



SELKIRK  
FIRST NATION  
FINAL  
AGREEMENT



**SELKIRK FIRST NATION FINAL AGREEMENT**

**among**

**THE GOVERNMENT OF CANADA,**

**and**

**THE SELKIRK FIRST NATION**

**and**

**THE GOVERNMENT OF THE YUKON**

Published under the authority of the  
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Services Canada

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en français sous le titre :

*Entente définitive de la première nation de  
Selkirk*

**AGREEMENT** made this 21st day of July, 1997.

**AMONG:**

Her Majesty the Queen in Right of Canada as represented by the Minister of Indian Affairs and Northern Development (hereinafter referred to as "Canada");

**AND**

The Selkirk First Nation as represented by the Chief and Principal Elder of the Selkirk First Nation (hereinafter referred to as the "Selkirk First Nation");

**AND**

The Government of the Yukon as represented by the Government Leader of the Yukon on behalf of the Yukon (hereinafter referred to as "the Yukon")

being the parties to this Selkirk First Nation Final Agreement (hereinafter referred to as "this Agreement").

**WHEREAS:**

The Selkirk First Nation asserts aboriginal rights, titles and interests with respect to its Traditional Territory;

the Selkirk First Nation wishes to retain, subject to this Agreement, the aboriginal rights, titles and interests it asserts with respect to its Settlement Land;

the parties to this Agreement wish to recognize and protect a way of life that is based on an economic and spiritual relationship between Selkirk People and the land;

the parties to this Agreement wish to encourage and protect the cultural distinctiveness and social well-being of Selkirk People;

the parties to this Agreement recognize the significant contributions of Selkirk People and the Selkirk First Nation to the history and culture of the Yukon and Canada;

the parties to this Agreement wish to enhance the ability of Selkirk People to participate fully in all aspects of the economy of the Yukon;

the Constitution Act, 1982, recognizes and affirms the existing aboriginal rights and treaty rights of the aboriginal peoples of Canada, and treaty rights include rights acquired by way of land claims agreements;

the parties to this Agreement wish to achieve certainty with respect to the ownership and use of lands and other resources of the Traditional Territory of the Selkirk First Nation;

the parties wish to achieve certainty with respect to their relationships with each other;

the parties to this Agreement have negotiated this land claims agreement securing for the Selkirk First Nation and Selkirk People the rights and benefits set out herein;

the Selkirk First Nation, Canada and the Yukon have authorized their representatives to sign this land claims agreement;

**NOW THEREFORE,**

in consideration of the terms, exchanges of promises, conditions and provisos contained herein, the parties to this Agreement agree to the following.

Signed at Minto, Yukon, the 21st day of July, 1997.

\_\_\_\_\_  
Patrick VanBibber  
Chief  
Selkirk First Nation

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Dan VanBibber  
Principal Elder  
Selkirk First Nation

\_\_\_\_\_  
Witness

\_\_\_\_\_  
The Honourable Jane Stewart  
Minister of Indian Affairs  
and Northern Development

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

\_\_\_\_\_  
The Honourable Piers McDonald  
Government Leader of the Yukon

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

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## CHAPTER 1 - DEFINITIONS

In the Umbrella Final Agreement, the following definitions shall apply unless otherwise provided in a particular chapter.

"Act" includes ordinance.

### **Specific Provision**

"Assembly" has the same meaning as in the Selkirk First Nation Constitution.

"Bed" of a body of water means the land covered so long by water as to mark it from vegetation, or as to mark a distinct character upon the vegetation where it extends into the water or upon the soil itself.

"Category A Settlement Land" means land which has been identified pursuant to 5.3.1, declared pursuant to 5.12.1.1, or designated pursuant to 7.5.2.8 (a) to be Category A Settlement Land and which has not ceased to be Settlement Land in accordance with 5.11.0.

"Category B Settlement Land" means land which has been identified pursuant to 5.3.1, declared pursuant to 5.12.1.2, or designated pursuant to 7.5.2.8 (b) to be Category B Settlement Land and which has not ceased to be Settlement Land in accordance with 5.11.0.

### **Specific Provision**

"Chief" has the same meaning as in the Selkirk First Nation Constitution.

"Community Boundary" means:

- (a) for a municipality or hamlet designated under the Municipal Act, R.S.Y. 1986, c. 119, the boundary as set out in that Act; and

- (b) for a community not so designated, until such time as the community is designated a municipality or hamlet pursuant to the Municipal Act, R.S.Y. 1986, c. 119, the boundary as set out in the Yukon First Nation Final Agreement of that Yukon First Nation in whose Traditional Territory the community is located.

"Conservation" means the management of Fish and Wildlife populations and habitats and the regulation of users to ensure the quality, diversity and Long Term Optimum Productivity of Fish and Wildlife populations, with the primary goal of ensuring a sustainable harvest and its proper utilization.

"Construction Materials" includes rock, gravel, sand, marl, clay, earth, silt, pumice, volcanic ash, and materials derived therefrom or occurring as a constituent part thereof used in the construction and maintenance of public roads and other public works.

"Consult" or "Consultation" means to provide:

- (a) to the party to be consulted, notice of a matter to be decided in sufficient form and detail to allow that party to prepare its views on the matter;
- (b) a reasonable period of time in which the party to be consulted may prepare its views on the matter, and an opportunity to present such views to the party obliged to consult; and
- (c) full and fair consideration by the party obliged to consult of any views presented.

"Council for Yukon Indians" includes any successor to the Council for Yukon Indians and, in the absence of any successor, the Yukon First Nations.

**Specific Provision**

"Council of the Selkirk First Nation" has the same meaning as "Council" in the Selkirk First Nation Constitution.

"Crown Land" means land vested from time to time in Her Majesty in Right of Canada, whether the administration and control thereof is appropriated to the Commissioner of the Yukon or not, but does not include Settlement Land.

"Decision Body" means the Government, a Yukon First Nation or both as determined by applying the same test set out in 12.13.0 for determination of the requirement to issue a Decision Document.

"Decision Document" means the document issued by the Decision Body pursuant to 12.6.3 or 12.12.1.

"Designated Heritage Site" means a Heritage Site designated as such pursuant to Laws of General Application.

"Developed Settlement Land" means any Parcel of Settlement Land designated as Developed Settlement Land in a Yukon First Nation Final Agreement or pursuant to 6.1.8 or 7.5.2.9.

"Documentary Heritage Resources" means Public Records or Non-Public Records, regardless of physical form or characteristics, that are of heritage significance, including correspondence, memoranda, books, plans, maps, drawings, diagrams, pictorial or graphic works, photographs, films, microforms, sound recordings, videotapes, machine-readable records, and any copy thereof.

"Effective Date" means the date on which a Yukon First Nation's Final Agreement takes effect.

"Encumbering Right" means every licence, permit or other right, and every right, title or interest described in 5.4.2.

"Existing Mineral Right" means a Mineral Right, other than a right to locate a claim or an unrecorded right to explore for Minerals other than Petroleum, existing at the date the affected land became Settlement Land and includes any renewal or replacement of such a Mineral Right or a new right described in 5.4.2.4.

"Exotic Species" means a vertebrate animal of any species or sub-species that is not indigenous to the Yukon.

"Fee Simple Settlement Land" means land which has been identified pursuant to 5.3.1, declared pursuant to 5.12.1.3, or designated pursuant to 7.5.2.8 (b) to be Fee Simple Settlement Land and which has not ceased to be Settlement Land in accordance with 5.11.0.

"Fish" includes:

- (a) portions of fish;
- (b) shellfish, crustaceans, marine animals, marine plants and portions thereof;
- (c) the eggs, spawn, larvae, spat and juvenile stages of fish, shellfish, crustaceans and marine animals; and
- (d) such fish products and by-products as are prescribed pursuant to section 34 of the Fisheries Act, R.S.C. 1985, c. F-14.

"Flooding Right" means the right to expropriate, provided by Laws of General Application and the Umbrella Final Agreement, for constructing, maintaining and operating a hydro-electric or water storage facility.

"Freshwater Fish" means all Fish found in the Yukon other than Salmon, but does not include Exotic Species or Transplanted Population, unless otherwise agreed by the parties to a Yukon First Nation Final Agreement.

"Gas" means natural gas and includes all substances other than Oil that are produced in association with natural gas.

"Government" means Canada or the Yukon, or both, depending upon which government or governments have responsibility, from time to time, for the matter in question.

"Harvesting" means gathering, hunting, trapping or fishing in accordance with a Settlement Agreement.

"Heritage Resources" includes Moveable Heritage Resources, Heritage Sites and Documentary Heritage Resources.

"Heritage Site" means an area of land which contains Moveable Heritage Resources, or which is of value for aesthetic or cultural reasons.

"Land Set Aside" means land in the Yukon reserved or set aside by notation in the property records of the Northern Affairs Program, Department of Indian Affairs and Northern Development, for the use of the Indian and Inuit Program for Yukon Indian People.

"Law" includes common law.

"Laws of General Application" means laws of general application as defined by common law.

"Legislation" includes Acts, Regulations, orders-in-council and bylaws.

"Legislative Assembly" means the Council of the Yukon Territory as defined in the Yukon Act, R.S.C. 1985, c. Y-2.

"Local Government Services" means those services generally supplied by local government, including but not limited to recreational facilities, water, sewage, waste disposal, and road maintenance.

"Long Term Optimum Productivity" means the productivity required to ensure the long term continuation of a species or population while providing for the needs of Yukon Indian People and other harvesters and non-consumptive users of Fish and Wildlife in the short term.

"Major Highway" means a highway listed in Schedule A of Chapter 15 - Definitions of Boundaries and Measurement of Areas of Settlement Land.

"Migratory Game Birds" has the same meaning as in the Migratory Birds Convention Act, R.S.C. 1985, c. M-7.

"Mineral Right" means any licence, permit or other right to explore for, locate, develop, produce or transport any Minerals other than Specified Substances and to enter on land for those purposes.

"Minerals" means precious and base metals and other non-living, naturally occurring substances, whether solid, liquid or gaseous, and includes coal, Petroleum and Specified Substances.

"Mines" means mines, opened and unopened.

"Minister" means the Minister or Ministers of Government charged by Legislation with the responsibility, from time to time, for the exercise of powers in relation to the matter in question.

"Moveable Heritage Resources" means moveable non-documentary works or assemblies of works of people or of nature that are of scientific or cultural value for their archaeological, palaeontological, ethnological, prehistoric, historic or aesthetic features, including moveable structures and objects.

"National Park" means land described in the schedules to the National Parks Act, R.S.C. 1985, c. N-14 within the Yukon.

"Natural Boundary" means a boundary, at any instant, corresponding to the position of a designated natural feature as it exists at that instant and the boundary position changes with the natural movements of the feature, so long as those movements are gradual and imperceptible from moment to moment.

"Navigable Water" means a stream, river, lake, sea or other body of water, used or capable of being used by the public for navigation by boats, kayaks, canoes, rafts or other small craft, or log booms on a continuous or seasonal basis, and includes any parts thereof interrupted by occasional natural obstructions or bypassed by portages.

"New Mineral Right" means any Mineral Right other than an Existing Mineral Right.

"Non-Settlement Land" means all land and water in the Yukon other than Settlement Land and includes Mines and Minerals in Category B Settlement Land and Fee Simple Settlement Land, other than Specified Substances.

"Oil" means crude oil, regardless of gravity, produced at a well head in liquid form, and any other hydrocarbons except coal and Gas and, without limiting the generality of the foregoing, includes hydrocarbons that may be extracted or recovered from deposits of oil sand, bituminous sand, oil shale or from any other type of deposits on the surface or subsurface.

"Parcel" means any particular portion of Settlement Land.

"Person" means any natural person or artificial entity capable of having rights or obligations and includes Government.

"Petroleum" means Oil or Gas.

**Specific Provision**

"Principal Elder" has the same meaning as in the Selkirk First Nation Constitution.

"Property Taxes" means all municipal tax and tax on real property but, for greater certainty, does not include income tax, tax on goods and services, sales tax, or tax on transfer of real property.



"Proposed Site Specific Settlement Land" means a parcel of land identified by the notation "S" and a number on maps appended to each Yukon First Nation Final Agreement.

"Public Access for Wildlife Harvesting" means a public right of access set out in 16.12.3.

"Quarry" means a pit, excavation, or other place made by any means for the purpose of removing Construction Materials or a site identified for such purposes, and includes works, machinery, plants, and buildings below or above ground belonging to or used in connection with a Quarry.

"Regulation" includes a regulation or any instrument made in the execution of a power or authority conferred by an Act.

"Reserve" means a Reserve as defined in the Indian Act, R.S.C. 1985, c. I-5.

"Right to Work" includes the right to enter on, use and occupy the land or as much thereof and to such extent as may be necessary for the purpose of the working and extraction of Minerals.

"Road" means a territorial highway designated in section 8(2) of the Highways Regulations O.I.C 1979/79 as amended by O.I.C. 1987/100 and having a prescribed right-of-way width not exceeding 60 metres.

"Salmon" means Pacific Salmon of the species Oncorhynchus nerka including sockeye; Oncorhynchus kisutch including coho; Oncorhynchus gorbuscha including pink; Oncorhynchus keta including chum; and Oncorhynchus tshawytscha including chinook; anadromous whitefish and cisco (Coregonidae spp.); and anadromous Arctic char (Salvelinus alpinus).

### **Specific Provision**

"Selkirk Firm" means an entity which complies with the legal requirements to carry on business in the Yukon and which is either:

- (a) a corporation of which more than 50 percent of the corporation's voting shares are beneficially owned by the Selkirk First Nation or Selkirk People;

### **Specific Provision Cont'd**

- (b) a co-operative controlled by the Selkirk First Nation or Selkirk People;
- (c) a sole proprietorship operated by a person enrolled under this Agreement in accordance with the criteria established in Chapter 3 - Eligibility and Enrollment;
- (d) a partnership in which at least 50 percent of the partners are the Selkirk First Nation or Selkirk People; or
- (e) any other entity more than 50 percent owned or controlled by the Selkirk First Nation or Selkirk People.

"Selkirk First Nation Constitution" has the same meaning as "Constitution" in the Selkirk First Nation self-government agreement.

"Selkirk People" means a person or persons enrolled under this Agreement in accordance with the criteria established in Chapter 3 - Eligibility and Enrollment.

"Settlement Agreement" means a Yukon First Nation Final Agreement or a Transboundary Agreement.

"Settlement Corporation" means a corporation as referred to in 20.4.2.

"Settlement Land" means Category A Settlement Land, Category B Settlement Land or Fee Simple Settlement Land.

"Settlement Legislation" means the Act of Parliament and the Act of the Yukon Legislative Assembly described in 2.4.2.

"Site Specific Settlement Land" means a Parcel of Proposed Site Specific Settlement Land which is described as Site Specific Settlement Land in a plan of survey confirmed in accordance with Chapter 15 - Definition of Boundaries and Measurement of Areas of Settlement Land.

"Specified Substances" means any of carving stone, flint, limestone, marble, gypsum, shale, slate, clay, sand, gravel, construction stone, sodium chloride, volcanic ash, earth, soil, diatomaceous earth, ochre, marl and peat.

"Specified Substances Right" means the right of a Yukon First Nation to take and use, without payment of any royalty, a Specified Substance.

"Surface Rights Board" means the Board established pursuant to 8.1.1.

"Sustainable Development" means beneficial socio-economic change that does not undermine the ecological and social systems upon which communities and societies are dependent.

"Traditional Territory" means, subject to a Yukon First Nation Final Agreement, with respect to each Yukon First Nation and each Yukon Indian Person enrolled in that Yukon First Nation's Final Agreement, the geographic area within the Yukon identified as that Yukon First Nation's Traditional Territory on the map referred to in 2.9.0.

"Transboundary Agreement" means a land claims agreement with respect to:

- (a) any aboriginal claims in a Yukon First Nation's Traditional Territory by the Kaska Dena Council, Tahltan Tribal Council or Taku River Tlingits of British Columbia and the Dene/Metis of the Northwest Territories; and
- (b) any aboriginal claims in the Northwest Territories or British Columbia by Yukon Indian People.

"Transplanted Population" means, except as otherwise agreed by the parties to a Yukon First Nation Final Agreement, a population of Freshwater Fish or Wildlife that is intentionally introduced by Government or by an entity other than a Yukon First Nation, anywhere in the Yukon as part of a Freshwater Fish or Wildlife management program.

"Undeveloped Settlement Land" means all Settlement Land not designated Developed Settlement Land and any Settlement Land designated as Undeveloped Settlement Land pursuant to 6.1.8 or 7.5.2.9.

"Waterfront Right-of-Way" means the public right-of-way along Navigable Water described in 5.15.0.

"Wildlife" means a vertebrate animal of any species or sub-species that is wild in the Yukon, but does not include Fish, and does not include Exotic Species or Transplanted Population, unless otherwise agreed by the parties to a Yukon First Nation Final Agreement.

"Yukon First Nation" means one of the following:

Carcross/Tagish First Nation;  
Champagne & Aishihik First Nation;  
Dawson First Nation;  
Kluane First Nation;  
Kwanlin Dun First Nation;  
Liard First Nation;  
Little Salmon/Carmacks First Nation;  
First Nation of Nacho Nyak Dun;  
Ross River Dena Council;  
Selkirk First Nation;  
Ta'an Kwach'an Council;  
Teslin Tlingit Council;  
Vuntut Gwitchin First Nation; or  
White River First Nation.

"Yukon First Nations" means all of the Yukon First Nations defined as a Yukon First Nation.

"Yukon First Nation Burial Site" means a place outside a recognized cemetery where the remains of a cultural ancestor of a Yukon Indian Person have been interred, cremated or otherwise placed.

"Yukon First Nation Final Agreement" means a land claims agreement for a Yukon First Nation that includes provisions specific to that Yukon First Nation and incorporates the provisions of the Umbrella Final Agreement.

"Yukon Indian People" means more than one Yukon Indian Person.

"Yukon Indian Person" means a person enrolled under one of the Yukon First Nation Final Agreements in accordance with criteria established in Chapter 3 - Eligibility and Enrollment.

## **CHAPTER 2 - GENERAL PROVISIONS**

### **2.1.0 The Umbrella Final Agreement**

2.1.1 Ratification of the Umbrella Final Agreement by the Yukon First Nations, through the Council for Yukon Indians, and by Canada and the Yukon signifies their mutual intention to negotiate Yukon First Nation Final Agreements in accordance with the Umbrella Final Agreement.

#### **Specific Provision**

2.1.1.1 This Agreement is the Yukon First Nation Final Agreement for the Selkirk First Nation, concluded in accordance with 2.1.1.

2.1.2 The Umbrella Final Agreement does not create or affect any legal rights.

2.1.3 A Yukon First Nation Final Agreement shall include the provisions of the Umbrella Final Agreement and the specific provisions applicable to that Yukon First Nation.

### **2.2.0 Settlement Agreements**

2.2.1 Settlement Agreements shall be land claims agreements within the meaning of section 35 of the Constitution Act, 1982.

2.2.2 Nothing in a Yukon First Nation Final Agreement shall affect any aboriginal claim, right, title or interest of a Yukon First Nation claimed in British Columbia or the Northwest Territories.

2.2.3 Settlement Agreements shall not affect the identity of aboriginal people of the Yukon as aboriginal people of Canada.

- 2.2.4 Subject to 2.5.0, 5.9.0, 5.10.1 and 25.2.0, Settlement Agreements shall not affect the ability of aboriginal people of the Yukon to exercise, or benefit from, any existing or future constitutional rights for aboriginal people that may be applicable to them.
- 2.2.5 Settlement Agreements shall not affect the rights of Yukon Indian People as Canadian citizens and their entitlement to all of the rights, benefits and protection of other citizens applicable from time to time.
- 2.2.6 Nothing in Settlement Agreements shall affect the ability of Yukon First Nations or Yukon Indian People to participate in and benefit from, Government programs for status Indians, non-status Indians or native people, as the case may be. Benefits under such programs shall be determined by the general criteria for such programs established from time to time. Programs which apply to Yukon Indian People residing on a Reserve or on Land Set Aside shall not cease only by reason of the fact the land becomes Settlement Land pursuant to a Yukon First Nation Final Agreement.
- 2.2.7 Except as provided in Chapter 4 - Reserves and Lands Set Aside and Chapter 20 - Taxation, nothing in Settlement Agreements shall affect any rights or benefits Yukon First Nations or Yukon Indian People may have or be entitled to under the Indian Act, R.S.C. 1985, c. I-5.
- 2.2.8 The parties to the Umbrella Final Agreement shall negotiate the processes for ratification of the Umbrella Final Agreement and the ratification of those processes shall be sought at the same time as ratification of the Umbrella Final Agreement.
- 2.2.9 Each Yukon First Nation and Government shall negotiate the processes for ratification of that Yukon First Nation's Final Agreement and the ratification of those processes shall be sought prior to or at the same time as ratification of the Yukon First Nation Final Agreement.

### **Specific Provision**

2.2.9.1 The process for ratification of this Agreement is set out in Schedule A - Ratification of the Selkirk First Nation Final Agreement, attached to this chapter.

- 2.2.10 The parties to a Transboundary Agreement shall negotiate the processes for ratification of that Transboundary Agreement and the ratification of those processes shall be sought prior to or at the same time as ratification of the Transboundary Agreement.
- 2.2.11 The enactment of Settlement Legislation shall be a condition precedent to the validity of Settlement Agreements which are ratified at the same time the Umbrella Final Agreement is ratified.
- 2.2.12 The passing of an order-in-council shall be a condition precedent to the validity of Yukon First Nation Final Agreements which are ratified subsequent to those Settlement Agreements referred to in 2.2.11.
- 2.2.13 Except as provided in Transboundary Agreements, nothing in Settlement Agreements shall be construed to affect, recognize or provide any rights under section 35 of the Constitution Act, 1982 for any aboriginal peoples other than persons who are eligible to be Yukon Indian People.\*
- 2.2.14 Subject to 2.2.13, no right provided in Settlement Agreements for the benefit of any Person who is not a Yukon Indian Person or a Yukon First Nation shall be construed as a right within the meaning of section 35 of the Constitution Act, 1982.
- 2.2.15 Settlement Agreements shall be the entire agreement between the parties thereto and there shall be no representation, warranty, collateral agreement or condition affecting those Agreements except as expressed in them.

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\* As amended. For Federal approval of the amendment, see the Federal OIC approving this Agreement. For Yukon approval of the amendment, see the Yukon OIC approving this Agreement. For Council for Yukon Indians approval of the amendment, see the Resolution of its Leadership Board passed March 23, 1994.

### **2.3.0 Amendment**

2.3.1 Except where expressly provided in the Umbrella Final Agreement, the provisions of the Umbrella Final Agreement may only be amended with the consent of the parties to the Umbrella Final Agreement.

2.3.2 Consent to any amendment pursuant to 2.3.1 may only be given on the part of:

2.3.2.1 Canada, by the Governor in Council;

2.3.2.2 the Yukon, by the Commissioner in Executive Council; and

2.3.2.3 Yukon First Nations by the following process,

(a) the Council for Yukon Indians shall Consult on all proposed amendments with all Yukon First Nations and shall provide the result of those Consultations to all Yukon First Nations,

(b) an amendment shall only be considered approved by the Yukon First Nations if it is approved by two thirds of the Yukon First Nations which have Yukon First Nation Final Agreements in effect and which represent at least 50 percent of all Yukon Indian People, and

(c) the Council for Yukon Indians shall provide Government with a certified copy of a resolution stating that (a) and (b) have been complied with, and Government shall be entitled to rely on that resolution as conclusive evidence of compliance with (a) and (b).

2.3.3 A Yukon First Nation shall approve an amendment to the provisions of the Umbrella Final Agreement in the same way that it approves amendments to the specific provisions of its Yukon First Nation Final Agreement.

2.3.4 Except where expressly provided in a Yukon First Nation Final Agreement, a specific provision applicable to that Yukon First Nation may only be amended by the parties to that Yukon First Nation Final Agreement.



2.3.5 Consent to any amendment pursuant to 2.3.4 may only be given on the part of:

2.3.5.1 Canada, by the Governor in Council, except where expressly provided in a Yukon First Nation Final Agreement;

**Specific Provision**

- (a) The Minister of Indian Affairs and Northern Development may consent, on behalf of Canada, to any amendment to a specific provision contemplated by 5.3.1, 5.15.1, 5.15.2, 6.1.2 or 6.1.8 of this Agreement, to any amendment to Appendix A - Settlement Land Descriptions, attached to this Agreement, to any amendment to Schedule C - Category 1 Traplins, attached to Chapter 16 - Fish and Wildlife and to any amendment to Schedule B - Resolution of Overlapping Claims, attached to Chapter 2 - General Provisions, as a result of an agreement referred to in 8.0 of that Schedule;
- (b) The Governor in Council may delegate to the Minister of Indian Affairs and Northern Development the authority to consent, on behalf of Canada, to any amendment to other specific provisions of this Agreement;

2.3.5.2 the Yukon, by the Commissioner in Executive Council, except where expressly provided in a Yukon First Nation Final Agreement;  
and

**Specific Provision**

- (a) The Yukon Minister with responsibility for land claims may consent, on behalf of the Yukon, to any amendment to a specific provision contemplated by 5.3.1, 5.15.1, 5.15.2, 6.1.2 or 6.1.8 of this Agreement, to any amendment to Appendix A - Settlement Land Descriptions, attached to this Agreement, to any amendment to Schedule C - Category 1 Traplins, attached to Chapter 16 - Fish and Wildlife and to any amendment to Schedule B - Resolution of Overlapping Claims, attached to Chapter 2 - General Provisions, as a result of an agreement referred to in 8.0 of that Schedule;

**Specific Provision Cont'd**

- (b) The Commissioner in Executive Council may delegate to the Yukon Minister with responsibility for land claims the authority to consent, on behalf of the Yukon, to any amendment to other specific provisions of this Agreement;

2.3.5.3 a Yukon First Nation by a process set out in that Yukon First Nation Final Agreement.

**Specific Provision**

- (a) The Council of the Selkirk First Nation may, by resolution, consent, on behalf of the Selkirk First Nation, to any amendment to a specific provision contemplated by 5.3.1, 5.15.1, 5.15.2, 6.1.2, or 6.1.8 of this Agreement, to any amendment to Appendix A - Settlement Land Descriptions, attached to this Agreement, to any amendment to Schedule C - Category 1 Traplins, attached to Chapter 16 - Fish and Wildlife and to any amendment to Schedule B - Resolution of Overlapping Claims, attached to Chapter 2 - General Provisions, as a result of an agreement referred to in 8.0 of that Schedule;
- (b) Consent to any other amendment pursuant to 2.3.4 may only be given on the part of the Selkirk First Nation by resolution of an Assembly upon a recommendation received from the Council of the Selkirk First Nation;
- (c) The Council of the Selkirk First Nation shall provide Government with a certified copy of a resolution approved pursuant to 2.3.5.3(a) or 2.3.5.3(b), and Government shall be entitled to rely on that resolution as conclusive evidence of compliance with 2.3.5.3(a) or 2.3.5.3(b), as the case may be.

2.3.6 Amendments to a Yukon First Nation Final Agreement shall be published in the Canada Gazette, the Yukon Gazette and the Yukon First Nation registry of laws established pursuant to that Yukon First Nation's self-government agreement.

## 2.4.0 Settlement Legislation

2.4.1 Upon ratification of the Umbrella Final Agreement, and upon ratification of a Yukon First Nation Final Agreement, Canada shall recommend to Parliament, and the Yukon shall recommend to the Legislative Assembly, Settlement Legislation.

2.4.2 Prior to ratification of the Umbrella Final Agreement, the parties to the Umbrella Final Agreement shall negotiate guidelines for drafting the Act that Canada will recommend to Parliament and the Act that the Yukon will recommend to the Yukon Legislative Assembly, which shall, among other things:

2.4.2.1 approve, give effect to and declare valid those Settlement Agreements which have been ratified at the same time as the Umbrella Final Agreement and enable subsequently ratified Settlement Agreements to be approved, given effect and declared valid by order-in-council;

2.4.2.2 acknowledge that a Settlement Agreement is a land claims agreement within the meaning of section 35 of the Constitution Act, 1982;

2.4.2.3 provide that a Settlement Agreement is binding on third parties; and

2.4.2.4 provide that where there is any doubt in the meaning of Settlement Legislation, any Settlement Agreement may be examined as an aid to interpretation.

2.4.3 Government shall Consult the Council for Yukon Indians during the drafting of Settlement Legislation.

### **Specific Provision**

2.4.3.1 Government shall Consult with the Selkirk First Nation during the drafting of any amendment to Settlement Legislation which affects the Selkirk First Nation.

## 2.5.0 Certainty

2.5.1 In consideration of the promises, terms, conditions and provisos in a Yukon First Nation's Final Agreement:

2.5.1.1 subject to 5.14.0, that Yukon First Nation and all persons who are eligible to be Yukon Indian People it represents, as of the Effective Date of that Yukon First Nation's Final Agreement, cede, release and surrender to Her Majesty the Queen in Right of Canada, all their aboriginal claims, rights, titles, and interests, in and to,

- (a) Non-Settlement Land and all other land and water including the Mines and Minerals within the sovereignty or jurisdiction of Canada, except the Northwest Territories, British Columbia and Settlement Land,
- (b) the Mines and Minerals within all Settlement Land, and
- (c) Fee Simple Settlement Land;

2.5.1.2 that Yukon First Nation and all persons eligible to be Yukon Indian People it represents, as of the Effective Date of that Yukon First Nation's Final Agreement, cede, release and surrender to Her Majesty the Queen in Right of Canada all their aboriginal claims, rights, titles and interests in and to Category A and Category B Settlement Land and waters therein, to the extent that those claims, rights, titles and interests are inconsistent or in conflict with any provision of a Settlement Agreement;

2.5.1.3 that Yukon First Nation and all persons eligible to be Yukon Indian People it represents, as of the Effective Date of that Yukon First Nation's Final Agreement, cede, release and surrender to Her Majesty the Queen in Right of Canada any claims, rights or causes of action which they may ever have had, may now have or may have hereafter, under, or arising out of Treaty 11; and

2.5.1.4 neither that Yukon First Nation nor any person eligible to be a Yukon Indian Person it represents, their heirs, descendants and successors, shall, after the Effective Date of that Yukon First Nation's Final Agreement, assert any cause of action, action for declaration, claim or demand of whatever kind or nature, which they ever had, now have, or may hereafter have against Her Majesty the Queen in Right of Canada, the Government of any Territory or Province, or any person based on,

- (a) any aboriginal claim, right, title or interest ceded, released or surrendered pursuant to 2.5.1.1 and 2.5.1.2,
- (b) any aboriginal claim, right, title or interest in and to Settlement Land, lost or surrendered in the past, present or future, or
- (c) any claim, right or cause of action described in 2.5.1.3.

2.5.2 Nothing in a Settlement Agreement shall be construed as an admission or assertion by that Yukon First Nation or Yukon Indian People that Treaty 11 has any application to or effect on Yukon First Nations or Yukon Indian People.

2.5.3 Government undertakes not to assert that Treaty 11 had or has any effect with respect to the rights, titles or interests of a Yukon First Nation or a Yukon Indian Person on Settlement Land.

## **2.6.0 Interpretation of Settlement Agreements and Application of Law**

2.6.1 The provisions of the Umbrella Final Agreement, the specific provisions of the Yukon First Nation Final Agreement and Transboundary Agreement applicable to each Yukon First Nation shall be read together.

2.6.2 Settlement Legislation shall provide that:

- 2.6.2.1 subject to 2.6.2.2 to 2.6.2.5, all federal, territorial and municipal Law shall apply to Yukon Indian People, Yukon First Nations and Settlement Land;
- 2.6.2.2 where there is any inconsistency or conflict between any federal, territorial or municipal Law and a Settlement Agreement, the Settlement Agreement shall prevail to the extent of the inconsistency or conflict;
- 2.6.2.3 where there is any inconsistency or conflict between the provisions of the Umbrella Final Agreement and the specific provisions applicable to a Yukon First Nation, the provisions of the Umbrella Final Agreement shall prevail to the extent of the inconsistency or conflict;
- 2.6.2.4 where there is any inconsistency or conflict between Settlement Legislation and any other Legislation, the Settlement Legislation shall prevail to the extent of the inconsistency or conflict; and
- 2.6.2.5 where there is any inconsistency or conflict between the Inuvialuit Final Agreement in effect on the date of ratification of the Umbrella Final Agreement by Yukon First Nations and a Settlement Agreement, the Inuvialuit Final Agreement shall prevail to the extent of the inconsistency or conflict.
- 2.6.3 There shall not be any presumption that doubtful expressions in a Settlement Agreement be resolved in favour of any party to a Settlement Agreement or any beneficiary of a Settlement Agreement.
- 2.6.4 Nothing in any Settlement Agreement shall be construed as an admission by Government that Yukon First Nations or Yukon Indian People have any aboriginal rights, title or interests anywhere within the sovereignty or jurisdiction of Canada.
- 2.6.5 Nothing in a Settlement Agreement shall be construed to preclude any party from advocating before the courts any position on the existence, nature or scope of any fiduciary or other relationship between the Crown and the Yukon First Nations.

- 2.6.6 Settlement Agreements shall be interpreted according to the Interpretation Act, R.S.C. 1985, c. I-21, with such modifications as the circumstances require.
- 2.6.7 Objectives in Settlement Agreements are statements of the intentions of the parties to a Settlement Agreement and shall be used to assist in the interpretation of doubtful or ambiguous expressions.
- 2.6.8 Capitalized words or phrases shall have the meaning assigned in the Umbrella Final Agreement.

### **2.7.0 Access to Information and Privacy**

- 2.7.1 Notwithstanding any other provision of the Settlement Agreements, Government shall not be required to disclose any information that it is required or entitled to withhold under any Legislation relating to access to information or privacy. Where Government has a discretion to disclose any information, it shall take into account the objectives of the Settlement Agreements in exercising that discretion.

### **2.8.0 Remedies**

- 2.8.1 Neither Government, the Council for Yukon Indians, a Yukon First Nation, nor any Yukon Indian Person shall have a claim or cause of action in the event any provision of a Settlement Agreement or Settlement Legislation is found to be invalid by a court of competent jurisdiction.
- 2.8.2 Neither Government, the Council for Yukon Indians, a Yukon First Nation, nor any Yukon Indian Person shall challenge the validity of any provision of a Settlement Agreement or Settlement Legislation.
- 2.8.3 If any provision of a Settlement Agreement or Settlement Legislation is found by a court of competent jurisdiction to be invalid, the parties thereto shall make best efforts to amend that Agreement or the Settlement Legislation to remedy the invalidity or replace the invalid provision.

## **2.9.0 Internal Overlap and Transboundary Agreements**

2.9.1 Subject to 2.9.2, each Yukon First Nation has provided to Government a map at a scale no smaller than 1:500,000 delineating its Traditional Territory within the Yukon as shown in each Yukon First Nation Final Agreement.

### **Specific Provision**

2.9.1.1 The map referred to in 2.9.1 is set out as map "Selkirk First Nation Traditional Territory, (SFNTT)", in Appendix B - Maps, which forms a separate volume to this Agreement.

2.9.2 Prior to the ratification of the Umbrella Final Agreement by the Yukon First Nations, the Kluane First Nation and the White River First Nation shall provide maps, at a scale no smaller than 1:500,000, of their Traditional Territories, which Traditional Territories shall be delineated within the Traditional Territory map provided by the Kluane First Nation pursuant to 2.9.1.

2.9.3 Prior to the ratification of a Yukon First Nation Final Agreement by the Yukon First Nation, any overlapping claim, right, title and interest, of other Yukon First Nations within its Traditional Territory as delineated pursuant to 2.9.1 or 2.9.2 shall be resolved to the satisfaction of the parties to that Yukon First Nation Final Agreement.

