

**COMPREHENSIVE LAND CLAIM AGREEMENT**  
**BETWEEN**  
**HER MAJESTY THE QUEEN IN RIGHT OF CANADA**  
**AND**  
**THE GWICH'IN**  
**AS REPRESENTED BY**  
**THE GWICH'IN TRIBAL COUNCIL**

**GWICH'IN COMPREHENSIVE LAND CLAIM AGREEMENT**

**FOR HER MAJESTY THE QUEEN  
IN RIGHT OF CANADA**

**FOR THE GWICH'IN**

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Government of the  
Northwest Territories

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Government of the  
Northwest Territories

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SIGNED IN FORT MCPHERSON, NORTHWEST TERRITORIES, ON

, 1992

WITNESSES

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## **VOLUME II**

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**PREAMBLE**

- WHEREAS the Gwich'in have traditionally used and occupied lands in the Northwest Territories and the Yukon from time immemorial;
- WHEREAS Treaty 11 was signed at Arctic Red River on the 26th day of July, 1921, and at Fort McPherson on the 28th day of July, 1921, with chiefs and headmen representing the Gwich'in (also known as the Loucheux);
- WHEREAS following the signing of Treaty 11, cash grants were issued to the Gwich'in Metis;
- WHEREAS the *Constitution Act, 1982* recognizes and affirms the existing aboriginal and treaty rights of the aboriginal peoples of Canada;
- WHEREAS the Gwich'in and Canada have unresolved differences with respect to the interpretation of aboriginal and treaty rights;
- WHEREAS the Gwich'in and Canada have negotiated in order to define and give effect to certain rights of the Gwich'in as set out in this agreement, which is a modern treaty;
- WHEREAS the Gwich'in, in a vote held between September 16 and 20, 1991, ratified the July 13, 1991 text of this agreement;
- WHEREAS following Gwich'in ratification of the agreement, land descriptions were appended, the Yukon transboundary agreement was made more detailed and the text of the agreement was revised by the parties to improve its clarity;
- WHEREAS the Gwich'in Tribal Council has approved, by resolution, the text of this agreement;
- WHEREAS Canada has approved this agreement by Order-in-Council P.C. \_\_\_\_\_, dated \_\_\_\_\_, 1992;
- AND WHEREAS representatives of the Gwich'in and Canada are authorized to sign this treaty which, when given effect by Parliament in settlement legislation, will be recognized as a land claim agreement under the *Constitution Act, 1982*;

NOW THEREFORE IT IS AGREED:

**1 OBJECTIVES**

- 1.1 The Gwich'in and Canada have negotiated this agreement in order to meet these objectives:
  - 1.1.1 To provide for certainty and clarity of rights to ownership and use of land and resources;
  - 1.1.2 To provide the specific rights and benefits in this agreement in exchange for the relinquishment by the Gwich'in of certain rights claimed in any part of Canada by treaty or otherwise;
  - 1.1.3 To recognize and encourage the Gwich'in way of life which is based on the cultural and economic relationship between the Gwich'in and the land;
  - 1.1.4 To encourage the self-sufficiency of the Gwich'in and to enhance their ability to participate fully in all aspects of the economy;
  - 1.1.5 To provide the Gwich'in with specific benefits, including financial compensation, land and other economic benefits;
  - 1.1.6 To provide the Gwich'in with wildlife harvesting rights and the right to participate in decision making concerning wildlife harvesting and management;
  - 1.1.7 To provide the Gwich'in the right to participate in decision making concerning the use, management and conservation of land, water and resources;
  - 1.1.8 To protect and conserve the wildlife and environment of the settlement area for present and future generations; and
  - 1.1.9 To ensure the Gwich'in the opportunity to negotiate self-government agreements.



## 2 DEFINITIONS

### 2.1.1 In this agreement,

"act" includes ordinance;

"agreement" means this agreement and "the date of this agreement" means the date on which it is signed by representatives of Her Majesty the Queen in Right of Canada and the Gwich'in after ratification;

"artificial boundary" means a straight line joining two identified geographic locations or survey monuments;

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

"conservation" means the management of wildlife populations and habitat to ensure the maintenance of the quality and diversity including the long-term optimum productivity of those resources, and to ensure a sustainable harvest and its efficient utilization;

"conservation area" means game reserves, sanctuaries, migratory bird sanctuaries, national wildlife areas, and similar areas for the protection of wildlife and wildlife habitat established under federal or territorial legislation except national parks;

"consultation" means

- (a) the provision, to the party to be consulted, of notice of a matter to be decided in sufficient form and detail to allow that party to prepare its views on the matter;
- (b) the provision of a reasonable period of time in which the party to be consulted may prepare its views on the matter, and provision of 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;

"designated Gwich'in organization" means a Gwich'in organization designated pursuant to chapter 7;

"developer" means any person engaged in development activity;

"development activity" means any private, local, territorial or federal government undertaking, or extension thereof, on land or water;

"development proposal" means a proposed development activity outside local government boundaries, or within such boundaries where the undertaking would be likely to have a significant impact on air, water or renewable resources;

"expropriating authority" means the Government of Canada or the Government of the Northwest Territories or any other authority authorized by statute to expropriate land or an interest in land;

"expropriation" means the compulsory taking of lands or any interest in land;

"forest conservation" means the management of forest resources to ensure the maintenance of the quality and diversity, including the long-term optimum productivity of those resources, and to ensure a sustainable harvest and its efficient utilization;

"forest management" includes forest conservation, forest firefighting, timber management, reforestation and silviculture;

"fur bearers" means the following species endemic to the settlement area: Castor including beaver; Alopex including white fox or arctic fox; Lutra including otter; Lynx including lynx; Martes including martens and fishers; Mephitis including skunk; Mustela including weasel and mink; Ondatra including muskrat; Vulpes including red, cross, black and silver fox; Gulo including wolverine; Canis including wolves and coyotes; Marmota including marmots; Tamiasciurus including red squirrels;

"gas" means natural gas and includes all substances, other than oil, that are produced in association with natural gas;

"government" means

- (a) the Government of Canada,
- (b) the Government of the Northwest Territories or its successor or successors, or
- (c) both,

depending upon which government or governments have responsibility, from time to time, for the matter in question, and this term shall include departments, agencies or officials duly authorized to act on behalf of the bodies named above;

"Gwich'in" means, except in chapters 3 and 4, participants and Gwich'in organizations designated pursuant to chapter 7, as the context requires;

"Gwich'in community" means the community of Inuvik, Aklavik, Arctic Red River or Fort McPherson;

"Gwich'in lands" means Gwich'in municipal lands and settlement lands;

"Gwich'in municipal lands" means Gwich'in lands within local government boundaries granted pursuant to **22.2.1**;

"harvesting" means gathering, hunting, trapping or fishing in accordance with this agreement or applicable legislation;

"impact on the environment" includes effects on air, land and water quality, on wildlife and wildlife harvesting, on the social and cultural environment and on heritage resources;

"legal survey" means the determination of all the monuments or landmarks that mark a boundary and the survey of all the lines constituting the boundary. It includes the preparation of field notes and plans and any examination, approval or confirmation that may be required of the Surveyor General and other officers under the provisions of the *Canada Lands Survey Act*, R.S. 1985, c. L-6, or other statutory authority;

"legislation" means federal or territorial legislation in force from time to time and includes regulations, and any reference to a specific act means that act as amended from time to time, and successor legislation;

"local government" means all incorporated cities, towns, villages, hamlets, charter communities, settlements and local governments listed in **22.8.1** and any other local government which is subsequently designated and established pursuant to **22.7.1** and includes the Government of the Northwest Territories when it acts in the stead of local government;

"Mackenzie Valley" comprises the area within the Northwest Territories that is bounded on the south by the 60th parallel of latitude excluding the area of Wood Buffalo National Park; on the west by the border between the Northwest Territories and Yukon Territory; on the north by the boundary of the Western Arctic Region; and on the east by the boundary of the settlement area of the Tungavik Federation of Nunavut;

"member of immediate family" means spouse, child, parent, brother or sister;

"migratory game birds" has the same meaning as in the *Migratory Birds Convention Act*, R.S. 1985, c. M-7;

"minerals" means precious and base metals and other, non-living, naturally occurring substances and includes coal and oil and gas;

"Minister" means the Minister of the Government of Canada or the Minister of the Government of the Northwest Territories, as the context requires, responsible for the subject matter referred to;

"minor" means a person who has not yet reached the age of majority as determined from time to time by the Legislative Assembly of the Northwest Territories;

"monument" means any authorized device used by a qualified surveyor to mark a boundary in a legal survey executed under some statutory authority, and includes any ancillary components;

"national park" means lands described in the schedules to the *National Parks Act*, R.S. 1985, c. N-14, that lie within the settlement area;

"natural boundary" means the ordinary high-water mark of water bodies or a well-defined height of land;

"navigable" means with respect to a river, lake or other body of water, capable of navigation by boat or other water craft used for commercial purposes or by members of the public in the settlement area;

"new licence", unless otherwise provided in this agreement, includes a licence where the licensee or effective ownership of the licensee is changed but does not include a renewal to the licensee of an existing licence, or a new licence issued to the licensee to authorize the continuation of activities of the licensee under an expiring licence;

"Norman Wells Proven Area" means the area described in Schedule "A" to the Proven Area Agreement dated July 21, 1944, between Imperial Oil Limited and His Majesty in Right of Canada, as amended and renewed from time to time;

"offset boundary" means a boundary parallel to an existing legal survey, a natural boundary or a right of way at a prescribed perpendicular distance from that boundary;

"oil" means crude oil, regardless of gravity, produced at a wellhead in liquid form and any other hydrocarbons except coal and gas and, without limiting the generality of the foregoing, hydrocarbons that may be extracted or recovered from deposits of oil sand, bitumen, bituminous sand, oil shale or from any other types of deposits on the surface or subsurface;

"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";

"participant" means a person who is enrolled in the Enrolment Register pursuant to chapter 4;

"plants" means all flora, other than trees, in a wild state;

"protected area" means all areas and locations of land set apart and protected by government in the settlement area including historic parks and sites, national wildlife areas, migratory bird sanctuaries, territorial parks, conservation areas and archaeological sites but does not include national parks;

"Renewable Resources Council" means a Gwich'in Renewable Resources Council described in 12.9;

"resource" means mines and minerals whether solid, liquid or gaseous;

"royalty" means any payment, whether in money or in kind, in respect of production of a resource in, on or under the Mackenzie Valley, including the Norman Wells Proven Area, paid or payable to government as owner of the resource, but does not include any payment for a service, for the issuance of a right or interest or for the granting of an approval or authorization;

"settlement area" comprises the area within the Northwest Territories as described in appendix A to this agreement;

"settlement lands" means Gwich'in lands outside local government boundaries granted pursuant to 18.1.2;

"settlement legislation" means the legislation described in 3.1.4 and "the date of settlement legislation" means the date when the legislation comes into force;

"Surveyor General" means the Surveyor General of Canada Lands 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;

"territorial park" means lands described in the schedule to the Territorial Park Regulations of the *Territorial Parks Act*, R.S.N.W.T. 1988, c. T-4;

"timber licence" includes a timber permit and forest management agreement;

"trade" means to barter, buy, sell, give or receive;

"tree" means a single-stemmed, perennial woody plant growing to a height of more than eight feet, and which is found in a wild state in the Northwest Territories, including Pinus species including Jack Pine and Lodge Pole Pine; Larix species including Tamarack; Picea species including White Spruce and Black Spruce; Abies species including Alpine Fir; Salix species including Beaked Willow and Pussy Willow; Populus species including Trembling Aspen and Balsam Poplar; Betula species including White Birch, Alaska Birch and Water Birch; Alnus species including Speckled Alder and Mountain Alder; and Prunus species including Choke Cherry and Pin Cherry;

"water" includes ice;

"waterfront lands" means lands from the water's edge to 30.48 metres (approximately 100 feet) inland measured from the ordinary high-water mark;

"Western Arctic Region" means that portion of the Inuvialuit Settlement Region other than the Yukon Territory as defined in the Inuvialuit Final Agreement; and

"wildlife" means all ferae naturae in a wild state including, fish, mammals and birds.

### **3 GENERAL PROVISIONS**

**3.1.1** In this chapter,

"Gwich'in" means a person of Gwich'in (also referred to as Loucheux) ancestry who resided in, or used and occupied the settlement area on or before December 31, 1921, or is a descendant of such person.

**3.1.2** This agreement shall be a land claim agreement within the meaning of section 35 of the *Constitution Act, 1982*.

**3.1.3** (a) This agreement has been ratified by the Gwich'in and Canada in accordance with the process set out in appendix E.

(b) Enactment of settlement legislation by Parliament is a condition precedent to the validity of this agreement which shall be effective from the date of settlement legislation and, in the absence of such approval, this agreement is null and void and of no effect.

**3.1.4** Canada shall recommend to Parliament that this agreement be approved, given effect and declared valid by legislation.

**3.1.5** Nothing in this agreement or in the settlement legislation shall remove from the Gwich'in their identity as aboriginal people of Canada or, subject to 3.1.12 and 3.1.13, affect their ability to participate in or benefit from any existing or future constitutional rights for aboriginal people which may be applicable to them.

**3.1.6** Nothing in this agreement shall affect the ability of Gwich'in to participate in and benefit from government programs for status Indians, non-status Indians or Metis, as the case may be. Benefits received under such programs shall be determined by general criteria established from time to time.

**3.1.7** Nothing in this agreement shall affect the rights of the Gwich'in as Canadian citizens and they shall continue to be entitled to all the rights and benefits of all other citizens applicable to them from time to time.

**3.1.8** Nothing in this agreement shall affect the status under the *Indian Act, R.S. 1985, c. I-5*, of any Gwich'in or of any Indian band in the settlement area.

**3.1.9** Gwich'in lands shall be deemed not to be lands reserved for Indians within the meaning of the *Constitution Act, 1867* nor reserves within the meaning of the *Indian Act, R.S. 1985, c. I-5*.

**3.1.10** Nothing in this agreement shall prejudice the devolution or transfer of jurisdiction or powers from Canada to the Government of the Northwest Territories.

**3.1.11** The parties recognize the historical and cultural importance of Treaty 11 and agree that there shall be annual meetings to affirm this recognition, to make annual treaty payments and to recognize the importance of this agreement.

- 3.1.12** In consideration of the rights and benefits provided to the Gwich'in by this agreement, the Gwich'in cede, release and surrender to Her Majesty in Right of Canada all their aboriginal claims, rights, titles and interests, if any, in and to lands and waters anywhere within Canada.
- 3.1.13** In consideration of the rights and benefits provided to the Gwich'in by this agreement, the Gwich'in cede, release and surrender to Her Majesty in Right of Canada all their claims, rights or causes of action whether collective or individual which they ever had, now have or may hereafter have under, arising out of or by reason of:
- (a) the obligation in Treaty 11 to set aside reserves, and the Gwich'in hereby acknowledge that no reserves were ever set aside in the settlement area pursuant to this obligation;
  - (b) the once and for all obligations in Treaty 11, which the Gwich'in acknowledge have been fulfilled by Her Majesty in Right of Canada, to provide the Indians with
    - (i) a payment of thirty-two dollars to each chief, twenty-two dollars to each headman, and twelve dollars to every other Indian,
    - (ii) medals, flags, copies of the Treaty, and
    - (iii) equipment for hunting, fishing and trapping to the value of fifty dollars for each family;
  - (c) the obligation in Treaty 11 to provide the Indians with
    - (i) tools for bands that select a reserve,
    - (ii) such assistance as is deemed necessary for the purpose of following agricultural pursuits, and
    - (iii) suits of clothing for chiefs and headmen;
  - (d) the right specified in Treaty 11 of the Indians to pursue their usual vocations of hunting, fishing and trapping, but this right shall only be ceded, released and surrendered
    - (i) within the settlement area, the Western Arctic Region, the treaty area east of the Western Arctic Region and north of the Sahtu Settlement Area, and the Yukon, and
    - (ii) within any other region in which a comprehensive land claim agreement based upon the April 9, 1990 Dene/Metis Comprehensive Land Claim Agreement is concluded and approved by Parliament, provided that the participants under such land claim agreement surrender their treaty rights in respect of hunting, fishing and trapping in the settlement area; and
  - (e) any Imperial or Canadian legislation or Order-in-Council or other action of the Governor in Council or Canada in relation to Metis or half-breed scrip or money for scrip.
- 3.1.14** Canada hereby confirms existing treaty rights arising out of those parts of Treaty 11 which are not surrendered in **3.1.13**.
- 3.1.15** Nothing in this agreement shall be construed to affect:
- (a) any aboriginal or treaty right to self-government which the Gwich'in may have; and

- (b) hunting, trapping or fishing rights under a Natural Resources Transfer Agreement, or under treaty in British Columbia, Alberta, Saskatchewan and Manitoba of any person who is eligible to participate in this agreement.
- 3.1.16 Nothing in this agreement shall be construed to affect, recognize or provide any rights under section 35 of the *Constitution Act, 1982* for any aboriginal peoples other than the Gwich'in.
- 3.1.17 In consideration of the rights and benefits provided to the Gwich'in by this agreement, the Gwich'in agree on their behalf, and on behalf of their heirs, descendants and successors not to assert any cause of action, action for a declaration, claim or demand of whatever kind or nature which they ever had, now have or may hereafter have against Her Majesty in Right of Canada or any province, the government of any territory or any person based on any claim, right, title or interest described in 3.1.13.
- 3.1.18
  - (a) In consideration of the rights and benefits provided to the Gwich'in by this agreement, the Gwich'in Tribal Council and the Gwich'in organizations designated pursuant to chapter 7 and successor organizations or assigns of such organizations hereby agree to indemnify and forever save harmless Her Majesty in Right of Canada from all manner of suits and actions, causes of action, claims, demands, damages, costs or expenses, liability and entitlement, initiated, made or incurred after this agreement, whether known or unknown against Canada which any person who is eligible to participate in this agreement, including any heir, successor or permitted assign of such a person, ever had, now has or may hereafter have against Canada relating to or in any way arising from the claims, rights, titles and interests described in 3.1.13.
  - (b) Canada shall vigorously defend any such suit or action, cause of action, claim or demand and shall not compromise or settle any such suit or action, cause of action, claim or demand without the consent of the Gwich'in Tribal Council.
  - (c) The Gwich'in shall not be required to pay Canada's costs under (a) and (b).
  - (d) For greater certainty, the right to be indemnified set out herein shall not extend to any manner of suit or action, cause of action, claim, demand, damage, cost or expense, liability or entitlement relating to or in any way arising from the failure of Her Majesty in Right of Canada to carry out Her obligations under this agreement.
- 3.1.19 This agreement may be examined as an aid to interpretation where there is any doubt in respect of the meaning of any legislation implementing the provisions of this agreement.
- 3.1.20 There shall not be any presumption that doubtful expressions in this agreement be interpreted in favour of government or the Gwich'in.
- 3.1.21 This agreement shall be the entire agreement and there is no representation, warranty, collateral agreement or condition affecting this agreement except as expressed in it.
- 3.1.22 Subject to 3.1.23, all federal, territorial and local government laws shall apply to the Gwich'in and to Gwich'in lands.
- 3.1.23 Where there is any inconsistency or conflict between the settlement legislation or this agreement and the provisions of any law, the settlement legislation or this agreement, as the case may be, shall prevail to the extent of the inconsistency or conflict.
- 3.1.24 Neither government nor the Gwich'in shall challenge the validity of any provision of this agreement.
- 3.1.25 Subject to 3.1.18, neither government nor the Gwich'in shall have a claim or cause of action based on a finding that any provision of this agreement is invalid.

- 3.1.26** If any provision of this agreement is found by a court of competent jurisdiction to be invalid, government and the Gwich'in shall make best efforts to amend this agreement to remedy the invalidity or replace the invalid provision.
- 3.1.27**
- (a) The provisions of this agreement may be amended with the consent of government, as represented by the Governor in Council, and the Gwich'in as represented by the Gwich'in Tribal Council.
  - (b) Government shall be entitled to rely on the written decision of the Board of Directors of the Gwich'in Tribal Council as evidence of the consent of the Gwich'in.
  - (c) Where any amendment of this agreement would affect the programs or responsibilities of the Government of the Northwest Territories, or would be a matter within its jurisdiction, that amendment may not be made without the consent of the Government of the Northwest Territories as represented by the Executive Council.
- 3.1.28** Government shall consult with the Gwich'in Tribal Council in the planning of the institutions and the preparation of the settlement legislation and other legislation proposed to implement the provisions of this agreement.
- 3.1.29** Notwithstanding any other provision of this agreement, government is not required to disclose any information that it is required or entitled to withhold under any act relating to access to information. Where government has a discretion to disclose any information, it shall take into account the objects of this agreement in exercising that discretion.



## **4 ELIGIBILITY AND ENROLMENT**

### **4.1 DEFINITIONS**

#### **4.1.1** In this chapter,

Gwich'in" means a person:

- (a) of Gwich'in (also referred to as Loucheux) ancestry who resided in, or used and occupied the settlement area on or before December 31, 1921, or is a descendant of such person; or
- (b) who was adopted as a minor, under the laws of any jurisdiction or under any Gwich'in custom, by a person described in (i), or is the descendant of a person so adopted; and

"initial enrolment period" means a period of five years, or such other period as the Gwich'in and Canada agree, commencing upon the date of settlement legislation.

### **4.2 ELIGIBILITY**

#### **4.2.1** A person shall be eligible to be enrolled as a participant if that person is a Canadian citizen and is a Gwich'in.

#### **4.2.2** (a) Notwithstanding that a person is not eligible to be enrolled by virtue of 4.2.1, that person shall be eligible to be enrolled if that person is a Canadian citizen of aboriginal ancestry, resident in the settlement area, and is accepted by the Gwich'in at any time following the date of settlement legislation.

- (b) "Accepted by the Gwich'in" means that a person was sponsored by a person enrolled pursuant to 4.2.1, and was approved by a process to be determined by the participants resident in the settlement area.

#### **4.2.3** Eligibility is personal; it cannot be transferred or assigned.

#### **4.2.4** The Gwich'in shall bear the responsibility, including the cost, for all votes held for the purpose of accepting persons for enrolment pursuant to 4.2.2.

### **4.3 NATURE OF ENROLMENT**

#### **4.3.1** The Enrolment Board shall enroll any person who is eligible pursuant to 4.2:

- (a) who is not a minor and who applies to the Board to be enrolled; or
- (b) who is a minor and for whom the Board receives an application for enrolment by that person's parent or guardian.

- 4.3.2 The Enrolment Board shall remove from the Enrolment Register the name of any person:
- (a) who is not a minor and who notifies the Board in writing that that person's name is to be removed from the Register; or
  - (b) who is a minor and whose parent or guardian notifies the Board in writing that that minor's name is to be removed from the Register.
- 4.4 OTHER COMPREHENSIVE LAND CLAIM AGREEMENTS
- 4.4.1 Notwithstanding 4.2.1, no person who is enrolled pursuant to another comprehensive land claim agreement in Canada may be enrolled pursuant to this agreement, and any person enrolled pursuant to this agreement shall cease to be so enrolled if that person becomes enrolled pursuant to another such agreement.
- 4.4.2 Notwithstanding 4.4.1, a person who would be eligible to be enrolled pursuant to this agreement but for the fact that that person is enrolled pursuant to another comprehensive land claim agreement in Canada, shall be eligible to be enrolled pursuant to this agreement if that person ceases to be enrolled pursuant to the other comprehensive land claim agreement and elects to be enrolled pursuant to this agreement.
- 4.4.3 For the purposes of 4.4.1, receipt of monetary benefits pursuant to the Agreement with Respect to Providing Interim Benefits to Yukon Indian Elders between the Government of Canada and the Council for Yukon Indians shall not be considered enrolment pursuant to any other comprehensive land claim agreement.
- 4.4.4 For the purpose of 4.4, Treaty 11 is not a comprehensive land claim agreement.
- 4.5 ENROLMENT BOARD
- 4.5.1 An Enrolment Board shall be established, at the date of settlement legislation, composed of:
- (a) five persons appointed by the Gwich'in including not less than one from each of the Gwich'in communities, whose names appear on the Official Voters List described in 28.3.1; and
  - (b) during the initial enrolment period only, two persons appointed by the Minister of Indian Affairs and Northern Development.
- 4.5.2 The Enrolment Board shall:
- (a) enroll persons who are eligible to be enrolled pursuant to 4.2, and for whom application for enrolment has been received pursuant to 4.3;
  - (b) establish an Enrolment Register, and maintain therein a record of all enrolled persons;
  - (c) maintain a record of those persons whose applications for enrolment were rejected;
  - (d) publish the Enrolment Register at least once a year;
  - (e) prepare an annual budget for the operation of the Enrolment Board and present it for review and approval to the Government of Canada;
  - (f) prepare and provide application forms and information. Application forms shall provide that an applicant:
    - (i) identify the Gwich'in community with which the applicant wishes to be associated, and

- (ii) identify whether the applicant is applying to be enrolled pursuant to 4.2.1 or pursuant to 4.2.2;
- (g) determine its own procedures and rules of evidence which shall be in accordance with principles of natural justice;
- (h) notify each applicant whose name has not been entered in the Enrolment Register of the reasons for the decision to refuse enrolment and of that applicant's right to appeal from any decision with respect to enrolment; and
- (i) prepare and provide to each participant proof of enrolment under this agreement.

