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April 15, 2014

RE: Métis Local 1909's Comments on the Frontier Oil Sands Mine Project Joint Review Panel Agreement and Draft Terms of Reference.

Dear Mr. Haddon,

In response to a March 17th invitation from Carolyn Dunn of CEAA we have reviewed the Frontier Oil Sands Mine Project Draft Joint Review Panel Agreement and Terms of Reference. Our comments are written into the PDF version which accompanies this letter. The comments are also repeated and explained in further detail below. We performed the review of the Draft Agreement and PTOR with the following intentions: 1) to ensure that the Agreement clearly identifies and defines the term “participants” and to clarify that Aboriginal Participants include Métis people; and 2) to clearly communicate to the proponent and the JRP that the PTOR suggests the inclusion of Métis land use information, environmental knowledge of the project site, and impacts of the project to Métis rights, culture and community interests under the Scope of the Factors laid out in Part III under “aboriginal rights and interests”. Our review was also performed with the caveat in mind that there are insufficient funds available under the Aboriginal Participant Funding Envelope alone to adequately collect and present to the panel information on Frontier Project specific impacts to Aboriginal rights and that additional funding may be sought in conjunction with the proponent to more clearly identify the impacts to the Métis community.

As such, we propose the following changes to the document:

- In the “Definitions” Section, on page 2, after “mitigation” and before “parties” insert a definition for “participants”. The term participants is used in the agreement and appendix but no definition is provided. Specify whether “participants” refers to interested persons, interested parties, Aboriginal groups, hearing participants, members of the public, or any or all of the above.
- In Appendix 1 “Terms of Reference” in Part II (page A1), the “Scope of the Environmental Assessment”, it states:



- “the environmental effects of the project, including the environmental effects of malfunctions or accidents that may occur in connection with the project and any cumulative environmental effects that are likely to result from the project in combination with other projects or activities that have been or will be carried out;”
 - Add to the end of that phrase “by this or any other proponent in the regional study area” in order to clarify that the environmental effects are cumulative and regional in nature and that the Frontier Mine project is one of several large scale mining projects proposed within the RSA. The Scope of the Frontier Mine Assessment must therefore take into account the combined impact of the Frontier Mine and projects proposed by other proponents.
- On page A2 there is a minor grammatical change – replace “mitigation” with “mitigate.”
 - In Appendix 2 “Cost Sharing Provisions” it is understood that the agreement specifies how the Joint Review Panel parties (CEAA and AER) will share costs. However it is worth noting that insufficient funds are provided to participants through the Aboriginal Participant Funding Envelope to complete Frontier Mine Project-specific Traditional Use Studies or Environmental Knowledge Assessments. If the crown is willing to provide additional funds to Aboriginal participants to collect and provide to the Panel project-specific land use information and environmental knowledge which will reveal potential impacts on Aboriginal rights, pertaining to Section III of the Agreement and Terms of Reference, then it should be specified in Appendix 2. However, if the crown is unwilling to provide Aboriginal participants funds to collect and present information on impacts to Aboriginal rights then the agreement should include a statement or reference to the effect that “Traditional Use Studies and Environmental Knowledge related information will be conducted with interested parties and Aboriginal participants at the request of the Panel with funding provided by the proponent.”

Thank you for considering our comments and for the opportunity to review the Draft Agreement and PTOR for the Frontier Joint Review Panel. We look forward to participating in the public comment period on the Frontier Mine project.

Sincerely,

<original signed by>

Melina Scoville

President, Lakeland Métis Local Council 1909

CC: Dermot O’Connor

CC: Carolyn Dunn

DRAFT AGREEMENT
To Establish a Joint Review Panel
for the Frontier Oil Sands Mine Project
Between

The Minister of the Environment, Canada
- and -
The Alberta Energy Regulator, Alberta

PREAMBLE

WHEREAS the Alberta Energy Regulator (the AER) has statutory responsibilities pursuant to the *Responsible Energy Development Act* (REDA); and

WHEREAS the *Canadian Environmental Assessment Act* has been repealed and the *Canadian Environmental Assessment Act, 2012* (CEAA 2012) has come into force; and

WHEREAS the Minister of the Environment, Canada (the Federal Minister of the Environment) has statutory responsibilities pursuant to CEAA 2012; and

WHEREAS the proposed Frontier Oil Sands Mine Project (the project) requires a public hearing and approvals from the AER pursuant to REDA, and the *Oil Sands Conservation Act*, and is subject to an assessment under CEAA 2012; and