### **Specific Provision**

2.9.3.1 Provisions respecting the resolution of the overlapping claims, rights, titles and interests of other Yukon First Nations within the Traditional Territory of the Selkirk First Nation pursuant to 2.9.3 are set out in Schedule B - Resolution of Overlapping Claims, attached to this chapter.



## **2.10.0 Representation and Warranty**

2.10.1 Each Yukon First Nation hereby represents and warrants to Government that it represents all Yukon Indian People who may have any aboriginal claims, rights, titles or interests in or to its Traditional Territory.

2.10.2 Each Yukon First Nation hereby indemnifies and forever saves harmless Her Majesty the Queen in Right of Canada from and against all suits and actions, causes of action, claims, demands, and damages, whether known or unknown, by any person eligible to be a Yukon Indian Person represented by the Yukon First Nation referred to in 2.10.1, which that person ever had, now has or may hereafter have against Canada or the Yukon relating to or in any way arising from the claims, rights, titles and interests described in 2.5.0, 5.9.0 and 5.10.1.

## **2.11.0 General**

2.11.1 Except as expressly provided otherwise, any reference in a Settlement Agreement to Legislation, an Act or a provision of an Act includes:

2.11.1.1 that Legislation, Act or provision of an Act, and any Regulations made thereunder, as amended from time to time; and

2.11.1.2 any successor Legislation, Act or provision of an Act.

2.11.2 Successor Legislation includes territorial Legislation which replaces federal Legislation as a consequence of devolution of authority or responsibility from Canada to the Yukon.

2.11.3 For purposes of the application of provisions of the Umbrella Final Agreement to a Yukon First Nation, the then existing name of each Yukon First Nation is substituted for the term "Yukon First Nation" wherever it appears in 2.5.0, 2.10.1, 4.4.0, 5.9.0 and 5.10.1 of the Umbrella Final Agreement.

2.11.4 Except as provided in 2.11.3, for purposes of the application of the provisions of the Umbrella Final Agreement to a Yukon First Nation, each Yukon First Nation Final Agreement and each Transboundary Agreement shall name which of that Yukon First Nation's then existing legal entities is to be substituted for the term "Yukon First Nation" wherever the context requires.

**Specific Provision**

2.11.4.1 The Selkirk First Nation described in the Legislation giving effect to the self-government agreement for the Selkirk First Nation is the legal entity referred to in 2.11.4.

2.11.5 Any legal entity described in 2.11.4 must have all the capacities, rights, powers and privileges of a natural person, subject to such special provisions as may be set out in that Transboundary Agreement or Yukon First Nation Final Agreement.

2.11.6 The act of acquiring or the holding of any rights, liabilities or obligations by any entity described in 2.11.4, shall not be construed to affect any aboriginal right, title or interest of that Yukon First Nation or any person eligible to be a Yukon Indian Person it represents.

2.11.7 Yukon First Nation Final Agreements may provide for that Yukon First Nation to alter from time to time which of its legal entities shall hold rights, liabilities or obligations pursuant to 2.11.4.

### **Specific Provision**

- 2.11.7.1 Except in respect of 2.5.0, 2.10.1, 4.4.0, 5.9.0 and 5.10.0, the Selkirk First Nation may cause any of its rights, obligations and liabilities set out in this Agreement to be held, or performed, on its behalf, by any legal entity wholly controlled by the Selkirk First Nation, or wholly controlled by the Selkirk First Nation and one or more other Yukon First Nations, provided any such arrangement does not adversely affect the exercise of rights, obligations and liabilities set out in this Agreement.
- 2.11.7.2 The Selkirk First Nation, prior to the Effective Date of this Agreement, shall establish and thereafter maintain a public register identifying all rights, obligations and liabilities held on its behalf pursuant to 2.11.7.1.
- 2.11.7.3 Government shall not be liable to Selkirk People for any damage or loss suffered by Selkirk People as a result of any failure of the Selkirk First Nation or any entity referred to in 2.11.7.1 to comply with an obligation under this Agreement.

- 2.11.8 Government may determine, from time to time, how and by whom any power or authority of Government or a Minister set out in a Settlement Agreement, other than the power to consent to an amendment pursuant to 2.3.0, shall be exercised.
- 2.11.9 The Supreme Court of the Yukon shall have jurisdiction in respect of any action or proceeding arising out of Settlement Legislation or a Settlement Agreement.
- 2.11.10 Nothing in a Settlement Agreement shall be construed to limit any jurisdiction the Federal Court of Canada may have from time to time.

**2.12.0 Boards**

2.12.1 The provisions of 2.12.2 apply to the:

Enrollment Commission;  
Yukon Land Use Planning Council;  
Regional Land Use Planning Commissions;  
Yukon Development Assessment Board;  
Yukon Heritage Resources Board;  
Yukon Geographical Place Names Board;  
Yukon Water Board;  
Fish and Wildlife Management Board, including the Salmon Sub-Committee;  
Renewable Resources Councils;  
Dispute Resolution Board;  
Surface Rights Board;  
Kluane National Park Management Board; and  
any other entity agreed to in a Yukon First Nation Final Agreement.

2.12.2 Unless otherwise provided in a Settlement Agreement, the following provisions shall apply to a Board:

2.12.2.1 a majority of the members nominated by Yukon First Nations or the Council for Yukon Indians, as the case may be, and a majority of the members nominated by Government shall be residents of the Yukon;

2.12.2.2 the Council for Yukon Indians or Yukon First Nations, as the case may be, and Government, shall put forward their nominees within 60 days of a request by the Minister;

- 2.12.2.3 appointments of Government nominees shall be made by the Minister as soon as practicable;
- 2.12.2.4 the Minister shall appoint as soon as practicable those persons nominated by Yukon First Nations or the Council for Yukon Indians, as the case may be;
- 2.12.2.5 in the event of a vacancy, the Board may discharge its duties with such members as have been nominated and appointed;
- 2.12.2.6 a member shall not be deemed to be in a position of conflict of interest solely by virtue of being a Yukon Indian Person;
- 2.12.2.7 members may only be removed for cause, provided however that, in addition to the grounds for removal for cause recognized generally in Law, a Board, may specify additional grounds in its procedures;
- 2.12.2.8 each Board shall prepare an annual budget for review and approval by Government and the approved expenses of the Board shall be a charge on Government;
- 2.12.2.9 each Board shall consider including in its annual budget funding to allow the Board to provide its members with cross cultural orientation and education, and other training directed to improving its members' ability to carry out their responsibilities, as well as funding for facilities to allow board members to carry out their responsibilities in their traditional languages;
- 2.12.2.10 each Board may adopt bylaws for its internal management and may make rules governing its procedures consistent with the Umbrella Final Agreement and with any Legislation establishing the Board;

- 2.12.2.11 appointments to a Board shall be for a three year term except that the term of initial appointments to a Board may, in the discretion of the nominating party, be less than but not exceed three years and any appointment replacing a member whose term has not expired shall only be for the unexpired portion of that term; and
- 2.12.2.12 members of Boards shall not be delegates of the parties who nominate or appoint them.

## **SCHEDULE A**

### **RATIFICATION OF THE SELKIRK FIRST NATION FINAL AGREEMENT**

#### **1.0 General**

- 1.1 Ratification of this Agreement by the Selkirk First Nation in accordance with this schedule shall be considered ratification by all persons eligible to be Yukon Indian People that it represents.
- 1.2 This Agreement shall be ratified by the Selkirk First Nation before being considered for ratification by Canada and the Yukon.
- 1.3 Where there is a reference in this schedule to a period of time after or before a specified day the period does not include that day.

#### **2.0 Ratification Committee**

- 2.1 Upon initialling of this Agreement by the negotiators, signifying their intent to recommend it for ratification to their principals, a ratification committee (the "Ratification Committee") shall be established with responsibility for conducting the Selkirk First Nation ratification process.
- 2.2 The Ratification Committee shall consist of one person named by the Selkirk First Nation, one person named jointly by Canada and the Yukon, and a third person named by the other two.
- 2.3 The Ratification Committee shall be an independent body and act at arm's-length from the parties to this Agreement and its members shall not be delegates of those who name them.

- 2.4 Following discussions with the Selkirk First Nation, the Ratification Committee shall prepare a budget for the ratification process, subject to review and approval by Canada. The approved expenses of the Ratification Committee shall be a charge on Canada.

### **3.0 Official Voters List**

- 3.1 The Ratification Committee shall prepare an official voters list which shall be comprised of all persons who are on the Official Enrollment List as of the day 45 days before the first day of the vote, and who will be, as of the last day of the vote, at least 16 years of age.
- 3.2 For the purposes of this schedule, "Official Enrollment List" means the official enrollment list for the Selkirk First Nation prepared by the Enrollment Commission pursuant to Chapter 3 - Eligibility and Enrollment.
- 3.3 At least 30 days before the first day of the vote, the Ratification Committee shall publish the official voters list in the offices of the Selkirk First Nation in Pelly Crossing and such other places as it considers necessary.
- 3.4 The Ratification Committee shall add to the official voters list any person, upon the request of that person, who at any time up to and including the last day of the vote is added to the Official Enrollment List and who will be, as of the last day of the vote at least 16 years of age.
- 3.5 Only persons whose names appear on the official voters list shall be eligible to vote.

### **4.0 Information Campaign**

- 4.1 The Ratification Committee shall be responsible for affording eligible voters a reasonable opportunity to review the substance and details of this Agreement through the use of a communications strategy which may include videos, information booklets, community visits, door to door visits and accurate map reproductions.



4.2 Only printed, audio and visual material submitted by the Ratification Committee to, and approved by, the parties shall be made available or distributed to eligible voters by the Ratification Committee pursuant to 4.1. Material submitted by the Ratification Committee to a party shall be considered approved by that party unless the Ratification Committee receives written notice otherwise within 15 calendar days of the material being received by that party.

## **5.0 Voting Process**

5.1 The day or days for the vote on the ratification of this Agreement shall be determined by the Council of the Selkirk First Nation and it shall advise the Ratification Committee in writing of the day or days determined at least 60 days before the first day of the vote.

5.2 The vote shall be held at the offices of the Selkirk First Nation in Pelly Crossing, and such other places as the Ratification Committee considers necessary.

5.3 The Ratification Committee shall determine the means by which votes shall be cast, which may include mail-in ballots. The Ratification Committee shall make reasonable efforts to provide all eligible voters with a reasonable opportunity to vote. The Ratification Committee may conduct an advance vote on the day 14 days before the first day of the vote determined pursuant to 5.1.

5.4 The vote, and any advance vote, shall each be held on the same day or days in all polling locations.

5.5 The day or days of the vote, including the day of an advance vote, and the polling locations shall be posted in each community in which a ballot may be cast at least 14 days before the day of the advance vote, or if no advance vote, at least 21 days before the first day of the vote.

5.6 The vote shall be by secret ballot.

5.7 The appearance, format, and contents of the ballot shall be approved by the parties to this Agreement.

5.8 The Ratification Committee shall receive and tabulate all ballots.

## **6.0 Ratification of this Agreement by the Selkirk First Nation**

6.1 The Selkirk First Nation shall be considered to have ratified this Agreement if no less than 50 percent plus one of the eligible voters cast a ballot approving this Agreement in accordance with 3.0 to 5.0.

6.2 The Ratification Committee shall, as soon as practical and in any event no later than seven days after the last day of the vote, tabulate and publish the results of the vote showing the total number of persons on the official voters list, the total number of ballots cast, the total number of ballots approving this Agreement, the total number of ballots not approving this Agreement, the total number of ballots spoiled, and the total number of ballots rejected. The Ratification Committee shall publish these results in the communities in which the official voters list was published pursuant to 3.3 and may publish the results in such other locations as the Ratification Committee determines.

6.3 The Ratification Committee shall prepare and submit to the parties to this Agreement, within 14 days after publishing the results pursuant to 6.2, a report setting out the results referred to in 6.2 and the details of the carrying out of the Selkirk First Nation ratification process.

6.4 After ratification of this Agreement by the Selkirk First Nation but prior to submission of this Agreement for ratification by Canada, the negotiators, on behalf of Government, and the Chief, on behalf of the Selkirk First Nation, may agree:

6.4.1 to minor amendments to the specific provisions of this Agreement;

6.4.2 to amend Appendix A - Settlement Land Descriptions, attached to this Agreement; and

6.4.3 to amend Appendix B - Maps, which forms a separate volume to this Agreement.

## **7.0 Ratification of this Agreement by Government**

- 7.1 After the Ratification Committee conducts the vote, publishes the results and submits its report pursuant to 6.3, and if the results of the vote constitute a ratification of this Agreement by the Selkirk First Nation, this Agreement shall be presented by the Yukon Minister with responsibility for land claims to the Executive Council for ratification and by the Minister of Indian Affairs and Northern Development to Cabinet for ratification, both within three months after receipt of the report of the Ratification Committee or as soon as practical thereafter.

## **8.0 Signing of this Agreement**

- 8.1 This Agreement shall be signed by representatives of the Selkirk First Nation, Canada and the Yukon as soon as practical after ratification by Government.
- 8.2 As soon as practical after the signing of this Agreement, the Yukon Minister with responsibility for land claims and the Minister of Indian Affairs and Northern Development shall sponsor orders-in-council approving, giving effect to and declaring valid this Agreement.
- 8.2.1 Government shall Consult with the Selkirk First Nation before recommending to the Governor in Council or the Commissioner in Executive Council, as the case may be, the orders-in-council approving, giving effect to and declaring valid this Agreement.

## **SCHEDULE B**

### **RESOLUTION OF OVERLAPPING CLAIMS**

#### **1.0 Definitions**

In this schedule, the following definitions shall apply.

"Contiguous Boundary" means the boundary which, for the purposes of Settlement Agreements, eliminates an Overlapping Area.

"Overlapping Area" is that part of a Yukon First Nation's Traditional Territory which overlaps the Traditional Territory of the Selkirk First Nation.

"Overlapping Yukon First Nation" means a Yukon First Nation which has an Overlapping Area.

"Overlapping Yukon First Nation Final Agreement" means the Yukon First Nation Final Agreement for an Overlapping Yukon First Nation.

#### **2.0 Agreements**

2.1 The Selkirk First Nation shall make best efforts to reach agreement with each Overlapping Yukon First Nation on a Contiguous Boundary.

2.2 The location of a Contiguous Boundary referred to in 2.1 is subject to approval by the other parties to this Agreement.

2.3 At any time at least six months prior to the earliest date when a dispute may be referred to the dispute resolution process pursuant to 3.1, the Selkirk First Nation may agree with an Overlapping Yukon First Nation to establish a panel of elders to consider and make recommendations to those Yukon First Nations on a Contiguous Boundary.

- 2.4 A panel of elders referred to in 2.3 shall make its recommendations in writing no later than the earliest date when a matter may be referred to the dispute resolution process pursuant to 3.1. The costs of the panel shall be paid by the Yukon First Nations appointing the panel.
- 2.5 A recommendation of a panel on the location of a Contiguous Boundary which is accepted by the Selkirk First Nation and the Overlapping Yukon First Nation is subject to approval by the other parties to this Agreement.
- 2.5.1 Where Canada or the Yukon does not approve the recommendation of a panel under 2.5, it shall give its reasons in writing.

### **3.0 Dispute Resolution**

- 3.1 In the absence of an approved agreement on the location of a Contiguous Boundary referred to in 2.2 or 2.5, any party to this Agreement or to an Overlapping Yukon First Nation Final Agreement may, at any time after one year from the Effective Date of this Agreement or the Overlapping Yukon First Nation Final Agreement, whichever occurs later, refer the matter of the location of a Contiguous Boundary to the dispute resolution process under 26.3.0 provided:
- 3.1.1. that Overlapping Yukon First Nation Final Agreement contains specific provisions substantially the same as this schedule; or
- 3.1.2 the Selkirk First Nation and the Overlapping Yukon First Nation agree to refer the matter to the dispute resolution process under 26.3.0.
- 3.2 A person appointed under 26.7.0 to resolve a dispute under 3.1 shall have the power:
- 3.2.1 to determine a Contiguous Boundary, in the Overlapping Area, between the Traditional Territories of the Overlapping Yukon First Nation and the Selkirk First Nation, in addition to the other powers provided in Chapter 26 - Dispute Resolution; and

- 3.2.2 where a recommendation of a panel under 2.4 has been accepted by the affected Yukon First Nations but not accepted by Government, to direct that the costs of the panel under 2.4 be paid by one or more of the parties to the dispute.
- 3.3 The parties to this Agreement may amend a Contiguous Boundary with the consent of the adjacent Yukon First Nation.
- 3.4 A map or other description of the location of a Contiguous Boundary agreed to by the parties to this Agreement or determined by a person appointed pursuant to 3.1 shall be included in Appendix B - Maps which forms a separate volume to this Agreement without any further action by the parties to this Agreement.

#### **4.0 Application of this Agreement in an Overlapping Area**

- 4.1 All of the provisions of this Agreement shall apply in that part of the Traditional Territory of the Selkirk First Nation which, from time to time, is included in an Overlapping Area except the following which shall not apply:
- 4.1.1 Chapter 10 - Special Management Areas - 10.3.3 and 10.5.5;
- 4.1.2 Chapter 13 - Heritage - 13.12.1.1 to 13.12.1.8 inclusive;
- 4.1.3 Chapter 16 - Fish and Wildlife, except 16.1.0 to 16.4.0 inclusive, 16.5.1.1(a), 16.5.1.8 to 16.5.1.15 inclusive, 16.5.2 to 16.5.4 inclusive, 16.7.0, 16.8.0, 16.9.0 except 16.9.1.3, 16.9.1.4 and 16.9.1.5 which shall not apply, 16.10.0, 16.11.11 to 16.11.13 inclusive, 16.12.0 to 16.15.0 inclusive and Schedule A - Determination of Basic Needs Allocation for the Drainage Basin of the Yukon River, all of which shall apply;
- 4.1.4 Chapter 17 - Forest Resources - 17.4.0, 17.5.4.2, 17.5.4.3, and 17.14.2.1 to 17.14.2.11 inclusive; and

4.1.5 Chapter 22 - Economic Development Measures - 22.3.3.5, 22.3.6.1, and Schedule A - Economic Measures.

## **5.0 Other Yukon First Nation Final Agreements**

5.1 Where there is an inconsistency or conflict between a provision of this Agreement which applies in an Overlapping Area and a provision of an Overlapping Yukon First Nation Final Agreement which applies in the Overlapping Area, the provision of this Agreement which is inconsistent or in conflict shall not apply, to the extent of the inconsistency or conflict.

5.2 Government shall make best efforts:

5.2.1 to ensure that provisions substantially the same as this schedule are included in the Yukon First Nation Final Agreement of an Overlapping Yukon First Nation; and

5.2.2 to conclude the Yukon First Nation Final Agreement of each Overlapping Yukon First Nation within 10 years of the Effective Date of this Agreement.

5.3 Government shall not agree in an Overlapping Yukon First Nation Final Agreement to provisions which resolve conflicts or inconsistencies between that Yukon First Nation Final Agreement and this Agreement in any manner other than as set out in this schedule, without the consent of the Selkirk First Nation.

## **6.0 Traplines**

6.1 A trapline which is situated more than 50 percent in an Overlapping Area and which might otherwise be designated as a Category 1 Trapline in accordance with 16.11.0 shall not be so designated until:

6.1.1 more than 50 percent of that trapline is situated in the Traditional Territory of the Selkirk First Nation; or

6.1.2 the Selkirk First Nation and the Overlapping Yukon First Nation agree.

## **7.0 Consultation in the Overlapping Area**

7.1 Government shall Consult with the Selkirk First Nation respecting any matter in an Overlapping Area which may affect the rights of Selkirk People or the Selkirk First Nation set out in this Agreement but which, pursuant to 4.1.1 to 4.1.5, do not apply in an Overlapping Area.

## **8.0 Alternative Proposals and Interim Measures**

8.1 Nothing in this schedule shall limit the ability of the Selkirk First Nation, Government and an Overlapping Yukon First Nation from developing alternative agreements other than as set forth in 2.0 for resolving any overlapping claim, right, title and interest in an Overlapping Area, and upon such agreement the parties shall amend this schedule accordingly.

8.2 Pending resolution of Overlapping Areas in accordance with 2.0, or completion of an agreement pursuant to 8.1, the Selkirk First Nation, Government and an Overlapping Yukon First Nation may enter into interim administrative arrangements in an Overlapping Area regarding any of the matters identified in 4.1.1 to 4.1.5 inclusive.

8.3 The Selkirk First Nation shall endeavour to engage the First Nation of Nacho Nyak Dun and the Little Salmon/Carmacks First Nation in developing the alternative agreements referred to in 8.1.

8.4 Government and the Selkirk First Nation shall endeavour to develop the alternative agreements referred to in 8.1 within 1 year of the Effective Date of this Agreement.



## **CHAPTER 3 - ELIGIBILITY AND ENROLLMENT**

### **3.1.0 Definitions**

In this chapter, the following definitions shall apply.

"Adopted Child" means a Person who, while a Minor, is adopted pursuant to Law relating to adoption recognized in Canada or pursuant to aboriginal customs.

"Descendant" means direct descendant by either maternal or paternal line, notwithstanding any intervening adoption and independent of whether any child of the line was born within or outside a marriage.

"Dispute Resolution Board" means the Board established pursuant to 26.5.0.

"Enrollment Commission" means the commission established pursuant to 3.6.0.

"Enrollment Committee" means a committee established pursuant to 3.5.0.

"Minor" means a Person who has not yet reached the age of majority as determined from time to time by the Laws of the Yukon.

"Ordinarily Resident" means a Person who lived or has lived the majority of his life in the Yukon. In making such determination, temporary absences from the Yukon for reasons such as travel, education, medical treatment, military service, or incarceration, shall be considered periods of residence provided the Person was Ordinarily Resident prior to such temporary absences.

"Person" means a natural person.

### 3.2.0 Eligibility Criteria

- 3.2.1 Eligibility for enrollment under a Yukon First Nation Final Agreement shall be determined by the process set out in this chapter.
- 3.2.2 A Person is eligible for enrollment as a Yukon Indian Person under one of the Yukon First Nation Final Agreements if that Person is a Canadian citizen, and:
- 3.2.2.1 establishes that he is of 25 percent or more Indian ancestry and was Ordinarily Resident in the Yukon between January 1, 1800 and January 1, 1940;
  - 3.2.2.2 establishes that he is a Descendant of a Person living or deceased eligible under 3.2.2.1;
  - 3.2.2.3 establishes that he is an Adopted Child of a Person living or deceased eligible under 3.2.2.1 or 3.2.2.2; or
  - 3.2.2.4 upon application within two years of the Effective Date of a Yukon First Nation Final Agreement to the Enrollment Commission by that Yukon First Nation, is determined by the Enrollment Commission in its discretion, and upon consideration of all relevant circumstances, to have a sufficient affiliation with that Yukon First Nation so as to justify enrollment.
- 3.2.3 Notwithstanding the requirement for Canadian citizenship in 3.2.2, a Person who is not a Canadian citizen is eligible for enrollment as a Yukon Indian Person under one of the Yukon First Nation Final Agreements if that Person meets one of the criteria set out in 3.2.2.1 to 3.2.2.4.
- 3.2.4 Enrollment of a Person under 3.2.3 shall not confer on that Person any rights or benefits under the Indian Act, R.S.C. 1985, c. I-5, rights of entry into Canada or of Canadian citizenship.

- 3.2.5 Any Person eligible for enrollment as a Yukon Indian Person pursuant to 3.2.2 or 3.2.3 is entitled to be enrolled under one, and no more than one, Yukon First Nation Final Agreement.
- 3.2.6 Where a Person applying for enrollment is eligible for enrollment under more than one Yukon First Nation Final Agreement, the Enrollment Commission shall take into account the wishes of that Person and any affected Yukon First Nation in deciding under which Yukon First Nation Final Agreement that Person will be enrolled.
- 3.2.7 Membership in a Yukon Indian Band under the Indian Act, R.S.C. 1985, c. I-5 does not necessarily result in eligibility for enrollment under a Yukon First Nation Final Agreement.
- 3.2.8 A Minor may apply on his own behalf to an Enrollment Committee for enrollment under a Yukon First Nation Final Agreement.

### **3.3.0 Applications on behalf of Another Person**

- 3.3.1 The Government, Yukon First Nations and Enrollment Committees shall work together to ensure that adoptive parents or legal guardians of Minors eligible for enrollment as a Yukon Indian Person under a Yukon First Nation Final Agreement are made aware of the Minor's eligibility.
- 3.3.2 Any adult Person may apply to an Enrollment Committee to enroll a Minor under a Yukon First Nation Final Agreement.
- 3.3.3 Any Person who, by order of a court, aboriginal custom in Canada or pursuant to Legislation, has been vested with the authority to manage the affairs of an adult incapable of managing his own affairs, may apply to an Enrollment Committee to enroll that adult under a Yukon First Nation Final Agreement.

### **3.4.0 Other Settlements**

- 3.4.1 Subject to 3.4.2, a Person who is enrolled in any other aboriginal land claims settlement in Canada shall not be enrolled as a Yukon Indian Person under any Yukon First Nation Final Agreement.
- 3.4.2 Any Person who is enrolled as a Yukon Indian Person under a Yukon First Nation Final Agreement and who is also enrolled under another aboriginal land claims settlement in Canada, shall have 60 days to elect between the two settlement agreements following notice in writing from a Yukon First Nation or the Enrollment Commission. If that Person elects to remain enrolled in the other settlement agreement, then that Person shall cease to be enrolled under the Yukon First Nation Final Agreement.
- 3.4.3 A Person who is enrolled under another aboriginal land claims settlement in Canada is entitled to apply to be enrolled under a Yukon First Nation Final Agreement on the condition that, if accepted for enrollment, that Person shall cease to be enrolled under that other settlement.
- 3.4.4 Notwithstanding 3.4.1 and 3.4.2, a Minor who is enrolled under any other aboriginal land claims settlement in Canada, and who is eligible for enrollment as a Yukon Indian Person, may elect to be enrolled as a Yukon Indian Person provided such election takes place within two years of the Minor attaining the age of majority, whereupon the Minor ceases to be enrolled under the other settlement.

### **3.5.0 Enrollment Committees**

- 3.5.1 Each Yukon First Nation shall establish an Enrollment Committee composed of no more than five members of that Yukon First Nation. Each Yukon First Nation shall notify the Enrollment Commission of the composition of its Enrollment Committee and of any changes made in it from time to time.

3.5.2 A Yukon First Nation may join with one or more Yukon First Nations to establish a joint Enrollment Committee to be composed of no more than five members of those Yukon First Nations. The affected Yukon First Nations shall notify the Enrollment Commission of the composition of the joint Enrollment Committee and any changes made in it from time to time.

3.5.3 Each Enrollment Committee shall:

3.5.3.1 establish its own procedures;

3.5.3.2 publish its own procedures;

3.5.3.3 publicize and provide information in respect of the enrollment process to members of the Yukon First Nation;

3.5.3.4 review, update and amend existing Yukon First Nation enrollment lists of that Yukon First Nation;

3.5.3.5 supply application forms to any Person wishing to apply for enrollment and to any Person wishing to make an application pursuant to 3.3.0;

3.5.3.6 decide promptly, upon receiving an application for enrollment, whether such applicant is entitled to be enrolled in accordance with 3.2.0 or 3.4.0;

3.5.3.7 prepare an initial list of all Persons who, in its opinion, are entitled to be enrolled in accordance with 3.2.0 or 3.4.0;

3.5.3.8 prepare a list of all applicants who have been refused inclusion on the list of Persons prepared pursuant to 3.5.3.7;

- 3.5.3.9 provide to the Enrollment Commission the lists prepared pursuant to 3.5.3.7 and 3.5.3.8 together with relevant information and documentation within a reasonable time period established by the Enrollment Commission;
  - 3.5.3.10 provide to the Enrollment Commission amendments to the lists prepared pursuant to 3.5.3.7 and 3.5.3.8 within a reasonable time period established by the Enrollment Commission;
  - 3.5.3.11 notify promptly each applicant, in writing, of the Enrollment Committee's decision respecting his application; and
  - 3.5.3.12 forward to the Enrollment Commission applications which, in its opinion, should be considered by another Enrollment Committee.
- 3.5.4 If a Yukon First Nation is not represented on an Enrollment Committee or does not establish an Enrollment Committee within three months of a request to do so from the Enrollment Commission, or an Enrollment Committee has not carried out its responsibilities as set out in 3.5.3 within a reasonable time period established by the Enrollment Commission, the Enrollment Commission may exercise any or all of the responsibilities of the Enrollment Committee.
- 3.5.5 The Enrollment Commission shall not exercise the responsibilities of an Enrollment Committee unless the Enrollment Commission has attempted to assist the Enrollment Committee in the performance of its responsibilities. The Enrollment Commission shall relinquish such responsibilities when the Enrollment Committee demonstrates to the reasonable satisfaction of the Enrollment Commission that it is ready, willing and able to perform its responsibilities.
- 3.5.6 The Enrollment Commission, in accordance with standards set by it, shall reimburse each Enrollment Committee for its reasonable out-of-pocket expenses incurred over the period of three years from the date of each Enrollment Committee's inception. Each Enrollment Committee shall prepare a budget and submit it for approval to the Enrollment Commission when requested to do so by it.

3.5.7 Where an Enrollment Committee fails or neglects to make a decision in respect of an application for enrollment within 120 days, then that application shall be deemed to have been rejected and a right of appeal lies to the Enrollment Commission.

### **3.6.0 Enrollment Commission**

3.6.1 The Enrollment Commission was established by the parties to the Umbrella Final Agreement on July 1, 1989.

3.6.2 Settlement Legislation shall:

3.6.2.1 give the Enrollment Commission and the Enrollment Committees the powers required to carry out their responsibilities;

3.6.2.2 deem the Enrollment Commission to have had, as of July 1, 1989, the jurisdiction, power and authority provided under the Umbrella Final Agreement, other than those set out in 3.6.2.4;

3.6.2.3 provide for the enforcement after the effective date of Settlement Legislation of any order or decision of the Enrollment Commission in a like manner as an order of the Supreme Court of the Yukon; and

3.6.2.4 provide the Enrollment Commission with the power to direct and compel the production of documents and the attendance of witnesses, with the exception of Ministers of Government, as provided to a Board of Inquiry under the Public Inquiries Act, R.S.Y. 1986, c. 137

3.6.3 The Enrollment Commission shall be comprised of:

3.6.3.1 one Person nominated by the Council for Yukon Indians and an alternate to act in the absence of the Person so nominated;

- 3.6.3.2 one Person nominated jointly by Canada and the Yukon and an alternate to act in the absence of the Person so nominated; and
  - 3.6.3.3 one Person and an alternate to act in the absence of that Person, each nominated by the two members nominated under 3.6.3.1 and 3.6.3.2. If the two members are unable to agree on a third member of the Commission, or an alternate, then either may refer the matter of appointment to the dispute resolution process under 26.3.0, or, in the absence of that process, to the Supreme Court of the Yukon.
- 3.6.4 The Minister shall appoint all Persons nominated pursuant to 3.6.3. In the event of a vacancy, the appropriate party shall promptly make a new nomination, and the Minister shall appoint the new nominee.
- 3.6.5 The Enrollment Commission:
- 3.6.5.1 shall establish and publish its own procedures including procedures in respect of appeals from decisions of Enrollment Committees;
  - 3.6.5.2 shall only spend funds allocated to it for the carrying out of its functions and responsibilities in accordance with its approved budget;
  - 3.6.5.3 shall assist Enrollment Committees in carrying out their responsibilities;
  - 3.6.5.4 shall prepare and provide such information and forms as may be necessary to facilitate enrollment through Enrollment Committees;
  - 3.6.5.5 shall refer to the appropriate Enrollment Committee those applications for enrollment which are submitted by Persons directly to the Enrollment Commission and those applications which appear to have been made to an inappropriate Enrollment Committee;



- 3.6.5.6 shall prepare, certify, publish and advertise the initial official enrollment list for each Yukon First Nation;
  - 3.6.5.7 shall enter on the initial official enrollment lists the name of each Person who, in the opinion of an Enrollment Committee, is entitled to be enrolled as a Yukon Indian Person, provided the Enrollment Commission is satisfied all Persons named are in fact eligible for enrollment in accordance with 3.2.0 or 3.4.0;
  - 3.6.5.8 where it appears to the Enrollment Commission that an applicant recommended by an Enrollment Committee pursuant to 3.5.3.7 is not entitled to be enrolled, the Commission may, on its own motion, institute an appeal pursuant to 3.6.5.9 in respect of that Person's application;
  - 3.6.5.9 shall hear and determine any appeal initiated on its own motion or by an applicant, a Yukon First Nation, the Council for Yukon Indians or Government, arising from any decision of an Enrollment Committee with respect to enrollment and to provide such remedy or remedies as the Enrollment Commission in its absolute discretion deems appropriate;
  - 3.6.5.10 shall hear and determine matters before it in accordance with the principles of natural justice; and
  - 3.6.5.11 shall notify the applicant, Government, Council for Yukon Indians, any affected Yukon First Nation and affected Enrollment Committees of additions to or deletions from official enrollment lists as a result of decisions made by the Enrollment Commission pursuant to 3.6.5.8 and 3.6.5.9.
- 3.6.6 The Enrollment Commission shall be an independent body, operating at arm's length from the parties to the Settlement Agreements.

3.6.7 Where the Enrollment Commission fails or neglects to make a decision in respect of an appeal pursuant to 3.6.5.9, then that appeal shall be deemed to have been rejected and a right of appeal shall lie to the Supreme Court of the Yukon. The Supreme Court may give direction to the Enrollment Commission and refer the matter back to the Enrollment Commission.

3.6.8 All Persons on the official enrollment list for a Yukon First Nation as of the Effective Date of that Yukon First Nation Final Agreement shall be deemed to be enrolled under that Yukon First Nation Final Agreement, subject to 3.7.0, without further action being required.

### **3.7.0 Judicial Review**

3.7.1 All decisions and orders of the Enrollment Commission shall be final and binding and not subject to appeal or judicial review in any court provided, however, that an application for judicial review by an applicant, a Yukon First Nation, the Council for Yukon Indians or Government, shall lie to the Supreme Court of the Yukon upon the grounds that the Enrollment Commission:

3.7.1.1 failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;

3.7.1.2 erred in law in making its decision or order, whether or not the error appears on the face of the record; or

3.7.1.3 based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

3.7.2 The application for a judicial review by an applicant pursuant to 3.7.1 shall be made:

- 3.7.2.1 in the case of a decision made prior to the Effective Date of the affected Yukon First Nation's Final Agreement, within 60 days of that Yukon First Nation's Final Agreement coming into effect; or
- 3.7.2.2 in the case of a decision made after the Effective Date of the affected Yukon First Nation's Final Agreement, within 60 days of the decision being made.

### **3.8.0 Budget**

- 3.8.1 The Enrollment Commission shall prepare an annual budget in respect of its operations and in respect of the operations of the Enrollment Committees and shall submit the proposed annual budget to Canada for approval. Canada shall pay the approved expenses.