#### 4.6 APPEAL

4.6.1 Any applicant for enrolment whose name has not been entered in the Enrolment Register may appeal such decision by filing a notice of appeal with the Supreme Court of the Northwest Territories.

4.6.2 On any such appeal, if the Court finds that the Enrolment Board erred in reaching its decision, the Court may reverse the decision of the Board and direct enrolment or refer the decision back to the Board for reconsideration.

#### 4.7 COSTS

4.7.1 (a) The Government of Canada shall pay the reasonable and necessary costs incurred by the Enrolment Board for the initial enrolment period.

(b) After the initial enrolment period, the Gwich'in shall bear the costs of the Enrolment Board.

#### 4.8 OTHER PROVISIONS

4.8.1 Nothing in this agreement shall be construed so as to imply that the Government of Canada has agreed to negotiate with those persons who are eligible to be enrolled pursuant to 4.2.2 on the basis of their being the original inhabitants of the settlement area.

4.8.2 Participants enrolled pursuant to 4.2.2 shall have rights equal to those of participants enrolled pursuant to 4.2.1.

**4.8.3** Benefits provided under this agreement, unless otherwise specified, shall be held by participants collectively. No individual participant has a right to land, money or other benefits unless specifically provided for in this agreement, or by decision of the participants acting through a designated Gwich'in organization.

**4.9** ENROLMENT

**4.9.1** The enrolment of participants shall commence after the date of settlement legislation.

## **5 SELF-GOVERNMENT**

- 5.1.1** Government shall enter into negotiations with the Gwich'in with a view to concluding agreements on self-government appropriate to the unique circumstances of the Gwich'in and in conformity with the constitution of Canada.
- 5.1.2** A framework agreement which states the principles, process, schedule and agenda items for negotiation is set out in appendix B.
- 5.1.3** Government shall recommend to Parliament or the Legislative Assembly of the Northwest Territories, as the case may be, legislation separate from settlement legislation to bring into effect self-government agreements resulting from negotiations pursuant to **5.1.1**.
- 5.1.4** The provisions of self-government agreements shall not be inconsistent with the provisions of settlement legislation or this agreement. Where there is any inconsistency or conflict between the settlement legislation or this agreement and the provisions of any self-government agreement, the settlement legislation or this agreement, as the case may be, shall prevail to the extent of the inconsistency or conflict. The parties may agree to amend either the self-government agreement, the settlement legislation or this agreement in order to resolve any inconsistency or conflict.
- 5.1.5** Self-government agreements shall not affect the rights of the Gwich'in as Canadian citizens or their entitlement to all the rights and benefits of other citizens applicable to them from time to time.
- 5.1.6** Subject to **3.1.15(a)**, self-government rights provided for in self-government agreements and any legislation enacted to implement such agreements shall not be construed, on the basis of this agreement, to be aboriginal or treaty rights within the meaning of section 35 of the *Constitution Act, 1982*.
- 5.1.7** Nothing in this agreement shall preclude the Gwich'in from acquiring constitutional protection for self-government or for self-government agreements negotiated pursuant to this chapter as may be provided in future constitutional amendments or otherwise.
- 5.1.8** This agreement shall not be interpreted to preclude the possibility that Gwich'in institutions may acquire additional powers and authority through a process of transfer of further powers and authorities from government.
- 5.1.9** The objectives of self-government agreements shall be to describe the nature, character and extent of self-government, the relationship between government and Gwich'in institutions and to accommodate Gwich'in self-government within the framework of public government.
- 5.1.10** Self-government negotiations will address the Gwich'in desire to have self-government exercised as close to the community level as is reasonably possible.

- 5.1.11** Funding for self-government negotiations shall be according to government policy for self-government negotiations.
- 5.1.12** Government and the Gwich'in agree that the development of a future constitution for the Northwest Territories is a priority. Government shall give the Gwich'in Tribal Council the opportunity to participate in any constitutional conference or similar process for reform of the constitution of the Northwest Territories.

## **6 DISPUTE RESOLUTION**

### **6.1 GENERAL**

- 6.1.1** The provisions of this chapter apply to any dispute which is not resolved by discussion and negotiation.
- 6.1.2** Subject to the provisions of this chapter, the Supreme Court of the Northwest Territories has jurisdiction in respect of any action arising out of this agreement including any application for judicial review in respect of any board established pursuant to this agreement.
- 6.1.3** The Supreme Court of the Northwest Territories shall have jurisdiction to review a decision of the arbitrator or arbitrators in **6.3.7** on a question of law or jurisdiction.
- 6.1.4** Except in respect of disputes arbitrated under this chapter, nothing in this chapter limits the jurisdiction of any court.
- 6.1.5** The panel described in **6.2** shall have jurisdiction to arbitrate in respect of:
- (a) any matter which this agreement stipulates is to be determined by arbitration; and
  - (b) any matter concerning the interpretation or application of this agreement where the parties agree to be bound by an arbitration decision in accordance with this chapter.
- 6.1.6** Where a participant has a right of action in relation to this agreement, the Gwich'in Tribal Council may bring that action on behalf of such participant with the consent of the participant.
- 6.1.7** Nothing in this chapter shall prevent parties to a dispute from agreeing to refer it to an alternate dispute resolution mechanism such as mediation or arbitration pursuant to the *Arbitration Act*, R.S.N.W.T. 1988, c. A-5.

### **6.2 ARBITRATION PANEL**

- 6.2.1**
- (a) An arbitration panel ("the panel") shall be established to resolve disputes in accordance with this agreement.
  - (b) The panel is established when:
    - (i) Canada, as represented by the Minister of Indian Affairs and Northern Development, the Government of the Northwest Territories as represented by the Minister of Justice and the Gwich'in Tribal Council agree in writing that it is established; or
    - (ii) Canada and the Government of the Northwest Territories have each appointed at least one member and the Gwich'in Tribal Council has appointed at least two members to the panel,whichever comes first.
- 6.2.2** The panel shall have eight members including a chairperson and a vice-chairperson, both of which shall be chosen by a majority of the panel. Subject to **6.3.5**, the panel may establish rules and procedures for the implementation of this chapter.
- 6.2.3**
- (a) Canada, the Government of the Northwest Territories and the Gwich'in Tribal Council shall consult and attempt to reach consensus as to the persons to be appointed to the panel.
  - (b) If a consensus is not reached under (a) within one year of the date of settlement legislation, Canada and the Government of the Northwest Territories may each appoint two members and the Gwich'in Tribal Council may appoint four members.

(c) The term of appointment shall be five years.

**6.2.4** Upon the departure of a panel member from the panel, the party which appointed the departing member may appoint a new member to the panel and, where the departing member was jointly appointed, Canada, the Government of the Northwest Territories and the Gwich'in Tribal Council shall consult and attempt to reach consensus as to the appointment of the new member.

**6.2.5** A quorum of the panel shall be four members, which in the case of a panel appointed under **6.2.3(b)** shall consist of one member appointed by each of Canada and the Government of the Northwest Territories and two members appointed by the Gwich'in Tribal Council.

**6.2.6** Any staff of the panel shall be provided by government. The panel shall prepare an annual budget, subject to review and approval by government. The approved expenses of the panel shall be a charge on government.

**6.2.7** Appointments by Canada under this chapter shall be made by the Minister of Indian Affairs and Northern Development. Appointments by the Government of the Northwest Territories shall be made by its Minister of Justice.

### **6.3** PROCEDURE FOR ARBITRATION

**6.3.1** A dispute shall be arbitrated by:

- (a) one arbitrator drawn from the panel if agreed to by the parties to the arbitration; or
- (b) three arbitrators drawn from the panel, one of whom shall be appointed by the party making the submission to arbitration, one by the other party to the submission and the third to be selected by the two appointed arbitrators from the other members of the panel. Failing agreement, the third arbitrator shall be appointed by a judge pursuant to the *Arbitration Act*, R.S.N.W.T 1988, c. A-5, who shall not be restricted to members of the panel when making such appointment.

(c) Unless otherwise agreed, arbitrators shall be selected from the panel.

**6.3.2** An arbitration, in respect of any matter referred to in **6.1.5(a)**, shall be convened by a submission to arbitration filed with the panel by any person having a right to arbitration under this agreement. The submission shall name the other party to the dispute, set out the nature of the dispute, a summary of the facts, describe the issue to be arbitrated, name an arbitrator from the panel and describe the relief sought.

**6.3.3** In the case of an arbitration convened pursuant to **6.3.2**, the other party to the dispute shall file a reply within 30 days responding to the submission, agreeing to the arbitrator named in the submission or naming another arbitrator from the panel and describing any relief sought. Where the other party to the dispute fails to file a reply within the prescribed time, that party shall be deemed to have agreed to the arbitrator named in the submission and shall be deemed to be a party to the arbitration.

**6.3.4** (a) The Gwich'in Tribal Council, Canada or the Government of the Northwest Territories may participate in any arbitration as a party on notice to the arbitrator or arbitrators.

(b) The arbitrator or arbitrators shall allow any other person, on application and on such terms as the arbitrator or arbitrators in their discretion may order, to participate in an arbitration if in the opinion of the arbitrator or arbitrators the interest of that person may be affected by the arbitration.

**6.3.5** The arbitrator or arbitrators shall have jurisdiction, after hearing the parties, to determine all questions of procedure, including the method of giving evidence, and to make an award, including interim relief, payment of interest and costs in accordance with this agreement.

**6.3.6** It is intended that the process of arbitration will resolve disputes submitted to it in an expeditious and, where appropriate, informal manner.



- 6.3.7** The decision of the arbitrator or arbitrators shall be conclusive and binding on the parties to the arbitration and shall not be challenged by appeal or review in any court except on the ground that the arbitrator or arbitrators have erred in law or exceeded their jurisdiction.
- 6.3.8** If the arbitrator or arbitrators make no decision as to costs, each party to an arbitration shall bear its own costs and an equal share of the other costs of the arbitration including the remuneration and expenses of the arbitrator or arbitrators.
- 6.3.9** The *Arbitration Act*, R.S.N.W.T. 1988, c. A-5, shall apply to any arbitration to the extent not inconsistent with this chapter.
- 6.3.10** A public file of arbitration decisions shall be maintained by the panel unless the parties to the arbitration agree that the proceedings, including the decision, shall remain confidential.
- 6.4** TRANSITIONAL
- 6.4.1** Until an arbitration panel is established, the *Arbitration Act*, R.S.N.W.T. 1988, c. A-5, applies to any arbitration described in **6.1.5**.

## **7 GWICH'IN ORGANIZATIONS**

- 7.1.1** All rights exercisable by a designated Gwich'in organization and all obligations to which a designated Gwich'in organization is subject shall be assigned by the Gwich'in Tribal Council prior to the date of settlement legislation to one or more designated Gwich'in organizations. Such rights and obligations may be reassigned by the Gwich'in Tribal Council from time to time provided that such reassignments shall not adversely affect the exercise of rights or the performance of obligations contemplated in this agreement.
- 7.1.2** Designated Gwich'in organizations shall be trusts, societies or corporations established pursuant to federal or territorial legislation.
- 7.1.3** (a) Designated Gwich'in organizations administering land or capital assets transferred pursuant to **8.1.1**, **9.1.2** or **18.1.2** shall be structured such that:
- (i) all participants have an equal interest therein as at the date of settlement legislation; and
  - (ii) such organizations shall be owned and controlled by participants and membership or shareholdings shall be non-transferable.
- (b) Any subsequent restructuring of such organizations shall respect the principle of maintaining an equal interest of participants, either at the regional or community level, in respect of land and capital assets.
- 7.1.4** Designated Gwich'in organizations exercising rights pursuant to this agreement shall be open to membership by all participants who are not minors and who are affected by the exercise of such rights.
- 7.1.5** Nothing in this chapter is intended to prevent participation by the Gwich'in in corporations or other forms of business organization in which other persons are shareholders or have an interest by using the capital assets transferred under this agreement.
- 7.1.6** (a) Prior to the date of settlement legislation, the Gwich'in Tribal Council may designate a Gwich'in organization or organizations to receive capital transfers pursuant to **8.1.1**, amounts payable to the Gwich'in pursuant to **9.1.2** and any other payments pursuant to this agreement.
- (b) The Gwich'in may later designate other Gwich'in organizations to receive payments provided the principles expressed in **7.1.3** are observed.
- 7.1.7** Canada is authorized to make:
- (a) capital transfers pursuant to **8.1.1** and payments pursuant to **9.1.2** to duly authorized organizations designated pursuant to **7.1.6**, and
  - (b) transfers of land to the Gwich'in Tribal Council pursuant to **18.1**,
- and shall be deemed to have fully discharged its obligations in respect of such payments and transfers upon receipt of such by the Gwich'in Tribal Council or the organizations designated pursuant to **7.1.6**.
- 7.1.8** The Gwich'in Tribal Council shall cause to be established, prior to the date of settlement legislation, and shall thereafter maintain, a public register of designated Gwich'in organizations, which register shall identify all rights and obligations assigned pursuant to **7.1.1** to designated Gwich'in organizations.
- 7.1.9** Government shall not be liable to participants for any damage or loss suffered by participants as a result of the failure of any designated Gwich'in organization to comply with an obligation under this agreement.

**8 FINANCIAL PAYMENTS**

**8.1 CAPITAL TRANSFER**

**8.1.1** Canada shall make a capital transfer to the Gwich'in Tribal Council in accordance with the schedule of payments as set forth in schedule I to this chapter.

**8.1.2** Canada is discharged from all undertakings and obligations, if any, to the Gwich'in in respect of the Norman Wells Proven Area described in schedule A to the Proven Area Agreement dated July 21, 1944 between Imperial Oil Limited and His Majesty in Right of Canada, as amended and renewed from time to time.

**8.2 NEGOTIATION LOAN REPAYMENT**

**8.2.1** The Gwich'in Tribal Council shall repay their negotiation loans and shall pay 15 percent of the negotiation loans incurred by the Dene Nation and the Metis Association of the Northwest Territories between 1975 and November 7, 1990 as provided in schedule II to this chapter.

**8.2.2** Canada may set off and deduct from payments to be made pursuant to **8.1.1** the amounts of repayment of the negotiation loans under **8.2.1** to be made at the time of such payments.

**8.2.3** In all other respects, any other terms and conditions of the negotiation loans shall be unaffected.

**8.3 LOANS AGAINST CAPITAL TRANSFER**

**8.3.1** At any time after three years from the date of settlement legislation the Gwich'in Tribal Council may request a loan from Canada against the then unpaid balance of the capital transfer.

**8.3.2** Canada, as represented by the Minister of Finance, may decide, at its discretion, whether to grant a request, pursuant to **8.3.1**, for a loan. The Minister may negotiate the terms and conditions of a loan subject to the requirement that:

- (a) the Gwich'in Tribal Council shall pay, at the time of the loan, an amount on any outstanding balance of negotiation loans described in **8.2.1** which will reduce the outstanding balance of those loans by the same proportion as the amount loaned under **8.3.2** bears to the unpaid balance of the capital transfer in **8.1.1**;
- (b) the amount paid by the Gwich'in Tribal Council in (a) shall be credited to the last payments of the schedule described in **8.2.1**;
- (c) the unpaid balance of the capital transfer in any year is greater than or equal to the total of all outstanding administrative fees, if any, loan repayments and interest payable by the Gwich'in Tribal Council; and
- (d) Canada may deduct any loan repayments due from the Gwich'in Tribal Council from payments due to the Gwich'in Tribal Council pursuant to **8.1.1**.

**SCHEDULE OF PAYMENTS**

<u>Date</u>	<u>Payment</u>
Advance Payment - date of signing this agreement	\$ 2,000,000
Date of Settlement Legislation	\$ _____
First Anniversary of date of this agreement	\$ _____
Second Anniversary of date of this agreement	\$ _____
Third Anniversary of date of this agreement	\$ _____
Fourth Anniversary of date of this agreement	\$ _____
Fifth Anniversary of date of this agreement	\$ _____
Sixth Anniversary of date of this agreement	\$ _____
Seventh Anniversary of date of this agreement	\$ _____
Eighth Anniversary of date of this agreement	\$ _____
Ninth Anniversary of date of this agreement	\$ _____
Tenth Anniversary of date of this agreement	\$ _____
Eleventh Anniversary of date of this agreement	\$ _____
Twelfth Anniversary of date of this agreement	\$ _____
Thirteenth Anniversary of date of this agreement	\$ _____
Fourteenth Anniversary of date of this agreement	\$ _____
Fifteenth Anniversary of date of this agreement	\$ _____

**OUTSTANDING BALANCE OF NEGOTIATION LOANS**

\$ \_\_\_\_\_ Gwich'in Tribal Council  
 15 percent of \$ \_\_\_\_\_ Dene Nation  
 15 percent of \$ \_\_\_\_\_ Metis Association of the Northwest Territories  
  
 \$ \_\_\_\_\_ TOTAL

First Payment	\$ _____	on the third anniversary of date of agreement
Second Payment	\$ _____	on the fourth anniversary.....
Third Payment	\$ _____	on the fifth anniversary.....
Fourth Payment	\$ _____	on the sixth anniversary.....
Fifth Payment	\$ _____	on the seventh anniversary.....
Sixth Payment	\$ _____	on the eighth anniversary.....
Seventh Payment	\$ _____	on the ninth anniversary.....
Eighth Payment	\$ _____	on the tenth anniversary.....
Ninth Payment	\$ _____	on the eleventh anniversary....
Tenth Payment	\$ _____	on the twelfth anniversary.....
Eleventh Payment	\$ _____	on the thirteenth anniversary..
Twelfth Payment	\$ _____	on the fourteenth anniversary..
Thirteenth Payment	\$ _____	on the fifteenth anniversary...

**NOTE**

The following principles shall determine the structure of the schedule of repayments:

- (a) the schedule consists of 13 repayments to be made on the same dates as the dates of the 13 last payments in schedule I to this chapter;
- (b) the present value at the date of this agreement of the repayments of the schedule, using a discount rate of 6 percent per annum, will be the total outstanding balance of negotiation loans at the time of this agreement (shown as TOTAL); and
- (c) each repayment of the schedule shall bear the same ratio to the payment in schedule I to this chapter which takes place on the same date as the repayment, as the last repayment of the schedule bears to the last payment in schedule I to this chapter.

**9 RESOURCE ROYALTIES**

**9.1.1** Government shall pay to the Gwich'in Tribal Council, annually, an amount equal to:

- (a) 7.5 percent of the first \$2.0 million of resource royalty received by government in that year; and
- (b) 1.5 percent of any additional resource royalties received by government in that year.

**9.1.2** (a) Amounts payable by government pursuant to this chapter shall be calculated on the basis of amounts due to and received by government in respect of resources produced after the date of this agreement.

- (b) Payments remitted to the Gwich'in Tribal Council shall be in quarterly instalments.
- (c) Government shall annually provide to the Gwich'in Tribal Council a statement indicating the basis on which royalties were calculated for the preceding year.
- (d) On the request of the Gwich'in Tribal Council, government shall request the Auditor General to verify the accuracy of the information in the annual statements.

**9.1.3** (a) Subject to (b), government shall consult with the Gwich'in Tribal Council on any proposal specifically to alter by legislation the resource royalty payable to government.

- (b) Where government consults outside government on any proposed changes to the fiscal regime which will affect the resource royalty payable to government, it shall also consult with the Gwich'in Tribal Council.

**10 ECONOMIC MEASURES**

**10.1.1** Government economic development programs in the settlement area shall take into account the following objectives:

- (a) that the traditional Gwich'in economy should be maintained and strengthened; and
- (b) that the Gwich'in should be economically self-sufficient.

**10.1.2** To achieve the objectives in **10.1.1**, government shall take such measures as it considers reasonable, in light of its fiscal responsibility and economic objectives, including:

- (a) support of the traditional Gwich'in economy and individual harvesters and promotion of the marketing of renewable resource products and native manufactured goods;
- (b) assistance in the development of commercially viable Gwich'in businesses and enterprises, and when necessary, identification of possible sources of financial assistance;
- (c) provision of business and economic training and educational assistance to the Gwich'in so that they may be able to participate more effectively in the northern economy; and
- (d) encouragement of the employment of Gwich'in in the settlement area, including employment in major projects and developments, in the public service and public agencies. Accordingly, government shall prepare plans for the training and employment of Gwich'in, including the development of measures to recognize the special need of the Gwich'in for pre-employment training in basic skills. Government shall review job qualifications and recruitment procedures to remove inappropriate requirements in respect of cultural factors, experience or education.

**10.1.3** (a) Where government proposes economic development programs related to the objectives in **10.1.1**, government shall consult with the Gwich'in Tribal Council.

- (b) Government shall meet with the Gwich'in Tribal Council not less than once every three years to review the effectiveness of programs relating to the objectives in **10.1.1**.

**10.1.4** Where government carries out public activities in the settlement area which give rise to employment or other economic opportunities and government elects to enter into contracts with respect to those activities:

- (a) the Government of Canada contracting procedures and approaches intended to maximize local and regional employment and business opportunities, including the provision of opportunities for potential contractors to become familiar with bidding systems, or
- (b) the Government of the Northwest Territories preferential contracting policies, procedures and approaches intended to maximize local, regional and northern employment and business opportunities

shall be followed respectively by Canada or the Government of the Northwest Territories.

**10.1.5** The Government of the Northwest Territories shall consult with the Gwich'in Tribal Council when developing modifications to its preferential contracting policies, procedures and approaches.

**10.1.6** When the Government of the Northwest Territories intends to carry out activities on settlement lands which give rise to employment or other economic opportunities, and when the Government of the Northwest Territories elects to enter into contracts with respect to those activities without going to public tender, participants shall be given the first opportunity to negotiate such contracts, provided they satisfy all criteria including any

qualifications particular to the contract and price. Should negotiations not conclude in a contract or contracts in a timely fashion, the contract or contracts shall go to public tender and Gwich'in shall be permitted to bid on the same basis as other northerners.

**10.1.7**

The provisions of this chapter are intended to be implemented through programs and policies which are in place from time to time without imposing any additional financial obligation on government.



## 11 TAXATION

### 11.1 DEFINITIONS

#### 11.1.1 In this chapter,

"Tax Act" shall mean the *Income Tax Act*, R.S. 1970-71-72, c. 63, and the *Income Tax Act*, R.S.N.W.T. 1988, c. I-1;

"federal Tax Act" shall mean the *Income Tax Act*, R.S. 1970-71-72, c. 63;

"real property taxation" shall mean all local government tax and taxes on real property but, for greater certainty, does not include any tax levied pursuant to the Tax Act, tax on goods and services, sales tax or tax on transfer of property;

"settlement corporation" shall mean a corporation described in 11.3.1; and

"Minister" shall mean the Minister of National Revenue.

