Nation and the Governments of Canada and Newfoundland and Labrador.

STEPS IN THE HEARING PROCESS

The main steps in the hearings by the Board will be as follows:

1. Provision and translation of final EIS: Once the Minister has determined that the EIS conforms to the EPA and to the EIS Guidelines, the Proponent shall provide the Board with copies of the final EIS. Innu-aimun translations of key sections of the final EIS will be made available as audio or video tape or in written form as directed by the Board after it receives submissions from Innu Nation regarding which

sections are considered key sections, and shall be supplied by the Proponent in the quantity required by the Board. The Proponent shall also provide the Board with an electronic version of the final EIS in both Word and WordPerfect.

2. Availability of EIS and related information: The Board will provide Innu Nation with 10 copies of the final EIS and place other copies of the final EIS and Innu-aimun translations in the public information center, together with approved EIS guidelines, a registry of all public submissions received by the Minister as permitted by the *Freedom of Information Act* or its successor legislation concerning the assessment of the Undertaking and any additional information provided by the Proponent concerning the Undertaking. The Proponent shall also make available electronic versions of the final EIS in both Word and WordPerfect to the Innu Nation and as otherwise directed by the Board.

3. Announcement and scheduling of Public Hearings: Public notice will be given by the Board to ensure that the public is fully aware of the schedule for Public Hearings and the availability of the final EIS and translations in the public information center.

4. Public Hearings: The Board will hold Public Hearings in the communities of Sheshatshiu, Happy Valley-Goose Bay, Cartwright and Port Hope Simpson. The Board will attempt to schedule the Public Hearings to maximize the attendance and participation of the public, taking into account the seasonal activities of the public and the seasonal activities and traditional practices of the Innu. The Board will use best efforts to complete the public consultations within 20 days of the commencement of the first public hearing session, provided that upon its review of the final EIS, the Board may seek from the Parties an additional period of time to complete the Public Hearings. The Board will issue written procedures for the conduct of the Public Hearings. The Public Hearings will be conducted in a manner that ensures a thorough examination of matters relevant to the Board's mandate and in particular the examination of technical evidence, while facilitating public participation. Technical hearings involving presentations by experts may be held in Happy Valley- Goose Bay.

Following consultation with the Innu Nation, the Board will determine interpretation requirements from English to Innu-aimun and from Innu-aimun into English for the Public Hearings, including any technical hearings, and any other interpretation requirements, and appropriate interpretation services will be provided by the Board.

5. Reporting: The Board will prepare and submit to the Parties a report including, but not limited to, the following:

- i) description of the public hearing process,
- ii) summary of any comments and recommendations received from the public, and
- iii) rationale, conclusions and recommendations of the Board.

The Board will submit its report at the earliest possible date, but in no event later than 45 days following completion of the Public Hearings.

The Board's report will be translated into Innu-aimun. Translations of key conclusions and recommendations from the Board's report and the executive summary of the Board's report will be available at the same time as the English version of the report is conveyed to the Minister and the President of the Innu Nation. Translation of the Board's report may be made available as an audio or video tape or in written form.

PUBLIC PARTICIPATION

The Board will conduct its hearings in a manner which will promote and facilitate public participation.

SPECIALIST ADVISORS TO BOARD

The Board may secure the services of independent experts to provide information on and help interpret technical and scientific issues and issues relative to local knowledge. The names of any specialists retained and their advice to the Board will be made public. Independent specialists hired by the Board may be requested to appear before the Board at the Public Hearings sessions.

ANNEX TO SCHEDULE 1
FACTORS TO BE CONSIDERED DURING PUBLIC HEARINGS

The definitions within Section 1 of the Memorandum of Understanding on Environmental Assessment of the Proposed Trans Labrador Highway (Phase III) will apply to this Annex. The Public Hearings will include consideration of the following factors as they relate to all phases of the Undertaking:

1. Description of the Undertaking, including its temporal and spatial boundaries;
2. Need for the Undertaking;
3. Purpose of and rationale for the Undertaking;
4. Analysis of alternatives including:
 - S alternatives to the Undertaking, and
 - S alternative means of carrying out the Undertaking which are technically and economically feasible, and
 - S the Environmental Effects of any such alternatives;
5. Temporal and spatial boundaries of the study areas;
6. Extent to which biological diversity is affected by the Undertaking;
7. Description of the present Environment which may reasonably be expected to be affected, directly or indirectly, by the Undertaking, including adequate baseline characterization;
8. Description of the likely future condition of the Environment within the expected life span of the Undertaking if the Undertaking were not approved;
9. Environmental Effects of the Undertaking including the Environmental Effects arising from malfunctions, accidents or unplanned events that may occur in connection with the Undertaking;
10. Potential Cumulative Environmental Effects of the Undertaking;
11. The significance of the effects as described in items 9 and 10;
12. Proposed Mitigation measures that are technically and economically feasible and that would Mitigate any significant adverse Environmental Effects of the Undertaking, including the interaction of these measures with existing management plans;

13. Proposals for environmental compliance monitoring;
14. Measures to enhance any beneficial Environmental Effects;
15. Proposals for Contingency Plans;
16. Residual Effects associated with the Undertaking and their significance;
16. Need for and requirements of any Follow-up Program in respect of the Undertaking;
17. Capacity of renewable resources that are likely to be significantly affected by the Undertaking to meet the needs of present and future generations; and
18. Extent of application of the precautionary principle to the Undertaking.
19. Comments received on the above factors by the Board during the Public Hearings.