WHEREAS the Federal Minister of the Environment has referred the project to a review panel in accordance with section 29 of the former *Canadian Environmental Assessment Act* and has determined that pursuant to section 40(1) of CEAA 2012 a joint review panel should be established to consider the project; and

WHEREAS the Government of the Province of Alberta and the Government of Canada established a framework for conducting joint review panels through the *Canada-Alberta Agreement on Environmental Assessment Cooperation (2005)* signed on May 17, 2005; and

WHEREAS the AER and the Federal Minister of the Environment have determined that a joint review of the project will ensure that the project is evaluated according to the spirit and requirements of their respective authorities while avoiding unnecessary duplication, delays and confusion that could arise from individual reviews by each government or the AER; and

WHEREAS the AER and the Federal Minister of the Environment have determined that a joint review of the project should be conducted in a manner consistent with the provisions of Appendix 2 of the *Canada-Alberta Agreement on Environmental Assessment Cooperation (2005)*; and

WHEREAS pursuant to section 126 of CEAA 2012, the assessment by the joint review panel is continued under the process established under the former *Canadian Environmental Assessment Act* as if it had been referred to a review panel under section 38 of CEAA 2012; and

WHEREAS the AER has determined that pursuant to section 18 of *REDA* a joint review panel cooperative proceeding should be established and that the project should be considered in a cooperative proceeding by the AER and the Agency.

THEREFORE, the AER and the Federal Minister of the Environment hereby establish a joint review panel for the project in accordance with the provisions of this Agreement and the Terms of Reference attached as an Appendix to this Agreement.

1. Definitions

For the purpose of this Agreement and of the Appendix attached to it,

“Aboriginal” describes those Aboriginal peoples of Canada as defined in the *Constitution Act, 1982*, subsection 35(2) including the Indian, Inuit and Métis peoples of Canada;

"Agency" means the Canadian Environmental Assessment Agency established under CEAA 2012;

"environment" means the components of the Earth, and includes

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

"environmental effect" means, for the purposes of the federal Minister of the Environment, those effects described in section 5 of CEAA 2012;

"federal authority" means a Minister, agency or department of the Government of Canada;

"follow-up program" means a program for

- a. verifying the accuracy of the environmental assessment of the project, and
- b. determining the effectiveness of any mitigation measures;

“interested party” means any person who the Joint Review Panel determines, with respect to the project, is directly affected by the carrying out of the project or has relevant information or expertise;

"Joint Review Panel" refers to the Joint Review Panel established by the AER and the Federal Minister of the Environment through this Agreement;

"mitigation" means, in respect of the project, the elimination, reduction or control of the adverse environmental effects of the project, and includes restitution for any damage to the environment caused by such effects through replacement, restoration, compensation or any other means;

Insert a definition for "Participants"

"parties" means the signatories to this Agreement;

“project” means the proposed Frontier Oil Sands Mine Project described in Part 1 of the Terms of Reference;

“proponent” has the meaning provided in section 2 of CEAA 2012;

“public registry” means the Canadian Environmental Assessment Registry established under section 78 of CEAA 2012;

“report” means the document produced by the Joint Review Panel, which contains decisions pursuant to *REDA* and the *Oil Sands Conservation Act*, and the Joint Review Panel's rationale, conclusions and recommendations relating to the environmental assessment of the project including any mitigation measures and follow-up program pursuant to CEAA 2012 and a summary of comments received from the public, including Aboriginal persons and groups.

2. Establishment of the Joint Review Panel

- 2.1 A process is hereby established to create a co-operative proceeding pursuant to section 18 of *REDA*, and a Joint Review Panel pursuant to sections 38, 39, 40 and 42 of CEAA 2012, for the purposes of the joint review of the project.
- 2.2 The AER and the Agency will make arrangements to coordinate the announcements of a joint review of the project by both the AER and Canada.