### 11.2 CAPITAL PAYMENTS

#### 11.2.1 There shall be no federal, territorial or local government tax or other similar charge exigible in respect of, or reduction to the cost or capital cost of, property acquired as a result of the receipt by a designated Gwich'in organization of, or the receipt by a settlement corporation that may reasonably be considered to be a receipt of, amounts that are:

- (a) capital transfer payments described in chapter 8;
- (b) payments made to all designated Gwich'in organizations and settlement corporations described in chapter 9, to the extent that such payments do not exceed in aggregate \$3.0 million; and
- (c) loans described in 8.3.

#### 11.2.2 Except as provided in this chapter, any income earned on an amount described in 11.2.1(a), (b) or (c) received by a person other than a settlement corporation shall be subject to federal, territorial or local government tax or other similar charges as may be exigible under legislation.

### 11.3 SETTLEMENT CORPORATIONS

#### 11.3.1 A settlement corporation means a non-share capital corporation that:

- (a) is incorporated by the Gwich'in, is resident in Canada and is operated all or substantially all for the general benefit of participants;
- (b) devotes all or substantially all of its resources to making the investments described in 11.3.3 and to carrying on its permitted activities as described in schedule I to this chapter;
- (c) qualifies as a designated Gwich'in organization, as described in chapter 7;
- (d) has received no contributions of capital or other amounts, except as described in 11.2.1 or as a transfer of capital from another settlement corporation;
- (e) has given to the Minister an election (i) to be a settlement corporation and (ii) to be subject to the special rules applicable to a settlement corporation, as provided in this chapter, with the first tax return that it is required to file with the Minister; and
- (f) has not had its status as a settlement corporation terminated pursuant to 11.3.7.

#### Disbursement Requirements

- 11.3.2** A settlement corporation shall be subject to the disbursement rules, including the disbursement excess rules, applicable to "public foundations" under the federal Tax Act, with such modifications as are required, provided that such rules shall not apply to a settlement corporation or its disbursements until the first day of the taxation year of the corporation commencing after the end of a period of 15 years commencing on the day of payment of the first capital transfer payment described in chapter 8. For this purpose, any loans made by the settlement corporation pursuant to schedule I to this chapter shall be treated as disbursements, the relevant provisions of the federal Tax Act shall apply as if the permitted activities described in schedule I to this chapter were charitable activities and the persons to whom payments or loans are made by the settlement corporation in the course of carrying on these permitted activities shall be treated as qualified donees.

Permitted Activities and Qualified Investments

- 11.3.3**
- (a) A settlement corporation shall restrict its investments to those made in the course of carrying on activities permitted under schedule I to this chapter and those described in schedule II to this chapter, as that latter schedule is amended from time to time by agreement among the Gwich'in Tribal Council, the Minister of Finance of Canada and the Government of the Northwest Territories, except that
  - (b) a settlement corporation, either alone or as part of a group that includes another settlement corporation, shall not control directly or indirectly in any manner whatever a corporation, partnership or other entity that carries on a business or whose principal activity is the making of investments.
  - (c) A settlement corporation may borrow money from time to time in order to finance its permitted activities and its qualified investments and the settlement corporation may repay the borrowed money and interest thereon.
  - (d) For the purposes of **11.3.3(b)**, another settlement corporation shall mean a settlement corporation as defined in **11.3.1** or any settlement corporation or like entity created pursuant to any comprehensive land claim agreement in Canada.

- (e) A settlement corporation shall not acquire an interest in a partnership or trust other than a small business investment limited partnership or a small business investment trust as defined in the federal Tax Act unless it is to realize on a security held by the settlement corporation, in which case its interest shall be disposed of within a reasonable period not to exceed six months. A settlement corporation shall not provide any loans to a partnership or a trust other than a small business investment limited partnership or a small business investment trust as defined in the federal Tax Act unless the loan is provided in the course of carrying on a permitted activity under schedule I to this chapter.

#### Taxation of Settlement Corporations

- 11.3.4 Except as provided in this chapter, there shall be no federal, territorial or local government tax or other similar charges exigible from a settlement corporation save and except federal goods and services tax. For greater certainty, a settlement corporation shall not be subject to federal large corporations or other capital taxes.
- 11.3.5 (a) A settlement corporation shall be liable to pay tax for a taxation year, determined as if its taxable income for the year was an amount equal to the aggregate of the following amounts:
  - (i) the amount of any income derived by it from property during the year including, for greater certainty, the income or the taxable portion of any capital gain realized on the disposition of the property, other than property that is a qualified investment of the settlement corporation as described in 11.3.3 or that is property acquired by the settlement corporation in the course of carrying on its permitted activities as described in schedule I to this chapter;
  - (ii) any amounts contributed or otherwise paid to the settlement corporation during the year, other than amounts;
    - (A) described in 11.2.1 or as a transfer of capital from another settlement corporation; or
    - (B) otherwise included in computing its taxable income for the year under 11.3.5(a)(i) or (iii);
  - (iii) described in 11.3.5(b), 11.3.7(c) or 11.3.8; and
  - (iv) any amounts paid by the settlement corporation during the year that are exempt from taxation in the hands of the recipient by virtue of subparagraph 81(1)(a) of the federal Tax Act or paragraph 87(b) of the *Indian Act*, R.S. 1985, c. I-5, other than any amounts that are exempt from taxation in the hands of the recipient by virtue of this agreement or settlement legislation.

- (b) For the purposes of **11.3.5(a)**, if a settlement corporation makes any payment, whether by distribution, disbursement, loan or otherwise, and the payment:
- (i) is not an investment described in **11.3.3**, is not made in the course of carrying on its permitted activities described in schedule I to this chapter and
  - (ii) where it is reasonable to believe that such payment was inadvertently made, the payment is made at least five years after the date of settlement legislation,

an amount equal to the amount of the payment, divided by (1-A), shall be deemed to be an amount referred to in **11.3.5(a)(iii)** for the year in which the payment was made, where A is the aggregate of the federal and the Northwest Territories tax rates applicable to public corporations for that year before deducting the territorial abatement, plus any surtaxes to which public corporations may be liable for the year.

- (c) The tax payable by a settlement corporation upon its taxable income for a taxation year provided in **11.3.5(a)** shall be that percentage of its taxable income that is the maximum federal and Northwest Territories tax rate applicable to a public corporation for the year, plus any surtaxes to which public corporations may be liable for the year, and shall be determined without any deduction.

**11.3.6** A settlement corporation shall be liable to pay the tax under part XI of the federal Tax Act, including the penalty tax payable on excess foreign property, as if that part were stated to be applicable to settlement corporations, with such modifications as are required.

Termination of Settlement Corporation Status

- 11.3.7** (a) A settlement corporation may revoke its election made under **11.3.1(e)** effective as of a date determined by the settlement corporation (the "revocation date") provided that:
- (i) the settlement corporation shall give written notice to the Minister of National Revenue of its intention to revoke its election, and
  - (ii) the date of such notice shall be not less than 60 days prior to the revocation date.

Upon receipt of such notice, the Minister of National Revenue shall terminate the status of the corporation as a settlement corporation effective as of the revocation date or, where the revocation date is less than 60 days prior to the date of such notice, as of the day which is 60 days after the date of such notice. For the purposes of this **11.3.7 (a)**, the date of any notice shall be the day of mailing of such notice.

- (b) Where the Minister is of the opinion that a settlement corporation has failed to comply with any provision in this chapter or has failed to meet the requirements set out in **11.3.1(a)** through (e), the Minister may notify the settlement corporation in writing and if the settlement corporation does not redress the default to the satisfaction of the Minister within 100 days after the registered mailing of such notice, the Minister may terminate the status of the corporation as a settlement corporation, subject to the same right of appeal as that applicable in respect of a revocation of the registration of a registered charity as set out in the federal Tax Act.
- (c) If the Minister terminates the status of a settlement corporation pursuant to **11.3.7(a)** or (b), the taxation year of the settlement corporation that would otherwise have included the time of termination shall be deemed to end immediately before that time and the settlement corporation shall be deemed to have disposed of all its assets immediately before the time that is immediately before the time of termination for proceeds of disposition equal to the fair market value thereof at that

time and to have reacquired such assets immediately after the time of termination at a cost equal to such fair market value and, for the purpose of **11.3.5**, an amount equal to the amount by which such fair market value exceeds the aggregate of:

- (i) amounts that may reasonably be considered to have been otherwise included in computing the taxable income of the settlement corporation in a taxation year under **11.3.5**, and
- (ii) amounts that may reasonably be considered to be a portion of the total payments described in **11.2.1(a)**, (b) or (c) that were paid directly to the settlement corporation or to a designated Gwich'in organization and that were contributed by such organization to the settlement corporation or are deemed to be so contributed by virtue of **11.3.10**,

shall be deemed to be an amount referred to in **11.3.5(a)(iii)** for that taxation year.

- (d) For greater certainty and for the purposes of **11.3.7**:
  - (i) the distribution by a settlement corporation to participants of any amount that may reasonably be considered to be payments referred to in **11.2.1(a)**, (b) or (c) shall not be considered a cause for the termination by the Minister of the status of a settlement corporation; and
  - (ii) subject to **11.3.7(d)(i)**, any failure of the settlement corporation to devote its resources in accordance with the requirements of **11.3.1(a)** through (e) may be considered cause for the termination by the Minister of the status of the settlement corporation pursuant to **11.3.7(b)**.

#### Winding-Up

**11.3.8** Where a settlement corporation commences to be wound-up or liquidated or commences proceedings to be granted articles of continuance or similar corporate constitutional documents in a jurisdiction outside Canada, the taxation year of the settlement corporation that otherwise would have included the time of such commencement shall be deemed to end immediately before that time and the amount distributed on the winding-up, liquidation or, in the case of continuance outside Canada, the fair market value of the total assets of the corporation, less the aggregate of:

- (a) the amount disbursed or expended in the course of the winding-up or liquidation on its permitted activities as described in schedule I to this chapter;
- (b) all amounts that may reasonably be considered to be amounts described in **11.2.1(a)**, (b) or (c) that were received by the settlement corporation and which are transferred to a designated Gwich'in organization which complies with the requirements of **7.1.2** and **7.1.3** or to another settlement corporation; and
- (c) all other amounts transferred to another settlement corporation;

shall be deemed to be an amount that is referred to in **11.3.5(a)(iii)** for that taxation year.

#### Taxation of Participants or Designated Gwich'in Organizations

**11.3.9** Subject to **11.3.11**, there shall be no federal, territorial or local government tax or other similar charge payable by a participant, a designated Gwich'in organization or a corporation controlled, directly or indirectly in any manner whatever, by one or more participants or designated Gwich'in organizations, on amounts disbursed or distributed to a participant, designated Gwich'in organization or such corporation in accordance with schedule I to this chapter (except for paragraphs 10 and 12.4 of schedule I to this chapter), other than amounts disbursed or distributed to a participant, designated Gwich'in organization or such corporation as consideration for value provided to the settlement corporation by that participant, designated Gwich'in organization or corporation.

**11.3.10** For the purposes of this chapter, where a particular property is disbursed or distributed by one settlement corporation (the "transferor" in **11.3.10**) to one or more settlement corporations (the "transferee" in **11.3.10**), the transferor and the transferee shall each file a copy of a joint designation with their tax returns for the year in which the transfer occurred designating an amount, if any, of the property so transferred, and any amount so designated shall, in applying the provisions of this chapter, including without limitation **11.3.10**, be deemed thereafter to be a contribution described in **11.2.1(a)** received by the transferee and not to be a contribution described in **11.2.1(a)** or (b) received by the transferor, provided that the total of such amounts so designated shall not exceed the contributions described in **11.2.1(a)** and (b) received by the transferor or deemed by virtue of **11.3.10** to be so received, at any time before the disbursement or distribution of the particular property.

- 11.3.11** (a) Where a settlement corporation has transferred or loaned property directly or indirectly or by means of a trust or by any other means whatever, to one or more settlement corporations or any other person or partnership, and one of the main purposes of the loan or transfer may reasonably be considered, but for this provision, to avoid the payment of a tax liability of the settlement corporation pursuant to this chapter:
- (i) the transferor and the transferee are jointly and severally liable to pay a part of the transferor's tax under this chapter for each taxation year equal to the amount of the tax in respect of any income from, or gain from the disposition of, the property so transferred or loaned, or property substituted therefor, and
  - (ii) the transferor and transferee are jointly and severally liable to pay under the federal Tax Act an amount equal to the lesser of
    - (A) the amount if any by which the fair market value of the property at the time it was transferred or loaned exceeds the fair market value at that time of the consideration given for the property, and
    - (B) the aggregate of all amounts each of which is an amount that the transferor is liable to pay under the federal Tax Act or this chapter in or in respect of the taxation year in which the property was transferred or loaned or in any preceding taxation year,
- but nothing in **11.3.11** shall be deemed to limit the liability of the transferor under any other provision of the federal Tax Act or this chapter.
- (b) The Minister may at any time assess a transferee in respect of any amount payable by virtue of **11.3.11(a)** and the provisions of part I of the federal Tax Act are applicable with such modifications as the circumstances require in respect of an assessment made under **11.3.11(a)** as though it had been made under section 152 of the federal Tax Act.
- (c) Where a transferor and transferee have, by virtue of **11.3.11(a)**, become jointly and severally liable in respect of part or all of a liability of the transferor under this chapter, the following rules are applicable:
- (i) a payment by the transferee on account of the transferee's liability shall to the extent thereof discharge the joint liability; but
  - (ii) a payment by the transferor on account of the transferor's liability only discharges the transferee's liability to the extent that the payment operates to reduce the transferor's liability to an amount less than the amount in respect of which the transferee was, by **11.3.11(a)**, made jointly and severally liable.
- (d) Notwithstanding **11.3.11(a)** to (c), **11.3.11(a)** to (c) are not applicable to a transfer or loan unless the Minister has, within two years of the end of the taxation year in

which a particular transfer or loan was made, given written notice to the transferor and transferee that the Minister intends to apply 11.3.11(a) to (c) to the particular transfer or loan.

#### 11.4 SETTLEMENT LANDS AND DEPRECIABLE PROPERTY

##### Acquisition

- 11.4.1 The cost of acquisition to a participant or to a designated Gwich'in organization of any real property acquired under this agreement, other than depreciable property, transferred to the participant or designated Gwich'in organization by the Government of Canada pursuant to this agreement shall, for the purposes of the Tax Act, be deemed to be an amount equal to the fair market value thereof at the earlier of the time that title to such property is registered in the name of the participant or such organization and the time that any right or interest in such property is acquired by the participant or such organization.

##### Disposition

- 11.4.2 Where any real property acquired under this agreement, other than depreciable property, is disposed of by a designated Gwich'in organization (the "transferor" in 11.4.2):

- (a) to a participant (the "transferee" in 11.4.2), and such real property has not previously been disposed of by a designated Gwich'in organization to another participant; or
- (b) to another designated Gwich'in organization (also a "transferee" in 11.4.2) within 10 years of the transfer by the Government of Canada of such property pursuant to this agreement to the designated Gwich'in organization;

the real property shall, for the purposes of the Tax Act, be deemed to have been disposed of by the transferor for proceeds of disposition equal to the greater of the amount that would otherwise be the proceeds of disposition and the adjusted cost base to the transferor of the real property at that time and to have been acquired by the transferee at a cost equal to the amount at which it was deemed to have been disposed of.

##### Depreciable Property

- 11.4.3 The rules of 11.4.2 shall apply to depreciable property with such modifications as are required.

##### Taxes on Transfer of Lands

- 11.4.4
- (a) No federal, territorial or local government charge, levy or tax shall be payable in respect of the transfer to or receipt by the Gwich'in Tribal Council of Gwich'in lands at the date of settlement legislation.
  - (b) No federal, territorial or local government charge, levy or tax shall be payable by the Gwich'in in respect of any subsequent transfer of settlement lands by the Gwich'in Tribal Council to a designated Gwich'in organization within five years from the date of settlement legislation.
  - (c) Where a transfer is made to which 11.4.2(b) applies, no federal goods and services tax shall be payable in respect of such transfer.

#### 11.5 REAL PROPERTY TAXATION OF SETTLEMENT LANDS

- 11.5.1
- (a) Unimproved settlement lands shall be exempt from real property taxation. Improvements which are used primarily for non-commercial wildlife harvesting or other traditional purposes, including single-family residences, cabins, camps and tent frames, shall be exempt from real property taxation and shall not be considered improvements for the purposes of the assessment of real property taxation.

- (b) In (a), "non-commercial wildlife harvesting" means wildlife harvesting which does not require authorization from the Renewable Resources Board pursuant to 12.7.1(a).

- 11.5.2 Subject to 11.5.1(a), settlement lands are subject to real property taxation under applicable legislation.
- 11.5.3 Notwithstanding 11.5.1(a), settlement lands that are leased or occupied by a person who is not a participant are subject to real property taxation under applicable legislation.
- 11.5.4 Should a participant or other person who occupies settlement lands fail to pay real property taxes levied against such participant or other person in respect of such lands and such taxes are in arrears for a period of one year or more, the designated Gwich'in organization which holds title to the lands shall be liable to pay, upon notice from the applicable government, such taxes within a reasonable period of time as may be determined by such government from time to time.
- 11.6 ADMINISTRATION AND ENFORCEMENT
- 11.6.1 The Minister shall be responsible for the administration and enforcement of the provisions of this agreement that relate to income taxation, goods and services taxation and regulation of qualified investments and to that end may seek the advice of the Minister of Indian Affairs and Northern Development with respect to any matter arising out of these provisions.
- 11.6.2 Every settlement corporation shall produce every year a report in a form acceptable to the Minister from a public accountant who has audited the settlement corporation providing the Minister with the information required to administer the provisions of this chapter.
- 11.6.3 Any tax or other amounts payable by a settlement corporation as provided in this chapter shall be considered to be tax or an amount payable under the Tax Act and, for greater certainty, the penalty, interest and administrative provisions of the Tax Act shall apply, with such modifications as are required, to any such tax or other amount.
- 11.7 IMPLEMENTATION AND INTERPRETATION
- 11.7.1 The Tax Act may be amended to provide for the implementation of this chapter.
- 11.7.2 Unless otherwise provided in this agreement and except to the extent that the context otherwise requires, words and phrases used in this chapter shall be deemed to have the meaning they have for the purposes of the federal Tax Act.
- 11.7.3 To the extent not inconsistent with this chapter, the Tax Act shall apply to the provisions of this chapter with such modifications as the circumstances require.
- 11.7.4 A settlement corporation shall be deemed for purposes of the Tax Act not to be a "specified financial institution".



**PERMITTED ACTIVITIES OF SETTLEMENT CORPORATIONS**

Definition: For the purposes of this schedule, a "low-income participant" is a participant whose total family income is less than 75 percent of the Northwest Territories average annual family income as set out in the last available census data published by Statistics Canada on economic families.

The following are permitted activities of settlement corporations. Subject to 11.3.2, it is not necessary for any or all of the permitted activities to be carried out by a settlement corporation.

1. EDUCATION AND TRAINING

Funding or providing:

- (a) courses for non-native and native teachers and other instructors to enable them to conduct courses in native culture, language and similar areas;
- (b) training for native elders to enable them to participate in the delivery of native culture and language instructional programs;
- (c) native studies, cultural languages programs for participants and research relating thereto;
- (d) scholarships for participants to enable them to attend educational institutions within and outside the Northwest Territories;
- (e) vocational training and similar programs for participants within and outside the Northwest Territories;
- (f) native language and cultural teaching research programs; and
- (g) training for persons employed in connection with native justice programs and research related thereto.

2. SUPPLEMENTAL PROGRAM FUNDING

Supplementing existing programs relating to child care, adoption, alcohol and drug abuse, hospital construction or upgrading, medical, dental and mental health care and similar programs and initiating, funding and administering new programs in those areas.

3. GRANTS OR LOANS TO LOW-INCOME PARTICIPANTS

Funding or providing grants or low interest or forgivable loans or mortgages to low-income participants for the following purposes:

- (a) to enable them to acquire or make down payments on freehold or leasehold interests in residential property in Canada for their personal use;
- (b) funds for the renovation or repair of residential properties owned or leased by low-income participants in Canada for their personal use; and
- (c) financial assistance to low-income participants to enable them to pay municipal or other local taxes.

4. HOUSING

Funding or providing for the construction, operation and administration of housing or subsidized, co-operative or communal housing for low-income participants in Canada.

5. PUBLIC SERVICES

Funding or administering public services and works for the general benefit of participants, including without limitation transportation and utility services.

6. HERITAGE RESOURCES

Funding or providing:

- (a) programs and activities relating to the study, protection and preservation of Gwich'in heritage resources;
- (b) facilities for the preservation and display of Gwich'in heritage resources; and
- (c) publications and audio-visual materials related to Gwich'in heritage resources and cultural history.

7. ECONOMIC DEVELOPMENT

Providing loans, guarantees or minority capital investment to participants or to a taxable entity, other than a corporation which is controlled by one or more settlement corporations, engaged in an economic activity or promotion of economic development within the Northwest Territories provided that:

- (a) the participant or entity is unable to borrow at normal commercial rates from ordinary commercial lenders without guarantees provided by the settlement corporation;
- (b) the settlement corporation may not acquire a controlling equity interest in an entity except by way of realization of its security in which case its controlling interest in the entity shall be disposed of within two years of its acquisition; and
- (c) in the case of any such loan, the settlement corporation does not contract to receive a rate of return on any such loan that is greater than the prescribed rate for overpayments of income tax in effect at the time the loan was made, and such loans shall be provided only to such eligible participants and entities who are engaged in an economic activity, or promotion of economic development, conducted for the benefit of Gwich'in carried on within the Northwest Territories or the Yukon.

8. HARVESTING AND CULTURAL ACTIVITIES

Providing loans or minority capital investment to participants or entities for harvesting and cultural activities including manufacture of handicrafts, arts and crafts, hunting, fishing and trapping and like pursuits provided that:

- (a) the participant or entity is unable to borrow at normal commercial rates from ordinary commercial lenders without guarantees provided by the settlement corporation;
- (b) the settlement corporation may not acquire a controlling equity interest in an entity except by way of realization of its security in which case its controlling interest in the entity shall be disposed of within two years of its acquisition; and
- (c) in the case of any such loan, the settlement corporation does not contract to receive a rate of return on any such loan that is greater than the normal commercial rate of return for similar loans, or is less than the prime rate of interest charged by chartered banks in the settlement area and such loans shall be provided only to such eligible participants and entities who are engaged in a harvesting or cultural activity for the benefit of Gwich'in carried on within the Northwest Territories or the Yukon.

9. RECREATIONAL LANDS

Funding and administering parks and other recreational facilities for participants such as skating rinks, arenas, libraries, assembly halls and similar facilities.

10. ELDERS' ASSISTANCE

Providing funding to confer benefits on participants who are at least 60 years of age, provided such participants reach 60 years of age within five years of the date of settlement legislation and provided such benefits do not exceed an amount per individual, expressed in dollars, equal to the product of 3,541 and the quotient obtained when the latest available monthly value of the Consumer Price Index ("CPI") at the time the distribution is made is divided by the CPI in respect of April 1991.

11. CAPITAL DISTRIBUTION

Distributing to participants, once within the first 15 years from the date of settlement legislation, capital up to a maximum amount per participant, expressed in dollars, equal to the product of 3,541 and the quotient obtained when the latest available monthly value of the Consumer Price Index ("CPI") at the time the distribution is made is divided by the CPI in respect of April 1991.

12. OTHER PERMITTED COSTS AND DISBURSEMENTS BY A SETTLEMENT CORPORATION

- (a) Settlement and implementation costs relating to the agreement.
- (b) Administrative costs incurred by the settlement corporation in respect of the general administration and management of its activities and investments including, without limitation, administrative salaries, wages and related benefits, legal and accounting fees and costs incurred in acquiring, leasing and maintaining premises, provided that such administrative costs shall not exceed 10 percent of the assets of the settlement corporation annually for the first five years after the date of settlement legislation and three percent per year thereafter.

