

**AGREEMENT FOR AN ENVIRONMENTAL IMPACT REVIEW  
OF A NORTHERN GAS PROJECT**

BETWEEN:    THE MACKENZIE VALLEY ENVIRONMENTAL IMPACT REVIEW BOARD

AND: THE INUVIALUIT as represented by the Inuvialuit Game Council

AND: THE MINISTER OF THE ENVIRONMENT

[hereinafter referred to as the Parties]

PREAMBLE

**WHEREAS** [the proponent] has filed a Preliminary Information Package and applications for land use permits and water licences in the Mackenzie Valley and has indicated its intention to file the necessary applications for a northern gas pipeline project;

**AND WHEREAS** the Parties have participated in the development of the *Cooperation Plan for the Environmental Impact Assessment and Regulatory Review of a Northern Gas Pipeline Project through the Northwest Territories* (Cooperation Plan);

**AND WHEREAS** the Inuvialuit Game Council (IGC) represents the collective interests of the Inuvialuit under the *Inuvialuit Final Agreement* (IFA) in the environment and wildlife;

**AND WHEREAS** the Minister of the Environment has the statutory responsibility for administering the *Canadian Environmental Assessment Act* (CEAA);

**AND WHEREAS** the Mackenzie Valley Environmental Impact Review Board (MVEIRB) has the statutory responsibility for administering Part 5 of the *Mackenzie Valley Resource Management Act* (MVRMA), including environmental assessment and environmental impact review;

**AND WHEREAS** the Project is within the jurisdiction of the Parties;

**AND WHEREAS** the Parties wish to discharge their respective responsibilities respecting the review of the Project while meeting the needs and protecting the interests of the residents of the Northwest Territories and the rest of Canada;

**AND WHEREAS** the Parties wish to establish an Environmental Impact Review process consistent with the spirit and intent of their respective authorities;

**AND WHEREAS** the Parties agree that development should occur in a manner that protects the environment from significant adverse environmental impacts unless justified; and protects the social, cultural, and economic well-being of affected residents and communities;

**AND WHEREAS** the Parties wish to ensure that the biophysical; and social, cultural and economic effects of the Project will be thoroughly evaluated;

**AND WHEREAS** the Parties acknowledge the importance of incorporating traditional knowledge in the Environmental Impact Review of the Project;

**AND WHEREAS** the Project has been referred to the Minister of the Environment for the establishment of a Review Panel under the CEAA;

**AND WHEREAS** the Environmental Impact Screening Committee has made a determination that the Project could have significant negative impacts and has referred the Project to a Review Panel to be established under the CEAA pursuant to subsection 11(15) of the IFA;

**AND WHEREAS** the Minister of the Environment has determined that a joint review panel should be established pursuant to sections 40 and 41 of the CEAA with the MVEIRB;

**AND WHEREAS** the MVEIRB has ordered a panel review of the Project and the Minister of Indian Affairs and Northern Development has granted the Review Board permission to enter into a joint review panel with the Minister of the Environment pursuant to paragraph 141(2)(a) of the MVRMA;

**AND WHEREAS** the Parties have made a firm commitment through this Agreement and otherwise to ensure that the Joint Review Panel will have the authority and capacity to address the requirements of Sections 11, [12 as appropriate] and 13 of the IFA as contemplated by subsection 11(15) of the IFA and will do so;

**AND WHEREAS** the Parties wish to avoid the unnecessary duplication that might arise from carrying out the environmental impact review requirements separately under the IFA, the MVRMA and the CEAA.

## **NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

### **1. DEFINITIONS**

For the purposes of this Agreement and the Schedule:

**Environmental Impact Review** means the examination of the Project undertaken by the Joint Review Panel in accordance with the process set out in this Agreement.

**ISR** means the Inuvialuit Settlement Region as defined in section 2 of the IFA.

**Joint Review Panel** means the panel established pursuant to this Agreement to conduct the Environmental Impact Review.

**Project** means the proposed development described in Annex 1 of the Schedule to this Agreement.

**Proponent** means [company name] that has proposed the Project.

## **2. PURPOSE OF THE AGREEMENT**

The purpose of this Agreement is to establish an Environmental Impact Review that meets the requirements of the CEAA, the MVRMA, and the IFA.

## **3. RELATIONSHIP OF AGREEMENT TO REGULATORY PROCESSES**

This Agreement is in furtherance of the relationship described in the Cooperation Plan.