### **3.9.0 Dissolution of Enrollment Committees**

- 3.9.1 The responsibilities of each Yukon First Nation's Enrollment Committee shall cease, except with respect to matters pending before it, two years after the day on which the Yukon First Nation's Final Agreement comes into effect. Upon dissolution, each Enrollment Committee shall deliver all its documents and records to the affected Yukon First Nation.
- 3.9.2 A joint Enrollment Committee shall deliver to a Yukon First Nation documents and records relating to applications for enrollment under that Yukon First Nation's Final Agreement.
- 3.9.3 Upon dissolution of an Enrollment Committee the Yukon First Nation shall have the powers and responsibilities to:
  - 3.9.3.1 maintain, update and amend the official enrollment list for that Yukon First Nation after the initial official enrollment list has been published by the Enrollment Commission;
  - 3.9.3.2 deliver to the Yukon the official enrollment list on each anniversary of the dissolution of the Enrollment Committee;

- 3.9.3.3 decide promptly upon all applications received, and advise all Persons in writing of the Enrollment Commission or the Dispute Resolution Panel's disposition of their application;
- 3.9.3.4 supply application forms to any Person wishing to apply for enrollment;
- 3.9.3.5 establish its own procedures;
- 3.9.3.6 publish its own procedures; and
- 3.9.3.7 publicize and provide information in respect of the enrollment process to members of the Yukon First Nation.

### **3.10.0 Continuation of Enrollment**

- 3.10.1 After the dissolution of an Enrollment Committee, a Person seeking enrollment as a Yukon Indian Person, and a Person making application pursuant to 3.3.2 or 3.3.3 shall apply to the appropriate Yukon First Nation which shall determine, according to this chapter, whether such Person or the Person on whose behalf the application is being made, is entitled to be enrolled under its Yukon First Nation Final Agreement.
- 3.10.2 If the Yukon First Nation rejects the application or fails or refuses to make a decision within 120 days, then an appeal shall lie to either:
  - 3.10.2.1 the Enrollment Commission, if it has not been dissolved pursuant to 3.10.4; or
  - 3.10.2.2 a single arbitrator appointed by the chairperson of the Dispute Resolution Board.

- 3.10.3 Upon a decision to enroll a Person under 3.10.1, the Yukon First Nation shall provide written notice to Government. Such enrollment shall not come into effect until 30 days following Government's receipt of such notice or, in the event of a dispute, until a determination has been made pursuant to 3.11.0.
- 3.10.4 The responsibilities of the Enrollment Commission shall cease, except with respect to matters pending before it, on the day two years after the Effective Date of the last Yukon First Nation Final Agreement or 10 years after the effective date of Settlement Legislation, whichever comes first. Upon dissolution, the Enrollment Commission shall deliver all its documents and records to the Dispute Resolution Board.

### **3.11.0 Dispute Resolution**

- 3.11.1 The Dispute Resolution Board shall maintain the confidentiality of the documents and records delivered to it by the Enrollment Commission pursuant to 3.10.4.
- 3.11.2 Upon the dissolution of the Enrollment Commission, the Dispute Resolution Board, in addition to its powers and duties under Chapter 26 - Dispute Resolution, shall have the following powers and duties:
- 3.11.2.1 to establish and publish its own procedures, including procedures in respect of appeals from decisions of a Yukon First Nation respecting eligibility and enrollment under this chapter;
  - 3.11.2.2 the chairperson of the Dispute Resolution Board shall appoint a single arbitrator to hear and determine an appeal from any decision of a Yukon First Nation with respect to enrollment and to provide such remedy or remedies as the arbitrator in his discretion deems appropriate;
  - 3.11.2.3 to direct and compel the production of documents and the attendance of witnesses with the exception of Ministers of Government, as provided to a Board of Inquiry under the Public Inquiries Act, R.S.Y. 1986, c. 137;

- 3.11.2.4 to hear and determine matters before it arising under this chapter in accordance with the principles of natural justice;
  - 3.11.2.5 powers necessarily incidental to the discharge of the arbitrator's duties in considering matters under this chapter;
  - 3.11.2.6 to notify the applicant, Government, the Council for Yukon Indians and the affected Yukon First Nations of additions to or deletions from official enrollment lists as a result of decisions made by the arbitrator; and
  - 3.11.2.7 to carry out any other responsibilities assigned to the Enrollment Commission under this chapter.
- 3.11.3 Any affected Yukon First Nation, Government, and any other affected Person shall be entitled to be a party in respect of an appeal or application for judicial review under this chapter.
- 3.11.4 Any decision or order of the arbitrator shall be enforceable in a like manner as an order of the Supreme Court of the Yukon.
- 3.11.5 All decisions of the arbitrator shall be subject to judicial review in the same manner as provided in 3.7.0.
- 3.12.0 Public Access**
- 3.12.1 Any Person may examine the official enrollment list maintained by an Enrollment Committee or Yukon First Nation during its usual business hours.

## **CHAPTER 4 - RESERVES AND LAND SET ASIDE**

### **4.1.0 Reserves**

4.1.1 Yukon First Nation Final Agreements shall set out whether a Reserve is to be:

4.1.1.1 subject to the Legislation giving effect to that Yukon First Nation's self-government agreement, retained as a Reserve to which all the provisions of the Indian Act, R.S.C. 1985, c.1-5, except as provided in Chapter 2 - General Provisions and Chapter 20 - Taxation, shall continue to apply; or \*

4.1.1.2 selected as Settlement Land and cease to be a Reserve.

4.1.2 Settlement Legislation shall provide that the Indian Act, R.S.C. 1985, c. 1-5 shall cease to apply to any Reserve identified pursuant to 4.1.1.2 as of the Effective Date of the Yukon First Nation Final Agreement of the Yukon First Nation for which the land had been set apart as a Reserve.

### **4.2.0 Land Set Aside**

4.2.1 Government shall make best efforts to identify all Land Set Aside and to disclose to the Yukon First Nations before ratification of the Umbrella Final Agreement by the Yukon First Nations all information, maps and documents that Government has in its possession respecting Land Set Aside.

4.2.2 Unless otherwise agreed in a Yukon First Nation Final Agreement, Yukon First Nations shall select Land Set Aside containing improvements as Settlement Land, and may select any other Land Set Aside as Settlement Land.

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\* As amended. See note to 2.2.13.

4.2.3 The reservation or notation with respect to all Land Set Aside selected pursuant to 4.2.2 shall be cancelled by the Department of Indian Affairs and Northern Development.

4.2.4 Subject to 4.2.2, reservations or notations with respect to Land Set Aside which is not selected by a Yukon First Nation shall be cancelled by the Department of Indian Affairs and Northern Development whether or not the Land Set Aside was identified under 4.2.1.

#### **4.3.0 Selection of Additional Land**

4.3.1 Before a final land selection is signed by the negotiators for a Yukon First Nation Final Agreement, the parties thereto shall identify:

4.3.1.1 all Reserves which are to become Settlement Land;

4.3.1.2 all Reserves to be retained by any Yukon First Nation; and

4.3.1.3 all Land Set Aside to be selected as Settlement Land by any Yukon First Nation, which shall be selected in accordance with 9.5.0.

4.3.2 Yukon First Nations may select as Settlement Land, in accordance with 4.3.3, additional land so that the total of the land identified under 4.3.1 and of the additional land equals 60 square miles (155.40 square kilometres).

4.3.3 The additional land under 4.3.2 shall be:

4.3.3.1 selected in accordance with 9.4.0 and 9.5.0; and



- 4.3.3.2 primarily allocated to the Yukon First Nations which do not retain Reserves or obtain Settlement Land under 4.1.1 or 4.2.2.
- 4.3.4 The Umbrella Final Agreement as initialled by the negotiators March 31, 1990, contemplated that the Yukon First Nations and Government would agree on the allocation of the land identified under 4.3.2 prior to ratification of the Umbrella Final Agreement by the Yukon First Nations.
- 4.3.5 The Yukon First Nations and Government have agreed to the allocation of the 60 square miles (155.40 square kilometres) referred to in 4.3.2, and the allocation of that amount among the Yukon First Nations is set out in Schedule A - Allocation of Settlement Land Amount attached to Chapter 9 - Settlement Land Amount.
- 4.3.6 Notwithstanding 4.3.2, a Yukon First Nation Final Agreement may identify other Reserves which Government and the Yukon First Nation agree exist in that Yukon First Nation's Traditional Territory.

#### **Specific Provision**

- 4.3.6.1 Where the Selkirk First Nation submits, prior to the Effective Date of this Agreement, one or more specific claims alleging that land shown as:

Parcel S-130B/D on Territorial Resource Base Map 115 I/14, dated July 21, 1997, in Appendix B - Maps, which forms a separate volume to this Agreement, including a portion of Lot 1 and a portion of Lot 2, Block AA, Plan 8392 CLSR, 8392 LTO; a portion of Lot 10, Block Z, Plan 8392 CLSR, 8392 LTO; and a portion of the road shown as Road on Plan 8392 CLSR, 8392 LTO, having an area of approximately 0.17 hectare;

Parcel S-125FS on Territorial Resource Base Map 115 I/14, dated July 21, 1997, in Appendix B - Maps, which forms a separate volume to this Agreement, comprising Lot 5, Group 4, Plan 8890 CLSR, 8890 LTO, having an area of 4.04 hectares, more or less, and that portion of R-18B on Territorial Resource Base Map 115 I/14, dated July 21, 1997, in Appendix B - Maps, which forms a separate volume to this Agreement, comprising the land described in Reservation No. 115I14-0000-00011 being Lot 6, Group 4, Plans 1618, T2616 and 8886 CLSR, 8886 LTO having an area of 64.74 hectares, more or less;

### **Specific Provision Cont'd**

is a Reserve for the Selkirk First Nation and the Minister of Indian Affairs and Northern Development, as part of settlement of the claim, proposes to recommend to the Governor in Council that it either recognize that land to be a Reserve or set it apart as a Reserve for the Selkirk First Nation, the Selkirk First Nation shall:

- (a) notify the Minister that it elects to retain that land as Settlement Land, or
- (b) notify the Minister that it wishes the Minister to make the recommendation to the Governor in Council, and if the Governor in Council recognizes or sets apart that land to be a Reserve for the Selkirk First Nation, that land shall be retained as a Reserve pursuant to 4.1.1.1, and shall cease to be Settlement Land.

4.3.6.2 If the Selkirk First Nation notifies the Minister under 4.3.6.1 (b), the parties to this Agreement shall negotiate whether, and to what extent, the exceptions and reservations referred to in 5.4.2 apply to that land.

4.3.7 A Reserve described in 4.3.6 shall be retained as a Reserve subject to 4.1.1.1, or selected as Settlement Land.

#### **4.4.0 Release**

- 4.4.1 In the event that after the Effective Date of a Yukon First Nation's Final Agreement there is determined to be a Reserve set aside for that Yukon First Nation other than a Reserve identified pursuant to 4.3.1 or 4.3.6, the Yukon First Nation for which that Reserve was set aside agrees to surrender all its interest absolutely and unconditionally to Her Majesty in Right of Canada.
- 4.4.2 Unless otherwise agreed in a Yukon First Nation Final Agreement, each Yukon First Nation and all persons eligible to be Yukon Indian People it represents, their heirs, descendants and successors, release Government as of the Effective Date of that Yukon First Nation's Final Agreement, from any and all suits, actions, causes of actions, claims, demands and charges, whether known or unknown, which the Yukon First Nation and all persons eligible to be Yukon Indian People it represents, their heirs, descendants and successors ever had, now have or may hereafter have against Government relating to or in any way arising out of:
- 4.4.2.1 any Reserve described in 4.4.1; and
  - 4.4.2.2 any Land Set Aside not identified pursuant to 4.2.1.

## **CHAPTER 5 - TENURE AND MANAGEMENT OF SETTLEMENT LAND**

### **5.1.0 Definitions**

In this chapter, the following definitions shall apply.

"Land Titles Office" means the Land Titles Office for the Yukon Land Registration District or its successor.

"Royalty" means any amount, paid in money or in kind, in respect of Mines and Minerals produced by a Person holding an Existing Mineral Right, but not including any payment made for a service, for the creation of special purposes funds, for the issuance of a right or interest or for the granting of an approval or authorization, any payment required regardless of the ownership of the Mines and Minerals, or any payment for incentives.

### **5.2.0 General**

- 5.2.1 Nothing in Settlement Agreements shall be construed as affecting any aboriginal claim, right, title or interest in and to Settlement Land, except to the extent that they are inconsistent with the Settlement Agreements.
- 5.2.2 Nothing in this chapter constitutes an admission by Government that an aboriginal claim, right, title or interest can co-exist with the rights described in 5.4.1.1(a) and 5.4.1.2, or with a treaty.
- 5.2.3 Each Yukon First Nation shall register in the Land Titles Office as soon as practicable its title to Fee Simple Settlement Land and its fee simple title in the Mines and Minerals in and under Category A Settlement Land.

- 5.2.4 No fee or charge shall be payable in respect of the initial registration by a Yukon First Nation of its title to Fee Simple Settlement Land and its fee simple title in the Mines and Minerals in and under Category A Settlement Land.
- 5.2.5 Nothing in this chapter shall be construed to preclude a Yukon First Nation or Yukon Indian People from acquiring or holding interests in Non-Settlement Land.
- 5.2.6 Settlement Land shall be deemed not to be lands reserved for Indians within the meaning of section 91(24) of the Constitution Act, 1867, nor a Reserve.
- 5.2.7 Government shall have no obligation or liability in respect of Settlement Land, or in respect of any dealings with Settlement Land by any Person, by virtue of any property interest Government may have as a result of the regime of tenure established under 5.4.1.1(a) and 5.4.1.2.

**5.3.0 Maps and Descriptions**

- 5.3.1 Maps, and legal descriptions where available, of Settlement Land for each Yukon First Nation, and descriptions setting out any reservations, exceptions, restrictions, easements, rights-of-way or special conditions that the parties to a Yukon First Nation Final Agreement agree apply to a Parcel of Settlement Land shall be annexed to and form part of that Yukon First Nation Final Agreement, and shall identify the Category A, Category B, Fee Simple Settlement Land and Proposed Site Specific Settlement Land of that Yukon First Nation.

<b>Specific Provision</b>	
5.3.1.1	The descriptions of Settlement Land for the Selkirk First Nation required by 5.3.1 are set out in Appendix A - Settlement Land Descriptions, attached to this Agreement.
5.3.1.2	The maps of Settlement Land referred to in 5.3.1 are set out in Appendix B - Maps, which forms a separate volume to this Agreement.

- 5.3.2 The boundaries of the Settlement Land of a Yukon First Nation shall be defined pursuant to Chapter 15 - Definition of Boundaries and Measurement of Areas of Settlement Land.
- 5.3.3 Plans of survey confirmed in accordance with Chapter 15 - Definition of Boundaries and Measurement of Areas of Settlement Land shall be deposited in the Land Titles Office and any system established under 5.5.1.4 applicable to the Settlement Land dealt with in the survey.
- 5.3.4 Plans of survey confirmed under Chapter 15 - Definition of Boundaries and Measurement of Areas of Settlement Land replace for all purposes any prior map or description of a Parcel of Settlement Land dealt with by the survey.
- 5.3.5 The deposition of a plan of survey under 5.3.3 shall not be construed to affect any aboriginal right, title or interest of a Yukon First Nation or any person eligible to be a Yukon Indian Person it represents.
- 5.3.6 The designation of a Parcel of Settlement Land by the letters "C", "S" and "R" is for convenience only and has no legal effect.

#### **5.4.0 Settlement Land**

5.4.1 A Yukon First Nation shall have by virtue of this chapter:

5.4.1.1 for Category A Settlement Land,

- (a) the rights, obligations and liabilities equivalent to fee simple excepting the Mines and Minerals and the Right to Work the Mines and Minerals, and
- (b) fee simple title in the Mines and Minerals, and the Right to Work the Mines and Minerals;

- 5.4.1.2 for Category B Settlement Land the rights, obligations and liabilities equivalent to fee simple reserving therefrom the Mines and Minerals and the Right to Work the Mines and Minerals but including the Specified Substances Right; and
- 5.4.1.3 for Fee Simple Settlement Land, fee simple title reserving therefrom the Mines and Minerals and the Right to Work the Mines and Minerals but including the Specified Substances Right.
- 5.4.2 The rights and titles described in 5.4.1 of a Yukon First Nation in Settlement Land are subject to the following exceptions and reservations:
- 5.4.2.1 any right, title or interest less than the entire fee simple therein existing at the date the land became Settlement Land;
- 5.4.2.2 any licence, permit and other right issued by Government for the use of land or other resources existing at the date the land became Settlement Land;
- 5.4.2.3 any renewal or replacement of a right, title or interest described in 5.4.2.1 or a licence, permit or other right described in 5.4.2.2;
- 5.4.2.4 any new licence, permit or other right in respect of,
- (a) Petroleum which may be granted as of right to a Person holding a right, title or interest described in 5.4.2.1, 5.4.2.2 or 5.4.2.3, and
- (b) Mines and Minerals which may be granted pursuant to the Yukon Quartz Mining Act, R.S.C. 1985, c. Y-4 or the Yukon Placer Mining Act, R.S.C. 1985, c. Y-3 to a Person holding a right, title or interest described in 5.4.2.1, 5.4.2.2 or 5.4.2.3;

- 5.4.2.5 any right-of-way, easement, reservation, exception, restriction, or special condition agreed to by the parties to a Yukon First Nation Final Agreement and set out therein pursuant to 5.3.1;
- 5.4.2.6 the Public Access for Wildlife Harvesting;
- 5.4.2.7 any Waterfront Right-of-Way;
- 5.4.2.8 the Flooding Right identified pursuant to 7.8.0;
- 5.4.2.9 the rights granted to Government in a Quarry identified pursuant to 18.2.0; and
- 5.4.2.10 any reservation agreed to pursuant to 5.7.4.2.

#### **5.5.0 Yukon First Nation Management Powers**

- 5.5.1 Subject to its Settlement Agreement, each Yukon First Nation, as owner of Settlement Land, may exercise the following powers of management in relation to its Settlement Land:
  - 5.5.1.1 to enact bylaws for the use of and occupation of its Settlement Land;
  - 5.5.1.2 to develop and administer land management programs related to its Settlement Land;
  - 5.5.1.3 to charge rent or other fees for the use and occupation of its Settlement Land; and
  - 5.5.1.4 to establish a system to record interests in its Settlement Land.



## **5.6.0 Administration by Government**

- 5.6.1 For the purposes of 5.6.0, "Encumbering Right" means every licence, permit or other right, and every right, title or interest described in 5.4.2.
- 5.6.2 Subject to 6.3.6, Government shall continue to administer every Encumbering Right including granting renewals or replacements described in 5.4.2.3 and new rights described in 5.4.2.4 in the public interest and in accordance with the Legislation which would apply if Settlement Land were Crown Land.
- 5.6.3 Where Category A Settlement Land is subject to an Existing Mineral Right or to a surface lease, existing at the date the affected land became Settlement Land, held by a Mineral Right holder, Government shall account for and pay to the affected Yukon First Nation as soon as practicable from time to time:
- 5.6.3.1 any Royalty received by Government for production after the date the land became Settlement Land in respect of that Existing Mineral Right; and
  - 5.6.3.2 any non-refunded rents received by Government which were payable after the date the land became Settlement Land in respect of that Existing Mineral Right and of any surface lease, existing at the date the affected land became Settlement Land, held by a Mineral Right holder.
- 5.6.4 Where Category B Settlement Land or Fee Simple Settlement Land is subject to a surface lease, existing at the date the affected land became Settlement Land, held by a Mineral Right holder, Government shall account for and pay to the affected Yukon First Nation as soon as practicable from time to time, any non-refunded rents received by Government which were payable after the date the land became Settlement Land in respect of that existing surface lease held by the Mineral Right holder.
- 5.6.5 Subject to 5.6.3, 5.6.4 and 5.6.6, Government shall retain for its own benefit any fees, charges or other payments received in respect of any Encumbering Right.

- 5.6.6 Where Settlement Land is subject to a timber harvesting agreement existing at the date the land becomes Settlement Land, Government may agree in the Yukon First Nation Final Agreement to account for and pay to the affected Yukon First Nation any stumpage fee in respect of that timber harvesting agreement received by Government which is payable after the date the land becomes Settlement Land.
- 5.6.7 Government shall not have any fiduciary obligation to a Yukon First Nation for the exercise of any discretionary or other power in relation to the administration of any Encumbering Right.
- 5.6.8 Government shall indemnify and forever save harmless the Yukon First Nations from and against all suits and actions, causes of action, claims, demands, and damages by any Person arising from the continuing administration of the Encumbering Right by Government.
- 5.6.9 Government shall Consult with the affected Yukon First Nation before exercising any discretion to renew or replace an Encumbering Right, to issue a new Encumbering Right, or to set any Royalty, rent or fee described in 5.6.3, 5.6.4 and 5.6.6.
- 5.6.10 If Legislation is amended to authorize Government to increase the term permitted for an Encumbering Right, Government shall not increase the term of that Encumbering Right pursuant to that amendment without the prior consent of the affected Yukon First Nation.
- 5.6.11 Subject to the consent of the Minister, a Yukon First Nation and the holder of an Encumbering Right may agree that the right be cancelled and replaced by an interest provided by the Yukon First Nation.
- 5.6.12 The Minister may only refuse to consent under 5.6.11 if:
- 5.6.12.1 the holder of the Encumbering Right is in default of any obligation to Government or has outstanding unsatisfied liabilities to Government pursuant to the interest;

- 5.6.12.2 the Encumbering Right was granted under the Yukon Quartz Mining Act, R.S.C. 1985, c. Y-4 and there is no "Certificate of Improvements" issued thereunder or equivalent certificate issued under any successor Legislation;
- 5.6.12.3 the Encumbering Right is a claim granted under the Yukon Placer Mining Act, R.S.C. 1985, c. Y-3 and there is no plan of survey of the claim approved in accordance with that Act or equivalent approval under successor Legislation; or
- 5.6.12.4 there is a Person claiming an interest in the Encumbering Right.

#### **5.7.0 Disclosure of Government Interests in Settlement Land**

- 5.7.1 Government shall make best efforts to disclose to each Yukon First Nation, before its final land selections are signed by the negotiators for its Yukon First Nation Final Agreement, which, if any, of those lands are:
  - 5.7.1.1 under the management, charge and direction of any department of Government listed in Schedule I of the Financial Administration Act, R.S.C. 1985, c. F-11, other than the Department of Indian Affairs and Northern Development, or of any entity in Schedule II or III of that Act;
  - 5.7.1.2 subject to reservations made in the land records of the Northern Affairs Program, Department of Indian Affairs and Northern Development;
  - 5.7.1.3 under the administration and control of the Commissioner and,
    - (a) under the management, charge and direction of any department of the Yukon as defined in the Financial Administration Act, R.S.Y. 1986, c. 65,
    - (b) subject to a reservation and notation made in the land records of the Lands Branch, Department of Community and Transportation Services, or

(c) occupied by any department of the Yukon as defined in the Financial Administration Act, R.S.Y. 1986, c. 65; or

5.7.1.4 any other land occupied by any department of the Yukon as defined in the Financial Administration Act, R.S.Y. 1986, c. 65.

5.7.2 For the purpose of 5.7.1 and 5.7.4, "disclose" means to provide Territorial Resource Base Maps at a scale of 1:20,000 or 1:30,000 or Community Reference Plans indicating thereon the land described in 5.7.1 and accompanied by a list describing:

5.7.2.1 the department or entity having management, charge or direction of the land in 5.7.1.1;

5.7.2.2 the nature of the reservation in 5.7.1.2; and

5.7.2.3 the department having management, charge and direction of, or occupying, the land in 5.7.1.3(a) or (c), or 5.7.1.4 or the nature of the reservation in 5.7.1.3(b).

5.7.3 The obligation set out in 5.7.1 does not apply where the information described in 5.7.1 is publicly available in the Land Titles Office.

5.7.4 If Government or a Yukon First Nation becomes aware of any information described in 5.7.1 which has not been disclosed prior to that Yukon First Nation ratifying its Yukon First Nation Final Agreement and which is not publicly available in the Land Titles Office, that party shall provide the other with the information, whereupon Government shall declare

5.7.4.1 that:

(a) the department or entity does not have the management, charge or direction of the land,

(b) the reservation is cancelled, or

(c) the Commissioner does not have administration and control of the land,

as the case may be, and, as of the date of the declaration, the Settlement Land shall not be subject to such management, charge or direction, reservation or administration and control and no compensation shall be payable to the Yukon First Nation; or

5.7.4.2 in the cases of 5.7.1.2 or 5.7.1.3(b), that, with the agreement of the affected Yukon First Nation, the land described in 5.7.1.2 or 5.7.1.3(b) remains Settlement Land subject to the reservation and, as of the date of the declaration, Government shall provide compensation as determined pursuant to 7.5.0 to the Yukon First Nation for any diminution in the value of the Settlement Land resulting from the continuation of the reservation after the date of the declaration, and the Settlement Land shall be subject to the reservation.

5.7.5 For the purposes of 5.7.1 and 5.7.4:

5.7.5.1 Government in 5.7.1.1 means Canada;

5.7.5.2 Government in 5.7.1.2 means the Government for whose benefit the reservation was made; and

5.7.5.3 Government in 5.7.1.3 means the Yukon.

## **5.8.0 Beds of Waterbodies**

5.8.1 Unless otherwise provided in the description referred to in 5.3.1, the portions of the Bed of a lake, river or other waterbody within the boundaries of a Parcel of Settlement Land shall be Settlement Land.

5.8.2 Unless otherwise provided in the description referred to in 5.3.1, the Bed of a lake, river or other waterbody which is contiguous with a boundary of a Parcel of Settlement Land shall not be Settlement Land.

### **5.9.0 Interests in Settlement Land - Less than Entire Interest in 5.4.1**

5.9.1 Upon and subsequent to the happening of any of the following events:

5.9.1.1 the registration in the Land Titles Office of any interest in a Parcel of Settlement Land, less than the entire interest set out in 5.4.1.1(a) or 5.4.1.2;

5.9.1.2 the expropriation of any interest in a Parcel of Settlement Land, less than the entire interest set out in 5.4.1.1(a) or 5.4.1.2;

5.9.1.3 the granting of any interest in a Parcel of Settlement Land less than the entire interest in 5.4.1.1(a) or 5.4.1.2 to any Person not enrolled under that Yukon First Nation Final Agreement; or

5.9.1.4 the declaration of a reservation in a Parcel by Government pursuant to 5.7.4.2,

the interest registered, expropriated or granted or the reservation declared, as the case may be, shall take priority for all purposes over:

5.9.1.5 any aboriginal claims, rights, titles and interests of the Yukon First Nation and all persons eligible to be Yukon Indian People it represents, their heirs, descendants and successors; and

5.9.1.6 the right to harvest described in 16.4.2,

in or to the Parcel referred to in 5.9.1.1, 5.9.1.2, 5.9.1.3 and 5.9.1.4, as the case may be.

5.9.2 Each Yukon First Nation and all persons who are eligible to be Yukon Indian People it represents, their heirs, descendants and successors undertake not to exercise or assert:

5.9.2.1 any aboriginal claim, right, title or interest; or

5.9.2.2 any right to harvest described in 16.4.2,

in or to any Parcel referred to in 5.9.1.1, 5.9.1.2, 5.9.1.3 and 5.9.1.4 which aboriginal claim, right, title or interest or right to harvest described in 16.4.2 is in conflict or inconsistent with the interest described in 5.9.1.1, 5.9.1.2 and 5.9.1.3, or the reservation declared in 5.9.1.4, as the case may be.

#### **5.10.0 Interests in Settlement Land - Entire Interest**

5.10.1 Each Yukon First Nation and all persons eligible to be Yukon Indian People it represents, shall be deemed to have ceded, released and surrendered to Her Majesty the Queen in Right of Canada all their aboriginal claims, rights, titles and interests, in and to the Parcels described hereunder and waters therein upon the happening of any of the following events:

5.10.1.1 the registration in the Land Titles Office of the fee simple title in that Parcel of Settlement Land;

5.10.1.2 the expropriation of the fee simple title in that Parcel of Settlement Land; or

5.10.1.3 the granting of the fee simple interest in that Parcel of Settlement Land.

- 5.10.2 A Yukon First Nation shall be deemed to have been granted immediately before the happening of an event described in 5.10.1.1, 5.10.1.2 or 5.10.1.3 for that Parcel:
- 5.10.2.1 if Category A Settlement Land, fee simple title excepting the Mines and Minerals and the Right to Work the Mines and Minerals, subject to,
- (a) the reservations and exceptions set out in 5.4.2, other than 5.4.2.6, and
  - (b) the reservations to the Crown and exceptions which apply to a grant of federally administered Crown Land under the Territorial Lands Act, R.S.C. 1985, c. T-7 other than the reservations set out in paragraphs 13(a) and (b) and 15(a) of that Act; and
- 5.10.2.2 if Category B Settlement Land, fee simple title reserving to the Crown therefrom the Mines and Minerals and the Right to Work the Mines and Minerals but including the Specified Substances Right, subject to,
- (a) the reservations and exceptions set out in 5.4.2, and
  - (b) the reservations to the Crown and exceptions which apply to a grant of federally administered Crown Land under the Territorial Lands Act, R.S.C. 1985, c. T-7 other than the reservations set out in paragraphs 13(a) and (b) and 15(a) of that Act.
- 5.10.3 The interest in Fee Simple Settlement Land set out in 5.4.1.3 shall be deemed to be subject to the reservations to the Crown and exceptions which would apply to a grant of federally administered Crown Land under the Territorial Lands Act, R.S.C. 1985, c. T-7, other than the reservations set out in paragraphs 13(a) and (b) and 15(a) of that Act, upon the happening of either of the following events:
- 5.10.3.1 the expropriation of the fee simple title in a Parcel of Settlement Land; or



5.10.3.2 the granting by a Yukon First Nation of its fee simple title in that Parcel of Settlement Land.

### **5.11.0 Land Ceasing to be Settlement Land**

5.11.1 Except for purposes of Chapter 23 - Resource Royalty Sharing, where a Yukon First Nation becomes divested, either voluntarily or involuntarily, of all its interest in land set out in 5.4.1.1(a) in a Parcel of Category A Settlement Land, but retains some or all of its interest in the Mines and Minerals in that Parcel, that Parcel and the retained interest in the Mines and Minerals in that Parcel shall cease to be Settlement Land.

5.11.2 Where a Yukon First Nation becomes divested, either voluntarily or involuntarily, of all its interest in land set out in 5.4.1.1(a), 5.4.1.2 or 5.4.1.3 in a Parcel of Settlement Land, that Parcel shall cease to be Settlement Land.

### **5.12.0 Reacquisition**

5.12.1 Where land which is or was subject to the operation of 5.10.0 is reacquired by a Yukon First Nation in fee simple, whether including or excluding the Mines and Minerals, that Yukon First Nation may declare the land to be Settlement Land and thereafter the land shall be Settlement Land of the following category:

5.12.1.1 Category A Settlement Land when Mines and Minerals are included and the land had previously been Category A Settlement Land;

5.12.1.2 Category B Settlement Land when Mines and Minerals other than Specified Substances are not included and the land had previously been Category B Settlement Land; or

5.12.1.3 Fee Simple Settlement Land when Mines and Minerals other than Specified Substances are not included and the land had previously been Fee Simple or Category A Settlement Land,

except that the cession, release and surrender of any aboriginal claim, right, title or interest in respect of the land shall not be affected.

## **5.13.0 Deregistration**

5.13.1 A Yukon First Nation may deregister a Parcel of Category A Settlement Land which is registered in the Land Titles Office and is free and clear of any interest in land recognized in Law, other than:

5.13.1.1 the reservations and exceptions set out in 5.4.2; and

5.13.1.2 the reservations to the Crown and exceptions which apply to a grant of federally administered Crown Land under the Territorial Lands Act, R.S.C. 1985, c. T-7 other than the reservations set out in paragraphs 13(a) and (b) or 15(a) of that Act.

5.13.2 A Yukon First Nation may deregister a Parcel of Category B Settlement Land which is registered in the Land Titles Office and is free and clear of any interest in land recognized in Law other than:

5.13.2.1 the reservations and exceptions set out in 5.4.2; and

5.13.2.2 the reservations to the Crown and exceptions which apply to a grant of federally administered Crown Land under the Territorial Lands Act, R.S.C. 1985, c. T-7.

5.13.3 Deregistration pursuant to 5.13.1 and 5.13.2 shall not affect the cession, release and surrender of any aboriginal claim, right, title or interest in respect of that Parcel.

## **5.14.0 Proposed Site Specific Settlement Land**

5.14.1 Subject to 5.14.2, the provisions of 2.5.0 and 5.4.1 shall not apply to Proposed Site Specific Settlement Land, and Proposed Site Specific Settlement Land shall not be considered Settlement Land for any purpose.

- 5.14.2 Subject to 5.14.3, the provisions of 2.5.0 shall apply to Proposed Site Specific Settlement Land and 5.4.1 shall apply to Site Specific Settlement Land on the same date the plan of survey is confirmed in accordance with Chapter 15 - Definition of Boundaries and Measurement of Areas of Settlement Land, and the Site Specific Settlement Land shall thereupon be Settlement Land for all purposes.
- 5.14.3 Where there is more than one Parcel of Site Specific Settlement Land to be selected in one or more Parcels of Proposed Site Specific Settlement Land bearing the same "S" number, 5.14.2 shall not apply until the plan of the last Parcel of Site Specific Settlement Land in the last Parcel of Proposed Site Specific Settlement Land bearing the same "S" number has been confirmed in accordance with Chapter 15 - Definition of Boundaries and Measurement of Areas of Settlement Land.
- 5.14.4 Any orders made under the Territorial Lands Act, R.S.C. 1985, c. T-7, the Yukon Quartz Mining Act, R.S.C. 1985, c. Y-4, the Yukon Placer Mining Act, R.S.C. 1985, c. Y-3 or the Lands Act, R.S.Y. 1986, c. 99 withdrawing Proposed Site Specific Settlement Land on the Effective Date of the Yukon First Nation's Final Agreement shall be continued until the provisions of 2.5.0 apply to that land.

## **5.15.0 Waterfront Right-of-Way**

- 5.15.1 Unless otherwise agreed in a Yukon First Nation Final Agreement on a case by case basis, there shall be a Waterfront Right-of-Way 30 metres in width measured landward from the Natural Boundaries within Settlement Land of all Navigable Waters which abut or are within Settlement Land.
- 5.15.2 The uses allowed upon and the width of the Waterfront Right-of-Way may be varied in a Yukon First Nation Final Agreement to accommodate special circumstances.
- 5.15.3 Subject to 6.1.6, any Person has a right of access without the consent of the affected Yukon First Nation to use a Waterfront Right-of-Way for travel and for non-commercial recreation including camping and sport fishing, and to use standing dead or deadfall firewood incidental to such use.

- 5.15.4 Except for hunting Migratory Game Birds if permitted by and in accordance with Law, the right of access in 5.15.3 shall not be construed to permit Harvesting Wildlife at any time on Category A or Fee Simple Settlement Land.
- 5.15.5 Any Person has a right of access to use a Waterfront Right-of-Way for commercial recreation purposes with the consent of the affected Yukon First Nation or failing consent, with an order of the Surface Rights Board setting out the terms and conditions of the access.
- 5.15.6 The Surface Rights Board shall not make an order under 5.15.5 unless the Person seeking access satisfies the Board that:
- 5.15.6.1 such access is reasonably required; and
  - 5.15.6.2 such access is not also practicable and reasonable across Crown Land.
- 5.15.7 Subject to 5.15.8, no Person shall establish any permanent camp or structure on a Waterfront Right-of-Way without the consent of Government and the affected Yukon First Nation.
- 5.15.8 A Yukon First Nation has a right to establish a permanent camp or structure on a Waterfront Right-of-Way on its Settlement Land, provided that:
- 5.15.8.1 the permanent camp or structure does not substantially alter the public right of access under 5.15.3; or
  - 5.15.8.2 there is a reasonable alternate public right of access for the purposes set out in 5.15.3.
- 5.15.9 Any dispute as to whether the conditions set out in 5.15.8.1 and 5.15.8.2 are met may be referred to the Surface Rights Board by Government or the affected Yukon First Nation.
- 5.15.10 For purposes of 5.15.9, the Surface Rights Board shall have all the powers of an arbitrator under 26.7.3.