- (c) Transfers to other settlement corporations or to registered charities.
- (d) Transfers to low-income participants.
- (e) Payment of any taxes that are payable by a settlement corporation under any Tax Act or pursuant to this agreement.

Qualified investments for a trust governed by a Registered Retirement Savings Plan as defined in paragraph 146(1)(g) of the federal Tax Act.

**12 WILDLIFE HARVESTING AND MANAGEMENT**

**12.1 OBJECTIVES**

**12.1.1** This chapter has the following objectives:

- (a) to protect for the future the right of the Gwich'in to gather, hunt, trap and fish throughout the settlement area at all seasons of the year;
- (b) to conserve and protect wildlife and wildlife habitat and to apply conservation principles and practices through planning and management;
- (c) to provide the Gwich'in with certain exclusive, preferential and other harvesting rights and economic opportunities related to wildlife;
- (d) to respect the harvesting and wildlife management customs and practices of the Gwich'in and provide for their ongoing needs for wildlife;
- (e) to involve the Gwich'in in a direct and meaningful manner in the planning and management of wildlife and wildlife habitat;
- (f) to integrate planning and management of wildlife and wildlife habitat with the planning and management of all types of land and water use in order to protect wildlife and wildlife habitat;
- (g) to ensure that traditional harvesting by other aboriginal peoples who have harvested in the settlement area can be accommodated in this agreement; and
- (h) to deal fairly and equitably with persons who hunt, trap, fish or conduct commercial wildlife activities in the settlement area and who are not participants.

**12.2 DEFINITIONS**

**12.2.1** In this chapter,

"Board" means the Renewable Resources Board; and

"edible products of wildlife" includes those parts of wildlife traditionally consumed for food by aboriginal people.

**12.3 GENERAL**

**12.3.1** Government shall retain the ultimate jurisdiction for the management of wildlife and wildlife habitat. Government shall continue to have the jurisdiction to initiate programs and to enact legislation with respect to the settlement area which are not inconsistent with this agreement.

**12.3.2** The exercise of the rights of the Gwich'in under this chapter is subject to the limitations provided in this agreement and to legislation in respect of conservation, public health or public safety.

**12.3.3** Nothing in this agreement is intended to confer rights of ownership in any wildlife.

**12.3.4** Nothing in this agreement shall be construed as granting a participant any right to buy, sell or offer for sale any migratory game bird, or parts thereof, or migratory game bird's egg not authorized for sale by law.

**12.3.5** The right to harvest wildlife pursuant to this chapter does not extend to migratory non-game birds and migratory insectivorous birds as defined in the *Migratory Birds Convention Act*, R.S. 1985, c. M-7.

**12.4 HARVESTING**

- 12.4.1** The Gwich'in have the right to harvest all species of wildlife within the settlement area at all seasons of the year subject to limitations which may be prescribed in accordance with this agreement.
- 12.4.2** The right described in **12.4.1** does not preclude persons who are not participants from harvesting in accordance with legislation.
- 12.4.3**
- (a) Subject to the provisions of this agreement, the Gwich'in have the exclusive right to harvest wildlife on Gwich'in lands.
  - (b) No person who is not a participant may harvest wildlife, other than fish or migratory game birds as may be provided pursuant to this agreement, on or in waters overlying Gwich'in lands.
- 12.4.4**
- (a) The Gwich'in may use the special harvesting areas identified in schedules V to VIII, appendix F, to harvest fish or other species of wildlife specified for those special harvesting areas. The disposition of wildlife harvested from such areas is subject to **12.4.16**.
  - (b) Persons who are not participants may not have access to such areas for the purpose of harvesting wildlife where such harvesting would be inconsistent with the special harvesting by the Gwich'in.
  - (c) Persons who are not participants may, pursuant to legislation, harvest moose in the special harvesting areas designated for the harvesting of moose during a season in the fall of the year. The season in such area shall be no longer than 90 days in duration and shall close no later than the 16th day of December in any calendar year.
  - (d) The Board may change or remove any such special harvesting areas and the conditions attached thereto, with the consent of the affected Renewable Resources Council.
- 12.4.5**
- (a) The Gwich'in have the exclusive right to harvest fur bearers throughout the settlement area.
  - (b) Notwithstanding (a), persons who are not participants may hunt, but not trap, wolves, wolverines and coyotes on lands other than Gwich'in lands throughout the settlement area in accordance with legislation.

- 12.4.6** A Renewable Resources Council may permit any person, within the limits prescribed by laws affecting wildlife harvesting and management and by this agreement, to harvest wildlife from the lands referred to in **12.4.3**, to harvest wildlife to which the Gwich'in have been granted special harvesting rights in **12.4.4**, and to harvest fur bearers to which the Gwich'in have the exclusive right, upon terms and conditions respecting species, location, methods, quantities, seasons and duration of harvest as may be set by the Renewable Resources Council. In the case of **12.4.4**, such permission may only be granted for the period of Gwich'in exclusive use and in respect of the species for which the special harvesting area was established. Where the Renewable Resources Council has received a request for permission to harvest pursuant to this provision, it shall render a decision within 60 days of the request and duly communicate such decision to the applicant.
- 12.4.7** Where a Renewable Resources Council has granted or refused permission to a person who is not a participant to harvest fur bearers on lands in the settlement area which are not Gwich'in lands and on which fur bearers are not being harvested, such person may apply in writing to the Board for a review of such refusal or of the terms and conditions attached to any permission. The Board shall consider such application within 60 days of receipt and may set aside the decision of the Renewable Resources Council and may substitute its own decision together with terms and conditions, if the Board determines that it is reasonable, in all the circumstances, to do so. The decision of the Board shall not be subject to review by the Minister.
- 12.4.8** Where in accordance with this chapter, a Renewable Resources Council permits persons who are not participants to harvest wildlife, harvesting by those persons shall be in accordance with legislation and such conditions as may be set by the Renewable Resources Council. Where such permission is granted to persons who are not participants, the resulting harvest shall not be included in the Gwich'in Needs Level established pursuant to **12.5**.
- 12.4.9** The Gwich'in shall not charge a fee or receive a benefit for the act of granting a person who is not a participant permission to harvest wildlife. The Gwich'in may charge a fee or obtain a benefit:
- (a) for granting access to Gwich'in lands to a person who is not a participant for harvesting; or
  - (b) for services and facilities provided to a person who is not a participant in connection with harvesting wildlife.
- 12.4.10**
- (a) The Gwich'in have the right of access to all lands within the settlement area for the purpose of harvesting wildlife, subject to **12.4.10(b)**, **12.4.12**, **12.4.13**, **15.1.2** and **26.2.1**.
  - (b) The exercise of the right of access provided by (a) to lands owned in fee simple or subject to an agreement for sale or a surface lease, is subject to the following conditions:
    - (i) that there be no significant damage to the lands, and the user shall be responsible for any such damage;
    - (ii) there be no mischief committed on the lands;
    - (iii) there be no significant interference with the occupier's use of, and peaceable enjoyment of, the lands; and
    - (iv) unless otherwise provided for in an agreement with the owner or occupier, Gwich'in using this right of access do so at their own risk and have no right of action against the owner or occupier for loss suffered or damage arising therefrom.
- 12.4.11**
- (a) The Gwich'in right of access granted by **12.4.10** includes the right to travel and establish and maintain hunting, trapping and fishing camps.



- (b) In (a), "camp" means a facility established for the personal use of the Gwich'in for the purpose of wildlife harvesting.
- (c) The Gwich'in right of access described in **12.4.10** includes the use of plants and trees for purposes ancillary to wildlife harvesting.

**12.4.12** The right of access granted by **12.4.10** shall not extend to:

- (a) lands dedicated to military or national security purposes pursuant to legislation or areas temporarily being used for military exercises for the period of such temporary use, after notice of such dedication or use has been given to the affected Gwich'in community or communities;
- (b) lands which, at the date of settlement legislation, are owned in fee simple or are subject to an agreement for sale or to a surface lease;
- (c) lands within municipal boundaries which, after the date of settlement legislation, are granted in fee simple, made subject to an agreement for sale or to a surface lease;
- (d) lands outside municipal boundaries of 130 hectares (approximately 321 acres) or less in surface area which after the date of settlement legislation are granted in fee simple or made subject to an agreement for sale or to a surface lease; and
- (e) lands the right of access to which is restricted in accordance with **12.4.13**.

**12.4.13**

- (a) It is recognized that some uses of land, which may be authorized in the future, may conflict with harvesting activities and thus be incompatible with the exercise of Gwich'in harvesting rights.
- (b) If government or a holder of an interest in land (hereinafter "the proponent") proposes that the right of access granted in **12.4.10** should be restricted because a proposed use of land would conflict with harvesting, the proponent, after consultation with the Gwich'in Tribal Council with respect to the proposal, shall give notice to any other holder of an interest in the land and to any Renewable Resources Council for the area in which the land is situated specifying the nature, extent, duration and conditions as well as a proposal for public notice of the proposed restriction.
- (c) Any Renewable Resources Council or holder of an interest in the land to which the notice has been sent may, within 60 days of receipt of the notice, or such other period as the Board may establish, refer the proposal to arbitration pursuant to chapter 6, which shall determine:
  - (i) whether the proposed use conflicts with harvesting, and if so,
  - (ii) the nature, extent, duration and conditions of the restriction on access for harvesting, including the establishment and maintenance of hunting, trapping and fishing camps, required to allow the proposed use.
- (d) The arbitrator shall ensure that a restriction shall only apply for as long as the land is in actual use and only to the extent necessary to permit the proposed use without conflict.
- (e) Where no reference to arbitration is made pursuant to (c), the proposed restriction shall come into effect, according to the terms specified in the notice described in (b), unless otherwise agreed to by the parties.
- (f) The provisions of **12.4.13** do not apply to Gwich'in lands.

**12.4.14**

The Gwich'in have the right to employ any methods of harvesting and to possess and use any equipment for the purpose of harvesting. In addition to being subject to legislation referred to in **12.3.2**, this right is also subject to legislation respecting the humane

harvesting of wildlife. Government agrees that no legislation respecting the humane harvesting of wildlife will be introduced without prior consultation with the Gwich'in Tribal Council.

- 12.4.15** The exercise of the rights of the Gwich'in in **12.4.10**, **12.4.14** and **15.1.2** is subject to legislation for the protection of the environment from significant damage.
- 12.4.16**
- (a) The Gwich'in have the right to trade among themselves and with other aboriginal persons, for personal consumption, edible products of wildlife harvested by them.
  - (b) In (a), "aboriginal persons" means aboriginal persons
    - (i) who reside in and who are eligible to harvest wildlife in the Northwest Territories; or
    - (ii) who are members of a Yukon First Nation and who reside in the Yukon.
  - (c) Nothing in **12.4.16** is intended to confer any rights on any persons other than the Gwich'in.
  - (d) The right provided in (a) is intended to maintain traditional sharing among individuals and communities and is not to be exercised in a manner that would be considered by the Board to be commercial. The Board may propose regulations in respect of such trade but only to ensure that it is not done in a manner that it considers commercial. Notwithstanding **12.8.25**, the Minister may review any such proposed regulation only for purposes of conservation, public safety or public health.
- 12.4.17** The Gwich'in have the right to trade with any person any non-edible products of wildlife that are obtained from the harvesting of fur bearers or incidentally from the harvesting of wildlife for personal use.
- 12.4.18** The right to harvest wildlife includes the right to possess and transport wildlife parts and products in the Northwest Territories, in other areas where provided for in this agreement, and between the Northwest Territories and such other areas.
- 12.4.19**
- (a) Where required by the Board, participants shall show proof of enrolment as provided by the Enrolment Board pursuant to **4.5.2(i)**.
  - (b) The Board may require participants to obtain permits or licences for the purpose of regulating harvesting, but participants shall not be required to pay any fee or tax for any non-commercial permit or licence.
- 12.4.20** Nothing in this agreement prevents any person from killing wildlife in the settlement area for survival in an emergency.
- 12.5** LIMITATION OF THE HARVEST
- 12.5.1** The Board may limit the quantity of the harvest by the Gwich'in in accordance with the procedure set out in **12.5**.
- 12.5.2** The Board may, in accordance with this chapter, establish, modify or remove total allowable harvest levels from time to time in the settlement area but shall establish or modify such levels only if required for conservation and to the extent necessary to achieve conservation. Unless a total allowable harvest is established, the quantity of the harvest by the Gwich'in may not be limited.
- 12.5.3** Where a total allowable harvest has been established, the Board shall allocate for the Gwich'in a portion or all of the total allowable harvest, hereinafter called the "Gwich'in Needs Level". When the Gwich'in Needs Level equals or is less than the total allowable harvest it shall constitute a first demand on the total allowable harvest. When the Gwich'in

Needs Level is greater than the total allowable harvest, the Gwich'in shall be allocated not more than the total allowable harvest.

- 12.5.4** The Board may establish the total allowable harvest and the Gwich'in Needs Level for a particular wildlife species or population applicable to the settlement area as a whole, or to particular areas or communities. The Board may adjust the Gwich'in Needs Level from time to time.
- 12.5.5** When establishing and adjusting a Gwich'in Needs Level, the Board shall consult with Renewable Resources Councils and shall consider all relevant factors including in particular:
- (a) the usage patterns and levels of past harvests by the Gwich'in;
  - (b) personal consumption needs of the Gwich'in, including their nutritional, clothing and cultural needs and fish for their dogs;
  - (c) trade among the Gwich'in to meet their needs described in (b); and
  - (d) the availability of various wildlife species and populations to meet these needs.
- 12.5.6** A Settlement Area Harvest Study shall be conducted in order to provide necessary information for the Board and government to effectively manage wildlife. The terms of reference for the harvest study are set out in schedule I to this chapter.
- 12.5.7** Except when the total allowable harvest is less than the Gwich'in Minimum Needs Level established pursuant to **12.5.8** or **12.5.9**, the Gwich'in Needs Level may be established above or at, but shall never be established below, the Gwich'in Minimum Needs Level.
- 12.5.8** When the study described in **12.5.6** has been completed, the Gwich'in Minimum Needs Level for a species or population of wildlife shall be equal to one half of the sum of the average annual harvest by the Gwich'in over the first five years of the study and the greatest amount taken in any one of those five years, which calculation is expressed mathematically as:

$$\left[ \frac{h_1 + h_2 + h_3 + h_4 + h_5}{5} + h_{\max} \right] 1/2$$

- $h_1$  = harvest in year 1
- $h_2$  = harvest in year 2
- $h_3$  = harvest in year 3
- $h_4$  = harvest in year 4
- $h_5$  = harvest in year 5
- $h_{\max}$  = greatest amount taken in years 1-5

- 12.5.9**
- (a) Until the study described in **12.5.6** is completed, and when a total allowable harvest is established, the Board shall set the Gwich'in Minimum Needs Level in accordance with the calculation in **12.5.8**, using the best information available to estimate the annual harvest levels for the five years prior to establishment of the total allowable harvest. The Board may review and adjust such Minimum Needs Level as the study data become available.
  - (b) Notwithstanding **12.5.7**, if the Gwich'in Tribal Council or the appropriate Renewable Resources Council advises the Board that the Gwich'in Needs Level for a particular species, population, area or community will not be required in a particular harvesting period, the Board may allocate such unrequired portion, or a part thereof, pursuant to **12.5.15**.

**12.5.10** **12.5.11 to 12.5.14** shall apply to the species named therein, notwithstanding **12.5.1** to **12.5.9**.

Muskox

**12.5.11** In the case of muskox, the Board, after consultation with the affected Renewable Resources Council with respect to location, methods, quantities, seasons and like matters, shall allocate a portion of any total allowable harvest in excess of the Gwich'in Needs Level for persons who are not participants.

Moose and Barren-ground Caribou

**12.5.12** In the case of moose and barren-ground caribou, the Board, after consultation with the affected Renewable Resources Councils with respect to location, methods, quantities, seasons and like matters, shall allocate a portion of any total allowable harvest in excess of the Gwich'in Needs Level for persons who are not participants.

Sheep

**12.5.13** In the case of sheep in the Mackenzie Mountains, the Board shall allocate a portion of any total allowable harvest in excess of the Gwich'in Minimum Needs Level for persons who are not participants. For the purpose of **12.5.13**, Mackenzie Mountains means that portion of Unit E, as described in the Government of the Northwest Territories Wildlife Management Unit Regulations (R-057-83), which is in the settlement area.

Migratory Game Birds

- 12.5.14**
- (a) The Board may, in accordance with the provisions of this agreement, establish the total allowable harvest of migratory game birds in the settlement area:
    - (i) recognizing the national and international responsibilities of the Minister, the Board shall ensure that the total allowable harvest figures are received by the Minister on a date, to be specified by the Minister, that will allow consideration of such total allowable harvest for the settlement area when regulations for other users who harvest the same migratory game bird species outside the settlement area are being established. If such figures are not received by the Minister by the specified date, the Minister may establish the total allowable harvest for the settlement area and advise the Board accordingly;
    - (ii) the total allowable harvest for a migratory game bird species or population for the settlement area shall always be set at a percentage at least equal to the percentage that the settlement area harvest, as determined in (b)(i), bears to the total harvest of such migratory game bird species or population throughout Canada during the same period; and
    - (iii) the total harvest figures for Canada of each migratory game bird species or population harvested in the settlement area shall be provided to the Board by the Minister as required to enable the Board to establish the total allowable harvest for the settlement area.
  - (b) The Board shall establish the Gwich'in Minimum Needs Level for migratory game birds in the following manner:
    - (i) the total annual harvest for a migratory game bird species or population in the settlement area and the harvest by the Gwich'in and by persons who are not participants shall be determined for five consecutive years and the average annual harvest by Gwich'in and by persons who are not participants will be calculated;

- (ii) the percentage of the Gwich'in average annual harvest of the total average annual harvest for migratory game bird species or populations in the settlement area shall be determined for such migratory game bird species or populations; and
  - (iii) the total allowable harvest in any one year for such species or population, multiplied by the percentage determined in (b)(ii), shall constitute the Gwich'in Minimum Needs Level for that year.
- (c) The Board shall establish a Gwich'in Needs Level for migratory game birds in accordance with the provisions of this agreement and shall consult with the Gwich'in Tribal Council with respect to allocating the Gwich'in Needs Level among Gwich'in communities.

Allocation

**12.5.15** In allocating any total allowable harvest in excess of the Gwich'in Needs Level, the Board shall consider all relevant factors, including the following factors (which are not intended to be in order of priority):

- (a) requirements of long-term residents of the Mackenzie Valley who are not participants who rely on wildlife from the settlement area for food for themselves, their families and their dogs;
- (b) personal consumption needs of other aboriginal peoples who have harvesting rights in the settlement area;
- (c) demand for hunting and sport fishing by:
  - (i) residents of the Northwest Territories who are not participants; and
  - (ii) other persons who are not participants;
- (d) commercial demand inside and outside the settlement area; and
- (e) demand by lodges and outfitters.

**12.6** MANAGEMENT OF MIGRATORY SPECIES

**12.6.1** Government undertakes that plans for wildlife management and habitat management will be designed to maintain or enhance the productivity of populations of migratory species within the Northwest Territories and Yukon Territory in an integrated fashion.

**12.6.2** Government shall work with the Board, other wildlife management bodies and users to establish wildlife management agreements with respect to migratory species. Where an agreement has not been concluded for the management of a migratory species, government may exercise its powers of management including stipulating the terms of a management plan which shall be binding on all persons.

**12.6.3** Government shall work with the users of the Bluenose caribou herd for the purpose of establishing an agreement for the management of the herd.

**12.6.4** The provisions of the Porcupine Caribou Management Agreement and any management agreement established with respect to the Bluenose caribou herd shall apply to the herds named therein, notwithstanding any provisions of this agreement which may be inconsistent with such agreements.

- 12.6.5** In respect of migratory species which cross international boundaries, Canada shall endeavour to include the countries concerned in cooperative conservation and management agreements and arrangements. Canada shall endeavour to have provisions in such agreements respecting joint research objectives and related matters respecting the control of access to populations.
- 12.6.6** Government shall provide the Gwich'in with the opportunity to be represented in any Canadian management regime in respect of migratory species which are established pursuant to international or domestic agreements and which affect migratory species in the settlement area.
- 12.6.7** Canada shall consult the Board in developing Canadian positions for international consultations and negotiations relevant to migratory game bird management in the settlement area.

**12.7** COMMERCIAL OPPORTUNITIES RELATED TO WILDLIFE

Commercial Harvesting

- 12.7.1**
- (a) The Board shall determine whether commercial harvesting is to be permitted in a particular area for a particular species or population and may prescribe terms and conditions for such harvesting. The terms and conditions may include general licence terms in respect of employment, training and business opportunities for the Gwich'in, non-interference with harvesting by the Gwich'in, and like matters.
  - (b) Where there has not been commercial harvesting described in (a) at any time during the previous three years, the Board shall require the consent of the affected Renewable Resources Council before permitting such commercial harvesting. A Renewable Resources Council shall render a decision within such reasonable time as is specified by the Board.
  - (c) On application by an interested party, or on its own motion, the Board may review the decision of a Renewable Resources Council under (b) not to consent to such commercial harvesting and may permit such harvesting if the Board determines that it is reasonable, in all the circumstances, to do so.
- 12.7.2** The Gwich'in Tribal Council shall have the right of first refusal, in accordance with the provisions of **12.7.5**, to any new licence for the commercial harvesting of wildlife. The provisions of **12.7.2** do not apply to commercial fishing licences.

Commercial Harvesting of Fish

- 12.7.3**
- (a) In **12.7.3**,
    - (i) a licence shall be deemed to be valid at the date of settlement legislation if the licence was valid for the April 1 to March 31 period in which the date of settlement legislation occurs; and
    - (ii) "fishery" means the commercial harvesting of a specific fish species in a specific location as set out in legislation.

- (b) Government may not issue a licence for a fishery in waters overlying Gwich'in lands to a person who is not a participant except in the case of a person who:
  - (i) held a licence which was valid at the date of settlement legislation for a fishery in waters overlying Gwich'in lands; and
  - (ii) applies to renew and is issued such licence within the April 1 to March 31 period in which the date of settlement legislation occurs and in every April 1 to March 31 period thereafter.
- (c) In the case of the commercial harvesting of fish in waters other than waters in (b):
  - (i) government shall offer to the Gwich'in for every licensing period after the date of settlement legislation and for each fishery a number of licences equal to the larger of
    - (A) the number of licences held by Gwich'in at the date of settlement legislation who met any minimum production requirements, and if there are no production requirements, who actually fished pursuant to a licence during the fishing season immediately preceding the date of settlement legislation, and
    - (B) the number of licences held by Gwich'in at the date of settlement legislation who met any minimum production requirements, and if there are no production requirements, who actually fished pursuant to a licence during the fishing season two seasons immediately preceding the date of settlement legislation;
  - (ii) government shall first offer the licences described in (i) to Gwich'in who, in the fishery for which the licence is offered, met any minimum production requirements, and if there are no production requirements, who actually fished pursuant to a licence, in both or either of the two immediately preceding fishing seasons; and second, to the Gwich'in Tribal Council;
  - (iii) subject to (iv), the Gwich'in Tribal Council shall have the right of first refusal, for each fishery, to one half of any licences which are new, not renewed or not re-issued to the previous holder;
  - (iv) the right provided in (iii) shall not apply for any fishing season for any fishery in respect of which Gwich'in and the Gwich'in Tribal Council together have been offered or issued at least 50 percent of the licences for that fishing season for that fishery; and
  - (v) after the Gwich'in have been offered or have taken up licences pursuant to (i) or (iii), Gwich'in shall be treated on the same basis as other licence applicants in respect of a particular fishery.