## **4. THE JOINT REVIEW PANEL**

a) The Joint Review Panel will have the authority and capacity to meet the requirements of the relevant provisions of sections 11, [12 as appropriate], and 13 of the IFA as contemplated by subsection 11(15).

b) The Joint Review Panel will carry out its duties and conduct the Environmental Impact Review according to the mandate set out in the Schedule to this Agreement.

Joint Review Panel Membership:

c) The Joint Review Panel shall consist of 7 members, including a chairperson, appointed according to the following process:

i) the MVEIRB will seek nominations and select 3 members;

ii) the Minister of the Environment will select 4 members, 2 of whom will be nominated by the IGC according to the Memorandum of Understanding for Inuvialuit participation in the environmental review of the Project between the Minister of the Environment and the Inuvialuit; and

iii) the Minister of the Environment, the MVEIRB, and the IGC shall approve the selection of the chairperson.

d) The members shall be unbiased, free from any material conflict of interest relative to the Project, and have knowledge, including, as appropriate, traditional knowledge, or experience relevant to the anticipated impacts of the Project on the environment.

e) The members shall be cross-appointed under the CEEA and the MVRMA concurrent with the execution of this Agreement.

f) The Parties will consider appointing a member of the National Energy Board (NEB) as one of the 7 members of the Joint Review Panel, so as to allow that member to submit a report on environmental matters within the NEB's jurisdiction to the NEB pursuant to section 15 of the *National Energy Board Act*.

#### Replacing a Panel member

g) In the event that a member of the Joint Review Panel is incapable of continuing to act as such, the Parties shall determine whether a replacement member should be appointed. Any such replacement member will be selected by the Party whose member has withdrawn, pursuant to subsection c).

#### Joint Review Panel Orientation

h) The Parties will provide the Joint Review Panel with an orientation.

#### Powers of the Joint Review Panel

i) The Joint Review Panel shall have the powers provided for in section 35 of the CEEA, and section 25 and subsection 133(1) of the MVRMA.

j) Joint Review Panel members shall enjoy the protection from liability outlined in section 35 of CEEA and section 20 of the MVRMA.

## **5. REPORTING AND DECISION MAKING**

a) The Joint Review Panel shall prepare and submit a report in accordance with section 4.8 of the Schedule to this Agreement.

b) The Joint Review Panel report shall be made available to the public.

c) Following the submission of its report, the Joint Review Panel shall remain available for conducting further review or for consultation, as may be required under sections 135 and 137 of the MVRMA, or for clarification of any of the recommendations set out in the report, as may be required under subsection 37(1.1) of the CEEA.

#### Effect of the Decision

d) In accordance with subsections 136(2) and 137(3) of the MVRMA, a first nation, local government, regulatory authority or department or agency in the Mackenzie Valley and the NEB shall act in conformity with any recommendation accepted by the federal minister or the NEB.

e) In accordance with subsection 37(1.1) of the CEEA, responsible authorities shall act in conformity with the approval of their response to the Environmental Impact Review report by the Governor-in-Council.

**6. OTHER**

Secretariat

a) A Secretariat to support and assist the Joint Review Panel will be established by the MVEIRB, the IGC and the Canadian Environmental Assessment Agency (Agency).

Public Registry

b) A public registry will be established and maintained in accordance with the requirements of the CEAA, the IFA and the MVRMA to allow the public continued access to documents related to the Environmental Impact Review. There will be a public registry in Yellowknife, Inuvik, and Edmonton; additionally there will be electronic access to the public registry to the extent possible.

Change to the Project

c) Upon reference from the Joint Review Panel pursuant to 4.7 of the Schedule to this Agreement, the Parties may reconsider and amend this Agreement and may provide new directions to the Joint Review Panel as to changes to the Environmental Impact Review.

Participant Funding

d) Participant funding will be provided.

Schedules and Annexes

e) The Schedule and Annexes attached to this Agreement form a part of the Agreement.

**7. FINANCIAL RESPONSIBILITY AND LIABILITY UNDER THE IFA**

For greater certainty, the establishment of the Environmental Impact Review pursuant to this Agreement does not diminish any financial responsibility or liability for damages Canada or the Proponent may have under sections 13(13) to 13(16) of the IFA.