3. Constitution of the Joint Review Panel

- 3.1 The Joint Review Panel will consist of three members. The chief hearing commissioner of the AER shall appoint the chairperson and shall appoint one other member of the Joint Review Panel, with the approval of the Federal Minister of the Environment. The third Joint Review Panel member will be appointed by the Federal Minister of the Environment in accordance with article 3.2 of this Agreement.
- 3.2 The Federal Minister of the Environment will select the third Joint Review Panel member and recommend the selected candidate as an individual who may serve as a potential hearing commissioner of the AER. If acceptable to the Lieutenant Governor in Council of Alberta and the chief hearing commissioner of the AER, the Lieutenant Governor in Council of Alberta will nominate this candidate to serve as a hearing commissioner of the AER and the chief hearing commissioner of the AER will appoint this candidate as a member of the Joint Review Panel. The selected candidate will also be appointed by the Federal Minister of the Environment as a member of the Joint Review Panel.
- 3.3 The Joint Review Panel members shall be unbiased and free from any conflict of interest relative to the project and are to have knowledge or experience relevant to the anticipated environmental effects of the project. In the event that a Joint Review Panel member resigns or is unable to continue to work, the remaining members shall constitute the Joint Review Panel unless the federal Minister of the Environment and the chief hearing commissioner of the AER determine otherwise. In such circumstances, the federal Minister of the Environment and the chief hearing commissioner of the AER may choose to replace the member.

4. Secretariat

- 4.1 Administrative, technical, and procedural support requested by the Joint Review Panel shall be provided by a Secretariat, which shall be the joint responsibility of the AER and the Canadian Environmental Assessment Agency (the Agency).

- 4.2 The Secretariat will report to the Joint Review Panel and will be structured so as to allow the Joint Review Panel to conduct its review in an efficient and cost-effective manner.
- 4.3 The AER will provide its offices for the conduct of the activities of the Joint Review Panel and the Secretariat.
- 4.4 Costs for conducting the joint review will be shared between the Agency and AER in accordance with Appendix 2 attached to this Agreement.

5. Record of Joint Review and Report

- 5.1 A public registry will be maintained by the Agency during the course of the joint review in a manner that provides for convenient public access and for the purposes of compliance with sections 79 to 81 of CEEA 2012.
- 5.2 Subject to sections 45(3), (4), and (5) and 79(3) of CEEA 2012, the public registry will include all records relating to the review, including submissions, correspondence, hearing transcripts, exhibits and other information, received by the Joint Review Panel and all public information produced by the Joint Review Panel relating to the review of the project.
- 5.3 On completion of the assessment of the project, the Joint Review Panel shall prepare a report. The report shall include an executive summary in both official languages of Canada. The report will set out the rationale, conclusions and recommendations of the Joint Review Panel relating to the environmental assessment of the project, including any mitigation measures and follow-up program, and a summary of comments received from the public, including Aboriginal persons and groups. The report will be conveyed to the Government of Alberta and the Federal Minister within the overall time limit for the review established by the Federal Minister
- 5.4 After the report is submitted, the Agency will maintain the public registry. The AER will continue to maintain records of the proceedings and the report in accordance with its normal practices and procedures.
- 5.5 The Agency will be responsible for the translation of public notifications and releases and the report prepared by the Joint Review Panel, into both of the official languages of Canada. The Agency will use all reasonable efforts to expedite the translation of the report.

6. Other Government Departments

- 6.1 The Joint Review Panel may request federal and provincial authorities having specialized information or knowledge with respect to the project to make that information or knowledge available to the Joint Review Panel in an acceptable manner. The Joint Review Panel may also retain the services of independent non-government experts to provide advice on certain subjects within the Joint Review Panel's Terms of Reference.
- 6.2 Nothing in this Agreement will restrict the participation by way of submission to the Joint Review Panel by federal or provincial government departments or bodies, subject to article 6.1, above section 20 of CEEA 2012 and section 49 of REDA.
- 6.3 The names of the experts retained by the Joint Review Panel and any documents obtained or created by the experts and that are submitted to the Joint Review

Panel will be placed on the Public Registries. This shall exclude any information subject to solicitor-client privilege where the expert is a lawyer.

- 6.4** The Joint Review Panel may, in its sole discretion, require any expert referred to in articles 6.1 and 6.3 to appear before the Joint Review Panel at the public hearing and testify in regard to the documents they have created or obtained and that were submitted to the Joint Review Panel and made public in accordance with the preceding paragraph.

7. Participant Funding

- 7.1** Decisions regarding participant funding by the Agency under the federal Participant Funding Program, and decisions on participant funding by the AER as provided for in *REDA*, the *AER Rules of Practice* and the AER's *Directive 031: REDA Energy Cost Claims* will, to the extent practicable, take into account decisions of the other party.

8. Amending this Agreement

- 8.1** The terms and provisions of this Agreement may be amended by written memorandum executed by both the Federal Minister of the Environment and the Chief Executive Officer of the AER.
- 8.2** Subject to section 49 and 62 of CEAA 2012, this Agreement may be terminated at any time by an exchange of letters signed by both parties.

