

## SECTION 5

### **Land Regime**

#### **5.1 Category I lands – James Bay Crees**

##### **5.1.1 Definition**

Category I lands which are tracts of land having an area of approximately 2,140.6 square miles and which include Categories IA, IB and Special IB, as hereinafter defined shall be set aside for the James Bay Crees as defined in the Agreement. For greater certainty, a reference to James Bay Cree bands in Section 5 hereof shall include the Crees of Oujé-Bougoumou.

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JBNQA, par. 5.1.1

compl. A. no. 3, s. 7

compl. A. no. 22, sch. 2, s. 3

##### **5.1.2 Category IA lands**

Category IA lands are lands set aside for the exclusive use and benefit of the respective James Bay Cree bands, including the Great Whale River Band, under the administration, management and control of Canada, subject to the terms and conditions of the Agreement.

Subject to the provisions of the Agreement and notwithstanding the surrender provisions of the Indian Act, it is recognized by Canada, Québec and the James Bay Crees that the lands presently set aside for the Native people of the Waswanipi, Mistassini and Eastmain Bands under the Québec Lands and Forests Act (S.R.Q. 1964, c. 92 as amended) shall no longer be reserves within the meaning of the said Act as of the coming into force of the Agreement.

Category IA lands will comprise an area of approximately 1,274 square miles as shown on the attached maps and as described in Section 4 of the Agreement and shall include the areas of all the present Cree villages, except Waswanipi and Nemaska, and including part of the Great Whale River settlement. Such lands shall be excluded from the James Bay Municipality. The land selection for the village of Nemaska is subject to the provisions concerning the re-location of such village contained in the Agreement.

Québec shall, by the legislation giving effect to the Agreement, transfer, subject to the terms and conditions of the Agreement, the administration, management and control of the Category IA lands to Canada and Canada shall accept such transfer. Québec shall retain bare ownership of the land and, subject to the provisions herein, ownership of the mineral and sub-surface rights over such lands.

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JBNQA, par. 5.1.2

A. corr.

##### **5.1.3 Category IB lands**

Category IB lands of an area of approximately 866.6 square miles for the James Bay Crees as shown on the attached maps and as described in Section 4, which shall be excluded from the territories subject respectively to the jurisdiction of the Cree Nation Government and of the Regional Government contemplated in Section 11 of this Agreement will be granted by the provisions of the special legislation to provincial corporations composed solely of James Bay Crees.

The ownership of such lands, under provincial jurisdiction, will vest in such Cree corporations outright, provided that the lands can only be sold or ceded to Québec and this shall constitute a prohibition to sell or cede other than to Québec.

Such Cree corporations shall consist of the members of the respective Cree communities entitled to benefit under the Agreement and may be private landholding corporations or at the option of the Crees, the public corporations of a municipal character which will have jurisdiction over Category IB lands.

Unless otherwise specifically provided herein, these lands cannot be taken away by Québec and in those circumstances described in this Section where the right to expropriate by Québec is exercised, the land must be replaced or compensation paid at the option of the Crees except if otherwise provided herein.

JBNQA, par. 5.1.3  
A. corr.  
compl. A. no. 3, s. 8  
compl. A. no 24, s. 2

#### **5.1.4 *Special Category IB lands***

Within certain Category IB lands there shall be special Category IB lands.

Each parcel thereof, having areas ranging between twenty (20) to twenty-five (25) square miles, and shown on the attached map, described in the territorial descriptions hereto attached, and located near the localities of Rupert House, Eastmain, Fort George and Great Whale River, shall be situated on the northern banks of the Rupert, Eastmain and Fort George Rivers, and on the southern bank of Great Whale River.

It is also agreed that the lands are subject to the regime for Category IB lands subject to the following provisions:

- a) the right of Québec, its agents and mandataries to establish, in addition to the public servitudes in favour of public bodies, agencies and corporations, in accordance with the provisions of paragraph 5.1.7, servitudes for public purposes;
- b) in the case of the additional servitudes for public purposes, only developments which do not involve more than a permanent staff of ten (10) persons per development shall be allowed;
- c) the right for Québec to give the necessary authorizations for the duration of such activities;
- d) notwithstanding anything herein contained, any other developments by Québec, its agents and mandataries may be permitted with the consent of the Cree community concerned;
- e) Québec, its agents and mandataries shall, at all times, have access to Special Category IB lands as if they were Category II lands and for the purposes mentioned above.

JBNQA, par. 5.1.4  
A. corr.