**8. NOTICES**

Notices with respect of any matter included in this Agreement shall be provided to:

|                                      |  |
|--------------------------------------|--|
| For the Inuvialuit:                  | the Executive Director, Joint Secretariat    |
| For the MVEIRB:                      | the Executive Director, MVEIRB               |
| For the Minister of the Environment: | the Vice-President, Program Delivery, Agency |



SCHEDULE: JOINT REVIEW PANEL MANDATE

**1.0 DEFINITIONS**

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

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

**Environmental Impact Statement (EIS)** means a report prepared by the Proponent according to the direction in the terms of reference referred to in section 4.3.

**Impact on the environment** means, in respect of a project

a) any change that the project may cause on the environment, and includes

(i) any effect of any such change on health and socio-economic conditions, on physical and cultural heritage, on the current use of lands and resources for traditional purposes by aboriginal persons, or on any structure, site or thing that is of historical, archaeological, paleontological or architectural significance;

(ii) any change to present or future wildlife harvesting;

(iii) any change to the social and cultural environment or to heritage resources; and

b) any change to the project that may be caused by the environment.

**Mitigation** means action for the control, reduction, or elimination of an adverse impact of the Project on the environment and includes restitution for any damage to the environment caused by such effects through replacement, restoration, compensation, remedial measures or other means.

**Public Registry** means the registry established pursuant to subsection 6b) of the Agreement.

**2.0 SCOPE OF THE ENVIRONMENTAL IMPACT REVIEW**

In carrying out the review, the Joint Review Panel will address the factors outlined in the Annex 2 to this Schedule. The Environmental Impact Review shall have regard to the protection of the environment from the significant adverse impacts of proposed developments, and to the protection of the social, cultural and economic well-being of residents and communities.

**3.0 SPECIALIST ADVISORS TO THE JOINT REVIEW PANEL**

The Joint Review Panel shall rely on the scientific, technical, traditional knowledge, social, and economic expert services available from government agencies and departments in accordance

with subsection 12(3) of the CEEA and section 22 of the MVRMA to provide information on and help interpret technical, scientific and socio-economic issues, and issues relating to traditional knowledge.

In addition, the Joint Review Panel may also retain the services of any other independent experts to provide advice on certain subjects within the Joint Review Panel's mandate.

#### **4.0 STEPS IN THE REVIEW PROCESS**

The main steps in the review by the Joint Review Panel are as follows:

##### **4.1 Project Description**

The Project is as described in the Project Description, as per Annex 1 to this Schedule.

##### **4.2 Conduct of the Environmental Impact Review**

Rules of Procedure

- a) The MVEIRB, the IGC and the Agency will submit jointly draft rules of procedure to the Joint Review Panel concurrent with the execution of this agreement.
- b) The Joint Review Panel will finalize and issue rules of procedure. Any rules of procedure adopted by the Joint Review Panel must be consistent with the CEEA, the MVRMA and the IFA.
- c) The Joint Review Panel may consult on its rules of procedure.

Public Participation

- d) The Joint Review Panel will conduct its review in a manner that will promote and facilitate public participation.

##### **4.3 EIS Preparation**

The MVEIRB, the IGC and the Agency will jointly prepare and issue, concurrent with or before the execution of this agreement, draft EIS Terms of Reference. Prior to the finalization by the Parties or the Joint Review Panel of the draft EIS Terms of Reference, the public will be provided with an opportunity to comment.

The Joint Review Panel will require the Proponent to prepare an EIS, including an Executive Summary, in accordance with the EIS Terms of Reference.

##### **4.4 EIS Conformity with terms of reference**

The Joint Review Panel will make the EIS available for public review and comment. The EIS will be placed in the public registry. The Joint Review Panel will secure verbal or written



comments on the conformity of the EIS with the Terms of Reference referred to in subsection 4.3.

Once the Joint Review Panel determines that it has provided a reasonable opportunity for public comment on the conformity of the EIS it will make a determination of EIS conformity.

If the Joint Review Panel determines that the EIS is not in conformity with the Terms of Reference, it will issue instructions to the Proponent for the submission of the additional information needed to satisfy the Terms of Reference.

The Proponent will submit any additional information necessary to satisfy the Joint Review Panel that the EIS is in conformity with the Terms of Reference.

Once the EIS is in conformity with the Terms of Reference, the Joint Review Panel will proceed to conduct a technical analysis of the EIS.

#### **4.5 Analysis: Adequacy of the EIS**

The Joint Review Panel will issue instructions, set a timetable for and supervise the conduct of a process of written information requests (IRs) in order to secure any clarification, explanation or additional technical analyses required of the EIS.