Commercial Naturalist Activities and Commercial Guiding and Outfitting Activities in Respect of Hunting and Sport Fishing

- 12.7.4** The provisions of **12.7.1** apply, with such modifications as the circumstances require, to commercial naturalist activities and to commercial guiding and outfitting activities in respect of hunting and sport fishing.
- 12.7.5**
- (a) The Gwich'in Tribal Council shall have the right of first refusal to a new licence for an activity described in **12.7.4** in the settlement area, provided that the Board provides that a portion of such licences for guiding and outfitting for barren-ground caribou be reserved for residents who are not participants.
  - (b) Where a person who is not a participant has applied for a licence as described in (a), other than a licence reserved for such resident, the Gwich'in Tribal Council shall be duly notified of such application and shall have such reasonable time as is specified by the licensing authority to prepare and submit an application for the licence. The Gwich'in Tribal Council shall be awarded the licence except where:
    - (i) the Gwich'in Tribal Council fails to submit an application in the form and manner required for such applications by legislation and by the licensing authority and within the time specified in (b); or
    - (ii) the licensing authority determines that the application of the Gwich'in Tribal Council would not provide a comparable degree of long-term economic benefit to the community compared to the person's application.
- 12.7.6**
- (a) In the event that the holder of a licence in respect of any of the activities described in **12.7.4** intends to relinquish the licence and/or sell or transfer the enterprise, or any part thereof, the Gwich'in Tribal Council shall have the right of first refusal to take up such licence and/or the first opportunity to purchase the said enterprise or the part thereof at fair market value, provided that the following shall not be considered as sales or transfers under **12.7.6**:
    - (i) sales or transfers to persons holding rights or options to purchase as at the date of this agreement;
    - (ii) sales or transfers to persons who are members of the holder's immediate family, and who are themselves eligible to hold a licence; or
    - (iii) incorporations or reorganizations which do not affect the effective ownership of the enterprise, or amount to an effective sale or transfer of all or a part thereof.
  - (b) Procedures for the exercise of the right of first refusal in (a) are set out in schedule II to this chapter.



Commercial Propagation, Cultivation and Husbandry Activities

- 12.7.7**
- (a) Where, in the opinion of the Board, a proposed commercial activity for the propagation, cultivation or husbandry of a species of wildlife indigenous to the settlement area could adversely affect harvesting by the Gwich'in by reason of the area in which it is proposed to be carried on, or otherwise, the Board shall require the consent of the Renewable Resources Council for the area.
  - (b) Where, in the opinion of the Board, a proposed commercial activity for the propagation, cultivation or husbandry of a species of wildlife which is not indigenous to the settlement area could adversely affect harvesting by the Gwich'in by reason of the area in which it is proposed to be carried on, the Board shall require the consent of the Renewable Resources Council for the area.
  - (c) On application by an interested party, or on its own motion, the Board may review a decision of a Renewable Resources Council under (a) and (b), and may permit the proposed commercial activity if the Board determines that it is reasonable, in all the circumstances, to do so.
  - (d) The Board shall advise the appropriate licensing authority of its decision pursuant to **12.7.7**.

- 12.7.8** The Gwich'in Tribal Council shall have a right of first refusal in accordance with the provisions set out in **12.7.5** to any new licence in respect of commercial activities described in **12.7.7(a)**.

Muskox

- 12.7.9** The Gwich'in Tribal Council shall have the exclusive right to be licensed to commercially harvest free-roaming muskox and the exclusive right to be licensed to provide guiding services and harvesting opportunities with respect to this species.

General Conditions

- 12.7.10** The Gwich'in shall have the exclusive right to be licensed to conduct commercial wildlife activities on Gwich'in lands, and to permit others to do so, subject to rights existing at the date of settlement legislation.
- 12.7.11** Government shall, upon request and at reasonable rent, permit the use of or lease such lands to the Gwich'in as in the opinion of government are reasonably necessary to carry out the licensed activities described in this chapter.
- 12.7.12** The commercial wildlife activities referred to in **12.7** shall be conducted in accordance with legislation affecting such activities. A licence fee may be required to engage in such activities.

**12.8 RENEWABLE RESOURCES BOARD**

- 12.8.1**
- (a) A Renewable Resources Board shall be established to be the main instrument of wildlife management in the settlement area. The Board shall act in the public interest.
  - (b) The Board shall be established by virtue of settlement legislation at the date thereof.
  - (c) Wildlife shall be managed in the settlement area in accordance with this agreement including its objectives.
- 12.8.2**
- (a) Where, by legislation, any other renewable resources board ("the new board") is established having jurisdiction in an area within the Mackenzie Valley which includes the settlement area:
    - (i) the new board shall assume the powers and responsibilities of the Board;
    - (ii) the Board shall merge with and become a regional panel of the new board. The regional panel shall be reduced to five members of which two shall be nominees of the Gwich'in Tribal Council;
    - (iii) the regional panel shall exercise the powers of the Board except that where, in the opinion of the new board, any decision or recommendation may affect renewable resources in an area within the jurisdiction of the new board outside the settlement area, the decision or recommendation shall be made by the new board. At least one member of the new board making such a decision or recommendation shall be a nominee of the Gwich'in Tribal Council; and
    - (iv) decisions of the regional panel shall be decisions of the new board and subject to review by the Minister in the same manner as decisions of the Board.
  - (b) The Gwich'in Tribal Council shall be consulted with respect to any such legislation.

Establishment and Structures

**12.8.3** The Board shall consist of seven members appointed as follows:

- (a) six members and six alternate members to be appointed jointly by the Governor in Council and Executive Council of the Government of the Northwest Territories ("Executive Council"), of whom three members and three alternate members shall be appointed from nominees put forward by each of the Gwich'in and government, provided that the Board shall include at least one resident of the Northwest Territories who is not a participant; and
- (b) a chairperson, resident in the settlement area, to be nominated by the members of the Board appointed under (a) and appointed jointly by the Governor in Council and Executive Council.

- 12.8.4 (a) Board members shall not be considered to have a conflict of interest by reason only of being public servants or employees of Gwich'in organizations.
- (b) Each member shall, before entering upon his or her duties as such, take and subscribe before an officer authorized by law to administer oaths, an oath in the form set out in schedule III to this chapter.
- 12.8.5 In the event that the Board does not recommend a chairperson within 90 days after the other members of the Board are appointed, the Minister of Indian Affairs and Northern Development jointly with the Minister of Renewable Resources of the Government of the Northwest Territories shall, after consultation with the Board, recommend a chairperson to the Governor in Council and Executive Council.
- 12.8.6 Should any party fail to nominate members to the Board within 90 days of the date of settlement legislation, the Governor in Council and Executive Council may jointly appoint any persons to complete the Board.
- 12.8.7 Should a member resign or otherwise leave the Board, the body which nominated that member shall nominate a replacement within 90 days.
- 12.8.8 A vacancy in the membership of the Board does not impair the right of the remainder to act.
- 12.8.9 Each member shall be appointed to hold office for a specific term not to exceed five years. A member may be reappointed.
- 12.8.10 A member may be removed from office at any time for cause by the Governor in Council and Executive Council after consultation with or at the request of the body which nominated the member.

Administration and Procedure

- 12.8.11 The Board may make by-laws:
- (a) respecting the calling of meetings of the Board; and
- (b) respecting the conduct of business at meetings of the Board, including in-camera meetings, and the establishment of special and standing committees of the Board, the delegation of duties to such committees and the fixing of quorums for meetings of such committees.
- 12.8.12 A majority of the members from time to time in office constitutes a quorum of the Board.
- 12.8.13 The Board shall have, subject to its approved budget, an Executive Director and such staff, professional and technical advisors and consultants as are necessary for the proper conduct of its affairs.
- 12.8.14 The Board shall be accountable to government for its expenditures.
- 12.8.15 It is intended that there be no duplication in the functions required for the public management of wildlife.
- 12.8.16 The Board shall prepare an annual budget, subject to review and approval by government. The approved expenses of the Board shall be a charge on government. Such budget shall be in accordance with the Government of Canada's Treasury Board guidelines and may include:
- (a) remuneration and travel expenses for attendance of Board members at board and committee meetings;
- (b) the expenses of public hearings and meetings;

- (c) a budget for research, public education and other programs as may be approved by government from time to time; and
- (d) the expenses of staff, advisors and consultants and of the operation and maintenance of the office.

- 12.8.17** The annual budget of the Board in its first year of operation shall be set out in the implementation plan.
- 12.8.18** The Board may make rules respecting the procedure for making applications, representations and complaints to it, including the conduct of hearings before it, and generally respecting the conduct of any business before it.
- 12.8.19** The Board shall have the powers of a commissioner under part I of the *Inquiries Act*, R.S. 1985, c. I-11. The Board may not, however, subpoena Ministers.
- 12.8.20** The Board may consult with government, communities, the public and with Renewable Resources Councils and may do so by means of informal meetings or public hearings.
- 12.8.21**
- (a) A public hearing may be held by the Board where the Board is satisfied that such a hearing is desirable.
  - (b) A public hearing shall be held when the Board intends to consider establishing a total allowable harvest and a Gwich'in Needs Level in respect of a species or population of wildlife which has not been subject to a total allowable harvest level within the previous two years.
- 12.8.22** A public hearing may be held at such place or places within the settlement area as the Board may designate.

Powers of the Renewable Resources Board

- 12.8.23** In furtherance of its purpose as the main instrument of wildlife management in the settlement area, the Board shall have the power to:
- (a) establish policies and propose regulations in respect of:
    - (i) the harvesting of wildlife by any person, including any class of persons;
    - (ii) the commercial harvesting of wildlife; and
    - (iii) commercial activities relating to wildlife including:
      - (A) commercial establishments and facilities for commercial harvesting; propagation, cultivation and husbandry of fur bearers and other species; and commercial processing, marketing and sale of wildlife and wildlife products, which may include trade with persons not included in **12.4.16**;
      - (B) guiding and outfitting services; and
      - (C) hunting, fishing and naturalist camps and lodges;
  - (b) exercise the powers and duties given to it elsewhere in the agreement;
  - (c) approve plans for the management and protection of particular wildlife populations, including transplanted wildlife populations and endangered species, and particular wildlife habitats including conservation areas, territorial parks and national parks in the settlement area;
  - (d) approve the designation of conservation areas and endangered species;
  - (e) approve provisions of interim management guidelines, park management plans and policies that impact on wildlife and harvesting by the Gwich'in in a national park;
  - (f) approve regulations which may be proposed by government pursuant to **12.8.29**, except for those in respect of which the Board has already made a final decision under **12.8.27**;
  - (g) establish rules and procedures for the carrying out of any consultation required by these provisions; and
  - (h) review any matter in respect of wildlife management referred to it by government.
- 12.8.24** (a) Unless the Minister directs otherwise, the Board shall forward all its decisions, except those made pursuant to **12.4.7**, to the Minister, accompanied by draft regulations, where the Board proposes regulations.
- (b) Unless the Minister directs otherwise, all decisions of the Board, except those made pursuant to **12.4.7**, shall be confidential until the process in **12.8.25** has been completed, or the time provided for the process has expired.
- 12.8.25** The Minister may, within 60 days of the receipt of a decision under **12.8.24**, accept, vary or set aside and replace the decision. The Minister must consider the same factors as were considered by the Board and in addition may consider information not before the Board, and matters of public interest not considered by the Board. Any proposed variation or replacement shall be sent back to the Board by the Minister with written reasons.
- 12.8.26** The Minister may extend the time provided in **12.8.25** by 30 days.

**12.8.27** (a) The Board shall, within 30 days of the receipt of a variation or replacement from the Minister pursuant to **12.8.25**, make a final decision and forward it to the Minister with written reasons.

(b) The Minister may extend the time provided under (a).

**12.8.28** The Minister may, within 30 days of receipt of a final decision of the Board accept or vary it, or set it aside and replace it, with written reasons. The Minister may consider information not before the Board and matters of public interest not considered by the Board.

**12.8.29** Government shall, as soon as practicable, implement:

(a) all decisions of the Board which are accepted by the Minister under **12.8.25**;

(b) all decisions of the Minister under **12.8.28**; and

(c) subject to (a) and (b), all decisions of the Board after the expiry of the time provided in **12.8.25** and **12.8.28**.

**12.8.30** Government may make changes of a technical nature only, not going to substance, to any decision or final decision of the Board, without varying or setting aside and replacing the decision or final decision, provided the Board is advised of any such change.

#### Licensing and Enforcement

**12.8.31** The Board shall not issue licences, or hear and decide applications for individual commercial undertakings, or enforce legislation, unless otherwise agreed by government and the Gwich'in.

#### Advisory Powers

**12.8.32** Government may consult the Board on any matter which will likely impact on wildlife or wildlife habitat in the settlement area and shall seek the timely advice of the Board on the following matters:

(a) draft legislation respecting wildlife or wildlife habitat;

(b) land use policies or draft legislation which will likely impact on wildlife or wildlife habitat;

(c) proposed inter-provincial or international agreements which will likely impact on wildlife, wildlife harvesting or wildlife habitat;

(d) the establishment of new national parks and territorial parks;

(e) plans for public education on wildlife, wildlife harvesting and wildlife habitat;

(f) policies respecting wildlife research and the evaluation of wildlife research in the settlement area;

(g) plans for cooperative management and research relating to species and populations not wholly within the settlement area, such as the Porcupine caribou herd; and

(h) plans for training Gwich'in in management of wildlife and related economic opportunities.

**12.8.33** The Board shall provide any advice to government under **12.8.32** within such reasonable time as government requires, failing which, government may proceed without any such advice.

**12.8.34** The Minister may request the Board to exercise a power described in **12.8.23** and the Board shall comply with the request within such reasonable time as the Minister requires.

- 12.8.35** If urgent circumstances require an immediate decision respecting matters referred to in **12.8.23** or **12.8.32**, the Minister or his designated agent may make an interim decision and take such action as required to implement the interim decision without receiving a decision or advice from the Board. The Minister shall advise the Board forthwith of the interim decision made or action taken and the reasons therefor and direct the Board to review the decision made or action taken and render its decision or advice in accordance with this agreement.
- 12.8.36** The Board may:
- (a) advise the Minister or government of any matter relating to wildlife or wildlife habitat at any time whether or not the Minister or government has requested such advice; and
  - (b) request the parties to this agreement to review any of its provisions.

Research and Harvesting Studies

- 12.8.37** It is intended that the Board and government departments and agencies work in close collaboration, and exchange full information on their policies, programs and research.
- 12.8.38** The Board may participate in harvesting studies, in data collection and in the evaluation of wildlife research. It is intended that the Board have an independent research capability, to the extent agreed by government and which does not duplicate research which is otherwise available to it.
- 12.8.39** The Board shall establish and maintain a public file for reports, research papers and data received by the Board. Any material furnished on a confidential basis shall not be made public without the consent of the originator.
- 12.8.40** Wildlife research or harvesting studies conducted in the settlement area by government, or by the Board, or with government assistance shall directly involve Renewable Resources Councils and Gwich'in harvesters to the greatest extent possible.
- 12.8.41** Notwithstanding **12.5.2** and until the Board exercises its powers or carries out its duties under **12.8.23**, legislation and government policies in effect from time to time shall continue to apply.

**12.9** RENEWABLE RESOURCES COUNCILS

- 12.9.1** There shall be a Renewable Resources Council in each Gwich'in community to encourage and promote local involvement in conservation, harvesting studies, research and wildlife management in the local community.
- 12.9.2** A Renewable Resources Council shall be composed of not more than seven persons who are residents of the local community.
- 12.9.3** A Renewable Resources Council shall be established by the designated Gwich'in organization in the community.
- 12.9.4** A Renewable Resources Council shall have the following powers:
- (a) to allocate any Gwich'in Needs Level for that community among local participants;
  - (b) to manage, in a manner consistent with legislation and the policies of the Board, the local exercise of Gwich'in harvesting rights including the methods, seasons and location of harvest;
  - (c) to establish group trapping areas, as defined in legislation, subject to the approval of the Board;

- (d) to exercise powers given to Renewable Resources Councils under this agreement; and
- (e) to advise the Board with respect to harvesting by the Gwich'in and other matters of local concern within the jurisdiction of the Board.

**12.9.5** The Board shall consult regularly with Renewable Resources Councils with respect to matters within the Board's jurisdiction. Government and the Board may jointly delegate authority to Renewable Resources Councils, upon terms and conditions established by government and the Board.

**12.9.6** Renewable Resources Councils shall participate in the collection and provision, to government and the Board, of local harvesting data and other locally available data respecting wildlife and wildlife habitat.

**12.10** OTHER PROVISIONS

**12.10.1** Government shall consult with the Gwich'in Tribal Council with respect to the formulation of government positions in relation to international agreements which may affect wildlife or wildlife habitat in the settlement area, including negotiations with respect to methods of harvesting and amendments to the *Migratory Birds Convention* (1916), prior to adopting positions.

- 12.10.2**
- (a) Persons who reside in the Mackenzie Valley or the Western Arctic Region and who held General Hunting Licences as at the date of settlement legislation may continue to harvest in the settlement area in accordance with legislation pertaining to such licences.
  - (b) Any participant who held a General Hunting Licence as at the date of settlement legislation may continue to hold such licence and shall be permitted to harvest outside the settlement area in accordance with legislation pertaining to such licences.



**TERMS OF REFERENCE: SETTLEMENT AREA HARVEST STUDY**

The terms of reference for the Settlement Area Harvest Study (the "Harvest Study") pursuant to 12.5.6 of the agreement are as follows:

**PURPOSE**

The purpose of the Harvest Study is to provide information on harvesting necessary for the effective management of wildlife by the Board and government, including determination of the Gwich'in Minimum Needs Level pursuant to 12.5.8.

**CO-OPERATIVE SPIRIT**

The Harvest Study is a joint venture of the Gwich'in and government who commit themselves to work in a co-operative spirit.

**RESPONSIBILITY**

The Board shall be responsible for the design and the conduct of the Harvest Study. The Board shall establish a Working Group, composed of equal representation of the Gwich'in and the agencies with wildlife management responsibilities in the study area, to support the Harvest Study.

**METHODOLOGY AND DESIGN**

The Working Group shall develop the methodology and design of the Harvest Study which shall be approved by the Board. The Harvest Study will provide for training of community field workers, education of the respondents regarding the importance of the Harvest Study, and the involvement of community organizations.

**SCOPE**

The Harvest Study shall cover all Gwich'in and others who harvest in the settlement area for those species designated in the Harvest Study.

**SCHEDULING**

The Harvest Study shall be initiated within one year of the establishment of the Board and shall be conducted for a minimum of five consecutive years.

**DATA SHARING**

The data shall be recorded in a manner that ensures harvester confidentiality. All information collected, whether in its raw form or after being compiled and analyzed, with the exception of identification of the harvesters, shall be provided to the Board, the Gwich'in Tribal Council and the participating government agencies on the Working Group in a manner to be set out in the design of the Harvest Study.

## FUNDING

It is acknowledged that adequate funding is required for the Harvest Study to yield meaningful data and that such funding must be identified before the study is initiated. The budget for the Harvest Study shall be set out in the implementation plan.

The right of first refusal to purchase an enterprise pursuant to 12.7.6 shall operate as follows.

- (i) Where the owner of an enterprise wishes to sell the enterprise or any part thereof ("the asset"), the owner shall notify the Gwich'in Tribal Council in writing of the asset, the selling price of the asset, the terms of sale and any other relevant details and conditions which a reasonable, informed purchaser would require. The owner shall provide a reasonable opportunity to inspect the asset.
- (ii) The notification in (i) shall constitute an offer to sell the asset to the Gwich'in Tribal Council upon the terms and conditions specified in the notification.
- (iii) The Gwich'in Tribal Council shall have 30 days from the date of receipt of notification to indicate whether it wishes to exercise its right of first refusal.
- (iv) If it wishes to exercise the right of first refusal, the Gwich'in Tribal Council shall have 120 days from the date of receipt of notification to accept the offer after which time the offer shall lapse. The owner may extend the time in which the Gwich'in Tribal Council may accept the offer.
- (v) Where the Gwich'in Tribal Council notifies the owner that it does not intend to exercise its right of first refusal, fails to notify an owner of its intention within the time limit specified in (iii) or fails to meet the requirements in (iv), the right of first refusal shall lapse, and the owner shall be free, within three years of the lapse of the offer in (iv), to sell the asset to another person, provided that the selling price and any terms and conditions are at least equivalent to the price and terms and conditions offered to the Gwich'in Tribal Council in (ii).
- (vi) The owner may not sell the asset to a person other than the Gwich'in Tribal Council at a price less than the selling price or under significantly different terms and conditions than set out by the owner pursuant to (i) unless the owner sets a new selling price or new terms and conditions pursuant to (i). Where a new selling price or new terms and conditions are set pursuant to (i), the right of first refusal shall apply to such selling price and such terms and conditions in accordance with these provisions.
- (vii) Where the owner fails to sell the asset within three years of the lapse of the offer in (v), the owner may not sell the asset without a further notification pursuant to (i).
- (viii) Where the Gwich'in Tribal Council does not exercise its right of first refusal in respect of the purchase of all or part of an enterprise in (i), it shall not have a right of first refusal to take up a new licence issued in respect of the enterprise where such licence is associated with the sale of all or part of the enterprise pursuant to (v).

**OATH OF MEMBER OF THE RENEWABLE RESOURCES BOARD**

I do solemnly affirm (or swear) that I will faithfully, truly, impartially and honestly, and to the best of my judgement, skill and ability, execute and perform the duties required of me as a member of the Board.

**13 FORESTRY**

**13.1.1** In this chapter,

"Board" means the Renewable Resources Board.

**13.1.2** Subject to the provisions of this chapter, the Gwich'in have the right to harvest trees, including dead trees, throughout the settlement area at all seasons of the year for the following purposes:

- (a) firewood for personal use;
- (b) the construction of camps for hunting, trapping and fishing for personal use;
- (c) handicrafts and traditional, cultural and medicinal uses;
- (d) the construction of boats and rafts for personal uses; and
- (e) house building for personal use.

**13.1.3** The Gwich'in right to harvest trees is subject to legislation in respect of forest management, land management within local government boundaries, conservation, public health, public safety and protection of the environment from significant damage.

**13.1.4** The Gwich'in right to harvest trees set out in this agreement does not apply:

- (a) subject to **12.4.11(c)**, on lands held in fee simple, subject to an agreement for sale or surface lease;
- (b) upon Crown lands where it conflicts with the carrying out of any activity authorized or permitted by government such as a timber licence or land use permit;
- (c) in national parks except as permitted by the provisions of chapter 15; and
- (d) on lands described in **12.4.12(a)**.

**13.1.5** The Gwich'in may dispose of harvested trees by way of trade with other Gwich'in for the purposes described in **13.1.2**.

**13.1.6** The commercial harvesting of trees throughout the settlement area is subject to legislation.

- 13.1.7**
- (a) No new licence for the commercial harvesting of trees shall be granted without the consent of the affected Renewable Resources Council where such commercial harvesting would significantly affect the harvesting of wildlife by the Gwich'in.
  - (b) The affected Renewable Resources Council shall be consulted by government prior to any change in the area of operation of an existing licence.
  - (c) On application by an interested party, or on its own motion, the Board may review the decision of a Renewable Resources Council under (a) not to consent to such commercial harvesting and may permit such harvesting if the Board determines that it is reasonable, in the circumstances, to do so.

**13.1.8** Nothing in this agreement shall be construed to:

- (a) confer rights of ownership of trees except on Gwich'in lands;
- (b) guarantee the supply of trees;
- (c) preclude persons who are not participants from harvesting trees on lands other than Gwich'in lands, subject to legislation; or

- (d) entitle the Gwich'in to any compensation for damage to or loss of trees or harvesting opportunities on lands other than Gwich'in lands.

**13.1.9** The Board shall have the power to

- (a) establish policies and propose regulations in respect of
  - (i) the harvesting of trees by any person, including any class of persons; and
  - (ii) the commercial harvesting of trees; and
- (b) approve forest conservation and forest management plans and policies within the settlement area which may include
  - (i) determination of areas of commercial harvesting of trees and the terms and conditions of such harvesting which may include cutting rates, yields, reforestation measures and Gwich'in employment and training;
  - (ii) provisions for forest management agreements with licensees and owners; and
  - (iii) provision for the establishment of fire attack zones.