#### **5.1.5 *Existing third party and governmental interests***

Lands ceded to third parties, by letters patent or owned by third parties prior to the execution of the Agreement, shall be Category III lands. However, the said lands and persons thereon shall be subject to the by-laws of the Cree local authority as if such lands formed part of Category I lands. Such persons shall have a right to all services of a municipal nature which are offered by the Cree local authority to the residents of the surrounding or adjacent Category I lands on the same terms and conditions, the whole subject to the rights of such persons and the exercise of the same.

The lands over which rights have been ceded by Québec to third parties prior to the Agreement in the form of leases, occupation permits or other authorizations shall be Category I lands. The holders of such rights may continue to exercise them, subject solely to all provincial laws and regulations as if the lands over which the said rights are granted were Category III lands until the termination of the period fixed for the exercise of such rights, unless such rights are renewed by Québec.

Lands within the areas of Category I lands, as shown on the attached maps but which are presently the object of mining claims, development licenses, exploration permits, mining concessions and mining leases and other similar rights, as presently defined in the Québec Mining Act (S.Q. 1965, c. 34 as amended) shall be Category III lands. However, Québec undertakes upon the expiry of these rights, or any renewal

thereof, to transfer the administration, management and control of the lands subject thereto to Canada for the use and benefit of the Crees or the ownership to the Cree corporation depending on whether the said lands are within the areas of Category IA or IB lands. If any part of such lands are taken for development under the Québec Mining Act, Québec will replace the land taken, in accordance with the procedure set out for the replacement of Category II lands.

Notwithstanding the foregoing, lands within Category I which are presently the object of exploration permits issued to La Société de Développement de la Baie James will be Category I lands with the right to explore and develop as if such lands were Category III lands for the purpose of exercising the rights granted by the permits but subject to paragraph 5.1.6 c) below. However, provincial laws and regulations shall apply with respect to such permits and the exercise of all rights pursuant thereto.

Québec undertakes to provide Canada and the Grand Council of the Crees (of Québec), within ninety (90) days of the execution of the Agreement, with a list of the mining claims, development licenses, mining concessions, mining leases, exploration permits, referred to above, within Category I lands along with the names of the holders thereof, the dates the rights were granted, the nature of the rights and the date of their expiry.

The areas of land covered by such existing mining claims, development licenses, exploration permits, including the above mentioned portions of those of La Société de développement de la Baie James, mining concessions and mining leases surrounded by Category I lands have been included in the calculation establishing the total area of 2,158 square miles of Cree Category I lands.

Existing regional and provincial roads and main arteries within Category I lands shall be Category III lands and shall be clearly described at the time of the transfer of such lands. However, there shall be Category II lands for a distance of five hundred (500) feet on each side of said roads. Other existing roads within the Cree communities, as well as branch roads within Category I lands and leading to the Cree communities, shall be Category I lands, but the general public shall be granted access over such roads.

Moreover, no persons other than the Native people can establish or operate commercial facilities subject to the provisions of sub-paragraph 5.1.6 c) hereof on either side of those roads or arteries referred to in the previous paragraph, except with the express consent of the Cree community concerned.

The areas covered by existing landing strips, airport installations, hydroplane bases and maritime structures within Category I lands are excluded from Category I lands and shall be Category III lands. However, the areas of such lands have been included in calculating the total area of Category I lands.

When such landing strips, airport installations or other areas mentioned above are no longer required, as determined by Québec, the ownership or the administration, management and control, as the case may be, shall be transferred by Québec in the manner provided hereinabove, subject to the approval of any owner thereof, and subject to third party interests respecting mineral substances already conceded.

The seashore, beds and shores of the lakes and rivers identified in the territorial descriptions in Section 4 of the Agreement shall be excluded from Category I lands with respect to the shoreline of such lakes and rivers and lands on both sides of such rivers and around the lakes for a distance of two hundred (200) feet shall be Category II lands. Subject to the provisions of paragraph 5.1.6 c), in such Category II lands, no person other than Native people can establish or operate commercial facilities except with the sole consent of the Cree community concerned, however, such two hundred (200) foot restriction does not apply for a distance of one (1) mile in both directions from the centre of the Cree community concerned along the shoreline.

In front of Category I and Category II lands, the intertidal zone will be Category II lands. In front of Category III lands, the intertidal zone will remain Category III lands. From the coming into force of

Complementary Agreement No. 22, and subject to the provisions thereof, the provisions of this paragraph apply to Oujé-Bougoumou Category I lands with the modifications that the circumstances require.