**5.16.0 Notations for Hydro-electric and Water Storage Projects**

- 5.16.1 Government shall identify to Yukon First Nations, before final land selections are signed by the negotiators for all parties to a Yukon First Nation Final Agreement, those areas proposed for future hydro-electric and water storage projects.
- 5.16.2 When land identified pursuant to 5.16.1 forms part of Settlement Land, a notation shall be made in the description of that land pursuant to 5.3.1 that such land is proposed for hydro-electric and water storage projects.
- 5.16.3 If any Parcel of Settlement Land bearing the notation referred to in 5.16.2 is registered in the Yukon Land Titles Office, the notation shall be noted on the title by way of caveat.
- 5.16.4 Chapter 7 - Expropriation shall apply to the expropriation of any land bearing such notation or caveat.

## CHAPTER 6 - ACCESS

### 6.1.0 General

- 6.1.1 Laws of General Application in respect of access to and use incidental thereto, of privately held land shall apply to Settlement Land, except as altered by a Settlement Agreement.
- 6.1.2 Government and a Yukon First Nation may agree in a Yukon First Nation Final Agreement or from time to time after the Effective Date of a Yukon First Nation Final Agreement to amend, revoke or reinstate a right of access provided by a Settlement Agreement to address special circumstances in respect of a specific Parcel of Settlement Land.

#### **Specific Provision**

- 6.1.2.1 The holder of an outfitting concession shall have a right of access to Settlement Land situated within that concession, for outfitting purposes, during the first full spring hunting season subsequent to the Effective Date of this Agreement and during the first full fall hunting season subsequent to the Effective Date of this Agreement and a further right of access to that Settlement Land, for the purpose of removing property, during the thirty days immediately following whichever full hunting season is the later.
- 6.1.2.2 Nothing in 6.1.2.1 shall be construed to prevent the Selkirk First Nation and the holder of an outfitting concession from entering into any agreement which provides the holder of an outfitting concession with a right of access other than as set out in 6.1.2.1.

- 6.1.3 A Yukon First Nation owes the same duty of care to a Person exercising a right of access on Undeveloped Settlement Land pursuant to Settlement Agreements as the Crown owes to a Person on unoccupied Crown Land.
- 6.1.4 Nothing in this chapter imposes an obligation on a Yukon First Nation or Government to manage or maintain any trail or other route of access.
- 6.1.5 Any Person may enter upon Settlement Land in an emergency but when damage is caused, the Person shall report to the affected Yukon First Nation the location thereof as soon as practicable thereafter and shall be liable for significant damage to Settlement Land or to any improvement on Settlement Land as a result of the entry.
- 6.1.6 A right of access provided by 5.15.3, 6.3.1 and 6.3.2 is subject to the conditions that there shall be no:
- 6.1.6.1 significant damage to Settlement Land or to improvements on Settlement Land;
  - 6.1.6.2 mischief committed on Settlement Land;
  - 6.1.6.3 significant interference with the use and peaceful enjoyment of Settlement Land by the Yukon First Nation;
  - 6.1.6.4 fee or charge payable to the affected Yukon First Nation; or
  - 6.1.6.5 compensation for damage other than for significant damage.
- 6.1.7 A Person who fails to comply with the conditions in 6.1.6.1, 6.1.6.2, or 6.1.6.3 shall be considered a trespasser with respect to that incident of access.

6.1.8 Government and a Yukon First Nation may agree from time to time to designate Undeveloped Settlement Land to be Developed Settlement Land and Developed Settlement Land to be Undeveloped Settlement Land.

**Specific Provision**

6.1.8.1 The designation of Selkirk First Nation Settlement Land as Developed Settlement Land as of the Effective Date of this Agreement is set out in Appendix A - Settlement Land Descriptions, attached to this Agreement.

6.1.9 Subject to Chapter 7 - Expropriation, unless the affected Yukon First Nation otherwise agrees, any route of access on Settlement Land which may be established or improved after the Effective Date of the affected Yukon First Nation's Final Agreement shall remain Settlement Land and shall not be designated by operation of law or otherwise, as a highway or public road, notwithstanding that the route is established or improved:

6.1.9.1 for the benefit of any Person; or

6.1.9.2 using funds or other resources provided directly or indirectly by Government for the establishment or improvement of such route.

**6.2.0 Access to Crown Land**

6.2.1 A Yukon Indian Person has and a Yukon First Nation has a right of access without the consent of Government to enter, cross and stay on Crown Land and to use Crown Land incidental to such access for a reasonable period of time for all non-commercial purposes if:



- 6.2.1.1 the access is of a casual and insignificant nature; or
  - 6.2.1.2 the access is for the purpose of Harvesting Fish and Wildlife in accordance with Chapter 16 - Fish and Wildlife.
- 6.2.2 A Yukon Indian Person has and a Yukon First Nation has a right of access without the consent of Government to cross and make necessary stops on Crown Land to reach adjacent Settlement Land for commercial purposes if:
- 6.2.2.1 the access is of a casual and insignificant nature; or
  - 6.2.2.2 the route used is a traditional route of Yukon Indian People or of a Yukon First Nation or is generally recognized and is being used for access on a regular basis, whether year round or intermittently, and the exercise of the right of access does not result in a significant alteration in the use being made of that route.
- 6.2.3 A right of access in 6.2.1 or 6.2.2 does not apply to Crown Land:
- 6.2.3.1 which is subject to an agreement for sale or a surface licence or lease except,
    - (a) to the extent the surface licence or lease permits public access, or
    - (b) where the holder of the interest allows access; or
  - 6.2.3.2 where access or use by the public is limited or prohibited.

- 6.2.4 A right of access provided by 6.2.1 or 6.2.2 shall be subject to the conditions that there shall be no:
- 6.2.4.1 significant damage to the land or to improvements on the land;
  - 6.2.4.2 mischief committed on the land;
  - 6.2.4.3 significant interference with the use and peaceful enjoyment of the land by other Persons;
  - 6.2.4.4 fee or charge payable to Government; or
  - 6.2.4.5 compensation for damage other than significant damage.
- 6.2.5 A Yukon Indian Person or Yukon First Nation who fails to comply with the conditions in 6.2.4.1, 6.2.4.2 or 6.2.4.3 shall forfeit the rights provided in 6.2.1 or 6.2.2, as the case may be, with respect to that incident of access.
- 6.2.6 A Yukon First Nation or any Person to whom rights have been granted by a Yukon First Nation in respect of the exploration or development of Mines and Minerals in Category A Settlement Land shall have the same rights of access to Non-Settlement Land and the use thereof incidental to such access as any other Person has for the same purpose.
- 6.2.7 Government shall not alienate Crown Land abutting any block of Settlement Land so as to deprive that block of Settlement Land of access from adjacent Crown Land or from a highway or public road.
- 6.2.8 Nothing in this chapter shall be construed so as to deprive Yukon Indian People or a Yukon First Nation of the rights or privileges of access to Crown Land available to the public.

### 6.3.0 General Access

6.3.1 A Person has a right of access, without the consent of the affected Yukon First Nation, to enter, cross and make necessary stops on Undeveloped Settlement Land to reach adjacent Non-Settlement Land for commercial and non-commercial purposes if:

6.3.1.1 the access is of a casual and insignificant nature; or

6.3.1.2 the route used is generally recognized and was being used for access on a regular basis, whether year round or intermittently, either,

(a) prior to public notification of the final land selection for that Yukon First Nation's Final Agreement, or

(b) where the land becomes Settlement Land after the Effective Date of the Yukon First Nation Final Agreement, on the date the land became Settlement Land,

on the condition that the exercise of the right of access does not result in a significant alteration being made of that route.

6.3.2 A Person has a right of access without the consent of the affected Yukon First Nation to enter, cross and stay on Undeveloped Settlement Land for a reasonable period of time for all non-commercial recreational purposes.

6.3.3 Where no right of access is provided by a Settlement Agreement, a Person has a right of access to enter, cross and make necessary stops on Undeveloped Settlement Land to reach adjacent land for commercial and non-commercial purposes with the consent of the Yukon First Nation or, failing consent, with an order of the Surface Rights Board setting out the terms and conditions of access.

6.3.4 The Surface Rights Board shall not make an order under 6.3.3 unless the Person seeking access satisfies the Board that:

6.3.4.1 such access is reasonably required; and

6.3.4.2 such access is not also practicable and reasonable across Crown Land.

6.3.5 Subject to 6.3.6 and 5.6.0, the holder of a licence, permit or other right of access to or across Settlement Land for commercial or non-commercial purposes, which was in existence either:

6.3.5.1 on the Effective Date of the Yukon First Nation's Final Agreement; or

6.3.5.2 where the land becomes Settlement Land after the Effective Date of a Yukon First Nation's Final Agreement, on the date the land became Settlement Land,

shall be entitled to exercise the rights granted by the licence, permit or other right of access including those granted by a renewal or replacement thereof as if the land had not become Settlement Land.

6.3.6 Any change in the terms or conditions relating to access of a licence, permit or other right of access described in 6.3.5, other than a renewal or replacement thereof shall require the consent of the affected Yukon First Nation or, failing consent, an order of the Surface Rights Board setting out the terms and conditions of access.

- 6.3.7 A Yukon First Nation or any Person may refer a dispute concerning the interpretation, application or alleged violation of 6.3.1, 6.3.2 or of any condition established pursuant to 6.6.0 affecting 6.3.1 or 6.3.2 to the Surface Rights Board for resolution.
- 6.3.8 The parties to a Yukon First Nation Final Agreement may agree therein to limit the application of 6.3.1.2 in respect of any particular route.
- 6.3.9 Nothing in this chapter shall be construed to provide a right to harvest Fish and Wildlife.

#### **6.4.0 Government Access**

- 6.4.1 Government, its agents and contractors shall have a right of access to enter, cross and stay on Undeveloped Settlement Land and use natural resources incidental to such access to deliver, manage and maintain Government programs and projects, including but not limited to the necessary alterations of land and watercourses by earthmoving equipment for routine and emergency maintenance of transportation corridors.
- 6.4.2 A Person authorized by Law to provide utilities for public purposes including electricity, telecommunications and municipal services shall have a right of access to enter, cross and stay on Undeveloped Settlement Land to carry out site investigations, assessments, surveys and studies in relation to proposed services after Consultation with the affected Yukon First Nation prior to exercising such access.
- 6.4.3 The right of access provided in 6.4.1 and 6.4.2 shall be subject to the conditions that there shall be no:
- 6.4.3.1 mischief committed on the Settlement Land;
  - 6.4.3.2 fee or charge payable to the affected Yukon First Nation; or
  - 6.4.3.3 unnecessary interference with the use and peaceful enjoyment of its Settlement Land by the Yukon First Nation.

6.4.4 Any Person exercising a right of access pursuant to 6.4.1 and 6.4.2 shall be liable only for significant damage to Settlement Land and any improvements on Settlement Land caused by the exercise of such right of access. Significant damage does not include necessary alteration of Settlement Land or watercourses required to maintain transportation corridors referred to in 6.4.1.

6.4.5 The right of access provided in 6.4.1 and 6.4.2 may be exercised:

6.4.5.1 for a period of no more than 120 consecutive days for any single program or project without the consent of the affected Yukon First Nation except that notice, where reasonable, shall be given; and

6.4.5.2 for a period of more than 120 consecutive days with the consent of the affected Yukon First Nation or, failing consent, with an order of the Surface Rights Board setting out the terms and conditions of access.

6.4.6 The Surface Rights Board shall not make an order under 6.4.5.2 unless the Person seeking access satisfies the Board that:

6.4.6.1 such access is reasonably required; and

6.4.6.2 such access is not also practicable and reasonable across Crown Land.

6.4.7 Nothing in this chapter shall be construed to limit the lawful authority of Government to carry out inspections and enforce Law on Settlement Land.

### **6.5.0 Military Access**

6.5.1 In addition to the right of access provided by 6.4.1, the Department of National Defence has a right of access to Undeveloped Settlement Land for military manoeuvres with the consent of the affected Yukon First Nation with respect to contact persons, areas, timing, environmental protection, protection of Wildlife and habitat, land use rent, and compensation for damage caused to Settlement Land and improvements and personal property thereon, or, failing consent, with an order of the Surface Rights Board as to terms and conditions with respect to such matters.

6.5.2 Nothing in 6.5.1 shall be construed to limit the authority of the Department of National Defence to enter, cross, stay on or use Undeveloped Settlement Land in accordance with the National Defence Act, R.S.C. 1985, c. -5.

6.5.3 Government shall give reasonable advance notice of military exercises or operations to inhabitants of any area to be affected.

#### **6.6.0 Conditions of Access**

6.6.1 If a Yukon First Nation wishes to establish terms and conditions for the exercise of a right of access provided:

6.6.1.1 by 5.15.3, 6.3.1, 6.3.2, 16.11.12, 18.3.1, 18.4.1 or 18.4.2; or

6.6.1.2 by 6.4.1 or 6.4.2 where the right of access is for a period of no more than 120 consecutive days,

the Yukon First Nation and Government shall attempt to negotiate the terms and conditions.

6.6.2 Failing agreement pursuant to 6.6.1, the Yukon First Nation may refer the matter to the Surface Rights Board. The Surface Rights Board may establish terms and conditions only for the exercise of a right of access which specify seasons, times, locations, method or manner of access.

6.6.3 Unless Government and the affected Yukon First Nation otherwise agree, a condition established pursuant to 6.6.2 affecting the exercise of a right of access shall be established only to:

6.6.3.1 protect the environment;

6.6.3.2 protect Fish and Wildlife or their habitat;

6.6.3.3 reduce conflicts with traditional and cultural uses of Settlement Land by the Yukon First Nation or a Yukon Indian Person; or

6.6.3.4 protect the use and peaceful enjoyment of land used for communities and residences.

6.6.4 A condition established pursuant to 6.6.2 affecting the exercise of a right of access shall not:

6.6.4.1 restrict law enforcement or any inspection authorized by Law;

6.6.4.2 impose a fee or charge for the exercise of that right of access; or

6.6.4.3 unreasonably restrict that right of access.



## **CHAPTER 7 - EXPROPRIATION**

### **7.1.0 Objective**

7.1.1 The objective of this chapter is, in recognition of the fundamental importance of maintaining the geographic integrity of Settlement Land, to ensure that development requiring expropriation shall avoid Settlement Land where possible and practicable.

### **7.2.0 Definitions**

In this chapter, the following definitions shall apply.

"Affected Yukon First Nation" means the Yukon First Nation whose Settlement Land is being acquired or expropriated by an Authority pursuant to this chapter.

"Authority" means Government or any other entity authorized by Legislation to expropriate Land.

"Cost of Construction" for a proponent in respect of a hydro-electric or water storage project means the cost of construction of civil structures; cost of reservoir and site clearing; cost of construction of access; electrical and mechanical costs; cost of construction of transmission to grid; design, including the cost of socio-economic and environmental studies required for the project application; and, engineering and construction management costs.

"Land" includes any interest in land recognized in Law.

"Settlement Land" includes any interest in Settlement Land recognized in Law.

### **7.3.0 General**

7.3.1 This chapter applies only to the expropriation of an interest in Settlement Land recognized in Law and held by a Yukon First Nation.

### **7.4.0 Procedures for Expropriation**

7.4.1 An Authority shall negotiate with the Affected Yukon First Nation the location and extent of Settlement Land to be acquired or expropriated.

7.4.2 Subject to this chapter, an Authority may expropriate Settlement Land in accordance with Laws of General Application.

7.4.3 When agreement of the Affected Yukon First Nation pursuant to 7.4.1 is not obtained, the following procedures shall apply:

7.4.3.1 any expropriation of Settlement Land shall require the approval of the Governor in Council or the Commissioner in Executive Council as the case may be;

7.4.3.2 notice of the intention of any Authority to seek approval under 7.4.3.1 shall be given to the Affected Yukon First Nation by the Authority; and

7.4.3.3 notice of the intention shall not be given until the public hearing process under 7.6.0 or the public hearing in accordance with Legislation has been completed.

## 7.5.0 Procedures for Compensation

7.5.1 An Authority shall negotiate with the Affected Yukon First Nation compensation for Settlement Land being expropriated or acquired, pursuant to this chapter.

7.5.2 When the agreement of the Affected Yukon First Nation pursuant to 7.5.1 is not obtained, the following provisions shall apply:

7.5.2.1 the Surface Rights Board shall determine any dispute over compensation upon an application by either the Authority or Affected Yukon First Nation, except where the expropriation is pursuant to the National Energy Board Act, R.S.C. 1985, c. -7;

7.5.2.2 compensation ordered by the Surface Rights Board may be,

(a) upon request by the Affected Yukon First Nation, and, if available and identified by the Affected Yukon First Nation, Land of the Authority within the Traditional Territory of the Affected Yukon First Nation,

(b) money,

(c) other forms of compensation, or

(d) any combination of above;

7.5.2.3 when the Affected Yukon First Nation requests Land to be all or part of the compensation, the Surface Rights Board shall,

- (a) determine whether the Authority holds Land identified by the Affected Yukon First Nation which is within its Traditional Territory and whether that Land is available,
- (b) determine the value, in accordance with 7.5.2.7, of the Authority's Land which is available,
- (c) order the Authority to transfer to the Affected Yukon First Nation the amount of available Land necessary to provide compensation, and
- (d) subject to 7.5.2.4, where Land transferred to the Affected Yukon First Nation pursuant to 7.5.2.3(c) and 7.5.2.4(c) is not sufficient to provide compensation in Land as requested, order the balance of compensation to be in the form of 7.5.2.2(b), or (c), or both;

#### 7.5.2.4

if the expropriating Authority is not Government and the Surface Rights Board has determined there is not sufficient available Land for the purposes of 7.5.2.3,

- (a) the Board shall so notify Government and thereafter Government shall be a party to the proceedings,
- (b) the Board shall determine whether Government holds available Land which is contiguous to the Settlement Land and within the Affected Yukon First Nation's Traditional Territory, whether that Land is available and if so the value of that available Land in accordance with 7.5.2.7,
- (c) the Board shall order Government to transfer to the Affected Yukon First Nation available Land up to the value, which in addition to the value of Land provided under 7.5.2.3, is necessary to provide compensation in Land as requested by the Affected Yukon First Nation under 7.5.2.3, and

- (d) the Authority shall pay to Government the value of the Land provided under 7.5.2.4 (c) and all costs of Government associated with the transfer;

7.5.2.5 the Surface Rights Board shall consider the matters set out in 8.4.1 when assessing the value of expropriated Settlement Land;

7.5.2.6 Land is not available for the purposes of 7.5.2.3 or 7.5.2.4, if it is,

- (a) Land subject to an agreement for sale or a lease containing an option to purchase, unless both Government and the Person holding such an interest in the Land consent,
- (b) Land subject to a lease, unless both Government and the lessee consent,
- (c) a highway or highway right-of-way,
- (d) Land within 30 metres of the boundary line between the Yukon and Alaska, the Yukon and Northwest Territories, and the Yukon and British Columbia,
- (e) Land determined by the Surface Rights Board to be occupied or used by the expropriating Authority, any federal or territorial department or agency, or by a municipal government except with the consent of that expropriating Authority, department, agency or municipal government,
- (f) Land determined by the Surface Rights Board to be required for future use by the expropriating Authority, any federal or territorial department or agency, or by a municipal government except with the consent of that expropriating Authority, department, agency or municipal government,

- (g) Land which the Surface Rights Board determines would, if provided to a Yukon First Nation, unreasonably limit the expansion of Yukon communities,
- (h) Land which the Surface Rights Board determines would, if provided to a Yukon First Nation, unreasonably limit access for any Person to Navigable Water or highways, or
- (i) such other Land as the Surface Rights Board in its discretion determines is not available;

7.5.2.7

in determining the value of the Land to be provided by an Authority, the Surface Rights Board shall consider, in addition to the market value of the Land,

- (a) the value of Fish and Wildlife Harvesting and of gathering to the Affected Yukon First Nation,
- (b) any potential effect of the Land to be provided by an Authority upon other Settlement Land of the Affected Yukon First Nation,
- (c) any cultural or other special value of the Land to the Affected Yukon First Nation, and
- (d) such other factors as may be permitted by the Legislation establishing the Board;

7.5.2.8

Land provided or ordered as compensation under this chapter, which is within the Traditional Territory of the Affected Yukon First Nation, shall be transferred to the Affected Yukon First Nation in fee simple and shall, in accordance with 7.5.2.9, be designated as,

- (a) Category A Settlement Land when Mines and Minerals are included, or
- (b) Category B Settlement Land or Fee Simple Settlement Land when Mines and Minerals are not included;

7.5.2.9 prior to making an order under 7.5.2.3(c) or 7.5.2.4(c), the designation of Land under 7.5.2.8(b), and the designation of the acquired Land as Developed Settlement Land or Undeveloped Settlement Land shall be determined,

- (a) by agreement between the Affected Yukon First Nation and Government, or
- (b) failing agreement, by the Surface Rights Board; and

7.5.2.10 the designation of Land provided as compensation shall not affect any surrender in respect of such Land.

7.5.3 Nothing in this chapter prevents the Authority and the Affected Yukon First Nation from agreeing that Land outside of the Traditional Territory of the Affected Yukon First Nation be part of compensation for expropriation. Land outside the Affected Yukon First Nation's Traditional Territory shall not become Settlement Land, unless otherwise agreed to by Government, the Affected Yukon First Nation and the Yukon First Nation in whose Traditional Territory the Land is located.

## **7.6.0 Public Hearings**

7.6.1 Where an Affected Yukon First Nation objects to an expropriation, there shall be a public hearing in respect of the location and extent of the Land to be acquired. The procedure for the public hearing shall include the following:

- 7.6.1.1 notice to the Affected Yukon First Nation and the public;
- 7.6.1.2 an opportunity for the Affected Yukon First Nation and the public to be heard;
- 7.6.1.3 discretion in the holder of the hearing to award costs, including interim costs, to the Affected Yukon First Nation; and
- 7.6.1.4 the preparation and submission of a report by the hearing panel to the Minister.

7.6.2 Nothing in this chapter shall be construed to eliminate or duplicate any legislative requirement for a public hearing in respect of expropriation.

#### **7.7.0 Expropriation pursuant to the National Energy Board Act**

7.7.1 Where Settlement Land is expropriated pursuant to the National Energy Board Act, R.S.C. 1985, c. N-7, this chapter applies except that the powers of the Surface Rights Board shall be exercised by the board, committee, panel or other body authorized by the National Energy Board Act, R.S.C. 1985, c. N-7 to settle disputes in respect of expropriation.

7.7.2 The board, committee, panel or other body referred to under 7.7.1 shall include at least one nominee of the Affected Yukon First Nation.

#### **7.8.0 Expropriation for Hydro-electric and Water Storage Projects**

7.8.1 Government may identify on maps described in 5.3.1 no more than 10 sites for a hydro-electric or water storage project in the Yukon.



### **Specific Provision**

- 7.8.1.1 Government has identified in the Traditional Territory of the Selkirk First Nation, on Territorial Resource Base Maps 105 L/13 and 115 I/16, dated July 21, 1997, in Appendix B - Maps, which forms a separate volume to this Agreement, the Granite Canyon Hydro Project as a hydro-electric or water storage project site pursuant to 7.8.1.
- 7.8.1.2 Government shall, at regular ten year intervals, commencing in the tenth year following the year of the Effective Date of this Agreement, Consult with the Selkirk First Nation on the status of the Granite Canyon Hydro Project.
- 7.8.1.3 For greater certainty, Government shall not be deemed to have relinquished the Granite Canyon Hydro Project as an identified hydro-electric or water storage project pursuant to 7.8.1 by reason only that it failed to Consult with the Selkirk First Nation pursuant to 7.8.1.2.
- 7.8.1.4 If Government decides to relinquish the Granite Canyon Hydro Project as an identified hydro-electric or water storage project pursuant to 7.8.1, Government shall notify the Selkirk First Nation of that decision and thereafter, 7.8.1.1 to 7.8.1.4 of this Chapter and 5.14 to 5.17 of Schedule A, Part I of Chapter 22 - Economic Development Measures, shall be of no further force or effect.

- 7.8.2 Sites shall be identified pursuant to 7.8.1 in a Yukon First Nation's Traditional Territory before that Yukon First Nation's final land selection is signed by the negotiators to that Yukon First Nation's Final Agreement.

- 7.8.3 An Authority exercising a Flooding Right over Settlement Land identified pursuant to 7.8.1 and 7.8.2 shall pay compensation to the Affected Yukon First Nation for improvements only, provided the sum of such compensation to all Affected Yukon First Nations for that hydro-electric or water storage project shall not exceed three percent of the Cost of Construction of the project.
- 7.8.4 An Authority exercising a Flooding Right over Settlement Land, other than for those sites identified pursuant to 7.8.1 and 7.8.2, shall pay compensation pursuant to this chapter except that in assessing compensation for Land and improvements, the Surface Rights Board shall not consider 8.4.1.8 or 7.5.2.7(c) and the sum of such compensation to all Affected Yukon First Nations for all improvements shall not exceed three percent of the Cost of Construction of that hydro-electric or water storage project.

## **CHAPTER 8 - SURFACE RIGHTS BOARD**

### **8.1.0 General**

8.1.1 A Surface Rights Board ("the Board") shall be established pursuant to Legislation enacted no later than the effective date of Settlement Legislation.

8.1.2 The Minister shall appoint an even number of persons, no greater than 10, to the Board, one-half of which shall be nominees of the Council for Yukon Indians.

8.1.3 In addition to the persons appointed pursuant to 8.1.2, the Minister shall appoint, upon the recommendation of the Board, an additional person as a member of the Board who shall serve as chairperson.

8.1.4 The Surface Rights Board Legislation shall provide that:

8.1.4.1 applications to the Board shall be heard and decided by panels of three members of the Board;

8.1.4.2 where an application is in respect of Settlement Land, one member of the panel shall be a member nominated to the Board by the Council for Yukon Indians;

8.1.4.3 notwithstanding 8.1.4.1 and 8.1.4.2, any dispute may be heard and decided by one member of the Board, with the consent of the parties to the dispute; and

8.1.4.4 any order of a panel referred to in 8.1.4.1 or of one member referred to in 8.1.4.3 shall be considered an order of the Board.

8.1.5 To the extent an order of the Board is in conflict with:

8.1.5.1 a Decision Document that the Decision Body is empowered to implement; or

8.1.5.2 any requirement imposed pursuant to any Legislation regulating the activity for which the access is obtained, but not the access itself,

the Decision Document or the requirement shall prevail to the extent of that conflict whether the order was issued before or after the Decision Document or requirement.

8.1.6 Amendments to the Yukon Quartz Mining Act, R.S.C. 1985, c. Y-4 and the Yukon Placer Mining Act, R.S.C. 1985, c. Y-3 shall be made to conform with the provisions of this chapter.

8.1.7 An order of the Board shall be enforceable in the same manner as if it were an order of the Supreme Court of the Yukon.

8.1.8 A right of access to Settlement Land under an interim order shall not be exercised until the Person relying upon the interim order has paid to the affected Yukon First Nation, and to any affected interest holder designated by the Board, an entry fee, plus any interim compensation ordered by the Board.

8.1.9 Before any matter is referred to the Board, the parties to any proceeding pursuant to 8.2.1 shall first attempt to negotiate an agreement.

## **8.2.0 Jurisdiction of the Board**

8.2.1 The Board shall have jurisdiction to hear and determine:

8.2.1.1 any matter referred to the Board by a Settlement Agreement;

8.2.1.2 on Non-Settlement Land, a dispute between a Person, other than Government, with an interest or right in the surface and a Person, other than Government, with a right of access to or interest in the Mines and Minerals therein and thereunder; and

8.2.1.3 such other matters as may be set out in the Legislation establishing the Board.

### **8.3.0 Powers and Responsibilities of the Board**

8.3.1 In any proceeding before the Board pursuant to 8.2.1, it shall have the following powers and responsibilities:

- 8.3.1.1 to establish the terms and conditions of a right of access or use referred to the Board, whether or not compensation is included;
- 8.3.1.2 to award compensation for the exercise of a right of access or use of the surface, and for damage resulting from access or use of the surface, and from the activities of the Person having the interest in the Mines and Minerals and to specify the time and method of payment thereof subject to exceptions, limitations and restrictions set out in a Settlement Agreement, and to determine the amount of such compensation;
- 8.3.1.3 to determine compensation for Settlement Land expropriated and to carry out the responsibilities set out in Chapter 7 - Expropriation;
- 8.3.1.4 to determine, where required by a Settlement Agreement, whether access is reasonably required and whether that access is not also practicable and reasonable across Crown Land;
- 8.3.1.5 to designate the route of access on Settlement Land determined least harmful to the interest of the affected Yukon First Nation while being reasonably suitable to the Person wishing access;
- 8.3.1.6 to award costs, including interim costs;
- 8.3.1.7 to grant an interim order in respect of any matter in 8.3.1.1, 8.3.1.2, 8.3.1.3 or 8.3.1.5 where the Board has not heard all the evidence or completed its deliberation in respect of that matter;

- 8.3.1.8 except for a matter in respect of expropriation or acquisition of Settlement Land under Chapter 7 - Expropriation, to review periodically, any order of the Board, upon application by any party to the proceedings, where there has been a material change since the Board made the order;
- 8.3.1.9 after a review is completed under 8.3.1.8, to affirm, amend or terminate any order of the Board;
- 8.3.1.10 to prescribe rules and procedures to govern any negotiations required before a matter is referred to the Board; and
- 8.3.1.11 such additional powers and responsibilities as may be set out in the Legislation establishing the Board.

8.3.2 An order of the Board may include:

- 8.3.2.1 the hours, days and times of the year during which access or use of the surface may be exercised;
- 8.3.2.2 notice requirements;
- 8.3.2.3 limitations on the location of use and the route of access;
- 8.3.2.4 limitations on equipment;
- 8.3.2.5 abandonment requirements and restoration work;
- 8.3.2.6 a requirement to provide security in the form of a letter of credit, guarantee or indemnity bond, insurance or any other form of security satisfactory to the Board;
- 8.3.2.7 rights of inspection or verification;
- 8.3.2.8 a requirement to pay the entry fee payable to the affected Yukon First Nation;
- 8.3.2.9 a requirement to pay to the affected Yukon First Nation the compensation determined;

- 8.3.2.10 limitations on the number of Persons and on the activities which may be carried out by Persons; and
- 8.3.2.11 such other terms and conditions as may be permitted by the Legislation establishing the Board.

#### **8.4.0 Compensation**

8.4.1 In determining the amount of compensation for the affected Yukon First Nation for access to, use of, or expropriation of Settlement Land, the Board shall consider:

- 8.4.1.1 the market value of the interest in the Settlement Land;
- 8.4.1.2 any loss of use, loss of opportunity, or interference with the use of the Settlement Land;
- 8.4.1.3 any impact on Fish and Wildlife Harvesting within Settlement Land;
- 8.4.1.4 any impact on Fish and Wildlife and their habitat within Settlement Land;
- 8.4.1.5 any impact upon other Settlement Land;
- 8.4.1.6 any damage which may be caused to the Settlement Land;
- 8.4.1.7 any nuisance, inconvenience, and noise;
- 8.4.1.8 any cultural or other special value of the Settlement Land to the affected Yukon First Nation;
- 8.4.1.9 the expense associated with the implementation of any order of the Board; and
- 8.4.1.10 such other factors as may be permitted by the Legislation establishing the Board,

but shall not:

- 8.4.1.11 decrease the compensation on account of any reversionary interest remaining in the Yukon First Nation or any entry fee payable;
  - 8.4.1.12 increase the compensation on account of any aboriginal claim, right, title or interest; or
  - 8.4.1.13 increase the compensation by taking into account the value of Mines and Minerals on or under Category B or Fee Simple Settlement Land.
- 8.4.2 The Surface Rights Board Legislation shall set out the authority of the Board to establish the entry fee and shall set out the parameters for establishment of the entry fee.
- 8.4.3 If an interim order for access is granted before all matters have been determined, a hearing in respect of all these outstanding matters shall be commenced no later than 30 days from the date of the interim order as the case may be.

#### **8.5.0 Legislation**

- 8.5.1 The parties to the Umbrella Final Agreement shall negotiate guidelines for drafting Surface Rights Board Legislation and these drafting guidelines shall be consistent with the provisions of this chapter.
- 8.5.2 Failing agreement on guidelines, Government shall Consult with the Council for Yukon Indians and with Yukon First Nations during the drafting of the Surface Rights Board Legislation.



## **CHAPTER 9 - SETTLEMENT LAND AMOUNT**

### **9.1.0 Objective**

9.1.1 The objective of this chapter is to recognize the fundamental importance of land in protecting and enhancing a Yukon First Nation's cultural identity, traditional values and life style, and in providing a foundation for a Yukon First Nation's self-government arrangements.

### **9.2.0 Yukon Settlement Land Amount**

9.2.1 Subject to the Umbrella Final Agreement, the total amount of Settlement Land for the requirements of all Yukon First Nations shall not exceed 16,000 square miles (41,439.81 square kilometres).

9.2.2 The total amount shall contain no more than 10,000 square miles (25,899.88 square kilometres) of Category A Settlement Land.

### **9.3.0 Yukon First Nations' Settlement Land Amount**

9.3.1 The amount of Settlement Land to be allocated to each Yukon First Nation has been determined in the context of the overall package of benefits in the Umbrella Final Agreement.

- 9.3.2 The Umbrella Final Agreement as initialled by the negotiators on March 31, 1990, contemplated that the Yukon First Nations and Government would agree to the allocation of Settlement Land amounts described in 9.2.0 for each Yukon First Nation by May 31, 1990, and in the absence of such agreement, Government, after consultation with the Council for Yukon Indians, would determine that allocation.
- 9.3.3 In the absence of the agreement referred to in 9.3.2, Government, after consultation with the Council for Yukon Indians, has determined the allocation of Settlement Land among the Yukon First Nations and that allocation is set out in Schedule A - Allocation of Settlement Land Amount attached to this chapter.
- 9.3.4 The land allocation determined under 9.3.3 for Yukon First Nations which do not have a Yukon First Nation Final Agreement may be varied by agreement in writing of all affected Yukon First Nations and Government.
- 9.3.5 Negotiation of final Settlement Land selections for a Yukon First Nation shall not commence until the allocation pursuant to 9.3.2 or 9.3.3 is determined.
- 9.3.6 A Yukon First Nation Final Agreement shall identify and describe Settlement Land for that Yukon First Nation.

#### **9.4.0 Land Negotiation Restrictions**

- 9.4.1 Privately owned land, land subject to an agreement for sale or land subject to a lease containing an option to purchase is not available for selection as Settlement Land, unless the Person holding such an interest in the land consents.
- 9.4.2 Unless otherwise agreed to in a Yukon First Nation Final Agreement, the following land is not available for selection as Settlement Land:

- 9.4.2.1 except as provided in 9.4.1, land under lease, subject to the lease-holder's interest;
- 9.4.2.2 land occupied by or transferred to any department or agency of the federal, territorial or municipal government;
- 9.4.2.3 land reserved in the property records of Northern Program, Department of Indian Affairs and Northern Development, except land reserved for that Department's Indian and Inuit Program, in favour of a Yukon First Nation or a Yukon Indian Person;
- 9.4.2.4 a highway or highway right-of-way as defined in the Highways Act, S.Y. 1991, c.7, but in no case shall a highway right-of-way have a width greater than 100 metres; and
- 9.4.2.5 the border reserve constituting any land within 30 metres of the boundary line between the Yukon and Alaska, the Yukon and Northwest Territories, and the Yukon and British Columbia.