**13.1.10** Government may consult the Board on any matter which affects forestry and forest management and shall seek the timely advice of the Board on the following matters:

- (a) draft legislation respecting forestry and forest management including the fighting and control of forest fires;
- (b) land use policies or draft legislation which will likely impact on forestry or forest management;
- (c) policies respecting forestry and forest management research and the evaluation of such research; and
- (d) plans for training Gwich'in in forestry, forest management and lumbering.

**13.1.11** Nothing in this agreement is intended to affect the responsibility of government for the fighting of forest fires in the settlement area.

**14 PLANTS**

- 14.1.1** The Gwich'in may gather plant material for food, medicine, cultural and other personal purposes and for purposes required in the exercise of wildlife harvesting rights within the settlement area, subject to legislation in respect of conservation, land management within local government boundaries, public health, public safety and protection of the environment from significant damage.
- 14.1.2** The Gwich'in right to gather plants set out in this chapter does not apply:
- (a) subject to **12.4.11(c)**, on lands held in fee simple, subject to an agreement for sale or surface lease;
  - (b) upon Crown lands where it conflicts with the carrying out of any activity authorized or permitted by government such as a timber licence or land use permit;
  - (c) in national parks except as permitted by the provisions of chapter 15; and
  - (d) on lands described in **12.4.12(a)**.
- 14.1.3** Government shall consult with the Gwich'in Tribal Council with respect to the gathering of plants by the Gwich'in before legislating to regulate or prohibit gathering of plants.
- 14.1.4** Any legislation which regulates but does not prohibit the gathering of plants shall provide a preferential right of gathering by the Gwich'in for food, medicine, cultural and other personal uses and for purposes required in the exercise of wildlife harvesting rights and may describe on which lands and under what conditions the preferential right shall apply.
- 14.1.5**
- (a) The cultural purposes in **14.1.1** include the trade of plant material gathered by the Gwich'in with other aboriginal persons for their personal consumption.
  - (b) In (a), "aboriginal persons" means aboriginal persons
    - (i) who reside in and who are eligible to harvest wildlife in the Northwest Territories; or
    - (ii) who are members of a Yukon First Nation and who reside in the Yukon.
  - (c) Nothing in (a) is intended to confer any rights on any persons other than the Gwich'in.
- 14.1.6** Nothing in this agreement shall be construed to:
- (a) confer rights of ownership to plants except on Gwich'in lands;
  - (b) guarantee the supply of any plants;
  - (c) preclude persons who are not participants from gathering plants on lands other than Gwich'in lands, subject to legislation; or
  - (d) entitle the Gwich'in to any compensation for damage to or loss of plants or gathering opportunities on lands other than Gwich'in lands.

**15 NATIONAL PARKS**

**15.1 GENERAL**

- 15.1.1** The purpose of national parks established in the settlement area is to preserve and protect for future generations representative natural areas of national significance, including the wildlife resources of such areas, and to encourage public understanding, appreciation and enjoyment of such areas, while providing for the rights of the Gwich'in under this agreement to use such areas for the harvesting of wildlife and plants.
- 15.1.2** Gwich'in wildlife harvesting rights and wildlife management provisions of this agreement shall apply in national parks in the settlement area, as modified by the provisions of this chapter.
- 15.1.3** The traditional and current use of lands within a national park by the Gwich'in shall be recognized in policies and public information programs and materials.
- 15.1.4** Park management plans and guidelines for national parks shall respect:
- (a) Gwich'in burial sites and places of religious and ceremonial significance; and
  - (b) historic and archaeological sites.
- 15.1.5** Exploration for and development of minerals shall not be permitted within a national park, except as may be required for construction purposes within the park.
- 15.1.6** Except as otherwise provided in this agreement, all national parks in the settlement area shall be planned, established and managed pursuant to the *National Parks Act*, R.S. 1985, c. M-13, and other legislation, the national parks policy and park management plans in effect from time to time.
- 15.1.7** Once established, the boundaries of a national park shall not be reduced without the consent of the Gwich'in Tribal Council. The boundaries of a national park shall not be enlarged except by Order-in-Council, proclamation or legislation after consultation with the Gwich'in Tribal Council.

**15.2 IMPACT AND BENEFIT PLANS**

- 15.2.1** Prior to establishment of a national park in the settlement area, a Gwich'in Impact and Benefit Plan for the proposed park shall be jointly prepared by government and the Gwich'in Tribal Council for the approval of the Minister.
- 15.2.2** Impact and Benefit Plans shall address the impact of the establishment and development of the park on the affected Gwich'in community or communities in accordance with the provisions of this agreement and shall describe the steps that will be taken by government in the establishment of the park. In particular, the plan may include provisions relating to:
- (a) the National Park Management Committee ("the Committee") described in **15.3**;
  - (b) the continued use of Gwich'in camps, cabins and traditional travel routes to assist harvesting in the park;
  - (c) economic and employment opportunities for the Gwich'in and measures which will be adopted to assist Gwich'in to take advantage of such opportunities, in accordance with the preference provided for in **15.7**;
  - (d) mitigation of potential negative impacts of park establishment on the affected Gwich'in community or communities; and
  - (e) other matters of concern to government or the affected Gwich'in community or communities.



- 15.2.3** If the Gwich'in Tribal Council and government fail to reach agreement on a plan within a reasonable period of time for proposed parks, each party may submit its own plan to the Minister for his or her consideration and decision. The Minister shall give written reasons for a decision.
- 15.2.4** All plans shall contain provisions providing for a review of the plan not less than once every 10 years.
- 15.3** NATIONAL PARK MANAGEMENT COMMITTEES
- 15.3.1** A Committee shall be established for each national park in the settlement area at the time the park is established.
- 15.3.2**
- (a) The Committee shall consist of equal numbers of members to be appointed by the appropriate Renewable Resources Council or Councils and by the Minister in consultation with the Government of the Northwest Territories. For each member appointed there shall be appointed an alternate member in the same manner.
  - (b) Each member shall exercise one vote.
  - (c) The Park Superintendent or his or her designate shall sit as an ex-officio, non-voting member.
  - (d) The Committee shall choose from its members a chairperson who shall serve a fixed term and shall vote only in the event of a tie. The party who appointed the member who was selected as chairperson shall name a replacement on the Committee. If the Committee fails to agree on a chairperson within a reasonable period of time, the Minister shall select the chairperson from the Committee.
  - (e) All appointments shall be for a fixed term. A member may be removed from office for cause by the authority responsible for his or her appointment.
  - (f) The Committee may meet as often as necessary, but shall hold at least two meetings annually.
  - (g) The Committee may establish its own rules of procedures respecting the conduct of its business.

- 15.3.3** The Committee may advise the Minister or the Minister's designate, the Renewable Resources Board or agencies of government, as appropriate, with respect to the following matters:
- (a) all matters affecting the national park which lie within the Renewable Resources Board's powers and responsibilities;
  - (b) interim management guidelines, park management plans and any amendments to them;
  - (c) park employment, training plans and economic opportunities for participants associated with the development and operation of the park;
  - (d) any proposed changes to park boundaries;
  - (e) issuance of permits for cabins or camps which may be required for the exercise of Gwich'in harvesting rights;
  - (f) measures to give protection to sites, within the park, of cultural and spiritual significance to the Gwich'in and of archaeological significance;
  - (g) information and interpretive programs to recognize Gwich'in traditional use of the park area;
  - (h) research and field work conducted by or for government in a national park; and
  - (i) any other matters which may be referred to the Committee by the Minister, the Renewable Resources Board or agencies of government.
- 15.3.4** The Minister shall advise the Committee in writing of reasons for rejection of any advice provided and afford the Committee an opportunity for further consideration of the matter.
- 15.4** PARK PLANNING AND MANAGEMENT
- 15.4.1** Interim management guidelines for a national park shall be prepared by the Canadian Parks Service, in consultation with the Committee, within two years of establishment of a national park.
- 15.4.2** A park management plan shall be prepared by the Canadian Parks Service in consultation with the Committee within five years of establishment of a national park, and shall be reviewed and revised as required from time to time and not less than every 10 years.
- 15.4.3** Park management plans shall be approved by the Minister prior to coming into force.
- 15.4.4** To the extent feasible, interim management guidelines and park management plans shall be prepared in the settlement area.
- 15.4.5** Park management plans shall describe the policies which guide the conservation and management of the park and its resources.

**15.5 WILDLIFE**

**15.5.1** National parks shall be managed in a manner which provides for wildlife harvesting by the Gwich'in, consistent with the protection of wildlife habitat, the maintenance of viable wildlife populations, and the natural evolution of ecosystems and their associated plant and animal species, as well as public use and enjoyment of the national parks.

**15.5.2** Wildlife management within national parks shall be compatible with wildlife management in surrounding areas to the extent possible, consistent with national parks objectives and policies.

**15.5.3** Except for the harvesting of fur bearers, the harvesting of wildlife within national parks by the Gwich'in shall be limited to the personal use of participants or for trade with other participants for their personal use or to other aboriginal persons referred to in **12.4.16** for their personal use.

**15.5.4** Permits may be required for the location of cabins and camps required for the exercise of Gwich'in harvesting rights; such cabins and camps shall conform to interim management guidelines and park management plans. Permits shall be issued by the Park Superintendent without charge.

**15.5.5** Sport fishing may be permitted, subject to the provisions of chapter 12. Subject to **15.5.3**, hunting shall not be permitted in any national park.

**15.5.6** Any allocation of Gwich'in harvesting rights among individual harvesters shall be the responsibility of the appropriate Renewable Resources Council.

**15.5.7** Persons who are not participants and who:

- (a) held General Hunting Licences at the date of settlement legislation and lawfully harvested wildlife; or
- (b) otherwise lawfully harvested wildlife for subsistence purposes;

in the area comprised by a park at the time of its establishment, and the children of such persons, may continue to harvest wildlife after the establishment of the park, if permitted by and in accordance with the *National Parks Act*, R.S. 1985, c. M-13.

**15.6 PLANTS AND TREES**

**15.6.1** The Gwich'in may gather plant material for food, medicine, cultural and other personal purposes and for purposes required in the exercise of wildlife harvesting rights within the park subject to park management plans and to legislation in respect of conservation, public health, public safety and protection of the environment from significant damage. This right includes the cutting of trees for construction and maintenance of cabins and camps and for fuel.

**15.7 ECONOMIC AND EMPLOYMENT PROVISIONS**

**15.7.1** The parties intend that qualified participants will hold a majority of jobs in national parks in the settlement area. To this end, training opportunities, as described in the Impact and Benefit Plan, shall be provided to assist Gwich'in to qualify for such employment.

**15.7.2** To the extent that commercial and economic activities related to wildlife and tourism may be permitted in national parks, the Gwich'in Tribal Council shall have the right of first refusal to any new licences to carry on such activities and to take up licences in force at the date of settlement legislation that are not renewed, as provided in this agreement.

**15.7.3** In the event that manipulation of wildlife populations by way of a controlled hunt is required in a national park within the settlement area, the Gwich'in shall be given the preferential right to conduct the hunt in co-ordination with park officials, and to dispose of wildlife parts and products resulting therefrom outside the park, in accordance with this agreement.

## **16 PROTECTED AREAS**

### **16.1 GENERAL**

#### **16.1.1** In this chapter,

"territorial park" means an area dedicated as a recreation park under 4(1)(a) and (b) of the *Territorial Parks Act*, R.S.N.W.T. 1988, c. T-4, and any other territorial park outside local government boundaries the area of which exceeds 130 hectares (approximately 321 acres).

#### **16.1.2** Except as otherwise provided in this agreement, protected areas shall be planned and managed pursuant to legislation respecting protection of the resources in the protected areas.

#### **16.1.3** Except as otherwise provided in this chapter, the provisions of chapters 12, 13 and 14 apply in any protected area established in the settlement area.

### **16.2 PLANNING AND MANAGEMENT**

- 16.2.1**
- (a) Government shall consult with the Gwich'in Tribal Council and with affected local communities prior to the establishment of any protected area, or changes in the boundaries of an established protected area. Such consultation shall commence not less than 12 months prior to the establishment of the protected area or the change in boundaries.
  - (b) In an emergency for reasons of conservation, such consultation may take place in a shorter period. In the event of an emergency for reasons of conservation which requires immediate government action, government shall consult with the Gwich'in Tribal Council as soon as possible after the establishment of a protected area on the necessity of the action and the terms and conditions attached thereto.

#### **16.2.2** The Government of the Northwest Territories shall consult with the Gwich'in Tribal Council prior to the establishment of any territorial park which is not included in the definition of territorial park under this chapter.

#### **16.2.3** The Government of the Northwest Territories may prepare a park management plan for each territorial park which describes the policies which will guide the conservation and management of the park and its resources. The Gwich'in Tribal Council shall be invited to participate in the preparation of any plan. A park management plan shall be approved by the Minister before coming into force. Gwich'in use shall be in accordance with applicable interim management guidelines or park management plan.

#### **16.2.4** Any allocation of Gwich'in harvesting rights among participants in protected areas shall be the responsibility of the appropriate Renewable Resources Council.

#### **16.2.5** The harvesting of wildlife, plants and trees by the Gwich'in may be restricted in protected areas or parts of protected areas for conservation or other reasons as set out in chapters 12, 13 and 14 or related to the management of the protected area. Any proposed restrictions shall be included in a protected area agreement dealing with impacts and benefits to be negotiated between the affected Gwich'in communities and government. In the event that a protected area agreement is not concluded within two years of the commencement of negotiations, each party may submit its own proposal to the Minister responsible for the protected area for consideration and decision. The Minister shall give written reasons for a decision.

#### **16.2.6** The protected area agreement may include provisions relating to:

- (a) employment of Gwich'in;
- (b) training of Gwich'in;
- (c) protection of Gwich'in religious, cultural and historic sites;

- (d) mitigation of potential negative impacts of the establishment of the protected area on affected Gwich'in harvesters and their communities;
- (e) participation of the Gwich'in in management committees or other similar structures relating to the development and administration of the protected area;
- (f) any interim management guidelines or management plan;
- (g) periodic review of the protected area agreement not less than once every 10 years;
- (h) the continued use of Gwich'in camps and traditional travel routes to assist harvesting and other traditional uses; and
- (i) other matters of concern to the affected Gwich'in communities and government.

**16.2.7** It is the objective of the parties that qualified Gwich'in be employed at all occupational levels in protected areas. Government shall identify employment opportunities in respect of the management and administration of protected areas and shall provide appropriate training opportunities for the Gwich'in as set out in the Implementation Plan. For any protected area established after the date of settlement legislation, the nature and extent of the training opportunities shall be set out in the protected area agreement.

**16.2.8** To the extent that outfitting, guiding and naturalist commercial activities, including tourist establishments related to such activities and facilities for the manufacture or sale of handicrafts, may be permitted in protected areas, the Gwich'in Tribal Council shall have the right of first refusal to any new licences to carry on such activities and to take up licences in force at the date of settlement legislation that are not renewed and are available. The procedures set out in **12.7.5(b)** shall apply, where appropriate, to such right with such modifications as the circumstances require.

**16.2.9** To the extent that commercial wildlife activities including commercial harvesting are permitted in protected areas, the Gwich'in Tribal Council shall have the right of first refusal to any new licence for such activities. The procedures set out in **12.7.2** or **12.7.5(b)** shall apply, where appropriate, to such right with such modifications as the circumstances require.

**16.2.10** In the event that manipulation of wildlife populations is required in a protected area, the Gwich'in Tribal Council shall be given the first opportunity to conduct the hunt and to dispose of wildlife parts and products resulting therefrom in accordance with a plan to be approved by officials responsible for the protected area.

**16.3** CAMPBELL HILLS/LAKE

- 16.3.1**
- (a) The Government of the Northwest Territories and the Gwich'in Tribal Council have entered into a Memorandum of Agreement with respect to the proposed territorial park at Campbell Hills/Lake.
  - (b) The Memorandum of Agreement shall be a protected area agreement within the meaning of this chapter, in the event that this park is established. However, any financial obligations of government arising from the Memorandum of Agreement, including the costs of establishing, operating and maintaining the Park, and the costs of any benefits to Gwich'in, shall not be a cost of implementing this agreement.

**17 HARVESTING COMPENSATION**

**17.1.1** In this chapter,

"compensation" means a cash payment, either lump sum or a periodic payment, or non-monetary compensation such as replacement or substitution of damaged or lost property or equipment or relocation or transportation of participants or equipment to a different harvesting locale or a combination of such elements;

"development activity" means a development activity in the settlement area, other than individual or commercial wildlife harvesting activities, naturalist activities and commercial guiding and outfitting activities in respect to hunting and sport fishing; and

"wildlife harvesting" means wildlife harvesting pursuant to this agreement and does not include wildlife harvesting permitted pursuant to legislation other than legislation giving effect to this agreement.

**17.1.2** (a) A developer is liable absolutely, without proof of fault or negligence, for the following losses and damage suffered by a participant as a result of development activity of that developer:

- (i) loss or damage to property or equipment used in wildlife harvesting or to wildlife harvested;
- (ii) present and future loss of income from wildlife harvesting; and
- (iii) present and future loss of wildlife harvested for personal use or which is provided by the participant to other participants for their personal use; and

(b) notwithstanding (a), a developer shall not be liable for losses suffered by a participant as a result of the establishment of a national park or a protected area, or any lawful activity within a park or protected area, except for direct loss or damage to property or equipment used in wildlife harvesting or to wildlife harvested.

**17.1.3** Participants shall make their best efforts to mitigate any losses or damage referred to in **17.1.2**.

**17.1.4** If agreement has not been reached between a developer and a participant with respect to a claim for compensation within 30 days of the submission of a claim in writing by a participant, either party may refer the matter to arbitration pursuant to chapter 6.

**17.1.5** An arbitrator, if a claim is proven, may:

- (a) award compensation to a participant with provision for review of the award, if appropriate;
- (b) recommend that a developer or a participant take or refrain from taking certain action in order to mitigate further loss or damage; and
- (c) on review of a previous award, determine whether the developer or the participant has adopted any mitigative recommendations made under that previous award.

**17.1.6** Nothing in this chapter is intended to prejudice the legal rights of participants to sue for damages from any person. However, if a participant elects to refer the dispute to arbitration, the provisions of chapter 6 shall apply.

**17.1.7** Nothing in this chapter is intended to prejudice the negotiation of agreements between the Gwich'in and developers with respect to compensation for losses in relation to wildlife harvesting, including the process for settling and resolving claims under this chapter.



- 17.1.8** Legislation may provide for limits of liability of developers, the burden of proof on claimants, limitation periods for making claims and any other matters not inconsistent with this agreement.

**18 GWICH'IN LANDS**

**18.1 GWICH'IN TITLE**

**18.1.1** In this chapter,

"lands" does not include water; and

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

**18.1.2** The Gwich'in shall receive title, which may be referred to as "Gwich'in title", to settlement lands as follows:

- (a) 16,264 square kilometres (approximately 6,280 square miles) of lands in fee simple, reserving therefrom the mines and minerals, whether solid, liquid or gaseous that may be found to exist within, upon or under such lands and the right to work the same, subject to any rights, titles or interests in the lands existing at the date of settlement legislation;
- (b) 4,299 square kilometres (approximately 1,660 square miles) of lands in fee simple, including the mines and minerals, whether solid, liquid or gaseous that may be found to exist within, upon or under such lands, subject to any rights, titles or interests in the lands existing at the date of settlement legislation; and
- (c)
  - (i) 1,766 square kilometres (approximately 682 square miles) of lands in fee simple, including the mines and minerals, whether solid, liquid or gaseous that may be found to exist within, upon or under such lands, and
  - (ii) 93 square kilometres (approximately 36 square miles) of lands wherein the interest shall include title only to the mines and minerals underlying such lands but not to the surface thereof,

("the Aklavik Lands"), subject to any rights, titles or interests in the lands existing at the date of settlement legislation.

**18.1.3** Unless otherwise provided in the legal description,

- (a) Gwich'in title shall include title to those portions of the beds of lakes, rivers and other water bodies contained within the described boundaries of Gwich'in lands, and
- (b) Gwich'in title shall not include title to the bed of any lake, river or other water body where any lake, river or water body is described as a boundary of Gwich'in lands.

**18.1.4** (a) Title to Gwich'in lands, other than lands in (b), shall vest in the Gwich'in Tribal Council by virtue of settlement legislation at the date thereof.

- (b) Title to Gwich'in municipal lands acquired from persons other than government shall vest in the Gwich'in Tribal Council at the date the land is conveyed.

**18.1.5** Settlement lands may not be conveyed to any person except to government in exchange for other lands or to a designated Gwich'in organization. This provision shall not be interpreted to prevent the Gwich'in from granting leases or licences to persons who are not participants to use or occupy Gwich'in lands.

**18.1.6.** Subject to the provisions of this agreement and legislation, the Gwich'in shall manage and control the use of Gwich'in lands, including:

- (a) the development and administration of land management programs and policies; and
  - (b) the charging of rents or other fees for the use and occupation of Gwich'in lands.
- 18.1.7** Settlement lands are not subject to seizure or sale under court order, writ of execution or any other process whether judicial or extra-judicial.
- 18.1.8** Settlement lands shall not be mortgaged, charged or given as security.
- 18.1.9** No person may acquire, by prescription, an estate or interest in settlement lands.
- 18.1.10** Canada is discharged from any obligations arising from the Memorandum of Agreement Regarding Overlap Resolution Between the Inuvialuit, Dene/Metis, and Canada dated February 9, 1984 upon transfer of lands pursuant to **18.1.2(c)**.
- 18.2** SPECIFIED SUBSTANCES
- 18.2.1** Notwithstanding the reservation of mines and minerals from the lands described in **18.1.2(a)**, and subject to any specific reservation in the grant, Gwich'in title shall include the right to specified substances and the right to work such substances.
- 18.2.2** Notwithstanding **18.2.1**,
- (a) the right of the Gwich'in to work specified substances is subject to the rights of a person having a mineral interest. A person having a mineral interest shall, where practicable, exercise that interest so as to minimize interference with the right of the Gwich'in to work specified substances;
  - (b) no compensation, other than that determined pursuant to **26.2.1(d)** and (e), shall be paid to the Gwich'in in respect of any specified substance incidentally taken, used, damaged or destroyed by a person in the course of exercising mineral rights, and any such specified substance taken, used, damaged or destroyed shall be the property of the person exercising the mineral rights; and
  - (c) notwithstanding (b), the property described in (b) of a holder of a mineral interest in specified substances shall terminate upon termination of the mineral interest.
- 18.2.3**
- (a) The Gwich'in shall provide supplies of, and permit access to, sand, gravel, clay and other like construction materials on Gwich'in lands if, in the opinion of the Land and Water Board, no alternative source of supply is reasonably available in the surrounding area.
  - (b) The Gwich'in are entitled to fair and reasonable compensation for any materials supplied under (a).
  - (c) If any person or government, and the Gwich'in, do not agree on any terms or conditions respecting the supply of, or access to, materials under (a), the person or government seeking the supply or access may refer the matter to the Land and Water Board which shall decide all matters between the parties including the question of priorities between the Gwich'in and other users. The decision of the Land and Water Board shall be final and binding on the parties and shall not be challenged by appeal or review in any court except on the ground that the Board erred in law or exceeded its jurisdiction.
  - (d) The Land and Water Board may establish rules and procedures for the carrying out of this provision.
- 18.2.4** Government shall have the right to take sand and gravel without charge from the Gwich'in lands identified in (a) and (b) and shall have free access to reach such sites for that purpose for a period of 20 years from the date of settlement legislation:

- (a) deposit known as the Frog Creek source located at Lat. 67° 34'N, Long. 134° 04'W (approximately) within Block 24; and
- (b) deposit located at Lat. 67° 28'N, Long. 133° 45'W (approximately) within Block 15.