JBNQA, par. 5.1.5

A. corr.

compl. A. no. 22, sch. 2, s. 4

#### **5.1.6 Future occupation by Québec and third parties**

a) *Québec and its representatives*

Lots within Category I lands shall be allocated by the Cree community or corporation for community services supplied by Québec, its agents or mandataries, such as roads, schools, hospitals, police stations and telecommunications. Such allocation shall be by way of leases, servitudes or similar contract and for nominal compensation (i.e. \$1.00).

b) *Third Parties*

The Cree community, in any case in which it allows third parties to occupy Category I lands for projects of regional or provincial interest, shall first consult with Québec and in the case of Category IA lands, Canada as well.

c) *Mining explorations and operations under existing rights*

Where lands, including Oujé-Bougoumou lands at the time of execution of Complementary Agreement No. 22, which are the object of existing mining claims, development licenses, exploration permits, mining concessions, mining leases and other similar titles pertaining to minerals as defined in the Québec Mining Act are surrounded by or adjacent to Category I lands, the owners of these rights or titles for the purpose of exercising the said rights shall have the right to use Category I lands, but only to the extent necessary in order to carry out their exploration or mining operations as provided for in Division XXII of the Québec Mining Act. Nonetheless, the appropriation of the lands required for such purposes shall be done by temporary servitude only, but shall not be subject to the expropriation provisions of the Indian Act or of the Agreement. The indemnity to be paid to the Cree Local Authority by Québec for the use (other than for exploration) of such Category I lands will be equivalent replacement land. In the case of exploration, the compensation to be paid to the Cree Local Authority by Québec for the use of such Category I lands shall be the equivalent to what is being paid to Québec for the use of surface rights on Crown lands in similar cases.

In the event that areas of land contemplated in the immediately preceding paragraph are developed as provided hereinabove, the Cree community concerned shall have the right to the replacement of an equivalent area of land in the same manner as set forth in the procedure for the replacement of Category II lands in the case of development.

In regard to lands which will be the object of mining claims, development licenses, exploration permits, mining concessions, mining leases and similar titles in the future, except the lands presently covered by any such titles which shall be governed by the special provisions hereinabove set forth, the exercise of any rights in or over Category I lands shall be subject to the general regime set forth below. For greater certainty, from the coming into force of Complementary Agreement No. 22, the provisions of this subparagraph shall apply to Oujé-Bougoumou Category I lands subject to the following: the reference herein to Division XXII of the Québec Mining Act is replaced by a reference to sections 235 and 236 of Division V of Chapter IV of the *Mining Act* (R.S.Q., c. M-13.1) as they read on December 15, 2009, or, if those sections are amended thereafter, to equivalent provisions of the *Mining Act* as amended, as they read on

the date of the coming into force of Complementary Agreement No. 22, provided that any expropriation can only be by temporary servitude.

JBNQA, par. 5.1.6

A. corr.

compl. A. no. 22, sch. 2, ss. 5 and 6

### **5.1.7 Public servitudes established by Québec**

#### **A) General**

Category I lands are subject to public servitudes established by Québec, its agents or mandataries in the cases set forth in sub-paragraphs a), b) and c) of this paragraph, subject to the terms and conditions mentioned herein and subject to compensation in an equivalent amount of land or in money at the option of the Cree community concerned unless for services of direct benefit to Category I lands or to such community.

Consequently, all public bodies, agencies and corporations authorized by law will be allowed to expropriate for the purpose of establishing the following public servitudes in the cases and subject to the conditions mentioned below:

- a) infrastructures : such as regional roads and arteries, bridges, airports, maritime structures and protection and irrigation facilities;
- b) local services : water systems, sewers, purification plants, treatment plants, fire protection and other services generally provided by local or municipal governments;
- c) public utilities : electricity, gas, oil, telecommunications and telephones;
- d) however, in the case of gas or oil pipelines or transmission lines, the servitudes shall be subject to the following:
  - i) they shall be situated the farthest way possible from the center of the village, in so far as reasonable, taking into account all circumstances, and in all cases at a distance of at least five (5) miles from the center of the village;
  - ii) necessary land taken for such purposes shall be replaced in all cases;
  - iii) all reasonable efforts shall be made to attempt to locate such transmission lines or pipelines in Category III or Category II lands, for equal cost;
  - iv) they shall be subject to the Environmental Regime, applicable to Category II lands, notwithstanding the provisions of Section 22 of the Agreement;
- e) other servitudes of a similar nature established by law.