#### **9.5.0 Balanced Selection**

- 9.5.1 To establish a balanced allocation of land resource values, the land selected as Settlement Land shall be representative of the nature of the land, the geography and the resource potential within each Yukon First Nation's Traditional Territory, and the balance may vary among Yukon First Nations' selections in order to address their particular needs.
- 9.5.2 The selection of Site Specific Settlement Land shall not be restricted solely to traditional use and occupancy, but may also address other needs of Yukon First Nations.

- 9.5.3 The sizes of Site Specific Settlement Land may vary depending on the geography and needs of individual Yukon First Nations.
- 9.5.4 Except as otherwise agreed on a case by case basis, Settlement Land may only be selected by a Yukon First Nation within its Traditional Territory.
- 9.5.5 Land selections shall allow for reasonable expansion by Yukon First Nations and other Yukon communities.
- 9.5.6 Land selections on both sides of a major waterway or Major Highway should be avoided, but may be considered with each Yukon First Nation on a case by case basis to ensure final land selections provide a balanced selection and reasonable access for all users.
- 9.5.7 A Yukon First Nation may select land to address needs including, but not limited to the following:
- 9.5.7.1 hunting areas;
  - 9.5.7.2 fishing areas;
  - 9.5.7.3 trapping areas;
  - 9.5.7.4 habitat areas and protected areas;
  - 9.5.7.5 gathering areas;
  - 9.5.7.6 historical, archaeological or spiritual areas;
  - 9.5.7.7 areas of residence or occupancy;

9.5.7.8 access to waterbodies and use of waterbodies;

9.5.7.9 agriculture or forestry areas;

9.5.7.10 areas of economic development potential; and

9.5.7.11 wilderness areas.

9.5.8 Settlement Land may abut a right-of-way of a highway or road.

9.5.9 Settlement Land may abut Navigable Water and

non-Navigable Water notwithstanding any Waterfront Right-of-Way that may be identified pursuant to Chapter 5 - Tenure and Management of Settlement Land.

#### **9.6.0 Crown and Settlement Land Exchange**

9.6.1 A Yukon First Nation and Government may agree to exchange Crown Land for Settlement Land and may agree that Crown Land exchanged for Settlement Land will be Settlement Land provided that any such agreement shall not affect the cession, release and surrender of any aboriginal claim, right, title or interest in respect of that Crown Land.

**ANNEXE A**  
**RÉPARTITION DES TERRES VISÉES PAR LE RÈGLEMENT**

	Cat. A		Fee Simple & Cat. B		Total		Allocation Under 4.3.4	
	Sq. miles	Sq. Km*	Sq. miles	Sq. Km*	Sq. miles	Sq. Km*	Sq. miles	Sq. Km*
Carcross/Tagish First Nation	400	1 036.00	200	518.00	600	1 553.99	2.90	7.51
Champagen and Aishihik First Nations	475	1 230.24	450	1 165.49	925	2 395.74	12.17	31.52
Dawson First Nation	600	1 553.99	400	1 036.00	1 000	2 589.99	3.29	8.52
Kluane First Nation	250	647.50	100	259.00	350	906.50	2.63	6.81
Kwanlin Dun First Nation	250	647.50	150	388.50	400	1 036.00	2.62	6.79
Liard First Nation	930	2 408.69	900	2 330.99	1 830	4 739.68	2.63	6.81
Little Salmon/Carmacks First Nation	600	1 553.99	400	1 036.00	1 000	2 589.99	3.27	8.47
First Nation of Nacho Nyak Dun	930	2 408.69	900	2 330.99	1 830	4 739.68	3.58	9.27
Ross River Dena Council	920	2 382.79	900	2 330.99	1 820	4 713.78	2.75	7.12
Selkirk First Nation	930	2 408.69	900	2 330.99	1 820	4 739.68	2.62	6.79
Ta'an Kwach'an Council	150	388.50	150	388.50	300	777.00	3.21	8.31
Teslin Tlingit Council	475	1 230.24	450	1 165.49	925	2 395.74	12.88	33.36
Vuntut Gwitchin First Nation	2990	7 744.06	--	--	2 990	7 744.06	2.74	7.10
White River First Nation	100	259.00	100	259.00	200	518.00	2.72	7.04
<b>TOTAL</b>	<b>10 000</b>	<b>25 899.88</b>	<b>6 000</b>	<b>15 539.93</b>	<b>16 000</b>	<b>41 439.81</b>	<b>60.00</b>	<b>155.40</b>

\* Conversion to square kilometres is approximate

## **CHAPTER 10 - SPECIAL MANAGEMENT AREAS**

### **10.1.0 Objective**

10.1.1 The objective of this chapter is to maintain important features of the Yukon's natural or cultural environment for the benefit of Yukon residents and all Canadians while respecting the rights of Yukon Indian People and Yukon First Nations.

### **10.2.0 Definitions**

In this chapter, the following definition shall apply.

"Special Management Area" means an area identified and established within a Traditional Territory pursuant to this chapter and may include:

- (a) national wildlife areas;
- (b) National Parks, territorial parks, or national park reserves, and extensions thereof, and national historic sites;
- (c) special Wildlife or Fish management areas;
- (d) migratory bird sanctuaries or a wildlife sanctuary;
- (e) Designated Heritage Sites;
- (f) watershed protection areas; and
- (g) such other areas as a Yukon First Nation and Government agree from time to time.

### **10.3.0 Establishment of Special Management Areas**

10.3.1 Provisions in respect of an existing Special Management Area may be set out in a Yukon First Nation Final Agreement.

- 10.3.2 Special Management Areas may be established in accordance with the terms of this chapter pursuant to a Yukon First Nation Final Agreement or pursuant to Laws of General Application.

**Specific Provision**

- 10.3.2.1 The McArthur Wildlife Sanctuary is established as a Special Management Area, to be known as "Ddhaw Ghro Habitat Protection Area", and the specific provisions in respect of such Special Management Area are set out in Schedule A - "Ddhaw Ghro Habitat Protection Area", attached to this chapter.
- 10.3.2.2 The lake known as Ta'tla Mun is established as a Special Management Area and the specific provisions in respect of such Special Management Area are set out in Schedule B - "Ta'tla Mun Special Management Area", attached to this chapter.
- 10.3.2.3 The wetland area known as Lhutsaw is established as a Special Management Area and the specific provisions in respect of such Special Management Area are set out in Schedule C - "Lhutsaw Wetland Habitat Protection Area", attached to this chapter.

- 10.3.3 Except as provided in a Yukon First Nation Final Agreement, where Government proposes to establish a Special Management Area, Government shall refer the proposal to the affected Renewable Resources Council for its review and recommendations.

**Specific Provision**

- 10.3.3.1 Nothing in 10.3.3 shall be construed to prevent Government from informing the Selkirk First Nation of a proposal to establish a Special Management Area.



- 10.3.4 Government may refer proposals to establish historic territorial parks, national historic sites administered by the Canadian Parks Service or to designate Heritage Sites as Designated Heritage Sites to the Heritage Resources Board established pursuant to 13.5.0 instead of the affected Renewable Resources Council for its review and recommendations.

**Specific Provision**

- 10.3.4.1 Nothing in 10.3.4 shall be construed to prevent Government from informing the Selkirk First Nation of a proposal referred to in 10.3.4.

- 10.3.5 A Special Management Area may not include Settlement Land without the consent of the affected Yukon First Nation.

**10.4.0 Rights and Interests of Yukon First Nations**

- 10.4.1 Where a Special Management Area is proposed to be established which will adversely affect rights of a Yukon First Nation under a Settlement Agreement, Government and the affected Yukon First Nation shall, at the request of either party, negotiate an agreement to:

- 10.4.1.1 establish any rights, interests and benefits of the affected Yukon First Nation in the establishment, use, planning, management and administration of the Special Management Area; and

- 10.4.1.2 mitigate adverse effects of the establishment of the Special Management Area on the affected Yukon First Nation.

- 10.4.2 Agreements negotiated pursuant to 10.4.1:

- 10.4.2.1 shall address the rights Yukon Indian People have for Harvesting Fish and Wildlife within the Special Management Area;

- 10.4.2.2 may address the economic and employment opportunities and benefits for the affected Yukon First Nation;

- 10.4.2.3 may address whether, and on what terms, including provisions on management, Settlement Land may be included in the Special Management Area; and
- 10.4.2.4 may include such other provisions as Government and the affected Yukon First Nation may agree.
- 10.4.3 Where Government and the affected Yukon First Nation do not agree on the terms of an agreement pursuant to 10.4.1, the parties may refer the outstanding issues to the dispute resolution process under 26.4.0.
- 10.4.4 Where mediation under 10.4.3 does not result in agreement, the Government may establish the Special Management Area.
- 10.4.5 Notwithstanding 6.2.3.2, access by a Yukon Indian Person to a Special Management Area established pursuant to 10.4.4 for Harvesting Fish or Wildlife pursuant to a Settlement Agreement may be limited or prohibited only for reasons of Conservation, public health or public safety.
- 10.4.6 Government and the affected Yukon First Nation may, at any time after the establishment of a Special Management Area pursuant to 10.4.4, negotiate an agreement pursuant to 10.4.1 in respect of that Special Management Area, in which case 10.4.5 shall no longer apply to that Special Management Area.
- 10.4.7 Nothing in this chapter shall be construed to derogate from any provision respecting National Parks in the Yukon First Nation Final Agreements for the Selkirk First Nation, the Kluane First Nation, the White River First Nation or the Vuntut Gwitchin First Nation.
- 10.4.8 Any agreement concluded between Government and the affected Yukon First Nation pursuant to 10.4.1 may be amended according to the terms set out in that agreement.
- 10.4.9 Any agreement concluded between Government and the affected Yukon First Nation pursuant to 10.4.1 may be appended to and form part of that Yukon First Nation's Final Agreement if Government and the Yukon First Nation agree.

## **10.5.0 Management of Future Special Management Areas**

- 10.5.1 Unless Government otherwise agrees, Government shall be the management authority for Special Management Areas on Non-Settlement Land.
- 10.5.2 Government shall prepare, or have prepared, a management plan for each Special Management Area established pursuant to a Yukon First Nation Final Agreement after the Effective Date of that Yukon First Nation Final Agreement.
- 10.5.3 Government shall make best efforts to complete the management plan within five years of the establishment of the Special Management Area.
- 10.5.4 Government shall review each management plan at least once every 10 years.
- 10.5.5 The management plan and any proposed amendments thereto shall be referred before approval to the relevant Renewable Resources Council or to the Yukon Heritage Resources Board, as the case may be, for its review and recommendations.
- 10.5.6 The provisions of 16.8.0 shall apply in respect of the implementation of any recommendations made pursuant to 10.5.5.
- 10.5.7 Should a management advisory body other than a body referred to in 10.5.5 be established by Government for the purpose of 10.3.3, 10.3.4 or 10.5.5, Yukon First Nation representation shall be 50 percent on any such body unless Government and the affected Yukon First Nation agree otherwise. Any such management advisory body shall have the responsibilities of a Renewable Resource Council or the Heritage Resources Board set out in this chapter.
- 10.5.8 Except as provided otherwise in this chapter, or in a Yukon First Nation Final Agreement, all National Parks and extensions, national park reserves and extensions and national historic parks and sites shall be planned, established and managed pursuant to the National Parks Act, R.S.C. 1985, c. N-14, other Legislation, the Canadian Parks Service policy and park management plans in effect from time to time.

10.5.9 Where a Special Management Area includes a National Park or its extension or national park reserve or its extension, exploration and development of non-renewable resources shall not be permitted, except in respect of the removal of sand, stone and gravel for construction purposes within the National Park or national park reserve.

10.5.10 Where a Special Management Area includes Yukon First Nation Burial Sites or places of religious and ceremonial significance to a Yukon First Nation, the management plan shall be consistent with the provisions of Chapter 13 - Heritage and shall provide for the protection and preservation of the sites or places.

#### **10.6.0 Relationship to the Land Use Planning and Development Assessment Processes**

10.6.1 Special Management Areas established after the effective date of Settlement Legislation shall be:

10.6.1.1 consistent with land use plans approved in accordance with Chapter 11 - Land Use Planning; and

10.6.1.2 subject to the provisions of Chapter 12 - Development Assessment.

#### **10.7.0 Fish and Wildlife Management**

10.7.1 Fish and Wildlife within Special Management Areas shall be managed in accordance with Chapter 16 - Fish and Wildlife.

## SCHEDULE "A"

### DDHAW GHRO HABITAT PROTECTION AREA

#### **1.0 Objectives**

1.1 The objectives of this schedule are:

1.1.1 to establish the Ddhaw Ghro Habitat Protection Area (the "Area") to conserve and protect important Fish and Wildlife and Fish and Wildlife habitat for the benefit of all Yukon people;

1.1.2 to recognize and protect the use of the Area by the Selkirk People and Nacho Nyak Dun and to facilitate their interest in sharing the Area with Little Salmon/Carmacks People and other Yukon Indian People;

1.1.3 to provide for the management and protection of the Area;

1.1.4 to protect the full diversity of Wildlife populations and their habitats in the Area from activities which could reduce the Area's capability to support Wildlife; and

1.1.5 to encourage public awareness of and appreciation for the natural resources of the Area.

#### **2.0 Definitions**

In this schedule, the following definitions shall apply.

"Forest Resources" has the same meaning as in Chapter 17 - Forest Resources.

"Little Salmon/Carmacks People" has the same meaning as in the Little Salmon/Carmacks First Nation Final Agreement.

"Nacho Nyak Dun" has the same meaning as in the First Nation of Nacho Nyak Dun Final Agreement.

"Nacho Nyak Dun Firm" has the same meaning as in the First Nation of Nacho Nyak Dun Final Agreement.

### **3.0 Sharing Process**

- 3.1 For greater certainty, the Selkirk First Nation may cause any of its rights, obligations and liabilities set out in this schedule to be held or performed on its behalf by an entity comprised of the Selkirk First Nation, the First Nation of Nacho Nyak Dun, the Little Salmon/Carmacks First Nation or other Yukon First Nations, in accordance with 2.11.7 of Chapter 2 - General Provisions.

### **4.0 Establishment**

- 4.1 The boundaries of the Area shall be as set out on map "Ddhaw Ghro Habitat Protection Area, (DGHPA)" in Appendix B - Maps, which forms a separate volume to this Agreement and which for greater certainty includes Parcel S-60B/D and excludes Parcels R-27A and S-116A/D.
- 4.2 Canada shall transfer to the Commissioner of the Yukon Territory the administration and control of Crown Land within the Area, excluding the mines and minerals and the right to work the mines and minerals, as soon as practicable after the Effective Date of this Agreement.
- 4.3 As soon as practicable after the transfer referred to in 4.2, the Yukon shall designate the Area as a protected habitat area pursuant to the Wildlife Act, R.S.Y. 1986, c.178.
- 4.4 The designation as a protected habitat area shall not be removed from any part of the Area except with the agreement of Government, the Selkirk First Nation and the First Nation of Nacho Nyak Dun.
- 4.5 Government, the Selkirk First Nation and the First Nation of Nacho Nyak Dun may agree to expand the boundaries of the Area.
- 4.5.1 The boundaries of the Area shall not be altered except with the agreement of Government, the Selkirk First Nation and the First Nation of Nacho Nyak Dun.

- 4.5.2 Government, the Selkirk First Nation or the First Nation of Nacho Nyak Dun may, at any time, request the others to consider an expansion to the boundaries of the Area, in which case the parties shall, within 90 days of receiving the request, advise each other of the manner in which each wishes to address the request.
- 4.5.3 The identification of any expanded boundaries shall be guided by the objectives of and considerations consistent with this schedule.
- 4.5.4 Except as provided for under 4.5.5, the provisions of this schedule shall apply to any area added as a result of the boundary expansion (the "Additional Area").
- 4.5.5 The public harvesting of Wildlife in the Additional Area shall be addressed in the agreement to expand the boundaries.
- 4.5.6 The Additional Area may, for the purposes of this schedule, be designated by a name other than Ddhaw Ghro Habitat Protection Area.
- 4.6 Subject to 4.6.1, Canada shall withdraw the mines and minerals in the Area from locating, prospecting or mining under the Yukon Quartz Mining Act, R.S.C. 1985, c. Y-4 and the Yukon Placer Mining Act, R.S.C. 1985, c. Y-3, from exploration and development under the Canadian Petroleum Resources Act, R.S.C. 1985 (2d Supp.), c. 36, and from staking out a location for the mining of coal and from issuance of a licence to explore for coal pursuant to the Territorial Lands Act, R.S.C. 1985, c. T-7, for 24 months from the Effective Date of this Agreement or until a management plan is approved under 7.0, whichever is earlier.
- 4.6.1 The withdrawal shall be subject to:
- 4.6.1.1 recorded mineral claims and leases under the Yukon Quartz Mining Act, R.S.C. 1985, c. Y-4 and recorded placer mining claims and leases to prospect under the Yukon Placer Mining Act, R.S.C. 1985, c. Y-3, existing on the Effective Date;

- 4.6.1.2 oil and gas rights, interests and privileges under the Canadian Petroleum Resources Act, R.S.C. 1985 (2d Supp.), c. 36, existing on the Effective Date;
- 4.6.1.3 rights granted under section 8 of the Territorial Lands Act, R.S.C. 1985, c. T-7, existing on the Effective Date; and
- 4.6.1.4 new licenses, permits or other rights which may be granted in respect of an interest described in 4.6.1.1, 4.6.1.2, or 4.6.1.3.

## **5.0 Fish and Wildlife**

5.1 The public harvesting of Wildlife shall be prohibited within the Area.

5.2 For greater certainty:

5.2.1 the Selkirk First Nation, Selkirk People, the First Nation of Nacho Nyak Dun and Nacho Nyak Dun have, within the Area, all rights set out in Chapter 16 - Fish and Wildlife, of the Selkirk First Nation Final Agreement and of the First Nation of Nacho Nyak Dun Final Agreement, respectively; and

5.2.2 Little Salmon/Carmacks People have the right to harvest within the Area in accordance with 16.4.0 with the consent of the Selkirk First Nation or the First Nation of Nacho Nyak Dun pursuant to 16.5.0 of Chapter 16 - Fish and Wildlife, of this Agreement or of the First Nation of Nacho Nyak Dun Final Agreement, as the case may be.

## **6.0 Management Plan**

6.1 A management plan shall be prepared for the Area.

6.2 A steering committee shall be established to prepare the management plan referred to in 6.1.



- 6.2.1 The steering committee shall be comprised of six members of whom two shall be nominated by Government, two shall be nominated by the Selkirk First Nation and two shall be nominated by the First Nation of Nacho Nyak Dun.
- 6.2.2 Upon request by the steering committee, Government, the Selkirk First Nation and the First Nation of Nacho Nyak Dun shall make available to the steering committee information in their possession reasonably required for the steering committee to carry out its functions under this schedule.
- 6.3 The management plan shall be consistent with the objectives of this schedule.
- 6.4 The steering committee shall consider and the management plan may address matters pertaining to the management of the Area including:
  - 6.4.1 Fish and Wildlife management and protection;
  - 6.4.2 the necessity for inventories of Wildlife and habitat;
  - 6.4.3 habitat management and protection;
  - 6.4.4 land use;
  - 6.4.5 recreational use;
  - 6.4.6 access to and use of the Area for commercial wilderness purposes;
  - 6.4.7 harvesting of Forest Resources;
  - 6.4.8 scientific research;
  - 6.4.9 traditional knowledge, customs and culture of Yukon Indian People in connection with the Area;
  - 6.4.10 the role and views of Yukon First Nation elders in the development of the management plan;
  - 6.4.11 measures to enhance public awareness and appreciation of the Area;

- 6.4.12 recommendations respecting any withdrawal of portions of the mines and minerals of the Area from locating, prospecting or mining under the Yukon Quartz Mining Act, R.S.C. 1985, c. Y-4 and the Yukon Placer Mining Act, R.S.C. 1985, c. Y-3, from exploration and development under the Canada Petroleum Resources Act, R.S.C. 1985 (2d Supp.), c. 36, and from staking out a location for the mining of coal and from issuance of a licence to explore for coal pursuant to the Territorial Lands Act, R.S.C. 1985, c. T-7;
  - 6.4.13 division of the Area into zones for management purposes;
  - 6.4.14 specific economic opportunities for the Selkirk First Nation, Selkirk People, Selkirk Firms, the First Nation of Nacho Nyak Dun, Nacho Nyak Dun and Nacho Nyak Dun Firms; and
  - 6.4.15 permitting or other methods of regulating uses of the Area in accordance with the management plan.
- 6.5 The preparation of the management plan shall include a process for public consultation, which, for greater certainty, includes consultation with Selkirk People, Nacho Nyak Dun and Little Salmon/Carmacks People.
- 6.6 The steering committee shall make best efforts to recommend the management plan to the Minister, the Selkirk First Nation and the First Nation of Nacho Nyak Dun within two years of the Effective Date of this Agreement.
- 6.6.1 If the members of the steering committee are unable to reach agreement on the provisions to be included in the management plan, the Minister, the Selkirk First Nation or the First Nation of Nacho Nyak Dun may refer the matter to dispute resolution pursuant to 26.4.0.

## **7.0 Approval of the Management Plan**

- 7.1 Within 90 days of receipt of the management plan, the Minister, the Selkirk First Nation and the First Nation of Nacho Nyak Dun shall each decide whether to accept, vary or set aside the provisions set out therein.
- 7.2 Government, the Selkirk First Nation and the First Nation of Nacho Nyak Dun shall jointly review their decisions under 7.1.
- 7.3 Where the provisions set out in the management plan are accepted by the Minister, the Selkirk First Nation and the First Nation of Nacho Nyak Dun, such management plan shall be the "Approved Management Plan".
- 7.4 Where the Minister, the Selkirk First Nation and the First Nation of Nacho Nyak Dun do not agree on the provisions set out in the management plan, any of them may refer the matter to the dispute resolution process under 26.4.0.
- 7.5 In the event the dispute referred to the dispute resolution process under 7.4 is not resolved, the Minister may accept, vary or set aside the provisions set out in the management plan and the decision of the Minister shall be forwarded to the Selkirk First Nation and to the First Nation of Nacho Nyak Dun.
- 7.6 The management plan accepted pursuant to the process set out in 7.4 or decided upon under 7.5 shall be the "Approved Management Plan".

## **8.0 Implementation and Review**

- 8.1 The Area shall be managed in accordance with the Wildlife Act, R.S.Y. 1986, c.178 and the Approved Management Plan.
- 8.2 Government, the Selkirk First Nation and the First Nation of Nacho Nyak Dun shall consider and may develop mechanisms or enter into agreements to facilitate co-operative implementation and monitoring of the Approved Management Plan.

- 8.3 Government, the Selkirk First Nation and the First Nation of Nacho Nyak Dun shall jointly review the Approved Management Plan and its implementation no later than five years after its initial approval and shall consider the need for review at least every five years thereafter, provided that there shall be a joint review at least every 10 years.

## **9.0 Interim Measures**

- 9.1 In the period prior to the implementation of the Approved Management Plan, the Area shall be managed in a manner consistent with the objectives of this schedule.

## **10.0 Development Assessment and Land Use Planning**

- 10.1 In carrying out their functions under Chapter 12 - Development Assessment, the Yukon Development Assessment Board and a Designated Office shall consider the Approved Management Plan.
- 10.2 In developing a land use plan which includes all or part of the Area, a Regional Land Use Planning Commission shall consider the Approved Management Plan.

## **11.0 Management of Settlement Land**

- 11.1 The Selkirk First Nation shall manage Parcel R-27A in a manner consistent with the objectives set out in 1.1.1 through 1.1.4 of this schedule.

## SCHEDULE "B"

### TA'TLA MUN SPECIAL MANAGEMENT AREA

#### **1.0 Objectives**

1.1 The objectives of this schedule are:

- 1.1.1 to ensure Conservation in the management and use of the Freshwater Fish resources and their habitat in the lake known as Ta'tla Mun, which lake is shown approximately on map "Ta'tla Mun Special Management Area,(TMSMA)" in Appendix B - Maps, which forms a separate volume to this agreement ("Ta'tla Mun");
- 1.1.2 to enhance and promote the full participation of the Selkirk First Nation and Selkirk People in the management of the Freshwater Fish resources in Ta'tla Mun;
- 1.1.3 to integrate the relevant knowledge and experience of both Selkirk People and the scientific communities in respect of Ta'tla Mun in order to achieve Conservation;
- 1.1.4 to recognize the importance of Ta'tla Mun to Selkirk People and to protect the use of Ta'tla Mun by Selkirk People;
- 1.1.5 to facilitate the priority of the Freshwater Fish food needs of Selkirk People over other uses of Ta'tla Mun;
- 1.1.6 to provide quality Sport Fishing opportunities in Ta'tla Mun; and
- 1.1.7 to deal fairly with all users of Ta'tla Mun.

## **2.0 Definitions**

In this schedule the following definitions shall apply.

"Commercial Fishing License" has the meaning assigned in the Yukon Territory Fishery Regulations.

"Domestic Fishing License" has the meaning assigned in the Yukon Territory Fishery Regulations.

"Sport Fishing" has the meaning assigned in the Yukon Territory Fishery Regulations.

"Ta'tla Mun Sport Fishing License" means the license referred to in section 7(1)(b) and Schedule III of the Yukon Territory Fishery Regulations required to engage in Sport Fishing at Ta'tla Mun.

## **3.0 Commercial and Domestic Fishing Licenses**

3.1 Unless otherwise agreed by Government and the Selkirk First Nation, Government shall not issue any Commercial Fishing Licenses or Domestic Fishing Licenses for Ta'tla Mun.

## **4.0 Fish and Wildlife**

4.1 For greater certainty, the Selkirk First Nation and Selkirk People have, in respect of Ta'tla Mun, all the rights set out in Chapter 16 - Fish and Wildlife.

## **5.0 Management Plan**

5.1 A management plan shall be prepared for Ta'tla Mun.

5.2 A steering committee shall be established to prepare the management plan referred to in 5.1.

5.2.1 The steering committee shall be comprised of four members of whom two shall be nominated by Government and two shall be nominated by the Selkirk First Nation.

- 5.3 The steering committee shall make best efforts to recommend the management plan to Government and the Selkirk First Nation within one year of the Effective Date of this Agreement.
- 5.3.1 If the members of the steering committee are unable to reach agreement on the provisions to be included in the management plan, Government or the Selkirk First Nation may refer the matter to dispute resolution pursuant to 26.4.0.
- 5.4 The preparation of the management plan shall include a process for public consultation, which for greater certainty includes consultation with Selkirk People.
- 5.5 The management plan shall be consistent with the objectives of this schedule.
- 5.6 The steering committee shall consider and the management plan may address any matter pertaining to the management of the Freshwater Fish resources in Ta'tla Mun including:
- 5.6.1 the maintenance of the priority of the Freshwater Fish food needs of Selkirk People over other uses;
- 5.6.2 the maintenance of quality Sport Fishing opportunities;
- 5.6.3 the harvest which might arise from Sport Fishing opportunities;
- 5.6.4 the necessity, if any, of limiting harvest of Freshwater Fish for the purposes of Conservation, including the steps to be taken to achieve such a limit which steps may include:
- a) the establishment of a maximum number of Ta'tla Mun Sport Fishing Licenses that may be issued annually; or

- b) the placement of conditions on Ta'tla Mun Sport Fishing Licenses;
- 5.6.5 the availability of Ta'tla Mun Sport Fishing Licenses from the offices of the Selkirk First Nation as well as from Government;
- 5.6.6 mechanisms by which the Selkirk First Nation and Government shall advise each other of the issuance of any Ta'tla Mun Sport Fishing Licenses;
- 5.6.7 mechanisms by which the Selkirk First Nation may develop and provide to the holders of Ta'tla Mun Sport Fishing Licenses, information containing the recommendations of the Selkirk First Nation for conduct of those using Ta'tla Mun for Sport Fishing; and
- 5.6.8 the necessity, if any, for the establishment of a licensing or permitting regime in respect of a sector of the commercial freshwater sport fishing industry applicable at Ta'tla Mun and the necessity, if any, for the placement of limits upon the number of such licenses or permits to be issued in respect of Ta'tla Mun.

## **6.0 Economic Opportunities**

- 6.1 In the event a licensing or permitting regime in respect of a sector of the commercial freshwater sports fishing industry applicable to Ta'tla Mun is established and Government places a limit upon the number of such licenses or permits to be issued in respect of Ta'tla Mun, the Selkirk First Nation shall have a right of first refusal to acquire a portion of those licenses or permits as follows:
- 6.1.1 in the first year that Government places the limit, Government shall offer to the Selkirk First Nation in respect of Ta'tla Mun:



- 6.1.1.1 25 percent of the licenses or permits to be issued, less the number of licenses or permits required to allow existing operations which are held by Selkirk Firms to operate at their then existing level at Ta'tla Mun; or
- 6.1.1.2 the number of licenses or permits that remain after the then existing operations at Ta'tla Mun have been issued the licenses or permits that are required to allow them to operate at their then existing level,

whichever is less; and

- 6.1.2 in the second year, and in each year thereafter, Government shall offer to the Selkirk First Nation any new licenses or permits issued from time to time until the Selkirk First Nation and Selkirk Firms together have been issued 25 percent of the licenses or permits issued from time to time.
- 6.2 In calculating the number of licenses or permits required to be offered to the Selkirk First Nation pursuant to 3.1 of Schedule A, Part II - Allocation of Licenses, Permits and Concessions of Chapter 22 - Economic Development Measures, the total number of licenses or permits to be issued at Ta'tla Mun in respect of a sector of the commercial freshwater sports fishing industry shall be included in the total number of licenses or permits to be issued in the Traditional Territory of the Selkirk First Nation in respect of that sector.
- 6.3 The number of licenses or permits offered to Selkirk First Nation pursuant to this schedule shall not be included in the calculation of the number of licenses or permits required to be offered to the Selkirk First Nation pursuant to 3.1 of Schedule A, Part II - Allocation of Licenses, Permits and Concessions of Chapter 22 - Economic Development Measures.

6.4 The conditions set out at 4.0 of Schedule A, Part II - Allocation of Licenses, Permits and Concessions of Chapter 22 - Economic Development Measures shall apply, with the exception of 4.13 which shall not apply, to the licenses or permits referred to in 6.0 and the issuance of such licenses or permits.

6.5 Nothing in 6.0 shall be construed to prevent the Selkirk First Nation from acquiring additional licenses or permits in respect of a sector of the commercial freshwater sports fishing industry applicable to Ta'tla Mun in accordance with Laws of General Application.

## **7.0 Approval of the Management Plan**

7.1 Within 90 days of receipt of the management plan, the Minister and the Selkirk First Nation, shall each decide whether to accept, vary or set aside the provisions set out therein.

7.2 Government and the Selkirk First Nation shall jointly review their decisions under 7.1.

7.3 Where the provisions set out in the management plan are accepted by the Minister and the Selkirk First Nation, such management plan shall be the "Approved Management Plan".

7.4 Where the Minister and the Selkirk First Nation do not agree on the provisions set out in the management plan, Government and the Selkirk First Nation shall make reasonable efforts to reach a consensus on the matter, failing which either of them may refer the matter to the dispute resolution process under 26.4.0.

7.5 If the matter referred to the dispute resolution process under 7.4 is not resolved, the Minister may accept, vary or set aside the provisions set out in the management plan and the decision of the Minister shall be forwarded to the Selkirk First Nation.

7.6 The management plan accepted pursuant to the processes set out in 7.4 or decided upon under 7.5 shall be the "Approved Management Plan".

## **8.0 Implementation and Review**

- 8.1 Ta'tla Mun shall be managed in accordance with the Approved Management Plan.
- 8.2 Government and the Selkirk First Nation shall consider and may develop mechanisms or enter into agreements to facilitate co-operative implementation and monitoring of the Approved Management Plan.
- 8.3 Government and the Selkirk First Nation shall jointly review the Approved Management Plan and its implementation no later than three years after its initial approval and shall consider the need for review at least every five years thereafter, provided that there shall be a joint review at least every 10 years.
- 8.4 In the period prior to the implementation of the Approved Management Plan, Ta'tla Mun shall be managed in a manner consistent with the objectives of this schedule.

## SCHEDULE "C"

### LHUTSAW WETLAND HABITAT PROTECTION AREA

#### **1.0 Establishment**

1.1 The boundaries of the Lhutsaw Wetland Habitat Protection Area (the "Area") shall be as set out on map "Lhutsaw Wetland Habitat Protection Area, (LWHPA)" in Appendix B - Maps, which forms a separate volume to this Agreement.

1.1.1 For greater certainty, the Area comprises that portion of Parcel R-3A and the whole of Parcel S-122B and that portion of Non-Settlement Land designated as Lhutsaw Wetland Habitat Protection Area on Territorial Resource Base Maps 115 I/10 and 115 I/15, dated July 21, 1997, in Appendix B - Maps, which forms a separate volume to this Agreement.

1.2 The Yukon shall designate the Area as a protected habitat area pursuant to the Wildlife Act, R.S.Y. 1986, c.178 as soon as practicable after the Effective Date of this Agreement.

1.3 The designation as a protected habitat area shall not be removed from any part of the Area except with the agreement of Government and the Selkirk First Nation.

1.4 Subject to 1.4.1, Canada shall withdraw the mines and minerals in the Non-Settlement Land portions of the Area from locating, prospecting or mining under the Yukon Quartz Mining Act, R.S.C. 1985, c. Y-4 and the Yukon Placer Mining Act, R.S.C. 1985, c. Y-3, from exploration and development under the Canadian Petroleum Resources Act, R.S.C. 1985 (2d Supp.), c. 36, and from staking out a location for the mining of coal and from issuance of a licence to explore for coal pursuant to the Territorial Lands Act, R.S.C. 1985, c. T-7, for 24 months from the Effective Date of this Agreement or until a management plan is approved under 5.0, whichever is earlier.

1.4.1 The withdrawal shall be subject to:

- 1.4.1.1 recorded mineral claims and leases under the Yukon Quartz Mining Act, R.S.C. 1985, c. Y-4 and recorded placer mining claims and leases to prospect under the Yukon Placer Mining Act, R.S.C. 1985, c. Y-3, existing on the Effective Date;
- 1.4.1.2 oil and gas rights, interests and privileges under the Canadian Petroleum Resources Act, R.S.C. 1985 (2d Supp.), c. 36, existing on the Effective Date;
- 1.4.1.3 rights granted under section 8 of the Territorial Lands Act, R.S.C. 1985, c. T-7, existing on the Effective Date; and
- 1.4.1.4 new licenses, permits or other rights which may be granted in respect of an interest described in 1.4.1.1, 1.4.1.2 or 1.4.1.3.

## **2.0 Fish and Wildlife**

- 2.1 For greater certainty, the Selkirk First Nation and Selkirk People have, within the Area, all rights set out in Chapter 16 - Fish and Wildlife.
- 2.2 For greater certainty, the powers and responsibilities of Government and of the Selkirk First Nation for the management of Fish and Wildlife in the Area and their habitats shall be in accordance with Chapter 16 - Fish and Wildlife and with the Selkirk First Nation self-government agreement.

## **3.0 Forest Resources**

- 3.1 In this schedule, "Forest Resources" has the same meaning as in Chapter 17 - Forest Resources.
- 3.2 The harvesting of Forest Resources in the Area shall be subject to the provisions of the management plan approved pursuant to 5.0.