Once the IR process is complete the Joint Review Panel will review the information available on the public registry and comments received from the public and determine whether the information available is sufficient to proceed to the public hearing phase of the process.

The Joint Review Panel may arrange for a prehearing conference in order to assist it in structuring and conducting the public hearings.

A [75] day period is provided for the initial EIS review, determination of conformity completion of the IR process, in addition to the time taken by the proponent to respond to any IRs,

Once the Joint Review Panel determines the EIS is ready to proceed to a public hearing, at least [45] days notice of the public hearing phase will be provided.

All information received during the conformity and IR process will be placed on the public registry.

#### **4.6 Public Hearings**

Once the Joint Review Panel has decided to proceed to public hearings, it will schedule and announce public hearings. The Joint Review Panel will hold community hearings in those locations it deems necessary and will attempt to schedule the public hearings to maximize the attendance and participation of the public. Technical hearings will be coordinated with the hearings of the regulatory agencies in time and place. The public hearings will be conducted in a manner that ensures a thorough examination of matters relevant to the Joint Review Panel's

mandate. The total time allowed for the public hearings process and submission of the Joint Review Panel's report is [10] months.

#### **4.7 Change to the Project**

If, in the opinion of the Joint Review Panel, the Proponent has made a significant change to the Project, the Panel shall refer the change to the Parties as per subsection 6d) of the Agreement.

#### **4.8 Interpretation, translation, transcript and reporting requirements**

During the Joint Review Panel's proceedings, interpretation services will be provided by the Panel where necessary.

The Joint Review Panel may require the Proponent to translate some documents into French and Aboriginal languages.

The Joint Review Panel shall arrange for preparation of transcripts of its proceedings.

The EIS will be submitted to the Joint Review Panel by the Proponent in English. Key sections of the EIS, will be translated by the Proponent and made available in French and in Aboriginal languages as determined by the Joint Review Panel.

The Joint Review Panel's rules of procedure, public notices pertaining to its meetings and hearings, and any decision statements issued by the Joint Review Panel will be available in English, French, and Aboriginal languages as it determines. Issuance of these documents will not be delayed more than one week for translation purposes.

The Joint Review Panel will prepare and provide the Minister of the Environment, the Minister of Indian Affairs and Northern Development, Responsible Ministers, the National Energy Board, the MVEIRB, the Inuvialuit and the Responsible Authorities, a report including, but not limited to, the following:

- a description of the public review process
- a summary of any comments and recommendations received from the public, and
- a rationale, conclusions and recommendations regarding the nature and significance of environmental effects including any mitigation measures and follow-up program.

The Joint Review Panel will determine whether translated documents will be provided as a audio and/or video tape or in written form.

DRAFT ONLY    September 18, 2002

ANNEX 1 TO THE SCHEDULE: PROJECT DESCRIPTION

ANNEX 2 TO THE SCHEDULE: FACTORS TO BE CONSIDERED DURING REVIEW

The Environmental Impact Review will include a consideration of the following factors:

1. The impact of the Project on the environment, including the impact of malfunctions or accidents that may occur in connection with the Project and any cumulative impact that is likely to result from the Project in combination with other projects or activities that have been or will be carried out;
2. The significance of any such impact;
3. Any comments from the public that are received during the Environmental Impact Review;
4. Measures that are technically and economically feasible and that would mitigate any significant adverse impact of the Project on the environment;
5. The purpose of the Project;
6. The need for the Project;
7. Alternatives to the Project;
8. Alternative means of carrying out the Project that are technically and economically feasible and the impact on the environment of any such alternative means;
9. The need for any follow-up program in respect of the Project, and the requirements of such a program;
10. The capacity of renewable resources that are likely to be significantly affected by the Project to meet existing and future needs;
11. In respect of the Inuvialuit Settlement Region recommend:
  - a) Terms and conditions relating to mitigation measures that would be necessary to minimize any negative impact on wildlife harvesting, as referred to in paragraph 13(11)(a) of the IFA, including, as far as is practicable, measures to restore wildlife and its habitat to its original state and to compensate Inuvialuit hunters, trappers and fishermen for the loss of their subsistence or commercial harvesting opportunities;
  - b) An estimate of the potential liability of the Proponent, determined on a worst case scenario, taking into consideration the balance between economic factors, including the ability of the Proponent to pay, and environmental factors, as referred to in paragraph 13(11)(b) of the IFA.