In the case of public servitudes, indemnity in lands or money, at the option of the Crees, must be effected, except in the case of public servitudes involving services which directly benefit Category I lands or the Cree community concerned. Direct benefit would be determined with respect to the potential use by and/or future advantages to Category I lands and the community itself.

Where it is not otherwise possible for Québec to achieve the above without a full use and taking of the land, Québec shall have the right to expropriate in full ownership for the purposes of the present paragraph and paragraph 5.1.4, subject to the other provisions of this Section.

B) *Direct benefit*

Servitudes considered as being of direct benefit to Category I lands or the Cree community concerned would include servitudes involving public services expressly requested by the Cree community, essential services for the Cree communities provided such services are used by the Cree residents of the community and services designed to enhance the quality of life of the Cree inhabitants of the community.

Such servitudes would include but not necessarily be limited to such things as local services generally provided by municipal or local governments and by public utilities, local roads, bridges and community airports.

In all other cases not covered by the Agreement, burden of proof in establishing the direct benefit to the Category I lands of the community shall lie upon Québec.

In all cases, the Cree community shall have the right and opportunity to contest, in accordance with the procedure hereinafter set forth, whether a particular public servitude involves services of direct benefit to Category I lands or to the community.

C) *Compensation in land or in money*

In the case of a servitude recognized not to be of direct benefit to Category I lands or to the Cree community, there shall be compensation in an equal amount of land or, at the option of the Crees, in an amount of money and/or land. However, such compensation shall be by replacement of land only when such servitudes effectively withdraw portions of Category I lands from the use or enjoyment of the Cree community concerned.

If the Cree community chooses compensation in the form of land, the Cree community shall indicate its selection preference to Québec as soon as the decision to proceed with the proposed public servitude is taken.

If necessary, Québec shall then propose to the Cree community taking into consideration the Cree community's preference, an area with similar characteristics, insofar as is possible, to Category I lands and contiguous to the location of the Category I lands subject to the servitude. Such area proposed as replacement shall be double the size of the land to be replaced. The community shall be then entitled to choose from this area a piece of land equal in size to that land effectively taken away for the purposes of the public servitude.

This procedure will precede the taking of land for a servitude or any construction related to the servitude. However, a time limit of one hundred and twenty (120) days shall be allowed for this procedure, provided that the taking of the land for the servitude or any construction related to the servitude may proceed after sixty (60) days.

If there is no agreement on the choice of the replacement land within the period of one hundred and twenty (120) days and provided there is no contestation of the right to acquire the servitude, the compensation would then have to take the form of money.

If there is no agreement between the Cree community and Québec respecting the determination of what is direct benefit to a community or if the community, instead of compensation in the form of land, chooses compensation in the form of money and the parties are unable to agree as to what is adequate compensation, the decision whether to be of direct benefit and the amount of compensation shall be fixed by the Expropriation Tribunal of Québec, unless the parties agree to submit the matter to binding arbitration.

D) *Impact assessment*

All proposed servitudes mentioned in sub-paragraphs 5.1.7Aa) and 5.1.7 Ad) shall be subject to the Environmental and Social Protection Regime applicable to Category II lands and the procedures for such

regime, which are contemplated by the Agreement. More particularly, and if appropriate, the proposed servitude will be subject to a prior environmental and social impact assessment report and a delay of at least sixty (60) days will be allowed for comments by and discussions with the community on the proposed work.

E) *Other*

Any land effectively withdrawn from Category I lands for the purpose of establishing a servitude which has been compensated for in the form of land or money will be classified as Category III lands.

If the holder of the servitude no longer requires such servitude, the community shall have the option to have the land formerly subject to such servitude reclassified as Category I lands provided that the land which was allocated to the community as compensation, if such was the case, reverts to Québec to be reclassified as Category II or Category III lands depending on its status before the said land was used for compensation.

Unless the Crees are compensated in money in respect to expropriations by Québec and subject to the provisions of paragraph 5.1.8, the total area of Category I lands shall never be less than 2,140.6 square miles without the consent of the Crees or exceed 2,140.6 square miles without the consent of Québec.

In respect to the above servitudes, and also subject to the consent of the Lieutenant-Governor in Council, all public bodies, agencies and companies which now have or will have such powers defined in present or future laws of Québec will be able to establish such servitudes.