#### **4.0 Management Plan**

- 4.1 A steering committee shall be established to prepare a management plan for the Area.
- 4.2 The steering committee shall be comprised of four members of whom two shall be nominated by the Selkirk First Nation and two shall be nominated by Government.
- 4.3 The management plan shall be consistent with the following objectives:
  - 4.3.1 the Conservation of Fish and Wildlife and Fish and Wildlife habitat for the benefit of Yukon residents;
  - 4.3.2 recognition of the importance of the Area to Selkirk People and protection of the use of the Area by Selkirk People;
  - 4.3.3 the protection of the full diversity of Wildlife populations and their habitats from activities that could reduce the Area's capability to support Wildlife; and
  - 4.3.4 the encouragement of public awareness of and appreciation for the natural resources of the Area.
- 4.4 The steering committee shall consider and the management plan may address matters pertaining to the management of the Area including:
  - 4.4.1 Fish and Wildlife management and protection;
  - 4.4.2 habitat management and protection;
  - 4.4.3 land use;
  - 4.4.4 recreational use;
  - 4.4.5 access to and use of the Area for commercial purposes;
  - 4.4.6 harvesting of Forest Resources;
  - 4.4.7 scientific research;

- 4.4.8 traditional knowledge, customs and culture of Yukon Indian People in connection with the Area;
  - 4.4.9 the role and views of Yukon First Nation elders in the development of the management plan;
  - 4.4.10 measures to enhance public awareness and appreciation of the Area;
  - 4.4.11 recommendations respecting any withdrawal of portions of the mines and minerals of the Area from locating, prospecting or mining under the Yukon Quartz Mining Act, R.S.C. 1985, c. Y-4 and the Yukon Placer Mining Act, R.S.C. 1985, c. Y-3, from exploration and development under the Canada Petroleum Resources Act, R.S.C. 1985 (2d Supp.), c. 36, and from staking out a location for the mining of coal and from issuance of a licence to explore for coal pursuant to the Territorial Lands Act, R.S.C. 1985, c. T-7.
- 4.5 The preparation of the management plan shall include a process for public consultation, which for greater certainty includes consultation with Selkirk People.
- 4.6 The steering committee shall make best efforts to recommend the management plan to the Selkirk First Nation and the Minister within two years of the Effective Date of this Agreement.
- 4.6.1 If the members of the steering committee are unable to reach agreement on the provisions to be included in the management plan, the Minister or the Selkirk First Nation may refer the matter to dispute resolution pursuant to 26.4.0.
- 5.0 Approval and Review of the Management Plan**
- 5.1 The Minister and the Selkirk First Nation shall jointly approve the management plan.

5.2 If the Minister and the Selkirk First Nation are unable to agree on the provisions of the management plan, the Minister or the Selkirk First Nation may refer the matter to the dispute resolution process under 26.3.0.

5.2.1 Nothing in this schedule shall be construed to confer upon an arbitrator appointed pursuant to 5.2, any power to determine resources to be provided in connection with the Area by either the Selkirk First Nation or Government.

5.3 The management plan which is jointly approved pursuant to 5.1 or decided upon pursuant to 5.2 shall be the "Approved Management Plan".

5.4 Government and the Selkirk First Nation shall review the Approved Management Plan no later than five years after its initial approval and no later than every 10 years thereafter.

5.5 Government and the Selkirk First Nation shall refer any proposed amendments to the Approved Management Plan to the Selkirk Renewable Resources Council for its review and recommendations.

## **6.0 Implementation**

6.1 The Area shall be managed in accordance with the Approved Management Plan.

6.2 Prior to the approval of a management plan pursuant to 5.0, the Area shall be managed in accordance with the objectives set out at 4.3.



## **CHAPTER 11 - LAND USE PLANNING**

### **11.1.0 Objectives**

11.1.1 The objectives of this chapter are as follows:

- 11.1.1.1 to encourage the development of a common Yukon land use planning process outside community boundaries;
- 11.1.1.2 to minimize actual or potential land use conflicts both within Settlement Land and Non-Settlement Land and between Settlement Land and Non-Settlement Land;
- 11.1.1.3 to recognize and promote the cultural values of Yukon Indian People;
- 11.1.1.4 to utilize the knowledge and experience of Yukon Indian People in order to achieve effective land use planning;
- 11.1.1.5 to recognize Yukon First Nations' responsibilities pursuant to Settlement Agreements for the use and management of Settlement Land; and
- 11.1.1.6 to ensure that social, cultural, economic and environmental policies are applied to the management, protection and use of land, water and resources in an integrated and coordinated manner so as to ensure Sustainable Development.

### **11.2.0 Land Use Planning Process**

11.2.1 Any regional land use planning process in the Yukon shall:

- 11.2.1.1 subject to 11.2.2, apply to both Settlement and Non-Settlement Land throughout the Yukon;
- 11.2.1.2 be linked to all other land and water planning and management processes established by Government and Yukon First Nations minimizing where practicable any overlap or redundancy between the land use planning process and those other processes;
- 11.2.1.3 provide for monitoring of compliance with approved regional land use plans;
- 11.2.1.4 provide for periodic review of regional land use plans;
- 11.2.1.5 provide for procedures to amend regional land use plans;
- 11.2.1.6 provide for non-conforming uses and variance from approved regional land use plans in accordance with 12.17.0;
- 11.2.1.7 establish time limits for the carrying out of each stage of the process;
- 11.2.1.8 provide for public participation in the development of land use plans;
- 11.2.1.9 allow for the development of sub-regional and district land use plans;
- 11.2.1.10 provide for planning regions which, to the extent practicable, shall conform to the boundaries of Traditional Territories;
- 11.2.1.11 provide, to the extent practicable, for decisions of the Yukon Land Use Planning Council and the Regional Land Use Planning Commissions to be made by consensus; and

- 11.2.1.12 apply to the process of establishing or extending National Parks and national historic parks and commemorating new national historic sites.
- 11.2.2 This chapter shall not apply to:
  - 11.2.2.1 national park reserves established or national historic sites commemorated prior to Settlement Legislation, National Parks or national historic parks once established, or national historic sites once commemorated;
  - 11.2.2.2 subdivision planning or local area planning outside of a Community Boundary; or
  - 11.2.2.3 subject to 11.2.3, land within a Community Boundary.
- 11.2.3 In the event a Community Boundary is altered so as to include within a Community Boundary any land subject to an approved regional land use plan, the regional land use plan shall continue to apply to such land until such time as a community plan is approved for such land.
- 11.3.0 Yukon Land Use Planning Council**
  - 11.3.1 The Land Use Planning Policy Advisory Committee established by the "Agreement on Land Use Planning in Yukon", dated October 22, 1987, shall be terminated as of the effective date of Settlement Legislation and replaced by the Yukon Land Use Planning Council on the same date.
  - 11.3.2 The Yukon Land Use Planning Council shall be made up of one nominee of the Council for Yukon Indians and two nominees of Government. The Minister shall appoint the nominees.
  - 11.3.3 The Yukon Land Use Planning Council shall make recommendations to Government and each affected Yukon First Nation on the following:

- 11.3.3.1 land use planning, including policies, goals and priorities, in the Yukon;
  - 11.3.3.2 the identification of planning regions and priorities for the preparation of regional land use plans;
  - 11.3.3.3 the general terms of reference, including timeframes, for each Regional Land Use Planning Commission;
  - 11.3.3.4 the boundary of each planning region; and
  - 11.3.3.5 such other matters as Government and each affected Yukon First Nation may agree.
- 11.3.4 The Yukon Land Use Planning Council may establish a secretariat to assist the Yukon Land Use Planning Council and Regional Land Use Planning Commissions in carrying out their functions under this chapter.
- 11.3.5 The Yukon Land Use Planning Council shall convene an annual meeting with the chairpersons of all Regional Land Use Planning Commissions to discuss land use planning in the Yukon.
- 11.4.0 Regional Land Use Planning Commissions**
- 11.4.1 Government and any affected Yukon First Nation may agree to establish a Regional Land Use Planning Commission to develop a regional land use plan.
- 11.4.2 Settlement Agreements shall provide for regionally based Regional Land Use Planning Commissions with one third representation by nominees of Yukon First Nations, one third representation by nominees of Government, and one third representation based on the demographic ratio of Yukon Indian People to the total population in a planning region.

### **Specific Provision**

- 11.4.2.1 In the event a Regional Land Use Planning Commission is established for a planning region which includes any part of the Traditional Territory of the Selkirk First Nation, it shall be composed of one-third nominees of the Selkirk First Nation and the other Yukon First Nations whose Traditional Territories are included in the planning region, one-third nominees of Government, and one-third nominees appointed in accordance with 11.4.2.2.
- 11.4.2.2 Government, the Selkirk First Nation and the other Yukon First Nations whose Traditional Territories are included in the planning region shall agree on who may nominate each of the last one-third of the nominees to the Regional Land Use Planning Commission referred to in 11.4.2.1 based upon the demographic ratio of Yukon Indian People to the total population in the planning region.
- 11.4.2.3 The Selkirk First Nation and the other Yukon First Nations whose Traditional Territories are included in the planning region shall determine the proposed Yukon First Nation nominees to the Regional Land Use Planning Commission, prior to entering the process in 11.4.2.5 and 11.4.2.6.
- 11.4.2.4 Failing agreement under 11.4.2.2 or determination under 11.4.2.3, Government, the Selkirk First Nation or any Yukon First Nation whose Traditional Territory is included in the planning region may refer the matter to the dispute resolution process under 26.3.0.
- 11.4.2.5 Prior to any appointments being made to a Regional Land Use Planning Commission, Government, and the Selkirk First Nation and the other Yukon First Nations whose Traditional Territories are included in the planning region, shall make reasonable attempts to reach a consensus as to the individuals which each nominates to the Regional Land Use Planning Commission.

### **Specific Provision Cont'd**

11.4.2.6 In the event that, after having made the reasonable attempts required by 11.4.2.5, Government, and the Selkirk First Nation and the other Yukon First Nations whose Traditional Territories are included in the planning region, are unable to reach a consensus, either may give written notice to the others setting out the names of the individuals which it intends to nominate to the Regional Land Use Planning Commission, and 14 days thereafter, may so nominate those individuals.

11.4.3 The majority of nominees of Yukon First Nations and the majority of nominees of Government on a Regional Land Use Planning Commission shall be Yukon residents with a long term familiarity with the region or regions being planned.

11.4.4 Each Regional Land Use Planning Commission shall prepare and recommend to Government and the affected Yukon First Nation a regional land use plan within a timeframe established by Government and each affected Yukon First Nation.

11.4.5 In developing a regional land use plan, a Regional Land Use Planning Commission:

11.4.5.1 within its approved budget, may engage and contract technical or special experts for assistance and may establish a secretariat to assist it in carrying out its functions under this chapter;

11.4.5.2 may provide precise terms of reference and detailed instructions necessary for identifying regional land use planning issues, for conducting data collection, for performing analyses, for the production of maps and other materials, and for preparing the draft and final land use plan documents;

- 11.4.5.3 shall ensure adequate opportunity for public participation;
- 11.4.5.4 shall recommend measures to minimize actual and potential land use conflicts throughout the planning region
- 11.4.5.5 shall use the knowledge and traditional experience of Yukon Indian People, and the knowledge and experience of other residents of the planning region;
- 11.4.5.6 shall take into account oral forms of communication and traditional land management practices of Yukon Indian People;
- 11.4.5.7 shall promote the well-being of Yukon Indian People, other residents of the planning region, the communities, and the Yukon as a whole, while having regard to the interests of other Canadians;
- 11.4.5.8 shall take into account that the management of land, water and resources, including Fish, Wildlife and their habitats, is to be integrated;
- 11.4.5.9 shall promote Sustainable Development; and
- 11.4.5.10 may monitor the implementation of the approved regional land use plan, in order to monitor compliance with the plan and to assess the need for amendment of the plan.

## **11.5.0 Regional Land Use Plans**

- 11.5.1 Regional land use plans shall include recommendations for the use of land, water and other renewable and non-renewable resources in the planning region in a manner determined by the Regional Land Use Planning Commission.

## **11.6.0 Approval Process for Land Use Plans**

- 11.6.1 A Regional Land Use Planning Commission shall forward its recommended regional land use plan to Government and each affected Yukon First Nation.
- 11.6.2 Government, after Consultation with any affected Yukon First Nation and any affected Yukon community, shall approve, reject or propose modifications to that part of the recommended regional land use plan applying on Non-Settlement Land.
- 11.6.3 If Government rejects or proposes modifications to the recommended plan, it shall forward either the proposed modifications with written reasons, or written reasons for rejecting the recommended plan to the Regional Land Use Planning Commission, and thereupon:
- 11.6.3.1 the Regional Land Use Planning Commission shall reconsider the plan and make a final recommendation for a regional land use plan to Government, with written reasons; and
  - 11.6.3.2 Government shall then approve, reject or modify that part of the plan recommended under 11.6.3.1 applying on Non-Settlement Land, after Consultation with any affected Yukon First Nation and any affected Yukon community.
- 11.6.4 Each affected Yukon First Nation, after Consultation with Government, shall approve, reject or propose modifications to that part of the recommended regional land use plan applying to the Settlement Land of that Yukon First Nation.
- 11.6.5 If an affected Yukon First Nation rejects or proposes modifications to the recommended plan, it shall forward either the proposed modifications with written reasons or written reasons for rejecting the recommended plan to the Regional Land Use Planning Commission, and thereupon:
- 11.6.5.1 the Regional Land Use Planning Commission shall reconsider the plan and make a final recommendation for a regional land use plan to that affected Yukon First Nation, with written reasons; and



- 11.6.5.2 the affected Yukon First Nation shall then approve, reject or modify the plan recommended under 11.6.5.1, after Consultation with Government.

## **11.7.0 Implementation**

- 11.7.1 Subject to 12.17.0, Government shall exercise any discretion it has in granting an interest in, or authorizing the use of, land, water or other resources in conformity with the part of a regional land use plan approved by Government under 11.6.2 or 11.6.3.
- 11.7.2 Subject to 12.17.0, a Yukon First Nation shall exercise any discretion it has in granting an interest in, or authorizing the use of, land, water or other resources in conformity with the part of a regional land use plan approved by that Yukon First Nation under 11.6.4 or 11.6.5.
- 11.7.3 Nothing in 11.7.1 shall be construed to require Government to enact or amend Legislation to implement a land use plan or to grant an interest in, or authorize the use of, land, water or other resources.
- 11.7.4 Nothing in 11.7.2 shall be construed to require a Yukon First Nation to enact or amend laws passed pursuant to self-government Legislation to implement a land use plan or to grant an interest in, or authorize the use of, land, water or other resources.

## **11.8.0 Sub-Regional and District Land Use Plans**

- 11.8.1 Sub-regional and district land use plans developed in a region which has an approved regional land use plan shall conform to the approved regional land use plan.
- 11.8.2 The provisions of an approved regional land use plan shall prevail over any existing sub-regional or district land use plan to the extent of any inconsistency.

- 11.8.3 Subject to 11.8.4 and 11.8.5, a Yukon First Nation may develop a sub-regional or district land use plan for Settlement Land and Government may develop a sub-regional or district land use plan for Non-Settlement Land.
- 11.8.4 If Government and a Yukon First Nation agree to develop a sub-regional or district land use plan jointly, the plan shall be developed in accordance with the provisions of this chapter.
- 11.8.5 If Government and a Yukon First Nation do not agree to develop a sub-regional or district land use plan jointly, only 11.8.1 and 11.8.2 of this chapter shall apply to the development of the plan.

#### **11.9.0 Funding**

- 11.9.1 Each Regional Land Use Planning Commission, after Consultation with each affected Yukon First Nation, shall prepare a budget for the preparation of the regional land use plan and for carrying out its functions under this chapter and shall submit that budget to the Yukon Land Use Planning Council.
- 11.9.2 The Yukon Land Use Planning Council shall, on an annual basis, review all budgets submitted under 11.9.1 and, after Consultation with each affected Regional Land Use Planning Commission, propose a budget to Government for the development of regional land use plans in the Yukon and for its own administrative expenses.
- 11.9.3 Government shall review the budget submitted under 11.9.2 and shall pay those expenses which it approves.
- 11.9.4 If Government initiates the development of a sub-regional or district land use plan by a planning body, the planning body established to prepare that plan shall prepare a budget for the preparation of the plan which shall be subject to review by Government, and Government shall pay those expenses which it approves.

## **CHAPTER 12 - DEVELOPMENT ASSESSMENT**

### **12.1.0 Objective**

12.1.1 The objective of this chapter is to provide for a development assessment process that:

12.1.1.1 recognizes and enhances, to the extent practicable, the traditional economy of Yukon Indian People and their special relationship with the wilderness Environment;

12.1.1.2 provides for guaranteed participation by Yukon Indian People and utilizes the knowledge and experience of Yukon Indian People in the development assessment process;

12.1.1.3 protects and promotes the well-being of Yukon Indian People and of their communities and of other Yukon residents and the interests of other Canadians;

12.1.1.4 protects and maintains environmental quality and ensures that Projects are undertaken consistent with the principle of Sustainable Development;

12.1.1.5 protects and maintains Heritage Resources;

12.1.1.6 provides for a comprehensive and timely review of the environmental and socio-economic effects of any Project before the approval of the Project;

12.1.1.7 avoids duplication in the review process for Projects and, to the greatest extent practicable, provides certainty to all affected parties and Project proponents with respect to procedures, information requirements, time requirements and costs; and

12.1.1.8 requires Project proponents to consider the environmental and socio-economic effects of Projects and Project alternatives and to incorporate appropriate mitigative measures in the design of Projects.

## 12.2.0 Definitions

In this chapter, the following definitions shall apply.

"Designated Office" means a community or regional office of Government, an office of a Yukon First Nation or another office identified pursuant to the Development Assessment Legislation in accordance with Yukon First Nation Final Agreements and for the purposes set out in 12.6.0.

"Development Assessment Legislation" means Legislation enacted to implement the development assessment process set out in this chapter.

"Environment" means the components of the Earth and includes:

- (a) air, land and water;
- (b) all layers of the atmosphere;
- (c) all organic and inorganic matter and living organisms; and
- (d) the interacting natural systems that include components referred to in (a),(b) and (c).

"Existing Project" means an enterprise or activity or class of enterprises or activities which has been undertaken or completed in the Yukon which is not exempt from screening and review.

"Independent Regulatory Agency" means an agency established by Government that is identified in the Development Assessment Legislation which issues a licence, permit or other authorization, the terms and conditions of which are not subject to variation by Government.

"Plan" means a plan, program, policy or a proposal that is not a Project.

"Project" means an enterprise or activity or class of enterprises or activities to be undertaken in the Yukon which is not exempt from screening and review.

"YDAB" means the Yukon Development Assessment Board established pursuant to Development Assessment Legislation.

### **12.3.0 Development Assessment Legislation**

- 12.3.1 Government shall implement a development assessment process consistent with this chapter by Legislation.
- 12.3.2 The parties to the Umbrella Final Agreement shall negotiate guidelines for drafting Development Assessment Legislation and these drafting guidelines shall be consistent with the provisions of this chapter.
- 12.3.3 Failing agreement on guidelines, Government shall Consult with the Council for Yukon Indians and with Yukon First Nations during the drafting of the Development Assessment Legislation.
- 12.3.4 Government shall recommend to Parliament or the Legislative Assembly, as the case may be, the Development Assessment Legislation consistent with this chapter as soon as practicable and in any event no later than two years after the effective date of Settlement Legislation.
- 12.3.5 Canada shall recommend to Parliament necessary amendments to existing Legislation including, but not limited to, the Yukon Quartz Mining Act, R.S.C. 1985, c. Y-4, Yukon Placer Mining Act, R.S.C. 1985, c. Y-3, Territorial Lands Act, R.S.C. 1985, c. T-7 and Northern Inland Waters Act, R.S.C. 1985, c. N-25, to ensure its conformity with the Development Assessment Legislation.
- 12.3.6 Prior to the enactment of Development Assessment Legislation, the parties to the Umbrella Final Agreement shall make best efforts to develop and incorporate in the implementation plan provided for in 12.19.1, interim measures for assessing a Project which shall be consistent with the spirit of this chapter and within the existing framework of Law and regulatory agencies.

## **12.4.0        Scope**

12.4.1        Subject to this chapter, the following matters are subject to the development assessment process:

12.4.1.1      Projects and significant changes to Existing Projects; and

12.4.1.2      in accordance with 12.8.0,

- (a)    a proposed enterprise or activity located outside the Yukon with significant adverse environmental or socio-economic effects in the Yukon,
- (b)    temporary shutdown, abandonment or decommissioning of an Existing Project,
- (c)    Plans,
- (d)    Existing Projects,
- (e)    development assessment research, or
- (f)    studies of environmental or socio-economic effects that are cumulative regionally or over time.

12.4.2        YDAB and each Designated Office shall consider the following matters when carrying out their functions:

12.4.2.1      the need to protect the special relationship between Yukon Indian People and the Yukon wilderness Environment;

12.4.2.2      the need to protect the cultures, traditions, health and lifestyles of Yukon Indian People and of other residents of the Yukon;

12.4.2.3      the need to protect the rights of Yukon Indian People pursuant to the provisions of Settlement Agreements;

12.4.2.4      the interests of Yukon residents and Canadians outside the Yukon;

- 12.4.2.5 alternatives to the Project or alternative ways of carrying out the Project that avoid or minimize significant adverse environmental or socio-economic effects;
- 12.4.2.6 measures for mitigation of and compensation for significant adverse environmental and socio-economic effects;
- 12.4.2.7 any significant adverse effect on Heritage Resources;
- 12.4.2.8 the need for a timely review of the Project;
- 12.4.2.9 the need to avoid duplication and, to the greatest extent practicable, provide certainty to all affected parties and Project proponents with respect to procedures, information requirements, time requirements, and costs; and
- 12.4.2.10 any other matters provided for in the Development Assessment Legislation.

## **12.5.0 Entry Point**

- 12.5.1 Development Assessment Legislation shall provide criteria for classification of Projects and Existing Projects for determining their entry point to the development assessment process and further criteria for identifying exemptions from the process.
- 12.5.2 The entry point shall be either a Designated Office or YDAB.

## **12.6.0 Designated Office**

- 12.6.1 In accordance with the Development Assessment Legislation, a Designated Office:
  - 12.6.1.1 shall screen and may review Projects;
  - 12.6.1.2 shall establish information requirements for Project proponents;

- 12.6.1.3 shall ensure that interested parties have the opportunity to participate in the assessment process;
  - 12.6.1.4 shall make written recommendations to a Decision Body that a Project that has not been referred to YDAB be allowed to proceed, be allowed to proceed subject to any terms and conditions, or not be allowed to proceed;
  - 12.6.1.5 may refer a Project to YDAB;
  - 12.6.1.6 may determine the type of screening or review of a Project by that Designated Office;
  - 12.6.1.7 may establish procedures pursuant to which a screening or review shall be conducted by that Designated Office;
  - 12.6.1.8 may make written recommendations to a Decision Body that a Project audit or monitoring of effects be undertaken; and
  - 12.6.1.9 may exercise any other powers and shall carry out any other duties provided for in the Development Assessment Legislation.
- 12.6.2 A Designated Office shall maintain a public registry in accordance with the Development Assessment Legislation.
- 12.6.3 Subject to 12.13.4.2, upon receipt of a recommendation from a Designated Office, a Decision Body shall, in a Decision Document, accept, vary, or reject the recommendations of that Designated Office.

## **12.7.0 Yukon Development Assessment Board**

- 12.7.1 A Yukon Development Assessment Board shall be established pursuant to the Development Assessment Legislation.
- 12.7.2 YDAB shall be composed of an Executive Committee and an additional number of members determined in the Development Assessment Legislation.



- 12.7.3 The Executive Committee shall be composed of one member nominated by the Council for Yukon Indians, one member nominated by Government, and the chairperson of YDAB.
- 12.7.4 The Minister shall, after Consultation with the other members of the Executive Committee, appoint the chairperson of YDAB.
- 12.7.5 The Minister shall appoint the additional number of persons to YDAB, so that in total, excluding the chairperson, one half the members of YDAB are nominees of the Council for Yukon Indians and one half the members of YDAB are nominees of Government.

#### **12.8.0 YDAB Powers and Responsibilities**

- 12.8.1 In accordance with the Development Assessment Legislation, YDAB:
- 12.8.1.1 shall establish rules for its procedures;
  - 12.8.1.2 shall in accordance with 12.9.0 and 12.10.0 ensure that a mandatory screening or review of a Project and a screening or review of a Project referred to it pursuant to this chapter are conducted and that written recommendations are made to a Decision Body concerning any significant adverse environmental or socio-economic effects of the Project;
  - 12.8.1.3 may make written recommendations to a Decision Body that Project audits or effects monitoring be undertaken;
  - 12.8.1.4 shall upon request by Government, or with the consent of Government, upon request from a Yukon First Nation,
    - (a) conduct a review,
    - (b) review a temporary shut down, abandonment, decommissioning or significant change,
    - (c) conduct an audit, or
    - (d) monitor effects,

of a Project or an Existing Project, as the case may be;

- 12.8.1.5 may review Plans which may have significant adverse environmental or socio-economic effects in the Yukon, upon request of Government or, with the consent of Government, upon request by a Yukon First Nation;
  - 12.8.1.6 shall notify Designated Offices and other relevant review bodies and agencies of a Project and of any decision to conduct a review of the Project;
  - 12.8.1.7 may in accordance with 12.9.0 and 12.10.0 hold joint reviews with other bodies;
  - 12.8.1.8 may upon request by Government or, with the consent of Government, upon request by a Yukon First Nation, undertake studies of environmental or socio-economic effects that are cumulative regionally or over time, or undertake development assessment research;
  - 12.8.1.9 may upon request by Government or, with the consent of Government, upon request by a Yukon First Nation, review an enterprise or activity located outside of the Yukon which has significant adverse environmental or socio-economic effects on the Yukon;
  - 12.8.1.10 may agree to review upon request by a Yukon First Nation and at the expense of that Yukon First Nation, any activity set out in 12.8.1.5, 12.8.1.8, and 12.8.1.9, without the consent of Government; and
  - 12.8.1.11 may exercise any other powers and shall carry out any other duties set out in the Development Assessment Legislation.
- 12.8.2 YDAB shall establish structures and procedures to carry out its administrative functions.
- 12.8.3 YDAB shall maintain a public registry in accordance with the Development Assessment Legislation.

## **12.9.0 Executive Committee Powers**

12.9.1 In accordance with the Development Assessment Legislation, the Executive Committee:

- 12.9.1.1 shall, before exercising any of its functions relating to the screening or review of a Project, satisfy itself that the Project proponent has,
- (a) Consulted with affected communities,
  - (b) taken into consideration the matters identified in 12.4.2, and
  - (c) adhered to the procedural rules established by YDAB;
- 12.9.1.2 subject to 12.9.2, shall determine that a Project will be reviewed by a panel of YDAB or shall recommend to a Decision Body in writing with reasons that a Project not be reviewed by a panel;
- 12.9.1.3 shall, where it has recommended that a Project not be reviewed by a panel, make written recommendations to the Decision Body that the Project be allowed to proceed, be allowed to proceed subject to any terms and conditions, or not be allowed to proceed;
- 12.9.1.4 shall, where a review of a Project is to be conducted by a panel, determine whether the significant adverse environmental or socio-economic effects of the Project will be,
- (a) primarily on Settlement Land,
  - (b) primarily on Non-Settlement Land, or
  - (c) on both Settlement Land and Non-Settlement Land but not primarily on either Settlement Land or Non-Settlement Land;
- 12.9.1.5 where a review of a Project is to be conducted by a panel, establish terms of reference for the panel, and appoint a chairperson for the panel;
- 12.9.1.6 shall issue an annual report; and

- 12.9.1.7 may exercise any other power and shall carry out any other duty set out in the Development Assessment Legislation.
- 12.9.2 Subject to 12.9.4, the Executive Committee shall establish a panel to conduct a public review of a Project if:
  - 12.9.2.1 it determines that the Project may have significant adverse environmental or socio-economic effects in the Yukon or outside the Yukon;
  - 12.9.2.2 it determines that the Project causes or is likely to cause significant public concern in the Yukon;
  - 12.9.2.3 it determines that the Project involves technology which is controversial in the Yukon or for which the effects are unknown; or
  - 12.9.2.4 it determines that the Project, while not generating significant adverse environmental or socio-economic effects by itself, may contribute significantly to cumulative adverse environmental or socio-economic effects in the Yukon.
- 12.9.3 Subject to 12.9.4, the Executive Committee shall establish a panel to conduct:
  - 12.9.3.1 a public review of a Project, subject to 12.9.3.2, where a Decision Body rejects the Executive Committee's recommendation that the Project not be publicly reviewed by a panel; or
  - 12.9.3.2 a public review or other form of review as Government or a Yukon First Nation may require, where Government or a Yukon First Nation requests a review pursuant to 12.8.0.
- 12.9.4 The Development Assessment Legislation shall provide for the avoidance of duplication of any public review by a federal environmental assessment panel and YDAB, or by the Inuvialuit Environmental Impact Review Board and YDAB, either by requiring a public review only by one of those bodies or a public review by a joint body.

- 12.9.5 Where it is proposed by Government in accordance with 12.9.4 that a Project be reviewed publicly by a federal environmental assessment panel instead of by YDAB, consent of the affected Yukon First Nation shall be required before the federal environmental assessment panel is established.
- 12.9.6 If the consent pursuant to 12.9.5 is not provided within 30 days of a request from the Minister responsible for the federal environmental assessment panel, that Minister may require the Project be reviewed publicly by the federal environmental assessment panel instead of YDAB provided that:
- 12.9.6.1 that Minister shall appoint members to a panel in accordance with that Minister's practice and at least one quarter of the panel members shall be appointed from a list of nominees given to that Minister by the Council for Yukon Indians and at least one quarter from a list of nominees given to that Minister by the Yukon. Members of YDAB are eligible to be appointed to the panel; and
- 12.9.6.2 the recommendations made by the panel to that Minister shall be deemed to be written recommendations of YDAB within the meaning of 12.12.0. Such recommendations shall be referred to the Decision Body, to be dealt with in accordance with 12.12.0, 12.13.0 and 12.14.0 as if they were recommendations of YDAB, except that 12.12.1.2 does not apply.

## **12.10.0 Panels of YDAB**

- 12.10.1 Where the Executive Committee determines that the primary significant adverse environmental or socio-economic effects of a Project are on Settlement Land, two thirds of the members of a panel shall be members nominated to YDAB by the Council for Yukon Indians and one third of the members of the panel shall be members nominated to YDAB by Government.
- 12.10.2 Where the Executive Committee determines that the primary significant adverse environmental or socio-economic effects of a Project are on Non-Settlement Land, two thirds of the members of a panel shall be members nominated to YDAB by Government and one third of the members of the panel shall be members nominated to YDAB by the Council for Yukon Indians.

12.10.3 Where the Executive Committee determines that the significant adverse environmental or socio-economic effects of a Project are on both Settlement Land and Non-Settlement Land but not primarily on either Settlement Land or Non-Settlement Land, apart from the chairperson, one half of the members of the panel shall be members nominated to YDAB by the Council for Yukon Indians and one half of the members of the panel shall be members nominated to YDAB by Government.

12.10.4 For the purposes of 12.10.0, "Settlement Land" may, if so provided in a Transboundary Agreement, include land in the Yukon held by that transboundary claimant group pursuant to its Transboundary Agreement.

### **12.11.0 Panel Powers**

12.11.1 In accordance with the Development Assessment Legislation, a panel established pursuant to 12.10.0 to review a Project:

12.11.1.1 shall determine the information required from the Project proponent, the manner in which the review shall be conducted, a review schedule, and Yukon First Nation, public and local, territorial and federal government involvement in the review and such other matters as the panel considers appropriate;

12.11.1.2 shall make written recommendations to a Decision Body that a Project be allowed to proceed subject to terms and conditions or not be allowed to proceed;

12.11.1.3 may make written recommendations to a Decision Body that Project audits or effects monitoring be undertaken; and

12.11.1.4 may exercise any power and shall carry out any other responsibility set out in the Development Assessment Legislation.

12.11.2 Written recommendations and reports of a panel shall be deemed to be written recommendations and reports of YDAB.

## **12.12.0 YDAB Recommendations**

12.12.1 Upon receipt of written recommendations and reports from YDAB a Decision Body shall:

12.12.1.1 accept the recommendations in their entirety in writing in a Decision Document;

12.12.1.2 refer the recommendations back to YDAB for further consideration;  
or

12.12.1.3 subject to 12.13.4.2, subsequent to the reconsideration by YDAB, accept the recommendations, vary the recommendations, or reject the recommendations in writing in a Decision Document.

12.12.2 Where a Decision Body rejects or varies the recommendations of YDAB, the Decision Body shall provide written reasons to YDAB which shall be available to the public.

## **12.13.0 Determination of the Decision Body**

12.13.1 Where a Project is located wholly or partially on Settlement Land, a Decision Document is required from:

12.13.1.1 a Yukon First Nation, where the Yukon First Nation is empowered by Yukon First Nation self-government Legislation or Settlement Agreements to require its approval or other authorization, other than for access to Settlement Land as provided in Settlement Agreements; or

12.13.1.2 a Yukon First Nation, where the Project does not require a Decision Document from Government; and

12.13.1.3 Government, where the Project involves the Right to Work Mines and Minerals on Category B or Fee Simple Settlement Land, or where the Project requires an approval or other authorization from Government.

12.13.2 Where a Project is located wholly or partially on Non-Settlement Land, a Decision Document is required from Government.

- 12.13.3 Government and the Yukon First Nation shall Consult with each other before issuing a Decision Document for a Project where Decision Documents for the Project are required from both Decision Bodies.
- 12.13.4 Where a Decision Document is required from both Decision Bodies and the Project involves the Right to Work Mines and Minerals on Category B or Fee Simple Settlement Land:
- 12.13.4.1 the Decision Bodies shall endeavour to make the terms and conditions of their Decision Document conform;
  - 12.13.4.2 notwithstanding 12.6.3 and 12.12.1.3, the Decision Bodies may only reject or vary the terms and conditions contained in the recommendations of YDAB or a Designated Office on the grounds that, to accomplish the objectives of this chapter, any of the terms and conditions are,
    - (a) insufficient to achieve an acceptable level of environmental and socio-economic impacts in the Yukon,
    - (b) more onerous than necessary to achieve an acceptable level of environmental and socio-economic impact in the Yukon, or
    - (c) so onerous as to undermine the economic viability of a Project; and
  - 12.13.4.3 where the terms and conditions of the Decision Documents conflict, Government and the Yukon First Nation shall, subject to 12.14.8, exercise any discretion in granting an interest in, or authorizing the use of land, water, or other resources, in conformity with the terms and conditions of the Decision Document issued by Government.

## **12.14.0 Implementation of Decision Document**

- 12.14.1 Government shall:



- 12.14.1.1 subject to 12.14.8, exercise any discretion in granting an interest in, or authorizing the use of land, water, or other resources in conformity with the terms and conditions of a Decision Document issued by Government; and
- 12.14.1.2 not issue any approval, authorization or, subject to Development Assessment Legislation under 12.19.2.14, provide financial assistance to a proponent with respect to a Project prior to issuing a Decision Document.
- 12.14.2 Nothing in 12.13.4.3 or 12.14.1.1 shall be construed to require Government to enact or amend Legislation to implement a Decision Document issued by Government or to require Government to grant an interest in or authorize the use of land, water or other resources.
- 12.14.3 A Yukon First Nation shall:
  - 12.14.3.1 subject to 12.13.4.3 and 12.14.8, exercise any discretion in granting an interest in, or authorizing the use of, land, water, or other resources in conformity with the terms and conditions of a Decision Document issued by the Yukon First Nation; and
  - 12.14.3.2 not issue any approval, authorization or, subject to Development Assessment Legislation under 12.19.2.14, provide financial assistance to a proponent with respect to a Project prior to issuing a Decision Document.
- 12.14.4 Nothing in 12.13.4.3 or 12.14.3.1 shall be construed to require a Yukon First Nation to enact or amend laws passed pursuant to self-government Legislation to implement a Decision Document issued by the Yukon First Nation or as requiring the Yukon First Nation to grant an interest in or authorize the use of land, water or other resources.
- 12.14.5 Where the Project proponent requires a licence, permit, or other authorization from the National Energy Board or other Independent Regulatory Agency identified in the Development Assessment Legislation under 12.19.2.13, the Decision Body shall send the Decision Document to the National Energy Board or other Independent Regulatory Agency.