**18.3 LAND SELECTION AND REGISTRATION**

- 18.3.1**
  - (a) Legal descriptions of the lands selected in accordance with this agreement are set out in schedules I to III, appendix F.
  - (b) Locations of specific sites of Gwich'in lands are set out in schedule IV of appendix F.
  - (b) The maps which form part of the legal descriptions in (a) are recorded in the Canada Lands Surveys Records, Department of Energy, Mines and Resources, Ottawa, as number 74198 C.L.S.R.
- 18.3.2** Canada shall make available to the Gwich'in Tribal Council data and information relating to resources and to existing rights, titles and interests on Gwich'in lands as soon as practicable after the date of settlement legislation.
- 18.3.3**
  - (a) Unless otherwise agreed by the parties, hazardous waste sites identified as such at the time of land selection shall not be vested in the Gwich'in. Identified hazardous waste sites are set out in schedule XVIII, appendix F.
  - (b) In (a), "hazardous waste sites" are sites on which toxic substances are stored or disposed of, as defined in part II, section 11, *Canadian Environmental Protection Act*, R.S. 1985, c. 16 (4th supp.).

**18.3.4** Where government undertakes any program respecting the clean-up of hazardous waste sites on Crown lands in the settlement area, such program shall apply to hazardous waste sites on Gwich'in lands existing at the date of settlement legislation, whether or not identified at that time, and government shall be responsible for the costs associated with such clean-up on Gwich'in lands. This provision shall not prevent government from recovering any such costs from a person made liable for these costs pursuant to legislation.

- 18.3.5**
- (a) Title to Gwich'in lands vested pursuant to **18.1.4** shall be registered by the Northwest Territories Land Titles Office. In order to facilitate registration and subsequent recording of transactions, title shall be registered in as many discrete parcels as considered necessary by the Registrar of Land Titles.
  - (b) Legal descriptions, as specified in **18.4.1**, shall be used for the purpose of registering title to settlement lands.
  - (c) Wherever surveys of Gwich'in lands are required, these surveys shall be registered by the Northwest Territories Land Titles Office and become the legal description for that portion of the parcel boundary, replacing the initial legal description referred to in (b).

#### **18.4 BOUNDARIES AND SURVEYS**

- 18.4.1**
- (a) Legal descriptions, including the area, of each parcel agreed upon in land selection, shall be prepared by Canada and approved by the Gwich'in Tribal Council. Approval of the legal description of parcels shall be confirmation that the parties agree the parcels described are the ones selected and the area calculations are satisfactory.
  - (b) The document containing the legal description may specify features which the parties agree should be enclosed within or excluded from a parcel of Gwich'in lands. Where any subsequent legal survey of the land indicates that the legal description failed to include or exclude, as the case may be, the feature intended to be included or excluded, the legal description shall be amended to so include or exclude that feature.
  - (c) The boundaries of Gwich'in lands shall be surveyed when, in the opinion of government, such surveys are required to avoid or resolve conflicts with another title or interest holder, and may otherwise be surveyed at government's discretion.

- 18.4.2**
- (a) Boundary surveys shall be conducted, and monuments placed, in accordance with the instructions of the Surveyor General and the *Canada Lands Survey Act*, R.S. 1985, c. L-6.
  - (b) The Government of Canada shall be responsible for the cost of the legal surveys which may be required pursuant to **18.4.1(c)** to define the boundaries of Gwich'in lands provided that this provision shall not prevent government from levying charges in respect of such surveys on any person whose lands abut Gwich'in lands.
  - (c) Subject to **18.4.1(b)**, the Gwich'in Tribal Council shall be responsible for the cost of surveys associated with the leasing and subdivision of Gwich'in lands.

- (d) The boundaries of settlement lands shall be described with reference to geographical features and degrees of latitude and longitude as shown on National Topographic Survey Maps at 1:50,000 scale, where available, or at 1:250,000 scale. The boundaries of Gwich'in municipal lands shall be described with reference to features shown on the maps provided pursuant to 4.1(b) and (d) of appendix D. To the extent possible, the descriptions shall refer to existing monumentation.
- (e) The boundaries of Gwich'in lands may be defined by existing legal surveys and natural and artificial boundaries including offset boundaries and rights of way, but shall, to the extent possible, be defined by existing boundary-survey traverses or by reference to natural features such as banks of rivers and lakes and well-defined heights of land for determining surveying points, with preference being given to natural boundaries.
- (f) Natural boundaries at any instant correspond to the position of the designated natural feature as it exists at that instant. The position of the natural boundaries changes with the movements of the natural features as long as these movements are gradual and imperceptible from moment to moment. Offset natural boundaries also move according to the natural movement of the natural features.
- (g) Where a natural boundary is a height of land which is subsequently found to be not well-defined, the Surveyor General shall have the authority to place a series of monuments, approximating the mean position of the height of land, to be the boundary.
- (h) Maps of the portions of a right of way that are used as the boundary of Gwich'in lands shall be filed by government with the Surveyor General. Those portions of the right of way used as a boundary shall be surveyed within four years of the date of this agreement.

## **18.5 ADMINISTRATION OF INTERESTS**

- 18.5.1**
  - (a) Any royalties or non-refunded rents accruing to and received by government after the date of this agreement in respect of an interest in lands which becomes a Gwich'in interest at the date of settlement legislation, not including any amounts paid pursuant to (b), shall be accounted for by government and an equal amount paid to the Gwich'in Tribal Council as soon as practicable after the date of settlement legislation.
  - (b) Any payments received by Canada from holders of interests in the Aklavik Lands between May 17, 1984 and the date of settlement legislation, other than payments which Canada is obligated to refund to such interest holders, shall be accounted for by government and an equal amount paid to a designated Gwich'in organization as soon as practicable after the date of settlement legislation.
  - (c) Canada shall pay to a designated Gwich'in organization, as soon as practicable after the date of settlement legislation, a royalty for each cubic yard of sand, gravel, clay and other like construction material removed from the Aklavik Lands between May 17, 1984 and the date of settlement legislation, such royalty to be calculated as \$0.75 per cubic yard multiplied by (b divided by a), where "a" shall mean the Gross National Product of Canada in current dollars for the year 1982, and where "b" shall mean the Gross National Product of Canada in current dollars for the year previous to the year in which the royalties are being charged.
- 18.5.2** Where lands to which the Gwich'in receive title pursuant to 18.1.2(b) or (c) are subject to a mineral interest existing at the date of settlement legislation:
  - (a) government shall continue to administer such interest including the granting of and administration of renewals, replacements, extensions of term or transfers thereof in accordance with applicable legislation as if the interest were on Crown lands until such time as the interest ceases to exist;

- (b) government shall notify the Gwich'in Tribal Council of any change in such interest which affects the Gwich'in as title-holder; and
- (c) after the date of settlement legislation, any royalties or non-refunded rents accruing to and received by government from the holder of a mineral interest shall be accounted for by government and an equal amount paid to the Gwich'in Tribal Council as soon as practicable from time to time.

**18.5.3** Amounts received by government described in **18.5.1** and **18.5.2(c)** or a similar provision in other comprehensive land claim agreements in the Mackenzie Valley shall not be calculated as amounts received by government for the purpose of **9.1.2**.

**18.5.4** Government shall be under no fiduciary obligation to the Gwich'in in respect of its administration of mineral interests apart from its obligation to account in **18.5.2(c)**. In particular, government may, subject to **9.1.3**, set royalties, rents and other charges and make other discretionary decisions on the basis of government's resource management policy.

**19 WATER RIGHTS AND MANAGEMENT**

**19.1.1** In this chapter,

"compensation" means a cash payment, either lump sum or a periodic payment, or non-monetary compensation such as replacement or substitution of damaged or lost property or equipment or relocation or transportation of participants or equipment to a different harvesting locale or a combination of such elements.

**19.1.2** Nothing in this chapter is intended to give authority to any person to take or damage Gwich'in lands except in accordance with this agreement.

**19.1.3** (a) Subject to the provisions of this agreement, the Gwich'in have the exclusive right to use waters which are on or flow through Gwich'in lands when such waters are on or flowing through Gwich'in lands.

(b) Gwich'in use of water is subject to legislation in respect of water use.

**19.1.4** Government and persons who are not participants having a right or interest in respect of Gwich'in lands the exercise of which requires the use of water, shall have the right to use the water, subject to this agreement and legislation in respect of water use.

**19.1.5** Notwithstanding Gwich'in ownership of beds of certain water bodies, government retains the right to protect and manage water and beds of water bodies, and to use water in connection with such right, throughout the settlement area for public purposes including:

- (a) management and research in respect of wildlife, and wildlife and aquatic habitat;
- (b) protection and management of navigation and transportation, establishment of navigation aids and devices, and dredging navigable water bodies;
- (c) protection of water supplies including community water supplies from contamination and degradation;
- (d) fighting fires;
- (e) flood control; and
- (f) research and sampling with respect to water quality and water quantity.

**19.1.6** Unless otherwise provided for in legislation, the Gwich'in right to use water shall not interfere with or take away from:

- (a) rights of navigation and passage on water;
- (b) use of water for emergency purposes; or
- (c) any right of access associated with a right to fish or to hunt migratory game birds.



- 19.1.7** (a) Nothing in this agreement shall be construed as granting the Gwich'in property rights in respect of water.
- (b) The property in water in the settlement area may be determined by legislation in respect of water.
- 19.1.8** Subject to legislation in respect of the use of water:
- (a) the Gwich'in have the right to have waters which are on or flow through or are adjacent to Gwich'in lands remain substantially unaltered as to quality, quantity and rate of flow when such waters are on or flow through or are adjacent to Gwich'in lands; and
- (b) the Gwich'in shall not use water so as to substantially alter the quality, quantity and rate of flow of waters which are on or flow through or are adjacent to Gwich'in lands.
- 19.1.9** The Gwich'in have a cause of action against any person in respect of any action or use of water not authorized by law, which substantially alters the quality, quantity or rate of flow of waters which are on or flow through or are adjacent to Gwich'in lands, with such remedies as if the Gwich'in had riparian rights.
- 19.1.10** The Gwich'in Tribal Council shall have standing at all times in a court of competent jurisdiction to seek a declaration of the authority of any person to alter the quality, quantity or rate of flow of water in the settlement area.
- 19.1.11** (a) Government shall use its best efforts to negotiate agreements with other jurisdictions which manage drainage basins shared with the settlement area for the management of water in the shared drainage basin.
- (b) Government shall consult with the Gwich'in Tribal Council with respect to the formulation of government positions on the management of water in a shared drainage basin before negotiating an agreement pursuant to (a).
- 19.1.12** Nothing in this agreement shall derogate from the ability of any person to use water for domestic uses as provided in legislation.
- 19.1.13** Subject to legislation, the Gwich'in have the right to use water without licence or permit for trapping and non-commercial harvesting of wildlife, including transportation relating thereto, or for traditional heritage, cultural and spiritual purposes.
- 19.1.14** The Land and Water Board shall not grant a licence, permit or authorization that interferes with the rights of the Gwich'in in **19.1.8** unless the Board considers 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.

- 19.1.15** No water use anywhere in the settlement area which, in the opinion of the Land and Water Board, will likely substantially alter the quality, quantity or rate of flow of waters on or flowing through or adjacent to Gwich'in lands, when such waters are on or flowing through or adjacent to Gwich'in lands, shall be authorized by the Land and Water Board unless the applicant for the authorization has entered into an agreement with the Gwich'in Tribal Council to compensate the Gwich'in for loss or damage which may be caused by such alteration, or the Land and Water Board has made an order for compensation under **19.1.16(a)**.
- 19.1.16**
- (a) If the Gwich'in Tribal Council and the applicant for a water-use authorization described in **19.1.15** or **19.1.18** do not reach an agreement on compensation within the time limit established by the Land and Water Board, either party may refer the matter of compensation to the Board and the Board shall determine compensation.
  - (b) Notwithstanding **19.1.15** and **19.1.18**, the Land and Water Board may authorize a water use described in **19.1.14** and the competent water authority may authorize a water use described in **19.1.18** prior to the Land and Water Board making an order under (a).
- 19.1.17** In determining the amount of compensation payable to the Gwich'in in respect of a water use described in **19.1.15** or **19.1.18**, the Land and Water Board shall consider:
- (a) the effect of the water use on Gwich'in use of water on or adjacent to Gwich'in lands;
  - (b) the effect of the water use on Gwich'in lands, taking into account any cultural or special value of the lands to the Gwich'in;
  - (c) the nuisance, inconvenience and noise caused by the water use to the Gwich'in on Gwich'in lands;
  - (d) the effect on wildlife harvesting by the Gwich'in; and
  - (e) subject to legislation, such other factors as the Land and Water Board may consider relevant.
- 19.1.18** Where a water use is proposed outside the settlement area, but within the Northwest Territories, which, in the opinion of the Land and Water Board, will likely substantially alter the quality, quantity or rate of flow of water on or through or adjacent to Gwich'in lands, when such waters are on or flowing through or are adjacent to Gwich'in lands, the water use shall not be authorized by the competent water authority unless the applicant for the water use has entered into an agreement with the Gwich'in Tribal Council under **19.1.15** or the Land and Water Board has made an order under **19.1.16(a)**.

**20 ACCESS**

**20.1 GENERAL**

**20.1.1** In this chapter,

"Gwich'in lands" means settlement lands and parcels of Gwich'in municipal lands which are larger than four hectares (approximately 10 acres) and which are not developed Gwich'in municipal lands as defined in **22.4.1**.

**20.1.2** Except as provided in this chapter, persons who are not participants may only enter, cross or stay on Gwich'in lands and waters overlying such lands with the agreement of the Gwich'in Tribal Council. Any person, other than a person exercising rights pursuant to **20.3.1** or **20.3.3**, who contravenes any provision of this chapter shall be considered to be a trespasser.

**20.1.3** Access of persons who are not participants to or across:

- (a) parcels of developed Gwich'in municipal lands,
- (b) parcels of Gwich'in municipal lands which are not larger than four hectares (approximately 10 acres) and which are not developed Gwich'in municipal lands, or
- (c) waters overlying land in (a) and (b),

is governed only by laws of general application.

**20.1.4** Unless otherwise provided in an agreement with the Gwich'in Tribal Council, the exercise of access provided in **20.2**, **20.3.1**, **20.4.2**, **20.4.3**, **20.4.5** and **20.4.6(b)** is subject to the following conditions:

- (a) there be no significant damage to Gwich'in lands, and the user shall be responsible for any such damage;
- (b) there be no mischief committed on Gwich'in lands; and
- (c) there be no significant interference with Gwich'in use of and peaceable enjoyment of Gwich'in lands.

**20.1.5** Unless otherwise provided in an agreement with the Gwich'in Tribal Council, persons using a right of access to or across Gwich'in lands and waters overlying such lands do so at their own risk and have no right of action against the Gwich'in for alleged loss suffered or damage arising therefrom.

**20.1.6** Unless otherwise provided by legislation enacted after consultation with the Gwich'in Tribal Council, there shall be no fee or charge attached to the exercise of access provided in **20.2**, **20.3.1**, **20.3.5**, **20.3.6**, **20.4.1(a)**, **20.4.2**, **20.4.3**, **20.4.5** and **20.4.6(b)**.

- 20.1.7** (a) The Gwich'in Tribal Council may propose terms and conditions, other than fees or charges, for the exercise of access pursuant to **20.2**, **20.3.1**, **20.4.2** or **20.4.3**, in accordance with the following:
- (i) the Gwich'in Tribal Council shall consult with government and attempt to reach agreement on the proposed terms and conditions,
  - (ii) if agreement cannot be reached, the Gwich'in Tribal Council or the government may refer the matter to arbitration pursuant to chapter 6, and
  - (iii) conditions may not be imposed in relation to law enforcement or inspections authorized by law,
- but may not otherwise establish terms or conditions for the exercise of access rights pursuant to this chapter. This provision is not intended to restrict the establishment of any terms and conditions agreed to by a person to whom such terms or conditions would apply.
- (b) Terms and conditions pursuant to (a) may include the identification of areas, locations, seasons or times in respect of which such access is restricted by reason of the protection of the environment; conflict with Gwich'in harvesting or other Gwich'in uses of land; conservation of wildlife and wildlife habitat; protection of Gwich'in communities and camps; and requirements for notice or registration by persons exercising such access.
- 20.1.8** Any person may enter and stay on Gwich'in lands and waters overlying such lands without prior notice in an emergency.
- 20.1.9** The rights provided in this chapter for persons who are not participants are subject to legislation.
- 20.1.10** Where a person has a right of access pursuant to more than one provision in this chapter, that person may have access pursuant to the least restrictive applicable provision.
- 20.1.11** Subject to restrictions that may be imposed pursuant to this agreement or by legislation, a person may exercise a right of access by any mode of transport.
- 20.2** PUBLIC ACCESS
- 20.2.1** (a) Members of the public have the right to use:
- (i) navigable rivers and other navigable waters that can be entered from such rivers where such waters overlie Gwich'in lands;
  - (ii) portages on Gwich'in lands associated with navigable rivers and other navigable waters that can be entered from such rivers; and
  - (iii) waterfront lands within Gwich'in lands associated with navigable rivers and other navigable waters that can be entered from such rivers,
- for travel by water or for recreation, but these rights do not include the right to harvest wildlife except in accordance with **20.2.2** or to engage in any commercial activity or to establish any permanent or seasonal camp or structure on the lands to which such rights apply, or to travel by motorized vehicle on such waterfront lands.
- (b) Locations where the rights of access in (a)(ii) and (iii) are restricted are set out in schedule IX, appendix F.
- 20.2.2** (a) Members of the public may fish in navigable waters overlying Gwich'in lands identified in schedule X, appendix F, and may have access to these waters and to the associated waterfront lands to exercise this right. Members of the public may

use the portages and waterfront lands identified in schedule X, appendix F, to exercise a right to fish.

- (b) Members of the public may hunt migratory game birds in navigable waters overlying Gwich'in lands identified in schedule XI, appendix F, and may have access to these waters and to the associated waterfront lands to exercise this right. Members of the public may use the portages and waterfront lands identified in schedule XI, appendix F, to exercise a right to hunt migratory game birds.
- (c) The rights in (a) and (b) do not include the right to engage in any commercial activity or to establish any permanent or seasonal camp or structure on the lands to which such rights apply.

**20.2.3** (a) Members of the public may cross Gwich'in lands and waters overlying such lands to exercise a right, interest or privilege on adjacent lands or waters, such as to go to or from their place of work or to or from a place of recreation. Where practicable, such crossings shall take place either on routes designated by the local designated Gwich'in organization or upon prior notice to it.

- (b) Where any person has a right, title or interest in lands which are, or are surrounded by, Gwich'in lands as of either the date of land withdrawal following land selection or the date of transfer of land where no prior withdrawal takes place, such right, title or interest shall include a right of access across Gwich'in lands and waters overlying such lands to allow the continued use of the right, title or interest.

**20.2.4** With the agreement of the Gwich'in Tribal Council, persons conducting research may enter, cross and stay on Gwich'in lands for a reasonable time to conduct research.

### **20.3** GOVERNMENT ACCESS

**20.3.1** Agents, employees, contractors of government and members of the Canadian Armed Forces shall have the right to enter, cross and stay on Gwich'in lands and waters overlying such lands and to use natural resources incidental to such access to deliver and manage government programs and services, to carry out inspections pursuant to law and to enforce laws. Government shall give prior notice of such access to the Gwich'in Tribal Council when, in the opinion of government, it is reasonable to do so.

**20.3.2** If government requires the continuous use or occupancy of Gwich'in lands for more than two years, such use or occupancy shall be on terms negotiated between government and the Gwich'in Tribal Council. Failing agreement on the terms, the matter shall be referred to arbitration pursuant to chapter 6.

**20.3.3** (a) In addition to access provided by **20.3.1**, the Department of National Defence and the Canadian Armed Forces may have access to Gwich'in lands and waters overlying such lands for military manoeuvres after the negotiation of an agreement with respect to contact persons, areas, timing, land use rent, compensation for damages caused to lands or property, and any other matter. If an agreement is not reached, the parties may refer the matter of the terms of the agreement to arbitration pursuant to chapter 6.

- (b) Nothing in (a) is intended to limit the authority of the Minister of National Defence pursuant to s.257 of the *National Defence Act*, R.S. 1985, c. N-5.

**20.3.4** Government shall give reasonable advance notice of military exercises or operations to local inhabitants of any area to be affected in the settlement area.

**20.3.5** Notwithstanding **20.3.2**, government may establish, on Gwich'in lands, after consultation with the Gwich'in Tribal Council, navigational aids and safety devices along the shorelines of navigable waters provided that the area occupied by each such navigation aid or safety device shall not exceed:

- (a) two hectares (approximately five acres), for range markers and buoy transits; and

- (b) 30.48 metres (100 feet) by 30.48 metres (100 feet), for single beacons.
- 20.3.6**
- (a) Any person authorized by legislation to provide to the public electrical power, telecommunications services or similar public utilities, not to include pipelines for the transmission of hydrocarbons, shall have access to Gwich'in lands and waters overlying such lands to carry out assessments, surveys and studies in relation to proposed services. Such persons shall consult with the Gwich'in Tribal Council prior to exercising such access.
  - (b) Where access under (a) results in damage to Gwich'in lands or interference with Gwich'in use of and peaceable enications services or similar public utilities, not to include pipelines for the transmission of hydrocarbons, shall have access to Gwich'in lands and waters overlying such lands to carry out assessments, surveys an

=KEYBOARD()QUIT 89

**NEXTRECORD 25**

Inuvialuit harvesters pursuant to the Inuvialuit Final Agreement.

- 27.2.5** The Inuvialuit have the right to harvest those species of wildlife which they have traditionally harvested within those areas of the settlement area which have been traditionally used by the Inuvialuit to harvest wildlife.
- 27.2.6** For greater certainty, the rights of the Inuvialuit to harvest wildlife in the settlement area are subject to legislation applicable to Gwich'in harvesters including this agreement.
- 27.2.7** Nothing in **27.2** is intended to affect the rights of the Gwich'in and the Inuvialuit to share wildlife resources and to enter into agreements with each other with respect to harvesting and wildlife management as recognized in clause 14(15) of the Inuvialuit Final Agreement.
- 27.2.8** Notwithstanding that Gwich'in lands in the Western Arctic Region are not within the settlement area, the provisions of this agreement, with the exception of **12.8** and chapter 24, shall apply to Gwich'in lands in the Western Arctic Region.
- 27.3** OTHER COMPREHENSIVE LAND CLAIM AGREEMENTS
- 27.3.1** The Gwich'in may, pursuant to an agreement with the participants of a comprehensive land claim agreement, agree to share with such participants wildlife harvesting and wildlife management rights under this agreement, provided that no such agreement shall adversely affect the rights of persons who are not participants pursuant to a comprehensive land claim agreement.



**27.3.2** Notwithstanding **12.4.3** and **12.4.5**, nothing in this agreement is intended to affect any right which the Dene or Metis of Colville Lake or Fort Good Hope may have to harvest wildlife in those parts of the settlement area which they have traditionally used for the harvesting of wildlife.

**28 IMPLEMENTATION**

**28.1 IMPLEMENTATION PLAN**

**28.1.1** An implementation plan accompanies this agreement for the purpose of explanation but does not form part of it. It has been approved by Canada, the Gwich'in and the Government of the Northwest Territories in order to describe:

- (a) the obligations and activities required to fulfil this agreement;
- (b) who is responsible for, and the time frames required to fulfil, the obligations and the activities identified;
- (c) employment opportunities and training needs for the Gwich'in to participate in the implementation of this agreement;
- (d) legislative requirements arising from the provisions of this agreement;
- (e) a communication and information strategy to inform interested parties of the content of the implementation plan and this agreement;
- (f) a process to facilitate co-ordination and co-operation among Canada, the Gwich'in and the Government of the Northwest Territories to implement the implementation plan and this agreement;
- (g) a process to determine that the identified obligations and activities have been fulfilled; and
- (h) the costs of implementing this agreement.

**28.2 IMPLEMENTATION COMMITTEE**

**28.2.1** Within one month of the date of settlement legislation, an Implementation Committee shall be established for a minimum 10-year period.

**28.2.2** The Implementation Committee shall be composed of three senior officials: one representing the Government of Canada designated by the Minister of Indian and Northern Affairs; one designated by the Government of the Northwest Territories; and one designated by the Gwich'in Tribal Council.