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JBNQA, par. 5.1.7

A. corr.

compl. A. no. 3, s. 9

### **5.1.8 Expropriation by Canada**

Notwithstanding the Expropriation Act of Canada, no Category IA lands may be expropriated by Her Majesty in Right of Canada without the prior consent of the Governor in Council.

Subject to the foregoing, nothing in the Agreement shall be interpreted in any way as limiting the power of Canada to expropriate for public purposes.

### **5.1.9 Public utility**

Present and future public utilities will continue to remain the responsibility of competent authorities acting in accordance with Provincial and Federal statutes and regulations and applicable local by-laws.

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JBNQA, par. 5.1.9

A. corr.

### **5.1.10 Natural resources**

a) *Minerals and other underground rights*

In Category I lands, Québec remains the owner of the mineral and sub-surface rights with the exception of rights already granted by Québec, as of the execution of the Agreement.

However, no minerals or other sub-surface rights can be obtained, extracted, mined or exercised from or with respect to all Category I lands without the consent of the particular community with rights over such lands and only upon payment of compensation agreed upon, for the use of rights over such lands.

The carrying out of work resulting from mineral rights granted prior to the execution of the Agreement (or prior to the execution of Complementary Agreement No. 22 in the case of Oujé-Bougoumou Category I lands as depicted in Schedule 6 thereof) on lands surrounded by or adjacent to Category I lands shall be dealt with through sub-paragraph 5.1.6(c) above as on other Category III lands. For the purposes

contemplated by Division XXII of the Québec Mining Act, the holders of such rights requiring the use of adjacent Category I lands may use the adjacent or surrounding Category I lands to the extent necessary to exercise their rights, subject to the provisions of sub-paragraph 5.1.6 c) above. Such works may include mining operations subject to the provisions mentioned in that paragraph.

Any future exploration or exploitation of minerals within Category I lands, other than the exploration or exploitation under rights existing prior to the Agreement (or prior to the execution of Complementary Agreement No. 22 in the case of Oujé-Bougoumou Category I lands as depicted in Schedule 6 thereof) including the right to explore and mine extension of mineralization around the lands subject to such existing rights and subject to the provisions referred to in sub-paragraph 5.1.6 c) of this Section, shall only be permitted with the Consent of the Cree community holding the rights to the lands affected. Moreover, specific authorization from Québec according to conditions specified in Québec mining laws and regulations, shall be required before any mining rights may be acquired.

b) *Substances ceded to the Native people*

Deposits of steatite (soapstone) or other similar material used for traditional arts and crafts will belong to the Native population.

c) *Gravel and other similar materials*

Permits must be obtained by the Cree community from the Québec Department of Natural Resources for the use of gravel and other similar material generally used for earthworks for personal and community use. However, the Québec Department of Natural Resources may not withhold such permits provided all the regulations are observed and the duties provided for under any applicable Provincial legislation shall not be collected.

The taking or use of such gravel shall also be subject to the Environmental and Social Protection Regime provided for under the Agreement in respect to Category I lands.

d) *Forests*

The Crees will have the right to use the forest for personal and community needs within Category I lands.

The respective Cree communities will likewise have the exclusive right to the commercial exploitation of forest resources within Category I lands by themselves or by third parties acting with their consent. However, in such case, the Cree community will have to obtain cutting rights or permits from the Québec Department of Lands and Forests, but the Department shall not withhold its consent to such permit, provided that such commercial cutting is in keeping with the development and marketing plan accepted by the Québec Department of Lands and Forests. In the event of such commercial exploitation, the community will not be obliged to pay stumpage dues to Québec but operations must respect Québec standards.

Subject to such permit and the requirements hereinabove stated, such resources shall be governed by the laws applicable to Category I lands. The general regime for forest protection, including the cost entailed, will be applicable.

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JBNQA, par. 5.1.10

A. corr.

compl. A. no. 22, sch. 2, ss. 7 and 8

### **5.1.11 Residence**

Non-Native people presently residing in Category I lands shall have the right to remain until the expiration of their rights of occupancy or residency on such lands, and shall be subject to the general by-laws and regulations of the local government. Subject to the foregoing, non-Native people will not be allowed to reside in Category I lands except in accordance with the by-laws and regulations established by the local government. However, such by-laws and regulations must permit non-Native people to reside in the area



for purposes allowed by the local government, for purposes of administrative or public service duties or scientific research, provided such activities do not entail an influx of substantial numbers of people likely to alter in an appreciable way the demographic makeup of the community.

In particular, non-Crees married to Crees, and their immediate families in the first degree, shall have the right to reside in Category I lands.