- 12.14.6 An Independent Regulatory Agency other than the National Energy Board, in issuing a licence, permit or other authorization for a Project shall endeavour to make the terms and conditions of such authorization conform, to the extent practicable, with the terms and conditions of a Decision Document issued by Government for the Project.
- 12.14.7 The National Energy Board, in issuing a licence, permit or other authorization for a Project, shall take into consideration the terms and conditions of a Decision Document issued by Government for the Project.
- 12.14.8 Where there is a conflict between the terms and conditions of a Decision Document for a Project and the terms and conditions of a licence, permit, or other authorization for the Project issued by the National Energy Board or other Independent Regulatory Agency, the terms and conditions of the licence, permit, or other authorization for the Project issued by the National Energy Board or other Independent Regulatory Agency, as the case may be, shall prevail to the extent of the conflict.
- 12.14.9 Where the terms and conditions of a licence, permit or other authorization for a Project issued by the National Energy Board or other Independent Regulatory Agency vary from those in a Decision Document issued by Government, that agency shall provide written reasons for such variance to the Decision Body.
- 12.15.0 Monitoring and Enforcement**
- 12.15.1 Nothing in this chapter shall be construed to affect Government's responsibility for the compliance monitoring of Projects.
- 12.15.2 YDAB may make recommendations under 12.9.1.3 to a Decision Body that Project audits or effects monitoring be undertaken.
- 12.15.3 Upon request by YDAB, a Decision Body shall provide to YDAB information obtained through effects monitoring undertaken after the acceptance by the Decision Body of a recommendation made pursuant to 12.15.2.

- 12.15.4 YDAB may issue reports, including recommendations to a Decision Body, based on the review of the results of effects monitoring studies.
- 12.15.5 The Development Assessment Legislation may provide for the enforcement of Decision Documents.
- 12.15.6 YDAB may recommend to a Decision Body that YDAB or any other body hold a public hearing if YDAB determines that the terms and conditions of a Decision Document issued by that Decision Body may have been violated.
- 12.15.7 If the recommendation of YDAB pursuant to 12.15.6 is accepted by the Decision Body, then YDAB or the other body shall hold a public hearing.
- 12.15.8 After a body holds a public hearing under 12.15.7, the body may make recommendations to the Decision Body in respect of the disposition of the matter.

## **12.16.0 Transboundary Impacts**

- 12.16.1 Government shall make best efforts to negotiate with other relevant jurisdictions, in Consultation with affected Yukon First Nations, agreements or cooperative arrangements that provide for development assessments equivalent to the screening and review requirements in the Yukon for enterprises or activities located outside the Yukon that may have significant adverse environmental or socio-economic effects on the Yukon.
- 12.16.2 The representation of transboundary claimant groups on the YDAB shall be as established in Transboundary Agreements and, in any case, the proportion of Government nominees on a panel shall be as provided in this chapter.
- 12.16.3 Prior to the enactment of Settlement Legislation, the parties to the Umbrella Final Agreement shall make best efforts to resolve any conflict and avoid any duplication in North Yukon between the development assessment process provided pursuant to this chapter and the environmental impact screening and review process provided pursuant to the Inuvialuit Final Agreement.

## **12.17.0 Relationship to Land Use Planning**

- 12.17.1 Where YDAB or a Designated Office receives a Project application in a region where a regional land use plan is in effect, YDAB or the Designated Office, as the case may be, shall request that the Regional Land Use Planning Commission for the planning region determine whether or not the Project is in conformity with the approved regional land use plan.
- 12.17.2 Where a Regional Land Use Planning Commission is preparing a regional land use plan, YDAB or a Designated Office, as the case may be, shall provide the Regional Land Use Planning Commission with the information it has on any Project in the planning region for which a review is pending and shall invite the Regional Land Use Planning Commission to make representations to the panel or the Designated Office.
- 12.17.3 Where a panel is reviewing a Project and a Regional Land Use Planning Commission has determined pursuant to 12.17.1 that the Project does not conform with an approved regional land use plan, the panel shall consider the regional land use plan in its review, invite the relevant Regional Land Use Planning Commission to make representations to the panel and make recommendations to the Decision Body that conform so far as possible to the approved regional plan.
- 12.17.4 Where a Decision Document states that a non-conforming Project may proceed, the Project proponent may proceed with the Project if permitted by and in accordance with Law.
- 12.17.5 The Development Assessment Legislation shall set out the relationship between the issuance of a Decision Document for a Project that has not been assessed by YDAB and the grant of a variance from a regional land use plan or the amendment of the land use plan.

## **12.18.0 Funding**

- 12.18.1 Each Designated Office, after Consultation with the affected Yukon First Nation, shall prepare a budget respecting its responsibilities under the Development Assessment Legislation and this chapter and shall submit that budget to YDAB or to Government, whichever is designated by Government from time to time.

12.18.2 YDAB shall, on an annual basis, review all budgets submitted to it under 12.18.1 and shall prepare an annual budget for its responsibilities and for those of each Designated Office under the Development Assessment Legislation and this chapter for review and approval by Government. The approved expenses of YDAB and the Designated Offices shall be a charge on Government.

### **12.19.0 Implementation**

12.19.1 Government, in Consultation with the Yukon First Nations, shall prepare a detailed plan:

12.19.1.1 providing for the planning and implementation of the Development Assessment Legislation which addresses the involvement of Yukon First Nations; and

12.19.1.2 providing for the application of the Development Assessment Legislation until Yukon First Nation Final Agreements have been negotiated.

12.19.2 Development Assessment Legislation may provide the following:

12.19.2.1 criteria for classification of Projects for the determination of the entry point to the development assessment process;

12.19.2.2 classification of Projects for which screening and review by YDAB is mandatory;

12.19.2.3 criteria to determine the significance of adverse environmental or socio-economic effects;

12.19.2.4 the type of Plan which YDAB may review without a request by Government or Yukon First Nations;

12.19.2.5 criteria for the classes of enterprises or activities which are exempt from screening and review;

12.19.2.6 the role of YDAB, Yukon First Nations, Government, Project proponents or other participants in the provision of participant funding in reviews of Projects;

- 12.19.2.7 the ability of the Minister to identify a Designated Office for a type of Project;
  - 12.19.2.8 the manner in which a Designated Office conducts a review;
  - 12.19.2.9 time limits for activities or functions of YDAB, Designated Offices, the Minister and Yukon First Nations;
  - 12.19.2.10 procedural requirements for Project proponents and other participants;
  - 12.19.2.11 public participation in the review of Projects;
  - 12.19.2.12 the process for joint reviews by YDAB and other bodies;
  - 12.19.2.13 a listing of Independent Regulatory Agencies;
  - 12.19.2.14 conditions respecting the provision of financial assistance to a proponent prior to assessment of a Project; and
  - 12.19.2.15 any other matter required to implement the development assessment process.
- 12.19.3 A comprehensive review of the development assessment process by the parties to the Umbrella Final Agreement shall be completed five years after the enactment of Development Assessment Legislation.
- 12.19.4 Nothing in this chapter shall be construed to prevent Government, in Consultation with Yukon First Nations, from acting to improve or enhance socio-economic or environmental procedures in the Yukon in the absence of any approved detailed design of the development assessment process.
- 12.19.5 Nothing in this chapter shall be construed to affect any existing development assessment process in the Yukon prior to the Development Assessment Legislation coming into effect.

## **CHAPTER 13 - HERITAGE**

### **13.1.0 Objectives**

13.1.1 The objectives of this chapter are as follows:

- 13.1.1.1 to promote public awareness, appreciation and understanding of all aspects of culture and heritage in the Yukon and, in particular, to respect and foster the culture and heritage of Yukon Indian People;
- 13.1.1.2 to promote the recording and preservation of traditional languages, beliefs, oral histories including legends, and cultural knowledge of Yukon Indian People for the benefit of future generations;
- 13.1.1.3 to involve equitably Yukon First Nations and Government, in the manner set out in this chapter, in the management of the Heritage Resources of the Yukon, consistent with a respect for Yukon Indian values and culture;
- 13.1.1.4 to promote the use of generally accepted standards of Heritage Resources management, in order to ensure the protection and conservation of Heritage Resources;
- 13.1.1.5 to manage Heritage Resources owned by, or in the custody of, Yukon First Nations and related to the culture and history of Yukon Indian People in a manner consistent with the values of Yukon Indian People, and, where appropriate, to adopt the standards of international, national and territorial Heritage Resources collections and programs;
- 13.1.1.6 to manage Heritage Resources owned by, or in the custody of, Government and related to the culture and history of Yukon Indian People, with respect for Yukon Indian values and culture and the maintenance of the integrity of national and territorial Heritage Resources collections and programs;

- 13.1.1.7 to facilitate reasonable public access, except where the nature of the Heritage Resource or other special circumstances warrant otherwise;
- 13.1.1.8 to identify and mitigate the impact of development upon Heritage Resources through integrated resource management including land use planning and development assessment processes;
- 13.1.1.9 to facilitate research into, and the management of, Heritage Resources of special interest to Yukon First Nations;
- 13.1.1.10 to incorporate, where practicable, the related traditional knowledge of a Yukon First Nation in Government research reports and displays which concern Heritage Resources of that Yukon First Nation;
- 13.1.1.11 to recognize that oral history is a valid and relevant form of research for establishing the historical significance of Heritage Sites and Moveable Heritage Resources directly related to the history of Yukon Indian People; and
- 13.1.1.12 to recognize the interest of Yukon Indian People in the interpretation of aboriginal Place Names and Heritage Resources directly related to the culture of Yukon Indian People.

## **13.2.0 Definitions**

In this chapter, the following definitions shall apply.

"Non-Public Records" means all Documentary Heritage Resources other than Public Records.

"Place Names" includes Yukon Indian place names.

"Public Records" means records held by any department or agency or public office of any level of Government, and records which were formerly held by any such department, agency or public office.



### **13.3.0 Ownership and Management**

- 13.3.1 Each Yukon First Nation shall own and manage Moveable Heritage Resources and non-Moveable Heritage Resources and Non-Public Records, other than records which are the private property of any Person, found on its Settlement Land and on those Beds of waterbodies owned by that Yukon First Nation.
- 13.3.2 Subject to 13.3.5 to 13.3.7, each Yukon First Nation shall own and manage ethnographic Moveable Heritage Resources and Documentary Heritage Resources that are not Public Records and that are not the private property of any Person, that are found in its respective Traditional Territory and that are directly related to the culture and history of Yukon Indian People.
- 13.3.2.1 If more than one Yukon First Nation asserts ownership of a Heritage Resource pursuant to 13.3.2, they shall attempt to resolve the matter among themselves, and, failing resolution, any one of them may refer the matter to the Yukon Heritage Resources Board which shall determine ownership of the Heritage Resource in dispute.
- 13.3.3 Subject to 13.3.5 to 13.3.7, Moveable Heritage Resources and Documentary Heritage Resources which are not ethnographic resources directly related to the culture and history of Yukon Indian People and which are found on Non-Settlement Land shall be owned by Government.
- 13.3.4 Public Records, wherever they are found, shall be owned and managed by the Government by which they were created or held.
- 13.3.5 In the event that a Moveable Heritage Resource found on Non-Settlement Land in a Traditional Territory cannot be readily identified as an ethnographic object directly related to the culture and history of Yukon Indian People, that object shall be held in custody by Government until the nature of the object has been determined.
- 13.3.6 If the object in 13.3.5 is determined by the Yukon Heritage Resources Board to be:

- 13.3.6.1 an ethnographic object directly related to the culture and history of Yukon Indian People, it shall be owned and managed by the Yukon First Nation in whose Traditional Territory it was found; or
- 13.3.6.2 an ethnographic object not directly related to the culture and history of Yukon Indian People, or to be a palaeontological or an archaeological object, it shall be owned and managed by Government.
- 13.3.7 Where the Board is unable to reach a majority decision under 13.3.6, the issue of whether the ethnographic object is directly related to the culture and history of the Yukon Indian People shall be referred to the dispute resolution process under 26.3.0.
- 13.3.8 Agreements may be entered into by Government and Yukon First Nations with respect to the ownership, custody or management of Heritage Resources.
- 13.4.0 General**
- 13.4.1 As the Heritage Resources of Yukon Indian People are underdeveloped relative to non-Indian Heritage Resources, priority in the allocation of Government program resources available from time to time for Yukon Heritage Resources development and management shall, where practicable, be given to the development and management of Heritage Resources of Yukon Indian People, until an equitable distribution of program resources is achieved.
- 13.4.2 Once an equitable distribution of program resources is achieved, Heritage Resources of Yukon Indian People shall continue to be allocated an equitable portion of Government program resources allocated from time to time for Yukon Heritage Resources development and management.
- 13.4.3 Government, where practicable, shall assist Yukon First Nations to develop programs, staff and facilities to enable the repatriation of Moveable and Documentary Heritage Resources relating to the culture and history of Yukon Indian People which have been removed from the Yukon, or are retained at present in the Yukon, where this is consistent with the maintenance of the integrity of national or territorial collections.

- 13.4.4 A Yukon First Nation or a Yukon Indian Person who is an owner of a Heritage Resource may transfer the ownership or custody of the Heritage Resource to another Yukon First Nation or to another aboriginal person.
- 13.4.5 Government shall Consult Yukon First Nations in the formulation of Legislation and related Government policies on Heritage Resources in the Yukon.
- 13.4.6 Yukon First Nation Final Agreements may include provisions in respect of territorial heritage parks or sites, heritage rivers, heritage routes, heritage buildings, special management areas for Heritage Resources, for other sites or areas of unique cultural or heritage significance, or for other such heritage matters.

**Specific Provision**

- 13.4.6.1 Fort Selkirk shall be established as a Designated Heritage Site and the specific provisions in respect of the Fort Selkirk Heritage Site are set out in Schedule A - "Fort Selkirk Heritage Site", attached to this chapter.

- 13.4.7 Any granting of access to the public, third parties or Government to Settlement Land shall not divest the Yukon First Nation of the ownership or management of Heritage Resources on Settlement Land.
- 13.4.8 In accordance with Government procedures on access to and duplication of records, and subject to access to information, protection of privacy and copyright Legislation and to any agreements respecting records or the information contained in them, Government, within existing budgets, shall facilitate the preparation of an inventory of Moveable Heritage Resources and Heritage Sites which relate to Yukon First Nations.

### **13.5.0 Yukon Heritage Resources Board**

- 13.5.1 A Yukon Heritage Resources Board, comprised of 10 members and composed of equal numbers of appointees nominated by the Council for Yukon Indians, and of appointees nominated by Government, shall be established to make recommendations respecting the management of Moveable Heritage Resources and Heritage Sites to the Minister and to Yukon First Nations.
- 13.5.2 The Board shall operate in the public interest.
- 13.5.3 The Board may make recommendations to the Minister and to Yukon First Nations on:
- 13.5.3.1 the management of non-documentary Heritage Resources;
  - 13.5.3.2 means by which the traditional knowledge of Yukon Indian Elders may be considered in the management of Moveable Heritage Resources and Heritage Sites in the Yukon;
  - 13.5.3.3 means by which the traditional languages of Yukon First Nations can be recorded and preserved;
  - 13.5.3.4 the review, approval, amendment or repeal of regulations pursuant to heritage Legislation pertaining to Moveable Heritage Resources and Heritage Sites in the Yukon;
  - 13.5.3.5 the development and revision of a strategic plan for the preservation and management of Moveable Heritage Resources and Heritage Sites in the Yukon;
  - 13.5.3.6 the development, revision and updating of a manual including definitions of ethnographic, archaeological, palaeontological and historic resources, to facilitate the management and interpretation of these resources by Government and Yukon First Nations, such manual to be developed by Yukon First Nations and Government;
  - 13.5.3.7 the development, revision and updating of the inventory of Yukon Indian Heritage Resources provided for in 13.4.8;

- 13.5.3.8 means by which public awareness and appreciation of Moveable Heritage Resources and Heritage Sites may be fostered;
  - 13.5.3.9 designation of Heritage Sites as Designated Heritage Sites; and
  - 13.5.3.10 any other matter related to Heritage Resources of the Yukon.
- 13.5.4 In modifying or rejecting recommendations of the Board, Government or Yukon First Nations shall provide the Board with one opportunity to resubmit recommendations for the approval of Government or Yukon First Nations.
- 13.6.0 National Parks and National Historic Sites**
- 13.6.1 The management of Heritage Resources in National Parks, in Kluane National Park Reserve and in national historic sites administered by the Canadian Parks Service shall be as set out in the relevant Yukon First Nation Final Agreement.
- 13.7.0 Research**
- 13.7.1 Research or interpretative reports produced by Government or its agents regarding Yukon Heritage Resources shall be made available to the affected Yukon First Nation.
- 13.7.2 Where feasible, research reports in 13.7.1 or portions thereof, shall be made available to the public, recognizing that some reports may be restricted due to the sensitive nature of the information contained therein.
- 13.8.0 Heritage Sites**
- 13.8.1 Ownership and management of Heritage Sites in a Yukon First Nation's Traditional Territory shall be addressed in that Yukon First Nation Final Agreement.

### **Specific Provision**

- 13.8.1.1 The ownership of land in the Traditional Territory of the Selkirk First Nation is not affected by reason of that land being a Heritage Site or a Designated Heritage Site.
- 13.8.1.2 Government shall provide the Selkirk First Nation with a written inventory of the sites within the Traditional Territory of the Selkirk First Nation which are identified by Government as Heritage Sites directly related to the culture and heritage of Selkirk People, including information on their location and character, which have been documented by Government at the Effective Date of this Agreement.
- 13.8.1.3 Government shall inform the Selkirk First Nation when land within the Traditional Territory of the Selkirk First Nation is identified by Government as a proposed Designated Heritage Site or as a Heritage Site directly related to the culture and heritage of Selkirk People.
- 13.8.1.4 When requested by the Selkirk First Nation, Government shall consider protection within existing Legislation, for a period of time, of a Heritage Site on Non-Settlement Land within the Traditional Territory of the Selkirk First Nation which is directly related to the culture and heritage of Selkirk People, pending a decision by the Minister whether to designate the Heritage Site as a Designated Heritage Site.
- 13.8.1.5 Government shall Consult with the Selkirk First Nation regarding the terms and conditions of the temporary protection which might apply to the Heritage Site pursuant to 13.8.1.4.
- 13.8.1.6 Management plans for Designated Heritage Sites directly related to the culture and heritage of Selkirk People may provide for the use of Northern Tutchone or other aboriginal languages of Selkirk People in interpretive displays and signage.

**Specific Provision Cont'd**

13.8.1.7 Government and the Selkirk First Nation may negotiate arrangements for the ownership, management and protection of a Heritage Site on Non-Settlement Land within the Traditional Territory of the Selkirk First Nation which is directly related to the culture and heritage of Selkirk People.

13.8.2 Government and the affected Yukon First Nation shall consider the land use activities of other resource users in the management of interpretive and research activities at Heritage Sites.

13.8.3 Government and the affected Yukon First Nation shall institute a permit system for research at any site which may contain Moveable Heritage Resources.

**Specific Provision**

13.8.3.1 Government shall Consult with the Selkirk First Nation before issuing a permit for research at a Heritage Site which is directly related to the culture and heritage of Selkirk People in the Traditional Territory of the Selkirk First Nation.

13.8.4 Access to Designated Heritage Sites shall be controlled in accordance with the terms of site management plans which have been reviewed by the Board, and approved and implemented by Government or the affected Yukon First Nation.

13.8.5 Government and the affected Yukon First Nation, when controlling access to Designated Heritage Sites, shall consider:

13.8.5.1 the interests of permitted researchers;

13.8.5.2 the interest of the general public; and

13.8.5.3 the requirements of special events and traditional activities.

- 13.8.6 Except as otherwise provided in this chapter, the protection of Heritage Resources in or discovered on Non-Settlement Land, either by accident or otherwise, during construction or excavation shall be provided for in Laws of General Application.
- 13.8.7 Procedures to deal with the accidental discovery of Heritage Resources on Settlement Land shall be provided in each Yukon First Nation's Final Agreement.

**Specific Provision**

- 13.8.7.1 A Person who accidentally discovers a Heritage Resource on Selkirk First Nation Settlement Land shall take such steps as are reasonable in all circumstances to safeguard the Heritage Resource and shall report as soon as practicable that discovery to the Selkirk First Nation.
- 13.8.7.2 A Person described in 13.8.7.1 who is not exercising a right of access or a right to use Selkirk First Nation Settlement Land provided for in this Agreement may only continue to disturb a Heritage Site or Moveable Heritage Resource with the consent of the Selkirk First Nation.
- 13.8.7.3 A Person described in 13.8.7.1 who is exercising a right of access or a right to use Selkirk First Nation Settlement Land provided for in this Agreement shall not further disturb a Heritage Site or a Moveable Heritage Resource unless permitted by Laws of General Application, and that Person obtains:
- (a) the consent of the Selkirk First Nation; or
  - (b) failing consent, an order of the Surface Rights Board setting out the terms and conditions of further disturbing the Heritage Site or Moveable Heritage Resource.



### **Specific Provision Cont'd**

- 13.8.7.4 The Selkirk First Nation shall report to Government, as soon as practicable, the discovery on Selkirk First Nation Settlement Land of any Documentary Heritage Resource reported to it under 13.8.7.1.
- 13.8.7.5 Government and the Selkirk First Nation shall attempt to agree whether a Documentary Heritage Resource described in 13.8.7.4 is a Public Record or a Non-Public Record and, failing agreement, either may refer the matter to the dispute resolution process under 26.3.0.
- 13.8.7.6 If a Documentary Heritage Resource is a Non-Public Record, the Selkirk First Nation shall make reasonable efforts to determine if it is privately owned.

### **13.9.0 Yukon First Nation Burial Sites**

- 13.9.1 Government and Yukon First Nations shall each establish procedures to manage and protect Yukon First Nation Burial Sites which shall:
- 13.9.1.1 restrict access to Yukon First Nation Burial Sites to preserve the dignity of the Yukon First Nation Burial Sites;
- 13.9.1.2 where the Yukon First Nation Burial Site is on Non-Settlement Land, require the joint approval of Government and the Yukon First Nation in whose Traditional Territory the Yukon First Nation Burial Site is located for any management plans for the Yukon First Nation Burial Site; and
- 13.9.1.3 provide that, subject to 13.9.2, where a Yukon First Nation Burial Site is discovered, the Yukon First Nation in whose Traditional Territory the Yukon First Nation Burial Site is located shall be informed, and the Yukon First Nation Burial Site shall not be further disturbed.

- 13.9.2 Where a Person discovers a Yukon First Nation Burial Site in the course of carrying on an activity authorized by Government or a Yukon First Nation, as the case may be, that Person may carry on the activity with the agreement of the Yukon First Nation in whose Traditional Territory the Yukon First Nation Burial Site is located.
- 13.9.3 In the absence of agreement under 13.9.2, the Person may refer the dispute to arbitration under 26.7.0 for a determination of the terms and conditions upon which the Yukon First Nation Burial Site may be further disturbed.
- 13.9.4 Any exhumation, examination, and reburial of human remains from a Yukon First Nation Burial Site ordered by an arbitrator under 13.9.3 shall be done by, or under the supervision of, that Yukon First Nation.
- 13.9.5 Except as provided in 13.9.2 to 13.9.4, any exhumation, scientific examination and reburial of remains from Yukon First Nation Burial Sites shall be at the discretion of the affected Yukon First Nation.
- 13.9.6 The management of burial sites of a transboundary claimant group in the Yukon shall be addressed in that Transboundary Agreement.

### **13.10.0 Documentary Heritage Resources**

- 13.10.1 Public Records shall be managed in accordance with Laws of General Application.
- 13.10.2 In accordance with Government policies and procedures on access to and duplication of records, and subject to access to information, protection of privacy and copyright Legislation and to agreements respecting the records, Government shall make available to a Yukon First Nation, for copying, Documentary Heritage Resources in Government custody relating to that Yukon First Nation.
- 13.10.3 Yukon First Nations shall be Consulted in the formulation of any Legislation and related Government policy on Documentary Heritage Resources in the Yukon relating to Yukon Indian People.

- 13.10.4 Government shall, where practicable, Consult and cooperate with the affected Yukon First Nations on the management of Documentary Heritage Resources in the Yukon relating to Yukon Indian People.
- 13.10.5 Government shall Consult and cooperate with Yukon First Nations in the preparation of displays and inventories of Documentary Heritage Resources in the Yukon relating to the Yukon Indian People.
- 13.10.6 Provisions for Consultation and cooperation between Government and Yukon First Nations on the management of Documentary Heritage Resources by Yukon First Nations may be included in a Yukon First Nation Final Agreement.
- 13.10.7 Government and Yukon First Nations may work cooperatively with Yukon Indian Elders on the interpretation of Documentary Heritage Resources relating to Yukon Indian People.
- 13.10.8 Yukon First Nations shall own all Documentary Heritage Resources found on Settlement Land other than Public Records or records which are the private property of any Person.
- 13.11.0 Place Names**
- 13.11.1 There shall be a Yukon Geographical Place Names Board consisting of six people and composed of equal numbers of appointees nominated by the Council for Yukon Indians and appointees nominated by Government.
- 13.11.2 When considering the naming or renaming of places or features located within the Traditional Territory of a Yukon First Nation, or when acting with a federal agency where joint jurisdiction over the naming of the place or feature exists, the Yukon Geographical Place Names Board shall Consult with that Yukon First Nation.
- 13.11.3 A Yukon First Nation may name or rename places or geographical features on Settlement Land and such place names shall be deemed to be approved by the Yukon Geographical Place Names Board.
- 13.11.4 Traditional aboriginal place names shall be included, to the extent practicable and in accordance with map production specifications of Canada, on revised maps of the National Topographic Series.

**13.12.0 Economic Opportunities**

13.12.1 Economic opportunities, including training, employment and contract opportunities for Yukon Indian People at Designated Heritage Sites and other facilities related to Heritage Resources, shall be considered in Yukon First Nation Final Agreements.

**Specific Provision**

- 13.12.1.1 Government shall provide written notice to the Selkirk First Nation of any public tender for contracts associated with a Designated Heritage Site directly related to the history or culture of Selkirk People within the Traditional Territory of the Selkirk First Nation.
- 13.12.1.2 Government shall include the Selkirk First Nation in any invitational tender for contracts associated with a Designated Heritage Site directly related to the history or culture of Selkirk People within the Traditional Territory of the Selkirk First Nation.
- 13.12.1.3 The Selkirk First Nation shall have the first opportunity to accept any contract offered by Government, other than by public or invitational tender, associated with a Designated Heritage Site directly related to the history or culture of Selkirk People within the Traditional Territory of the Selkirk First Nation upon the same terms and conditions as would be offered to others.
- 13.12.1.4 Any failure to provide written notice pursuant to 13.12.1.1 shall not affect the public tender process or the contract awards resulting therefrom.
- 13.12.1.5 Any failure to include the Selkirk First Nation in any invitational tender for contracts pursuant to 13.12.1.2 shall not affect the invitational tender process, or the contract awards resulting therefrom.

**Specific Provision Cont'd**

13.12.1.6 Any failure to provide a first opportunity pursuant to 13.12.1.3 shall not affect any contract entered into associated with a Designated Heritage Site directly related to the history or culture of Selkirk People within the Traditional Territory of the Selkirk First Nation.

13.12.1.7 Government shall include in any contract opportunities associated with a Designated Heritage Site directly related to the history or culture of Selkirk People within the Traditional Territory of the Selkirk First Nation:

- a) a criterion for the employment of Selkirk People or engagement of Selkirk Firms; and
- b) a criterion for special knowledge or experience of Selkirk People related to the Designated Heritage Site.

13.12.1.8 Nothing in 13.12.1.7 shall be construed to mean that a criterion for employment of Selkirk People or engagement of Selkirk Firms or special knowledge or experience of Selkirk People shall be the determining criterion in awarding any contract.

## SCHEDULE A

### FORT SELKIRK HISTORIC SITE

#### **1.0 Definitions**

1.1 In this schedule, the following definition shall apply.

"Fort Selkirk" means the lands described as Fort Selkirk Historic Site on map "Fort Selkirk Historic Site, (FSHS)", in Appendix B - Maps, which forms a separate volume to this Agreement which, for greater certainty, excludes Parcel S-130B/D.

#### **2.0 Establishment**

2.1 As soon as practicable following the Effective Date of this Agreement, Canada shall cause fee simple title in respect of any lands forming part of Fort Selkirk which are under the administration of Canada, to be issued in the names of the Commissioner of the Yukon Territory and the Selkirk First Nation as tenants in common.

2.2 As soon as practicable following the Effective Date of this Agreement, the Yukon shall cause fee simple title in respect of any lands forming part of Fort Selkirk which are under the administration and control of the Commissioner of the Yukon Territory, to be issued in the names of the Commissioner of the Yukon Territory and the Selkirk First Nation as tenants in common.

2.3 Fort Selkirk shall be designated as an historic site under the Historic Resources Act, S.Y. 1991, c. 8, as soon as practicable following the issuance of the fee simple titles referred to in 2.1 and 2.2.

2.4 The historic site designation under the Historic Resources Act, S.Y. 1991, c. 8 shall not be removed from any lands forming part of Fort Selkirk, without the consent of the Selkirk First Nation and the Yukon.

2.5 If the Yukon acquires:

Block C - North half of the East one-half of Block C, (N½ of E½ of Block C) measuring 250 feet along First Avenue and 120 feet along Third Street, containing a measurement of 30,000 square feet, Townsite of Selkirk, Plan 8392 CLSR, 8392 LTO; and

Block C - Lots 6 and 8, Townsite of Selkirk, Plan 8392 CLSR, 8392 LTO,

or any part thereof (the "North West Company Lands"),

the Yukon shall cause fee simple title in respect of the North West Company Lands to be issued in the names of the Commissioner of the Yukon Territory and the Selkirk First Nation as tenants in common and the boundaries of Fort Selkirk shall be amended to include the North West Company Lands.

2.5.1 For greater certainty, if the boundaries of Fort Selkirk are amended to include the North West Company Lands pursuant to 2.5, the historic site designation under the Historic Resources Act, S.Y. 1991, c. 8 of Fort Selkirk shall also apply to the North West Company Lands.

2.6 Yukon acknowledges that the Selkirk First Nation shall have the entire beneficial interest in and the exclusive right to determine the use, management and access to those lands identified as gravesites on map "Fort Selkirk Historic Site (FSHS)" in Appendix B - Maps which forms a separate volume to this Agreement.

### **3.0 Management Plan**

3.1 A management plan shall be prepared for Fort Selkirk.

3.2 A steering committee shall be established to prepare the management plan referred to in 3.1.

3.2.1 The steering committee shall be comprised of six members, of whom three shall be nominated by Government and three shall be nominated by the Selkirk First Nation.

- 3.3 The steering committee shall make best efforts to recommend the management plan to Government and the Selkirk First Nation within two years of the Effective Date of this Agreement.
- 3.3.1 If the members of the steering committee are unable to agree on the provisions to be included in the management plan, Government or the Selkirk First Nation may refer the matter to dispute resolution under 26.3.0.
- 3.4 The preparation of the management plan shall include a process for public consultation, which for greater certainty, includes consultation with Yukon Indian People.
- 3.5 In preparing the management plan, the steering committee shall consider the interim management plan entitled "Fort Selkirk Management Plan" dated March 1990, which was prepared for the Department of Tourism, Heritage Branch, and the Selkirk First Nation.
- 3.6 Preparation of the management plan shall be guided by the following principles:
- 3.6.1 protection, conservation and interpretation of the Heritage Resources at Fort Selkirk in accordance with national and international standards as accepted or modified by the Selkirk First Nation and the Yukon;
- 3.6.2 recognition of the importance of Fort Selkirk to Selkirk People and protection of the use of Fort Selkirk by Selkirk People;
- 3.6.3 encouragement of public awareness of and appreciation for the natural and cultural resources of Fort Selkirk and surrounding area; and
- 3.6.4 provision of reasonable opportunities for the public to visit and appreciate Fort Selkirk.



- 3.7 The management plan may address all matters pertaining to the management of Fort Selkirk including:
- 3.7.1 its use by Selkirk People;
  - 3.7.2 the nature and status of resources;
  - 3.7.3 historic buildings;
  - 3.7.4 archaeological resources;
  - 3.7.5 burial sites;
  - 3.7.6 public access;
  - 3.7.7 land use impacts;
  - 3.7.8 the conditions of third-party use;
  - 3.7.9 research in respect of the Heritage Resources;
  - 3.7.10 economic opportunities for the Selkirk First Nation associated with Fort Selkirk; and
  - 3.7.11 other matters as agreed upon by Government and the Selkirk First Nation.

#### **4.0 Approval and Review of the Management Plan**

- 4.1 The Minister and the Selkirk First Nation shall jointly approve the management plan for Fort Selkirk.
- 4.2 If the Minister and the Selkirk First Nation are unable to agree upon the provisions of the management plan, the Minister or the Selkirk First Nation may refer the matter to dispute resolution under 26.3.0.
- 4.3 Government and the Selkirk First Nation shall jointly review the management plan no later than five years after its initial approval and shall consider the need for review of the management plan at least every five years thereafter, provided that the management plan shall be jointly reviewed at least every 10 years.
- 4.4 The management plan approved under 4.0 shall be the "Approved Management Plan".

## **5.0 Economic Opportunities**

- 5.1 The Selkirk First Nation shall have the first right to accept any contracting opportunity associated with Fort Selkirk offered by Government, the Selkirk First Nation, or Government and the Selkirk First Nation on the same terms and conditions as would be offered to others.
- 5.2 The Selkirk First Nation shall have the first right to all economic opportunities at Fort Selkirk identified in the Approved Management Plan provided that activities arising from such opportunities shall be undertaken in a manner consistent with the Approved Management Plan.

## **6.0 Implementation**

- 6.1 Government and the Selkirk First Nation shall manage Fort Selkirk in accordance with the Historic Resources Act, S.Y. 1991, c. 8, and the Approved Management Plan.
- 6.2 A management committee shall be established to implement the Approved Management Plan.
  - 6.2.1 The management committee shall be comprised of six members, of whom three shall be nominated by Government and three shall be nominated by the Selkirk First Nation.
- 6.3 The management committee shall implement the Approved Management Plan in a manner consistent with the principles set out at 3.6.
- 6.4 The management committee may consider implementing the Approved Management Plan in stages.
- 6.5 If the management committee is unable to agree upon the manner in which to implement the Approved Management Plan, the Minister or the Selkirk First Nation may refer the matter to dispute resolution under 26.3.0.

6.6 Nothing in this schedule shall be construed to confer upon an arbitrator appointed under 26.7.0 to resolve a matter referred to dispute resolution pursuant to 3.3.1, 4.2 or 6.5, any power to determine resources to be provided in connection with Fort Selkirk by either the Selkirk First Nation or Government.