**28.2.3** The Implementation Committee shall operate on a consensus basis and shall:

- (a) oversee and provide direction to guide the implementation of this agreement;
- (b) monitor the status of the implementation plan;
- (c) when it deems necessary, revise the schedule of activities, reallocate resources and amend the implementation plan;
- (d) attempt to resolve implementation disputes arising between the parties. Unresolved implementation disputes shall be resolved pursuant to arbitration under chapter 6;
- (e) provide the Minister of Indian and Northern Affairs, the Government Leader of the Northwest Territories and the Gwich'in Tribal Council with an annual report, which shall be made public, on the implementation of this agreement; and
- (f) make recommendations for the implementation of this agreement for the period following the initial 10-year period, including the role of the committee.

## **APPENDIX A**

### **DESCRIPTION OF THE GWICH'IN SETTLEMENT AREA**

All that portion of the Northwest Territories lying within the boundaries more particularly described as follows, all topographic features hereinafter referred to being according to:

edition 2 of the Bonnet Plume Lake map sheet number 106 B of the National Topographic System, produced at a scale of 1:250,000 by the Surveys and Mapping Branch, Department of Energy, Mines and Resources, at Ottawa;

edition 2 of the Nadaleen River map sheet number 106 C of the National Topographic System, produced at a scale of 1:250,000 by the Surveys and Mapping Branch, Department of Energy, Mines and Resources, at Ottawa;

edition 2 of the Snake River map sheet number 106 F of the National Topographic System, produced at a scale of 1:250,000 by the Surveys and Mapping Branch, Department of Energy, Mines and Resources, at Ottawa;

edition 2 of the Ramparts River map sheet number 106 G of the National Topographic System, produced at a scale of 1:250,000 by the Surveys and Mapping Branch, Department of Energy, Mines and Resources, at Ottawa;

edition 2 of the Ontaratue River map sheet number 106 J of the National Topographic System, produced at a scale of 1:250,000 by the Surveys and Mapping Branch, Department of Energy, Mines and Resources, at Ottawa;

edition 3 of the Martin House map sheet number 106 K of the National Topographic System, produced at a scale of 1:250,000 by the Surveys and Mapping Branch, Department of Energy, Mines and Resources, at Ottawa;

edition 2 of the Fort McPherson map sheet number 106 M of the National Topographic System, produced at a scale of 1:250,000 by the Surveys and Mapping Branch, Department of Energy, Mines and Resources, at Ottawa;

edition 3 of the Arctic Red River map sheet number 106 N of the National Topographic System, produced at a scale of 1:250,000 by the Surveys and Mapping Branch, Department of Energy, Mines and Resources, at Ottawa;

edition 2 of the Travillant Lake map sheet number 106 O of the National Topographic System, produced at a scale of 1:250,000 by the Surveys and Mapping Branch, Department of Energy, Mines and Resources, at Ottawa;

edition 3 of the Canot Lake map sheet number 106 P of the National Topographic System, produced at a scale of 1:250,000 by the Surveys and Mapping Branch, Department of Energy, Mines and Resources, at Ottawa;

edition 2 of the Aklavik map sheet number 107 B of the National Topographic System, produced at a scale of 1:250,000 by the Surveys and Mapping Branch, Department of Energy, Mines and Resources, at Ottawa;

edition 3 of the Bell River map sheet number 116 P of the National Topographic System, produced at a scale of 1:250,000 by the Surveys and Mapping Branch, Department of Energy, Mines and Resources, at Ottawa;

edition 2 of the Blow River map sheet number 117 A of the National Topographic System, produced at a scale of 1:250,000 by the Surveys and Mapping Branch, Department of Energy, Mines and Resources, at Ottawa;

Commencing at the point of intersection of the Yukon Territory-Northwest Territories boundary with latitude 66°00'00"N at approximate longitude 133°37'00"W;

thence northerly along said boundary to its intersection with the southern boundary of the Inuvialuit Settlement Region at latitude 68°13'00"N and longitude 136°26'45"W;

thence easterly along said boundary to its intersection with the centre line of the Iroquois River at latitude 68°00'00"N and approximate longitude 129°45'43"W;

thence southerly along said centre line of the Iroquois River to its intersection with the centre line of an unnamed stream at approximate latitude 67°57'10"N and approximate longitude 129°43'24"W;

thence southerly along said centre line of said stream to its intersection with longitude 130°01'55"W at approximate latitude 67°40'41"N;

thence southerly along said longitude to its intersection with the centre line of a seismic line at approximate latitude 67°37'22"N;

thence southwesterly in a straight line to the intersection of the east bank of the Mackenzie River with longitude 130°25'00"W at approximate latitude 67°18'35"N;

thence southwesterly in a straight line to the intersection of latitude 67°05'30"N and longitude 130°39'30"W;

thence southwesterly in a straight line to the intersection of latitude 67°00'00"N and longitude 131°12'00"W;

thence southerly in a straight line to the intersection of latitude 66°55'30"N and longitude 131°15'00"W;

thence northwesterly in a straight line to a height of land at approximate latitude 66°59'00"N and approximate longitude 131°44'00"W;

thence southwesterly in a straight line to the intersection of longitude 131°55'00"W with latitude 66°56'00"N;

thence southerly along said longitude to its intersection with latitude 66°33'00"N;

thence west in a straight line to the intersection of latitude 66°33'00"N with longitude 132°00'00"W;

thence south along said longitude to its intersection with the north bank of the north branch of Weldon Creek at approximate latitude 66°14'11"N;

thence southeasterly along said bank of Weldon Creek to latitude 66°08'00"N and approximate longitude 131°36'45"W;

thence southeasterly in a straight line to the intersection of latitude 66°00'00"N and longitude 131°20'00"W;

thence southeasterly in a straight line to a height of land between the watersheds of the Arctic Red River drainage system and the Mountain River, Gayna River, Hume River and Ramparts River drainage systems at latitude 65°50'00"N and approximate longitude 130°45'00"W;

thence southerly following the heights of land between the watersheds of the Arctic Red River drainage system and the Mountain River, Gayna River, Hume River and Ramparts River drainage systems to the intersection of latitude 64°23'30"N and approximate longitude 130°41'30"W;

thence southwesterly in a straight line to the intersection of the Yukon Territory-Northwest Territories boundary at latitude 64°20'00"N and approximate longitude 131°04'03"W; and

thence northerly along said boundary to the point of commencement.

MAP OF THE SETTLEMENT AREA

## APPENDIX B

### SELF-GOVERNMENT FRAMEWORK AGREEMENT

#### 1 OBJECTIVES

- 1.1 Government shall enter into negotiations with the Gwich'in pursuant to this framework agreement with a view to concluding self-government agreements which enable the Gwich'in to govern their affairs and to administer resources, programs and services, as appropriate to the circumstances of the Gwich'in.
- 1.2 Self-government agreements shall be in conformity with the constitution of Canada.
- 1.3 The objectives of self-government agreements shall be to describe the nature, character and extent of self-government, the relationship between government and Gwich'in institutions and to accommodate Gwich'in self-government within the framework of public government.
- 1.4 The objective of this framework agreement is to set out the principles, process, schedule and matters for negotiation in self-government negotiations conducted between government and the Gwich'in, in accordance with the provisions of chapter 5 of this agreement.

#### 2 DEFINITIONS

- 2.1 In the framework agreement, all terms not defined below shall be as defined in the agreement. Terms herein shall have the following meanings:

"Gwich'in First Nation Authority" means a governing body for Gwich'in in any of Aklavik, Arctic Red River, Fort McPherson or Inuvik with powers and responsibilities as set out in self-government agreements; and

"self-government agreement" means an agreement on self-government negotiated pursuant to the framework agreement.

#### 3 PRINCIPLES

- 3.1 Gwich'in self-government may comprise:
  - (a) Gwich'in First Nation Authorities with powers and responsibilities, including the necessary legislative capacity, in specified areas of jurisdiction;
  - (b) the Gwich'in Tribal Council or its successor with such powers and responsibilities as may be agreed upon by Gwich'in First Nation Authorities; and
  - (c) Gwich'in involvement in public government pursuant to self-government agreements.

- 3.2 Self-government agreements:
- (a) shall set out the powers and responsibilities of Gwich'in First Nation Authorities;
  - (b) may set out the powers and responsibilities of the Gwich'in Tribal Council or its successor; and
  - (c) may provide for Gwich'in participation in public government institutions and may set out appropriate powers and responsibilities of such institutions in the settlement area.
- 3.3 Self-government agreements may provide for the devolution or delegation of programs and services to:
- (a) Gwich'in First Nation Authorities;
  - (b) the Gwich'in Tribal Council or its successor; and
  - (c) those public government institutions in the settlement area provided for in 3.2(c).
- 3.4 Self-government agreements may provide for Gwich'in First Nation Authorities or the Gwich'in Tribal Council or its successor to exercise powers of a designated Gwich'in organization in accordance with this agreement.
- 3.5
- (a) Self-government agreements shall take into account the availability of government financial resources.
  - (b) Financial arrangements for self-government agreements shall address the need for flexibility, predictability and long-term planning.
  - (c) Self-government agreements shall take into account the effective and efficient use of financial resources.
- 3.6 Government shall consult with the Gwich'in Tribal Council before recommending to Parliament or the Legislative Assembly of the Northwest Territories as the case may be, legislation to enact or amend legislation providing for Gwich'in self-government.
- 4 MATTERS FOR NEGOTIATION
- 4.1 Self-government negotiations shall address, and self-government agreements may include, the following matters in a manner not inconsistent with this agreement:
- (a) structures and procedures of Gwich'in First Nation Authorities and the Gwich'in Tribal Council or its successor including the development of Gwich'in First Nation constitutions;
  - (b) accountability to Gwich'in of Gwich'in institutions;
  - (c) legal status and capacity of Gwich'in First Nation Authorities, the Gwich'in Tribal Council or its successor;
  - (d) membership;
  - (e) Gwich'in culture and language;
  - (f) housing;
  - (g) raising of revenue for local purposes, including taxation;
  - (h) education and training;
  - (i) social services;
  - (j) health services;

- (k) roads and traffic;
- (l) local government infrastructure, including programs and services;
- (m) economic development, including tourism;
- (n) child welfare, guardianship and customary adoption;
- (o) wills and estates;
- (p) administration of justice;
- (q) implementation plans and financial arrangements relating to self-government agreements;
- (r) procedures for the amendment of self-government agreements;
- (s) transition from existing Gwich'in institutions to future Gwich'in institutions; and
- (t) matters related to the foregoing, or as may be otherwise agreed.

5 PROCESS AND SCHEDULE

- 5.1 Government shall enter into negotiations with the Gwich'in in each Gwich'in community where a written request to negotiate is made by a designated Gwich'in organization.
- 5.2 Prior to commencing negotiations on self-government agreements, the parties to such negotiations shall agree on:
  - (a) the order in which the matters to be negotiated are to be addressed;
  - (b) the time frame within which negotiations will take place; and
  - (c) such other matters as may be necessary or desirable.



## APPENDIX D

### LAND SELECTION PROCESS

- 1 LAND SELECTION
- 1.1 Prior to land selection, the Gwich'in shall table their land use and occupancy maps for review by government.
- 1.2 The land selection processes for settlement lands and Gwich'in municipal lands shall be undertaken concurrently. Negotiations shall take place at locations to be determined by the parties prior to the commencement of land selection.
- 1.3 Prior to the commencement of land selection, government shall provide the Gwich'in with current data respecting the location and nature of existing government and third party interests in the settlement area, including government and surface leases, exploration agreements, recorded mining rights, timber permits and harvesting agreements, fee simple grants and the like.
- 1.4 Initial land selection maps shall be prepared for the settlement area by the Gwich'in, and may identify up to one and one-half times the total land quantum. The maps shall show subsurface selections, if any, under such lands. An estimate of the area of each selection shall also be indicated on the maps.
- 1.5 Government review and analysis of land selection maps shall occur primarily in the Northwest Territories, and negotiations and map exchanges shall be centralized in the Northwest Territories to expedite the land selection process.
- 1.6 Upon completion of all land selections, the maps and any agreements in respect of the selections shall be initialled by the parties.
- 1.7 (a) The initialled land selection maps shall, if required, be transposed onto alternative scale maps. The transposing of the maps shall be the responsibility of government.  
(b) Upon completion, the transposed maps shall be brought to the negotiating table for final review by the parties for accuracy.
- 1.8 (a) Unless it is otherwise agreed, the initialled agreements and maps shall form the basis for Orders-in-Council to withdraw the lands for purposes of interim protection in accordance with clause 1 of the Interim Provisions dated February 7, 1991. The Orders-in-Council are to be prepared as soon as possible after initialling.  
(b) The parties shall develop a joint communications plan for the release of information and maps to the public.  
(c) Upon withdrawal, both parties shall have 60 days to conduct a period of review and consultation concerning the initialled agreements and maps.  
(d) Upon completion of the review period specified in (c), the initialled maps and agreements shall be confirmed or amended, and the land withdrawal amended by Order-in-Council.  
(e) The confirmed agreements and maps shall only be reopened for negotiation if specifically agreed by the parties.
- 1.9 (a) Where land proposed for selection is owned or ordinarily resided on by a person eligible to be a participant, the Gwich'in shall give written notice to that person that such lands are proposed for land selection and, prior to that selection being accepted by government, the Gwich'in shall obtain a written consent to such selection from that person. The Gwich'in shall obtain a transfer or release of that person's interest prior to the lands becoming Gwich'in lands.  
(b) Existing fee simple lands are not available for selection unless the title holder consents.

- 1.10 Prior to the commencement of land selection, government shall provide the Gwich'in with maps or lists of all proposed parks or other protected areas in the settlement area. The identification of new parks or other protected areas may be considered in the course of land selection negotiations. Provisions relating to particular protected areas may be included in this agreement.
  - 1.11 Gwich'in land selection shall be made so as to leave communities with sufficient land for public purposes and for private, residential and commercial purposes and to leave sufficient land which is reasonably accessible to communities for public use for recreation and harvesting wildlife.
  - 1.12 Government shall provide a list of all identified hazardous waste sites and available information pertaining thereto at the time of land selection.
- 2 LAND SELECTION - SETTLEMENT LANDS
- 2.1 The initial land selection maps referred to in 1.4 shall be prepared using 1:250,000 scale National Topographic Series maps.
  - 2.2 The Gwich'in shall indicate on the land selection maps any existing significant public routes which are in common use.
  - 2.3 Government shall review the areas indicated on the maps provided by the Gwich'in and advise the Gwich'in of the position of government as to the suitability of those lands for negotiation.
  - 2.4 Unless otherwise agreed, maps for the selection of settlement lands and Gwich'in municipal lands shall be tabled simultaneously for each community.
  - 2.5 Land selections in the settlement area shall be fairly representative of the topography and quality of the lands in the settlement area.
  - 2.6 The lands selected in respect of any community need not be identical in quantity to the lands selected in respect of other communities.
  - 2.7 Where the objectives of the parties cannot be met through the process of land selection, negotiations at the time of land selection may provide the Gwich'in with special harvesting rights for fish and for other species of wildlife in designated areas.
  - 2.8 During land selection, the parties may determine locations where the public rights of access in **20.2.1(a)(ii)** and (iii) and the commercial rights of access in **20.4.2(a)(ii)** and (iii) are restricted.
  - 2.9 During land selection the parties shall determine those areas where the public access referred to in **20.2.2(a)** and (b) shall apply. These negotiations will be intended to balance the desire of the Gwich'in for exclusive possession of their lands and the interest of the public in having sufficient opportunity to fish and hunt migratory game birds.
  - 2.10 Unless otherwise agreed, Gwich'in lands shall not be selected within 30.48 metres (100 feet) of the boundary of the settlement area.
- 3 LOCAL GOVERNMENT BOUNDARY DETERMINATION
- 3.1 The Government of the Northwest Territories and the Gwich'in shall review the boundaries of local governments.
  - 3.2 The review and analysis of local government boundaries shall be conducted by representatives of the Gwich'in and the Government of the Northwest Territories. Local government authorities may participate in the review under the aegis of the Government of the Northwest Territories.
  - 3.3 After an agreement has been reached adjusting or confirming local government boundaries, the Government of the Northwest Territories shall adjust the boundaries forthwith.
  - 3.4 Upon joint agreement by the Government of the Northwest Territories and the Gwich'in on local government boundaries, this review process shall terminate.

- 3.5 Where there are no local government boundaries established in legislation the Development Control Zone boundary shall constitute the boundary for the purpose of land selection.
- 4 LAND SELECTION - GWICH'IN MUNICIPAL LANDS
- 4.1 Initial data-base preparation shall be completed by the Government of the Northwest Territories for each local government, and include a text and/or maps as follows:
- (a) a map of the existing local government boundary to 1:50,000 scale;
  - (b) local government mapping at 1:2,000 scale, showing all surveyed and unsurveyed parcels and topographic features;
  - (c) textual data base showing land ownership/ dispositions including expiry dates of leases; and
  - (d) where 1:2,000 maps are not available, the Government of the Northwest Territories shall provide an appropriate alternate map.
- 4.2 The Government of the Northwest Territories shall verify its respective data base in consultation with each local government authority.
- 4.3 Upon receipt, the Government of the Northwest Territories shall forward the data base to the Gwich'in Tribal Council.
- 4.4 The Gwich'in shall subsequently prepare land selection maps for each local government using local government planning maps where possible or the largest scale maps available.
- 4.5
- (a) The level of detailed planning (i.e., identification of individual lot boundaries and road allowances within the built-up portion of the local government and future expansion areas within that boundary) may vary from local government to local government.
  - (b) In cases where detailed planning is not available for those lands identified for selection by the Gwich'in, including those lands selected within the area designated as expansion lands within the local government boundary, land selection shall proceed in accordance with
    - (i) a description of the building occupied by a person eligible to be a participant, including sufficient land around the building, taking into account past use and the local government norm, with the understanding that this description will be reflected within the subdivision plan, when prepared; or
    - (ii) a description of the unoccupied government land by way of a sketch map illustrating approximate dimensions with the understanding that the dimensions will be finalized when a subdivision plan is prepared.
- 4.6 The Gwich'in shall forward maps as described in 4.4 to the Government of the Northwest Territories, and a copy shall be sent to the appropriate public local authority for the preparation of a formal government response.
- 4.7 The Gwich'in and government may agree to the selection of lands, which shall become Gwich'in municipal lands, within local government boundaries as follows:
- (a) lands noted within the Land Register of the Department of Indian Affairs and Northern Development as reserved in the name of the Indian Affairs Branch, with the exception of public roads or facilities within those lands;
  - (b) lands owned or occupied by persons eligible to be participants, whether through lease or occupancy, excepting public roads, provided the owner or occupant and any other person with a superior interest in the land agree in writing. The Gwich'in shall obtain a transfer or release of such person's interest or persons'interests prior to the lands becoming Gwich'in municipal lands;
  - (c) unoccupied Crown or Commissioner's lands; and

(d) lands within the built up areas of communities.

4.8 Lands in the following categories may not be selected:

- (a) land which is privately owned in fee simple or subject to an agreement for sale, unless the owner or purchaser agrees in writing. The Gwich'in shall obtain a transfer or release of the owner or purchaser's interest prior to the lands becoming Gwich'in municipal lands; and
- (b) all land administered by and/or reserved in the name of any department or agency of the federal, territorial or municipal governments, except in exceptional circumstances.

5 GWICH'IN MUNICIPAL LANDS

5.1 A description of Gwich'in municipal lands is set out in schedule XVI, appendix F. This schedule may be amended from time to time and such amendment shall not be considered to be an amendment to the agreement.

## APPENDIX E

### RATIFICATION PROCESS

#### 1 GENERAL

- 1.1 Ratification of the agreement by the Gwich'in shall be prior to October 1, 1991.
- 1.2 Canada shall consider the agreement as soon as possible after its ratification by the Gwich'in.

#### 2 RATIFICATION COMMITTEE

- 2.1 A Ratification Committee shall be established with responsibility for conducting the Gwich'in ratification process.
- 2.2 The Ratification Committee shall consist of two persons named by government, four persons named by the Gwich'in, of which one shall be named from each Gwich'in community, and a seventh person named by the other six.
- 2.3 The Ratification Committee shall prepare a budget, subject to review and approval by government. The approved expenses of the Committee shall be a charge on Canada.

#### 3 OFFICIAL VOTERS LIST

- 3.1 The Ratification Committee shall prepare an Official Voters List which shall contain the names of all eligible voters. Only individuals whose names appear on such list shall be eligible to vote.
- 3.2
  - (a) An eligible voter is a person who is determined by the Ratification Committee to be eligible to be enrolled as a participant under 4.2.1, who is at least 19 years of age before October 1, 1991, and who signifies consent to having his or her name entered on the Official Voters List.
  - (b) Notwithstanding (a), a person is not an eligible voter if that person is enrolled pursuant to any other comprehensive land claim agreement unless such person is eligible for Treaty 11 benefits.
- 3.3 A preliminary list of eligible voters shall be published in each Gwich'in community prior to July 13, 1991, and may be published in such other locations as determined by the Ratification Committee.
- 3.4 Application may be made to the Ratification Committee, prior to August 13, 1991,
  - (a) by individuals whose names are not on the preliminary voters list to have their names placed on the list; and
  - (b) by individuals whose names are on the preliminary voters list to delete names appearing on the preliminary voters list.

- 3.5 Applications in 3.4 shall be in writing and shall be heard by the Ratification Committee in the manner which it considers appropriate to the circumstances of the particular application. The Ratification Committee shall determine such applications on the best evidence that is available to it which may include unsworn written statements and hearsay evidence.
- 3.6 The decision of the Ratification Committee in respect of an application shall be final.
- 3.7 The Ratification Committee shall publish the Official Voters List prior to August 22, 1991.
- 4 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.
  - 4.2 The Ratification Committee shall organize community meetings to provide eligible voters the opportunity to discuss the agreement with representatives of government and the Gwich'in.
- 5 VOTING PROCESS
  - 5.1 The vote on the ratification of this agreement shall be from September 16 to 20, inclusive, 1991.
  - 5.2 The Ratification Committee shall determine the locations at which and the means by which votes shall be cast. The Ratification Committee may conduct an advance vote on August 31, 1991.
  - 5.3 The vote shall be held on the same date or dates in all polling locations.
  - 5.4 The date or dates of the vote and the polling locations shall be posted in each community in which a ballot may be cast prior to September 9, 1991.
  - 5.5 The vote shall be by secret ballot.
  - 5.6 The appearance, format and contents of the ballot shall be approved by the parties.
  - 5.7 The Ratification Committee shall receive and tabulate all ballots.
- 6 RATIFICATION OF THE AGREEMENT BY THE GWICH'IN
  - 6.1 The Gwich'in shall be considered to have ratified this agreement if:
    - (a) no less than three quarters of the eligible voters cast a ballot; and
    - (b) no less than two thirds of those eligible voters casting a ballot approve the agreement.
  - 6.2 The Ratification Committee shall tabulate and publish figures showing the total number of ballots cast, the total number of ballots approving the agreement, the total number not approving the agreement, the total number of ballots spoiled and the total number of ballots rejected, but none of these figures shall be tabulated on a community basis or any basis other than the aggregate vote. The Ratification Committee shall publish these results in each Gwich'in community and may publish the results in such other locations as the Committee determines.

7 RATIFICATION OF THE AGREEMENT BY CANADA

- 7.1 After the Ratification Committee conducts the vote and publishes the results, and if the results of the vote constitute a ratification of this agreement by the Gwich'in, the agreement shall be presented by the Minister of Indian Affairs and Northern Development to Cabinet for approval.

8 SIGNING OF THE AGREEMENT

- 8.1 The agreement shall be signed by representatives of the Gwich'in and of government as soon as possible after approval by Cabinet.

9 SETTLEMENT LEGISLATION

- 9.1 Once this agreement has been signed by government and the Gwich'in, the Minister of Indian Affairs and Northern Development shall submit legislation to Parliament to give effect to this agreement.