#### **5.1.12 Access**

The general public will have access to all roads, arteries, airports, bridges, public sea-plane bases, wharves, harbours, rivers and principal lakes and public buildings and lands used for public purposes.

The following persons shall also be permitted access to Category I lands:

- persons authorized to reside on Category I lands;
- persons authorized to exercise a public function or engaged in technical surveys, the construction or operation of a public work or public utility;
- owners of mineral rights and persons engaged in the exercise thereof;
- as well as such other persons as may be authorized by the Cree Local Authority.

Subject to the foregoing, only members of the Cree band or community shall have access to Category I lands and the Cree Local Authority shall have by-law power to regulate access provided that any such by-law shall not negate or unreasonably restrict the right of access.

#### **5.1.13 Restrictions on Transfer**

No Category I lands may be sold or otherwise ceded except to the Crown in Right of Québec. However, in accordance with the terms of the Agreement, the Cree Local Authority may grant to any person, including non-Natives, servitudes, usufructs, other rights of use and occupation and leases respecting such lands, provided that where lands are leased or real rights granted to non-Natives for a period exceeding five (5) years, including any renewal thereof, the leasehold interest or real rights granted shall be, as of the date of the lease or grant, subject to all Provincial laws and regulations as if the lands over which the said leasehold interest or real rights are granted were Category IB lands.

Notwithstanding the immediately preceding paragraph, no watercourses or lakes or rights therein in Category IB lands may be granted by the Cree Local Authority to persons other than members of the Cree community for whom Category IB lands have been allocated.

In the event that a band of Crees occupying part of Category IA lands becomes extinct, Canada shall revert in Québec all the rights and interests transferred to it under the Agreement in Category IA lands occupied by the band prior to its becoming extinct.

Notwithstanding the foregoing, should a Cree band join another Cree band or should all the members of one (1) Cree band join another Cree band, the Category IA lands of the band or members joining another band shall be vested in that other band, provided that Crees are living on the land of the band with which the amalgamation is proposed.

## **5.2 Category II lands**

### **5.2.1 Definition**

Category II lands will comprise 25,130 square miles south of the 55<sup>th</sup> parallel of latitude where the James Bay Crees shall have the exclusive right of hunting, fishing and trapping and will also have the rights established under Section 24 of the Agreement. Other uses of Category II lands for purposes other than hunting, fishing and trapping shall be subject to the provisions set forth below.

Provincial jurisdiction shall continue over Category II lands.

Category II lands shall not form part of any municipality except with the prior written agreement of the Cree Nation Government and Québec.

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JBNQA, par. 5.2.1

A. corr.

compl. A. no. 3, s. 10

compl. A. no. 24, s. 3

### **5.2.2 Third party interests**

The lands already ceded to third parties in ownership prior to the execution of the Agreement shall be excluded from Category II lands.

Moreover, lands within the area of the said Category II lands which are subject to rights already ceded to third parties prior to the execution of the Agreement (or prior to the execution of Complementary Agreement No. 22 in the case of lands within the area of the Oujé-Bougoumou Category II lands as depicted in Schedule 6 thereof) by way of lease or occupation permits or lands which are the object of mining claims, development licenses, exploration permits, mining concessions and mining leases shall be Category III lands. At such time as the said rights revert to the Crown such lands shall be Category II lands.

Lands within said Category II lands which are presently the object of exploration permits issued to La Société de développement de la Baie James shall fall into Category II lands with the right to explore, develop and mine as if such lands were Category III lands, in respect to the exercise of the rights under permits, subject to the provisions of paragraph 5.2.3.

Moreover, existing roads, landing strips, airport installations, sea-plane bases and maritime structures shall be Category III lands, and as such, shall be excluded from the administrative regime applicable to Category II lands. The large bodies of water surrounded fully or partially by Category II lands but excluded from Category II lands are identified in the said territorial descriptions.

Subject to this Agreement and the *Agreement concerning a New Relationship between le Gouvernement du Québec and the Crees of Québec* concluded on February 7, 2002, the third party interests, such as (i) permits, (ii) leases, (iii) mining claims and (iv) timber supply and forest management agreements (CAAF's) with a view to the continued access of the forestry industry to the resources as provided for therein, existing on Category II lands as of July 24, 2012, shall be maintained in accordance with the applicable laws.