## **7.0 Interim Measures**

7.1 Unless otherwise agreed by Government and the Selkirk First Nation, Fort Selkirk shall be managed in accordance with the interim management plan entitled "Fort Selkirk Management Plan" dated March 1990, which was prepared for the Department of Tourism, Heritage Branch, and the Selkirk First Nation for a period of two years from the Effective Date of this Agreement or until the management plan prepared pursuant to this schedule is approved, whichever is earlier.

## **8.0 Management of Adjacent Parcels**

8.1 The Selkirk First Nation shall manage Settlement Land, and Government shall manage Crown Land, within the area outlined by a dash-dot line designated as "Management Area" on map "Fort Selkirk Historic Site, (FSHS)", in Appendix B - Maps, which forms a separate volume to this Agreement, in a manner consistent with the principles set out in 3.6.

8.1.1 For greater certainty, Settlement Land within the Management Area includes Parcel S-130B/D and portions of Parcels R-18B, R-32B and R-42B.

## **9.0 Property Taxation**

9.1 Fort Selkirk and the improvements thereon shall not be taxable provided that:

9.1.1 the Commissioner in Executive Council is the taxing authority in respect of Fort Selkirk;

9.1.2 Fort Selkirk is designated as an historic site pursuant to the Historic Resources Act, S.Y. 1991, c.8; and

9.1.3 the Commissioner of the Yukon Territory and the Selkirk First Nation own Fort Selkirk as tenants in common.

## **10.0 Restrictions on Transfer**

10.1 Neither the Commissioner of the Yukon Territory nor the Selkirk First Nation shall transfer, assign, lease, encumber or otherwise dispose of any of its interest in Fort Selkirk without the consent of the other.

## **11.0 Mines and Minerals**

11.1 Canada shall withdraw the mines and minerals within Fort Selkirk from locating, prospecting and mining under the Yukon Quartz Mining Act, R.S.C. 1985, c. Y-4 and the Yukon Placer Mining Act, R.S.C. 1985, c. Y-3, from exploration and development under the Canada Petroleum Resources Act, R.S.C. 1985 (2d Supp.), c.36, and from staking out a location for the mining of coal and from issuance of a licence to explore for coal pursuant to the Territorial Lands Act, R.S.C. 1985, c. T-7.

## **CHAPTER 14 - WATER MANAGEMENT**

### **14.1.0 Objective**

14.1.1 The objective of this chapter is to maintain the Water of the Yukon in a natural condition while providing for its sustainable use.

### **14.2.0 Definitions**

In this chapter, the following definitions shall apply.

"Board" means the Water Board established for the Yukon pursuant to Laws of General Application.

"Domestic Use" has the same meaning as in the Northern Inland Waters Act, R.S.C. 1985, c. N-25.

"Licence" means a licence issued pursuant to the Northern Inland Waters Act, R.S.C. 1985, c. -25.

"Traditional Use" means the Use of Water, without substantially altering the quality, quantity or rate of flow, including seasonal rate of flow, by a Yukon Indian Person for trapping and non-commercial Harvesting, including transportation relating to such trapping and Harvesting or for traditional heritage, cultural and spiritual purposes.

"Use" includes the deposit of Waste into Water.

"Waste" has the same meaning as in the Northern Inland Waters Act, R.S.C. 1985, c. -25.

"Water" has the same meaning as "waters" in the Northern Inland Waters Act, R.S.C. 1985, c. N-25.

### **14.3.0 General**

14.3.1 The property in Water in the Yukon shall be determined by Laws of General Application.

14.3.2 Nothing in this chapter shall derogate from the ability of any Person to use Water for a Domestic Use in accordance with Laws of General Application.

**14.4.0 Water Board**

- 14.4.1 The Council for Yukon Indians shall nominate one-third of the members of the Board.
- 14.4.2 The Minister, in Consultation with the Board, shall appoint a chairperson and vice-chairperson from among the Board's members.

**14.5.0 Water Rights of Yukon First Nations**

- 14.5.1 Subject to Laws of General Application, a Yukon Indian Person shall have the right to use Water for a Traditional Use in the Yukon.
- 14.5.2 Notwithstanding Laws of General Application and 14.5.5, no Licence, fee or charge shall be required for a Traditional Use in the Yukon.
- 14.5.3 Nothing in 14.5.1 shall be construed to grant a priority of Use or a right to compensation.
- 14.5.4 Notwithstanding 14.3.1, and subject to the provisions of the Umbrella Final Agreement, a Yukon First Nation shall have the exclusive right to use Water which is on or flowing through its Settlement Land when such Water is on or flowing through its Settlement Land.
- 14.5.5 A Yukon First Nation's Use of Water under 14.5.4 is subject to Laws of General Application, provided that the Board shall not:
  - 14.5.5.1 refuse to issue a Licence for a Use by the Yukon First Nation; or
  - 14.5.5.2 impose terms and conditions in a Licence that are inconsistent with any terms and conditions of a Yukon First Nation assignment pursuant to 14.5.7,  
  
unless the Board is satisfied that such Water Use will:
    - 14.5.5.3 substantially alter the quantity, quality or rate of flow, including seasonal rate of flow, of Water; or
    - 14.5.5.4 result in a deposit of Waste prohibited by the Northern Inland Waters Act, R.S.C. 1985, c. N-25.

14.5.6 Unless otherwise authorized by Law, a Yukon First Nation's Use of Water under 14.5.1 to 14.5.4 shall be subject to:

14.5.6.1 public navigation and passage on Water;

14.5.6.2 the Use of Water for emergency purposes;

14.5.6.3 any hunting, trapping or fishing by the public; and

14.5.6.4 any right of access set out in a Settlement Agreement.

14.5.7 A Yukon First Nation may assign in whole or in part a right to use Water set out in 14.5.4 and an assignee's Use of Water shall be subject to 14.5.5 and 14.5.6.

14.5.8 Nothing in this chapter shall be construed to derogate from a Yukon First Nation's or a Yukon Indian Person's Use of Water on Non-Settlement Land in accordance with Law.

#### **14.6.0 Government's Management Powers**

14.6.1 Notwithstanding a Yukon First Nation's ownership of certain Beds of waterbodies, Government has the right to protect and manage Water and Beds of waterbodies, and to use Water incidental to that right, throughout the Yukon for:

14.6.1.1 management, protection and research in respect of Fish and Wildlife and their habitats;

14.6.1.2 protection and management of navigation and transportation, establishment of navigation aids and devices, and dredging of the Beds of Navigable Waters;

14.6.1.3 protection of Water supplies from contamination and degradation;

14.6.1.4 emergency purposes, including fighting fires and flood and icing control;

14.6.1.5 research and sampling of Water quality and quantity; and

14.6.1.6 other such Government public purposes.

**14.7.0 Water Rights of Other Parties on Settlement Land**

14.7.1 Subject to 14.12.0, any Person who has a right or interest in Settlement Land, except an interest in land granted by the Yukon First Nation, has the right to use Water incidental to the exercise of that right or interest in Settlement Land, if permitted by and in accordance with Laws of General Application.

14.7.2 Where the Board licenses a Water Use to a Person referred to in 14.7.1, the term of that Licence shall not extend beyond the term of the right or interest in Settlement Land.

14.7.3 A Person holding a Licence pursuant to the Northern Inland Waters Act, R.S.C. 1985, c. N-25 or a licence pursuant to the Dominion Water Power Act, R.S.C. 1985, c. W-4 for Water on or flowing through Settlement Land when such Water is on or flowing through Settlement Land, which licence was in existence on the date the land became Settlement Land, shall retain the rights thereunder as if the land had not become Settlement Land.

14.7.4 Where the term of a licence described in 14.7.3 is five years or more, the licensee shall have the right to apply to the Board for a renewal or replacement of the licence. The Board shall require that written notice of the application be given, in a form satisfactory to the Board, to the affected Yukon First Nation, and shall provide the affected Yukon First Nation an opportunity to be heard concerning terms and conditions to be attached to the renewal or replacement for the protection of the interest of the Yukon First Nation.

14.7.5 Unless a Person has a right of access without the consent of the affected Yukon First Nation, a Person requiring the use of Settlement Land other than the Parcel covered by that Person's interest under 14.7.1 in order to exercise a right to use Water under 14.7.1 and 14.7.3 has a right of access to use that Settlement Land with the consent of the affected Yukon First Nation or, failing consent, an order of the Surface Rights Board setting out terms and conditions of access.



- 14.7.6 The Surface Rights Board shall not make an order under 14.7.5 unless the Person seeking access satisfies the Surface Rights Board that:
- 14.7.6.1 such access is reasonably required; and
  - 14.7.6.2 such access is not also practicable and reasonable across Crown Land.
- 14.7.7 Nothing in this chapter shall be construed to limit the Board's ability to refuse to issue a Licence to a Person referred to in 14.7.0.
- 14.7.8 After three years from the Effective Date of a Yukon First Nation Final Agreement and only in respect to the term following the expiry of that three year period, a Person holding a Licence described in 14.7.3 shall be liable to pay compensation under the provisions of this chapter to the Yukon First Nation in respect of the exercise of such Licence, and shall be subject to the provisions of 14.11.0 and 14.12.0.
- 14.8.0 Protection of Quantity, Quality and Rate of Flow of Water**
- 14.8.1 Subject to the rights of Water users authorized in accordance with this chapter and Laws of General Application, a Yukon First Nation has the right to have Water which is on or flowing through or adjacent to its Settlement Land remain substantially unaltered as to quantity, quality and rate of flow, including seasonal rate of flow.
- 14.8.2 A Yukon First Nation shall not use Water which is on or flowing through or adjacent to its Settlement Land so as to substantially alter the quantity, quality or rate of flow, including seasonal rate of flow, except to the extent that such Water Use is authorized in accordance with 14.5.5 and is in conformity with the terms and conditions of any Water Licence granted to the Yukon First Nation.
- 14.8.3 The Board shall not grant a Licence that interferes with the rights provided in favour of a Yukon First Nation in 14.8.1 unless:

- 14.8.3.1 notice, in a form prescribed by the Board, of receipt of an application has been given to the affected Yukon First Nation; and
- 14.8.3.2 the Board is satisfied that,
- (a) there is no alternative which could reasonably satisfy the requirements of the applicant, and
  - (b) there are no reasonable measures whereby the applicant could avoid the interference.
- 14.8.4 In deciding whether to grant a Licence that interferes with the rights provided in favour of a Yukon First Nation in 14.8.1, the Board shall consider:
- 14.8.4.1 the effect of the Water Use on Fish, Wildlife and their habitats;
  - 14.8.4.2 the effect of the Water Use on the Yukon First Nation or on a Yukon Indian Person enrolled pursuant to that Yukon First Nation Final Agreement; and
  - 14.8.4.3 means of mitigating the interference.
- 14.8.5 If the Board grants a Licence that interferes with the rights provided in favour of a Yukon First Nation in 14.8.1, the Board shall order the licensee to pay compensation for loss or damage to the affected Yukon First Nation in accordance with 14.12.0.
- 14.8.6 A Yukon First Nation may apply to the Board to obtain an order for compensation from any Person not licensed by the Board and using Water in a manner not contrary to Laws of General Application, and the Board may order that compensation be paid where such Use substantially alters the quality, quantity or rate of flow, including seasonal rate of flow, of Water which is on or flowing through or is adjacent to its Settlement Land.
- 14.8.7 In deciding whether to issue a Licence, and in setting the terms and conditions of any Licence issued, the decision of the Board shall not conflict with a Decision Document that a Decision Body is empowered to implement.

- 14.8.8 A Yukon First Nation has a cause of action against any Person in respect of any Use of Water in violation of the terms and conditions of a Licence to use Water or contrary to Laws of General Application, which violation or contrary Use substantially alters the quality, quantity or rate of flow, including seasonal rate of flow, of Water which is on or flowing through or is adjacent to its Settlement Land, with such remedies as if the Yukon First Nation had riparian rights.
- 14.8.9 A Yukon First Nation shall have standing at all times in a court of competent jurisdiction in the Yukon to seek a declaration as to whether any Person substantially altering the quantity, quality or rate of flow, including seasonal rate of flow, of Water in that Yukon First Nation's Traditional Territory has lawful authority to do so.
- 14.8.10 In any civil court proceeding pursuant to 14.8.8 or 14.8.9, if the Yukon First Nation proves that the defendant who is in violation of a Water Licence is substantially altering the quality, quantity or rate of flow, including seasonal rate of flow, at the place in the body of Water where the defendant's Use of Water is taking place, then the onus shall rest on the defendant to prove that such Use of Water is not substantially altering the quality, quantity or rate of flow, including seasonal rate of flow, at any place downstream where the Yukon First Nation has the exclusive right to Use Water pursuant to 14.5.4 and the Yukon First Nation alleges there is a substantial alteration to the quality, quantity or rate of flow, including seasonal rate of flow of the Water.
- 14.8.11 In any civil court proceeding brought by a Person using Water in accordance with Laws of General Application against a Yukon First Nation on grounds that the Yukon First Nation is using Water contrary to this chapter or Laws of General Application, if the Person proves that the Yukon First Nation in violation of a Water Licence is substantially altering the quality, quantity or rate of flow, including seasonal rate of flow, at the place in the body of Water where the Yukon First Nation's Use of Water is taking place, then the onus shall rest on the Yukon First Nation to prove that such Use of Water is not substantially altering the quality, quantity or the rate of flow, including seasonal rate of flow, at any place downstream where the Person is using Water and that Person alleges there is a substantial alteration of the quality, quantity or rate of flow, including seasonal rate of flow of the Water.

**14.9.0 Protection of Yukon First Nation Traditional Uses on Non-Settlement Land**

14.9.1 Before granting a Licence in any drainage basin in the Yukon that causes substantial alteration in the quality, quantity or rate of flow, including seasonal rate of flow, of Water so as to adversely affect a Traditional Use by a Yukon Indian Person in that Yukon Indian Person's Traditional Territory, the Board shall:

14.9.1.1 give notice, in a form prescribed by the Board, of receipt of an application to the affected Yukon First Nation; and

14.9.1.2 upon request of the affected Yukon First Nation, consider whether,

(a) there is an alternative which could reasonably satisfy the requirements of the applicant while avoiding any adverse effect on the Traditional Use, and

(b) there are reasonable measures whereby the applicant could avoid the adverse effect.

14.9.2 A licensee who substantially alters the quality, quantity or rate of flow, including seasonal rate of flow, of Water in violation of a Licence or contrary to Law in a manner which causes loss or damage arising from an interference with a Traditional Use by a Yukon Indian Person within that Yukon Indian Person's Traditional Territory shall be liable to pay compensation pursuant to 14.12.0 for such loss or damage thereby caused to that Yukon Indian Person.

**14.10.0 Interjurisdictional Agreements**

14.10.1 Government shall make best efforts to negotiate Water management agreements with other jurisdictions which share drainage basins with the Yukon.

14.10.2 Government shall Consult with affected Yukon First Nations with respect to the formulation of Government positions on the management of Water in a shared drainage basin within those Yukon First Nations' Traditional Territories in negotiating an agreement pursuant to 14.10.1.

## **14.11.0 Water Use Disputes**

14.11.1 A Yukon First Nation may apply to the Board to determine whether:

14.11.1.1 there is an alternative that will reasonably satisfy the requirements of a licensee without interfering with the right of the Yukon First Nation to have Water which is on or flowing through or adjacent to its Settlement Land remain substantially unaltered as to quantity, quality or rate of flow, including seasonal rate of flow;

14.11.1.2 measures can be taken to avoid interference with Water rights referred to in 14.11.1.1 and Uses of Water of the Yukon First Nation;

14.11.1.3 the Water licensee is in compliance with the terms and conditions of a Licence;

14.11.1.4 the terms and conditions of a Licence need to be reviewed due to unforeseen impacts on the Yukon First Nation; or

14.11.1.5 the Yukon First Nation is entitled to compensation under the provisions of this chapter.

14.11.2 In addition to any other powers available to the Board, on application being made to the Board under 14.11.1, the Board may make an order amending, suspending or cancelling the Licence, or deciding that the Yukon First Nation is entitled to compensation by the licensee, or a combination of the foregoing.

14.11.3 Where an application under 14.11.1 is being considered by the Board and prior to the Board's decision thereon, the Board may make an interim order restraining the Water licensee from exercising such rights with respect to Water as are specified in the interim order and containing such terms and conditions as the Board may determine including the payment of interim compensation.

- 14.11.4 The Board may require a Water licensee to provide evidence of financial responsibility in a form satisfactory to the Board, including cash deposit, letter of credit, performance bond or other form of financial instrument conditioned on due performance by the Water licensee of the provisions of the Licence, including provisions, terms and conditions and orders of the Board relating to abandonment, reclamation and restoration of the environment.
- 14.11.5 A Yukon Indian Person may apply to the Board to determine whether he is entitled to compensation pursuant to 14.9.2.
- 14.11.6 Where the Board pursuant to 14.11.5 determines that a Yukon Indian Person is entitled to compensation, the Board may exercise the powers set out in 14.11.2, 14.11.3 and 14.11.4.
- 14.12.0 Compensation**
- 14.12.1 Compensation to be paid to a Yukon First Nation or a Yukon Indian Person pursuant to this chapter shall only be for provable loss or damage to the Yukon First Nation or Yukon Indian Person.
- 14.12.2 The amount and terms of compensation set out in 14.12.1 shall be determined by the Board.
- 14.12.3 When determining the amount and terms of compensation to be paid to a Yukon First Nation pursuant to this chapter, the Board shall consider:
- 14.12.3.1 the effect of the Water Use on the Yukon First Nation's Use of Water on or adjacent to its Settlement Land;
  - 14.12.3.2 the effect of the Water Use on the Yukon First Nation's Settlement Land, taking into account any cultural or special value of the land to the Yukon First Nation;
  - 14.12.3.3 the nuisance, inconvenience and noise caused by the Water Use to the Yukon First Nation on Settlement Land;
  - 14.12.3.4 the increment of the Water alteration caused by the Water Use;

- 14.12.3.5 the cost of mitigation and restoration of the Settlement Land;
  - 14.12.3.6 the duration of any of the above; and
  - 14.12.3.7 any other factors set out in the Northern Inland Waters Act, R.S.C. 1985, c. -25.
- 14.12.4 In a determination, pursuant to 14.12.3, of compensation payable to a Yukon First Nation, the loss or damage suffered by the Yukon First Nation for activity contrary to 14.8.1 shall include the loss or damage suffered by a Yukon Indian Person enrolled under that Yukon First Nation Final Agreement, but shall not include loss or damage compensable pursuant to 14.9.2.
- 14.12.5 In determining loss or damage suffered by a Yukon Indian Person under 14.12.4, the Board shall consider:
- 14.12.5.1 the effect of the Water Use on the Yukon Indian Person's Use of Water on or adjacent to the affected Yukon First Nation's Settlement Land;
  - 14.12.5.2 the effect of the Water Use on Fish and Wildlife Harvesting by the Yukon Indian Person enrolled under that Yukon First Nation Final Agreement;
  - 14.12.5.3 the increment of the Water alteration caused by the Water Use;
  - 14.12.5.4 the duration of any of the above; and
  - 14.12.5.5 any other factors set out in the Northern Inland Waters Act, R.S.C. 1985, c. -25.
- 14.12.6 When determining the amount and terms of compensation to be paid to a Yukon Indian Person pursuant to 14.9.2, the Board shall consider:
- 14.12.6.1 subject to 14.12.6.2, the effect of the unlawful Use of Water on the Yukon Indian Person's Traditional Use of Water in that Yukon Indian Person's Traditional Territory;

- 14.12.6.2 the effect of the unlawful Use of Water on a Yukon Indian Person's Traditional Use in relation to traditional heritage, culture and spiritual purposes, but only on or adjacent to the Settlement Land of the Yukon First Nation under whose Yukon First Nation Final Agreement that Yukon Indian Person is enrolled;
  - 14.12.6.3 the incremental effect of the unlawful Use of Water on the Yukon Indian Person's Traditional Use;
  - 14.12.6.4 the cost to the Yukon Indian Person of mitigation of damage caused to Settlement Land and restoration of Settlement Land for the Traditional Use;
  - 14.12.6.5 the duration of any of the above; and
  - 14.12.6.6 any other factors set out in the Northern Inland Waters Act, R.S.C. 1985, c. -25.
- 14.12.7 The Board may order periodic or lump sum compensation or both.
- 14.12.8 The Board may, on application, review and amend a compensation order from time to time to take into account changing circumstances.
- 14.12.9 The Board may award costs including interim costs and such costs may exceed costs which a court could award in a legal proceeding.
- 14.12.10 An order of the Board for compensation or for costs pursuant to 14.12.0 shall be enforceable as if it were an order of the Supreme Court of the Yukon.



## **CHAPTER 15 - DEFINITION OF BOUNDARIES AND MEASUREMENT OF AREAS OF SETTLEMENT LAND**

### **15.1.0 Definitions**

In this chapter, the following definitions shall apply.

"Artificial Boundary" means a boundary formed by a straight line or curve of prescribed radius joining points established on the ground by Monuments.

"Monument" means any device authorized by the Surveyor General to mark a boundary in a legal survey executed under some statutory authority.

"Offset Natural Boundary" means a sinuous boundary parallel to the sinuosities of a Natural Boundary at a prescribed perpendicular distance from the Natural Boundary.

"Ordinary High Water Mark" of a body of water means the limit or edge of its bed and in the case of non-tidal waters it may be called "the bank" or "the limit of the bank".

"Rural Settlement Land" means the lands identified by the notation "R" on maps appended to each Yukon First Nation Final Agreement.

"Settlement Land Committee" means a committee described in 15.3.0.

"Special Management Area" means a Special Management Area as defined in 10.2.0.

"Surveyor General" means the Surveyor General of Canada Land appointed in the manner authorized by Law or a person authorized by the Minister of Energy, Mines and Resources to carry out any or all of the duties of the Surveyor General.

"UTM Grid" means the Universal Transverse Mercator projection system grid lines shown on map sheets of the National Topographic Series published by the Surveys, Mapping and Remote Sensing Sector of the Department of Energy, Mines and Resources. For greater certainty, the UTM Grid datum shall be the reference datum existing at the time of compilation of each particular map sheet.

## **15.2.0 Administration of Surveys of Settlement Land**

- 15.2.1 The boundaries of Settlement Land shall be surveyed in accordance with the instructions of the Surveyor General and dealt with by an official plan confirmed pursuant to the Canada Lands Surveys Act, R.S.C. 1985, c. L-6.
- 15.2.2 The boundaries of Special Management Areas may be shown on an administrative or explanatory plan authorized and approved by the Surveyor General pursuant to the Canada Lands Surveys Act, R.S.C. 1985, c. L-6, without a full survey of the boundaries.
- 15.2.3 Standards of accuracy, techniques and specifications for the survey of Settlement Land shall be in accordance with the Manual of Instructions for the Survey of Canada Lands and other general or specific instructions issued by the Surveyor General from time to time.
- 15.2.4 The Surveyor General shall have the discretion to adjust boundaries of Settlement Land in order to reduce survey costs, subject to agreement of the Settlement Land Committee.
- 15.2.5 The Surveyor General has statutory responsibility for and control over all legal surveys arising out of Settlement Agreements.
- 15.2.6 Canada may establish, as necessary, either prior to or in conjunction with Settlement Legislation, control survey monuments along unsurveyed Major Highways and in the vicinity of Settlement Land in order to expedite the efficient survey of Settlement Land. The method of establishment of and specifications for density and accuracy of control survey monuments shall be decided by the Surveys, Mapping and Remote Sensing Sector, Department of Energy, Mines and Resources.

- 15.2.7 Subject to 15.6.7, Canada shall pay the full cost of surveying all Settlement Land pursuant to 15.2.1, and pay the full cost of describing and depicting Special Management Areas as necessary.
- 15.2.8 The cost of subsequent surveys of Settlement Land shall be the responsibility of the Yukon First Nation.
- 15.2.9 Final decisions and ultimate responsibility concerning survey of Settlement Land rests with Canada and such decisions shall be taken in Consultation with the Yukon and the Council for Yukon Indians.
- 15.2.10 Surveys of Settlement Land shall be effected as soon as resources will allow.

### **15.3.0 Settlement Land Committees**

- 15.3.1 There shall be established with each Yukon First Nation, no later than one month after the signing of its Yukon First Nation Final Agreement, a Settlement Land Committee, comprised of one representative appointed by the Surveyor General to be chairperson, no more than two representatives appointed by Government and no more than two representatives appointed by the Yukon First Nation.
- 15.3.2 Subject to 15.3.1, where interests in Parcels of Settlement Land are currently under the administration and control of Canada, the Minister of Indian Affairs and Northern Development shall appoint a Government representative.
- 15.3.3 Subject to 15.3.1, where interests in Parcels of Settlement Land are currently under the administration and control of the Yukon, the Yukon shall appoint a Government representative.
- 15.3.4 Each Settlement Land Committee shall, in accordance with the principles described in 15.3.5, be responsible for:
- 15.3.4.1 the identification and selection of Site Specific Settlement Land out of Proposed Site Specific Settlement Land;
  - 15.3.4.2 determining priorities for the survey of all Settlement Land; and

- 15.3.4.3 indication to the Surveyor General of portions of boundaries, if any, of those Special Management Areas which should be considered for definition by survey in order to better serve the mutual interests of the Yukon First Nation and the public.
  
- 15.3.5 In determining priorities for the identification and selection of Site Specific Settlement Land and for the survey of all Settlement Land, the Settlement Land Committee shall have regard to the following principles:
  - 15.3.5.1 the priorities of the Yukon First Nation;
  - 15.3.5.2 efficiency and economy; and
  - 15.3.5.3 the necessity to clarify boundaries because of imminent public or private development on adjacent lands.
  
- 15.3.6 To the extent practicable, between the Effective Date of each Yukon First Nation Final Agreement and the date of confirmation of a plan of survey of any particular Parcel of Settlement Land or Site Specific Settlement Land, Yukon Indian People shall not be precluded from the interim use and enjoyment of that Parcel by reason only that a plan of survey of that Parcel has not been confirmed.
  
- 15.3.7 During the period described in 15.3.6:
  - 15.3.7.1 each Settlement Land Committee shall receive requests relating to the use and enjoyment of Proposed Site Specific Settlement Land by Yukon Indian People;
  - 15.3.7.2 each Settlement Land Committee shall determine whether it is practicable to give effect to such requests and shall recommend to Canada or the Yukon, as the case may be, that it take such steps as the Committee considers appropriate; and
  - 15.3.7.3 Government undertakes to take such steps as it considers practicable to give effect to the recommendations of the Settlement Land Committee.

15.3.8 Where a Settlement Land Committee does not reach agreement under 15.3.4.1 or 15.3.4.2, Government, the affected Yukon First Nation or the Committee may refer the matter to the dispute resolution process under 26.3.0.

15.3.9 Where the dispute arises under 15.3.4.1, the arbitrator shall select either the final position proposed by Government or the final position proposed by the affected Yukon First Nation.

**15.4.0 Selection of Boundaries of Settlement Land**

15.4.1 Boundaries of Settlement Land or Special Management Areas shall be:

15.4.1.1 Artificial Boundaries;

15.4.1.2 Natural Boundaries, including but not limited to the Ordinary High Water Mark of Water, and well-defined heights of land; or

15.4.1.3 a combination of 15.4.1.1 and 15.4.1.2.

15.4.2 Where Natural Boundaries are used, the following provisions shall apply:

15.4.2.1 except as agreed to by the parties to a Yukon First Nation Final Agreement, Natural Boundaries of Settlement Land along Navigable Water and non-Navigable Water shall be located on the Ordinary High Water Mark;

**Specific Provision**

(a) Any exception to 15.4.2.1 for Selkirk First Nation Settlement Land is set out in Appendix A - Settlement Land Descriptions, attached to this Agreement.

15.4.2.2 Natural Boundaries, except Natural Boundaries of bodies of water as set out in 15.4.3, shall move with the various natural processes of erosion and accretion, and where an offset Natural Boundary is prescribed, it is also deemed to move and vary according to this natural movement of the Natural Boundary; and

- 15.4.2.3 where a Natural Boundary of Settlement Land involves a height of land which, in the opinion of the Surveyor General, is not well defined and where there is a requirement to establish all or part of that boundary by field survey, the Surveyor General shall have the authority to replace the sinuosities of the height of land by a series of monumented Artificial Boundaries closely approximating its mean position.
- 15.4.3 Where alteration of a natural river or lake is proposed for hydro-electric or other development purposes and such alteration affects a boundary or boundaries, any resurveys required for the proper redefinition of Settlement Land shall be undertaken at the cost of the proponent of the development.
- 15.4.4 At the time of field survey of boundaries of Settlement Land, recognition shall be given to the map features and grid lines as shown on maps comprising an Appendix to each Yukon First Nation's Final Agreement.
- 15.4.4.1 Notwithstanding any subsequently discovered inaccuracies in the plotting of features or improvements from which the location of Proposed Site Specific Settlement Land was determined, for the purposes of 5.14.0, the actual location of the Proposed Site Specific Settlement Land shall be determined by its actual proximity or relationship to this feature or improvement.
- 15.4.5 Each Settlement Land Committee shall indicate and identify any critical features intended to be enclosed in Settlement Land.
- 15.5.0 Monumentation of Boundaries of Settlement Land**
- 15.5.1 The boundaries of Settlement Land shall be defined by Monuments placed in accordance with applicable regulations and instructions of the Surveyor General and in particular at the following locations:
- 15.5.1.1 all points of deflection of Artificial Boundaries and at intervals to be specified by the Surveyor General;

- 15.5.1.2 all terminal points where an Artificial Boundary intersects an Artificial Boundary or Natural Boundary and, in the case of intersection with a Natural Boundary of a body of water, the Monuments shall be set back from the Natural Boundary on the Artificial Boundary at a reasonable and safe distance from the said Natural Boundary; and
- 15.5.1.3 all intersections of Artificial Boundaries with the prescribed limits of a surveyed or unsurveyed Major Highway, a Road or other right-of-way, established on each side of the Major Highway, Road or right-of-way.

**15.6.0 Measurement of Areas of Settlement Land**

- 15.6.1 The Surveyor General shall have the discretion to adjust the boundaries agreed to in each Yukon First Nation's Final Agreement in order to achieve the total land area agreed upon in such Yukon First Nation Final Agreement in accordance with 15.6.2.
- 15.6.2 The calculation of the total area of Settlement Land for each Yukon First Nation shall commence with Settlement Land within a Community Boundary and proceed in increasing Parcel size to the Site Specific Settlement Land and Rural Settlement Land. Any adjustment of boundaries of Settlement Land required shall be to the boundary or to those boundaries as agreed upon in the Yukon First Nation Final Agreement.

**Specific Provision**

- 15.6.2.1 The boundaries that may be adjusted pursuant to 15.6.2 for Selkirk First Nation Settlement Land are set out in Appendix A - Settlement Land Descriptions, attached to this Agreement.

- 15.6.3 The areas of surveyed Settlement Land shall be calculated using plane surveying methods.

- 15.6.4 The areas of larger Special Management Areas shall be computed using UTM Grid lines or lines between coordinate points as boundaries. The areas shall be computed on the map projection plane for the area and shall be transformed by calculation to the mean ground elevation for each parcel. The maps utilized shall be the most accurate maps available in the opinion of the Surveyor General.
- 15.6.5 The area of larger Parcels of Rural Settlement Land having numerous Natural Boundaries shall be determined by ground survey techniques or by utilizing the most accurate maps or aerial photographs available, or by any combination of the foregoing which, in the opinion of the Surveyor General, will give satisfactory accuracy. The areas calculated by plane survey or graphical methods or a combination of the two shall be calculated at mean ground elevation for the Parcel concerned.
- 15.6.6 Prior to the confirmation of an official plan by the Surveyor General or the approval of an administrative or explanatory plan, written approval from the Yukon First Nation shall be obtained by the Settlement Land Committee to ensure that the Yukon First Nation is satisfied that the Parcel as surveyed conforms either to the area originally selected or as modified by the Surveyor General pursuant to 15.2.4 and 15.6.1. The plan and a copy of the surveyor's report shall be reviewed by the Settlement Land Committee for conformance with the original land selection before recommending it to the Yukon First Nation.
- 15.6.7 If the Yukon First Nation rejects the recommendation by the Settlement Land Committee, the disagreement shall be referred to the dispute resolution process under 26.3.0, and the Surveyor General or his representative shall have standing as a party to the dispute. The resulting decision may direct that the costs of a resurvey be borne by one or more of the parties to the dispute.
- 15.6.8 After resolution of any disagreement pursuant to 15.6.7, the plan shall be returned directly to the Surveyor General for confirmation.



15.6.9 The determination and delineation of a Yukon First Nation's total land area pursuant to 15.6.0 shall be final and shall be governed by the Artificial and Natural Boundaries thereby established, notwithstanding:

15.6.9.1 any discrepancy subsequently discovered between computed areas and areas enclosed by those boundaries; or

15.6.9.2 any changes to the areas of Settlement Land caused by the gradual and imperceptible movements of Natural Boundaries.

### **15.7.0 Employment and Economic Opportunities**

15.7.1 Where employment in surveying of Settlement Land is generated as a direct consequence of a Yukon First Nation Final Agreement, the parties to the Yukon First Nation Final Agreement shall negotiate as part of that Yukon First Nation Final Agreement, the participation of Yukon Indian People who have appropriate qualifications or experience, in such employment, and the determination of such qualifications and experience.

#### **Specific Provision**

15.7.1.1 In evaluating any competitive proposal, bid or tender for the survey of Selkirk First Nation Settlement Land, Government shall include among the factors for consideration, employment of Selkirk People, and Selkirk First Nation and Selkirk People ownership or equity investment in the firm submitting the proposal, bid or tender, and in any subcontractor to that firm.

15.7.1.2 The Selkirk First Nation and Government shall ensure that qualifications and experience requirements for employment of Selkirk People in the surveying of Selkirk First Nation Settlement Land shall be established at levels appropriate to the nature of the tasks being performed in that employment, and shall take into account the local knowledge of Selkirk People.

15.7.1.3 Qualified Selkirk People shall have first priority for employment in the surveying of Selkirk First Nation Settlement Land on the same terms and conditions that such employment would be offered to any other person with the appropriate qualifications and experience.

15.7.1.4 Nothing in 15.7.1.1 shall be construed to mean that the criterion for employment of Selkirk People, or for Selkirk First Nation or Selkirk People ownership or equity investment shall be the determining criteria in awarding any contract.

15.7.2 Where economic opportunities and benefits are associated with the survey of Settlement Land, Yukon First Nations shall have access to these opportunities and benefits. Any contract issued for the survey of Settlement Land shall contain the condition that Yukon Indian People and Yukon First Nation businesses with the necessary qualifications and experience shall be given first consideration in providing technical and support services associated with the contract. A list of Yukon First Nation businesses and Yukon Indian People interested in providing such services to potential contractors for such surveys of a Yukon First Nation's Settlement Land shall be included with all requests for proposals, and documentary proof the Yukon First Nation's businesses and Yukon Indian People were given first consideration shall form part of a contractor's proposal.

## **SCHEDULE A - MAJOR HIGHWAYS**

Yukon Highway # 1	Alaska Highway
Yukon Highway # 2	Klondike Highway
Yukon Highway # 3	Haines Road
Yukon Highway # 4	Campbell Highway
Yukon Highway # 5	Dempster Highway
Yukon Highway # 6	Canol Road
Yukon Highway # 7	Atlin Road
Yukon Highway # 8	Tagish Road
Yukon Highway # 9	Top of the World Highway (Dawson - Boundary Road)
Yukon Highway # 10	Nahanni Range Road
Yukon Highway # 11	Silver Trail
Yukon Highway # 37	Cassiar Road