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JBNQA, par. 5.2.2

compl. A. no. 22, sch. 3, s. 1

compl. A. no. 24, s. 4

### **5.2.3 Development**

Category II lands may be appropriated by Québec for development purposes, provided such lands are replaced or, if the native people wish, and an agreement can be reached thereon, they are compensated.

Unless such activities are directly related to pre-development, the rights or the exercise thereof of non-Native people, in respect to their lawful activities, shall be controlled by Québec through appropriate legislation or regulations and reasonable enforcement machinery if they interfere or could reasonably be expected to interfere with the rights granted to Native people under the Section of the Agreement relating to hunting, fishing and trapping (Section 24).

For the purposes of the Agreement in respect to Category II lands: "development" shall be defined as any act or deed which precludes hunting, fishing and trapping activities by Native people, except for pre-

development; and “pre-development” shall be defined as any act or deed of an exploratory nature exercised during a limited time in view of researching information to decide if development will take place or not.

In the case of development, should the Cree community choose replacement of land, the community shall indicate its preference to Québec as soon as the decision to proceed with the development is taken and communicated.

If there is no agreement in respect to the choice of land, Québec shall then propose to the Cree community taking into consideration the Cree community's preference, an area with the similar characteristics, insofar as is possible, as Category II lands and contiguous to the location of the Category II lands subject to the replacement. Such area proposed as replacement shall be double the size of the land to be replaced. The Cree community shall then choose from this area a piece of land contiguous to the Category II lands and equal in size to that land effectively taken away for the purposes of such development as full compensation for the land taken away. Compensation may also be made by money payments mutually agreed upon.

This procedure will precede the taking of land for development or any construction related thereto. However, a time limit of one hundred and twenty (120) days shall be allowed for this procedure, provided that the taking of the land for the development or any construction related to such development may proceed after sixty (60) days.

Such development shall be subject to the Environmental Regime set forth in Section 22 of the Agreement.

#### **5.2.4 Public servitudes**

Notwithstanding the above definition of development, all public servitudes may be established on Category II lands without payment of indemnity.

#### **5.2.5 Natural resources**

##### *a) Minerals and other underground rights*

Mineral exploration and technical surveys do not constitute development as defined herein and may be carried out without replacement of lands and without payment of indemnity, but subject to the provisions of the Environmental and Social Protection Regime of the Agreement. Moreover, such mineral exploration and technical surveys must be carried out so as to avoid unreasonable conflict with harvesting activities.

##### *b) Use of soapstone*

The right to use soapstone for traditional arts and crafts purposes may be acquired by the Native people through their respective local governments by way of a permit from the Québec Department of Natural Resources. Such permit may not be unreasonably withheld. This special permit will be provided for under the Mining Act and will give the rights to use this mineral substance only for the use of traditional arts and crafts purposes.

The lands in question will have to be marked in the field by the Native people by using a method analogous to the one used for claim staking. The area will have to be restricted to the outcrops easily accessible to the Native people. Furthermore, the right to the soapstone will always be subordinated to the rights to other mineral substances, in such a way that it will not prevent possible mining developments on that land.

##### *c) Forests*

Forest operations are compatible with hunting, fishing and trapping activities.

Commercial cutting programs in Category II lands will be defined according to management plans elaborated by the Québec Department of Lands and Forests, which shall take into consideration the hunting, fishing and trapping activities

Operations must respect Québec standards and the general regime for forest protection will be applicable.

#### **5.2.6 Access**

Subject to the rights of the Native people, under the Hunting, Fishing and Trapping Section (24) of the Agreement, persons exercising a right compatible with such rights of the Native people as well as persons exercising some duty imposed by law shall have access to Category II lands and may remain thereon, and erect constructions thereon, subject to the general restrictions of law and the provisions imposed by this Section of the Agreement and subject to the following additional restrictions:

##### *a) Tourism and recreation*

Non-Native people will not be allowed to hunt, fish or trap in Category II lands, except with the consent of the Native people, and subject to the rights of the non-Natives set forth in the Hunting and Fishing Regime (Section 24).

##### *b) Exploration, pre-development activities, scientific studies and administrative purposes*

Persons wishing to carry out such works shall be required to obtain an authorization for same from Québec. Such a request for authorization shall have to include the following information: objective, nature, importance of the work to be effected, duration and a description of the installations involved.

In case such authorization is granted, the Native people shall be advised of the information so given to Québec, as soon as is reasonably possible.

However, works which do not involve substantial operations in the field, such as geoscientific works and mining exploration of the type provided for by the Québec Mining Act will not be subject to the presentation of the information nor the obtaining of the authorization mentioned above.

Nonetheless, such works shall be carried out in such a manner as to avoid unreasonable conflict with the rights of the Native people under the Hunting, Fishing and Trapping Regime.

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JBNQA, par. 5.2.6

A. corr.

#### **5.2.7 Special provisions concerning the Mistassini area outfitting camps**

Notwithstanding paragraph 24.9.2, the Québec shall be allowed to operate the Louis Jolliet and Vieux Poste Camps as well as the outposts of these two camps for a period of ten (10) years; during this period, the Québec shall take all reasonable means to train Cree persons in all aspects of the outfitting business so that the Crees may, if they wish, take over completely the operation of these camps at the end of this ten (10) year period.

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JBNQA, par. 5.2.7

A. corr.

### **5.3 Category III lands**

**5.3.1** General access to Category III lands will be in accordance with Provincial legislation and regulations concerning public lands.

The regime for the use of soapstone in Category III lands shall be that applicable, *mutatis mutandis*, to Category II lands.

#### 5.4 Wood rights for native people on category II or III

**5.4.1** Québec shall guarantee a supply of wood necessary for the operation of the present Paint Hills sawmill or an equivalent wood supply subject to the approval of the Minister of Lands and Forests of a location other than the Paint Hills area for such wood supply. No stumpage dues shall be payable for such wood supply.

**5.4.2** In addition, Québec will consider proposals submitted by the Native people which would have the effect of creating employment for Native people and other residents of the Territory and are in accordance with the planning of the Québec Department of Lands and Forests.

**5.4.3** The Crees shall pay stumpage dues for commercial utilization of such wood rights on Category II or III lands.

**5.4.4** Specific arrangements for the operation contemplated shall be discussed and agreed upon with the Québec Department of Lands and Forests. However, the Crees shall be liable for the payment of costs incurred under the general regime for forest protection.

#### 5.5 Development

**5.5.1** Notwithstanding anything else contained in the Agreement Québec, La Société d'Énergie de la Baie James, Hydro-Québec and La Société de Développement de la Baie James and their nominees and such other persons acting lawfully shall have the right subject to all applicable laws and regulations to develop the land and resources in Category III lands and also, for the purpose of development, Québec has the right to take Category II lands subject to the replacement or compensation as specified in this Section and such Category II lands shall then become Category III lands.

More particularly, the rights and guarantees given to the Native people by and in accordance with the Section on Hunting, Fishing and Trapping shall be subject to the right to develop Category III and Category II lands on the part of Québec, Hydro-Québec, La Société d'Énergie de la Baie James and La Société de Développement de la Baie James and their nominees and such other persons as may be lawfully authorized.

However, the developers shall be submitted to the Environmental Regime which takes into account the Hunting, Fishing and Trapping Regime.

**5.5.2** Subject to laws and regulations of general application except as hereinafter provided in paragraph 5.5.3, Québec, La Société d'Énergie de la Baie James, Hydro-Québec and all public bodies, agencies and corporations authorized by law may modify or regulate the flow of rivers of Categories II and III lands even if such rivers are flowing through or adjacent to Category I lands or have downstream effect on the part of such rivers included within Category I lands, subject to the following provisions:

- a) The flow regime shall not be modified in such a way as to increase the water level above the highest previously recorded water level of the river.
- b) For the purposes of establishing or exercising the servitudes contemplated by article 5.1.7 of this Section, the water level may be raised above the highest recorded level subject to the provisions of this Section.
- c) If shore facilities or other installations or rights in connection therewith are affected by the change of water level, Québec, La Société d'Énergie de la Baie James, Hydro-Québec or the public bodies, agencies or corporations shall be liable for damages to such facilities, installations or rights in connection therewith.

The special provisions of Section 8 of this Agreement shall take precedence over the provisions of the present article.

**5.5.3** Québec, La Société d'Énergie de la Baie James, Hydro-Québec and the said public bodies, agencies and corporations shall not be required to expropriate lands needed for the purposes contemplated in paragraph 5.5.2 nor to obtain any consent otherwise required for the utilization of such lands for the above purposes.

## **5.6 Legislation**

The provisions of this Section can only be amended with the consent of Canada and the interested Native party, in matters of federal jurisdiction, and with the consent of Québec and the interested Native party, in matters of provincial jurisdiction.

Legislation enacted to give effect to the provisions of this Section may be amended from time to time by the National Assembly of Québec in matters of provincial jurisdiction, and by Parliament in matters of federal jurisdiction.