9. Signatures

WHEREAS the parties hereto have put their signatures

The Honourable Leona Aglukkaq
Minister of the Environment

Jim Ellis
CEO
Alberta Energy Regulator

Date

Date

Appendix 1

Terms of Reference

Part I - Scope of Project

Teck Resources Limited (the proponent) proposes to develop and operate a new oil sands mine and processing plant (the project), located 110 kilometers north of Fort McMurray, Alberta. The proposed project would produce 38 156 cubic metres per calendar day (240 000 barrels pcd) of partially deasphalted bitumen.

The project would use truck and shovel to mine two open pits. The project would also include an ore preparation plant, bitumen extraction plant, tailings facilities, cogeneration facilities, support utilities, disposal and storage areas, river water intake, fish habitat compensation lake, roads, an airfield, and camp facilities.

The project would have a disturbance area of 24 139 hectares, resulting from three development phases. The proponent proposes to start producing partially deasphalted bitumen in 2021. Mining operations would cease in 2054 with decommissioning and reclamation to be completed by 2068.

Part II - Scope of the Environmental Assessment

The Joint Review Panel shall conduct an assessment of the environmental effects of the project referred to in the Scope of the Project (Part 1) in a manner consistent with the requirements of CEEA 2012, *REDA*, the *Oil Sands Conservation Act* and these Terms of Reference.

As per section 19(1) of CEEA 2012, the assessment shall include a consideration of the following factors:

- a) the environmental effects of the project, including the environmental effects of malfunctions or accidents that may occur in connection with the project and any cumulative environmental effects that are likely to result from the project in combination with other projects or activities that have been or will be carried out; ← ADD: by this or any other proponent in the regional study area
- b) the significance of the effects identified in paragraph a;
- c) comments from the original persons and groups, that are received during the assessment process;
- d) measures that are technically and economically feasible and that would mitigate any significant adverse environmental effects of the project;
- e) the requirements of the follow-up program in respect of the project;
- f) the purpose of the project;
- g) alternative means of carrying out the project that are technically and economically feasible and the environmental effects of any such alternative means; and
- h) any change to the project that may be caused by the environment;

As provided in subsection 19(3) of CEEA 2012, the assessment by the Joint Review Panel shall also include a consideration of the additional following matters:

- a. effects of the project on asserted or established Aboriginal or treaty rights, to the extent the Joint Review Panel receives such information as provided in Part III hereof; and
- b. community knowledge and aboriginal traditional knowledge (such as traditional use studies) received during the joint review.

Part III – Scope of the factors

The scope of the factors includes those specified in the “Final Terms of Reference” for the preparation of the Environmental Impact Assessment Report for the UTS Energy Corporation/Teck Cominco Ltd. (now Teck Resources Ltd.) Frontier Oil Sands Mine issued by Alberta Environment (now Alberta Environment and Sustainable Resource Development) on February 11, 2009. The document is available on the public registry (document # 9).

In considering the factors outlined in Part II, the Joint Review Panel shall have regard for the following:

Aboriginal Rights and Interests

The Joint Review Panel shall accept as part of its record and review information from Aboriginal groups related to the nature and scope of asserted or established Aboriginal or treaty rights in the area of the project, as well as information on the potential adverse environmental effects that the project may have on asserted or established Aboriginal or treaty rights, and information regarding any measures proposed to avoid or ~~mitigation~~ mitigate potential adverse effects of the project on asserted or established Aboriginal or Treaty rights. The Joint Review Panel may also receive information provided in this regard by other participants, federal authorities or government, and provincial departments or government.

mitigate

The Joint Review Panel shall consider:

- Evidence presented by participants concerning any potential project effects to asserted or established Aboriginal or treaty rights, such as:
 - Any potential effects on current uses of lands and resources by Aboriginal persons for traditional purposes;
 - Any effects (including the effects related to increased access and fragmentation of habitat) on hunting, fishing, trapping, cultural and other traditional uses of the land (e.g. collection of medicinal plants, use of sacred sites), as well as related effects on lifestyle, culture, health and quality of life of Aboriginal persons;
 - Any effects of alterations to access into areas used by Aboriginal persons for traditional uses;
 - Any adverse effects of the project on the ability of future generations to pursue traditional activities or lifestyle;
 - Any effects of the project on heritage and archaeological resources in the project area that are of importance or concern to Aboriginal groups;
- Evidence presented by participants concerning the measures proposed to manage, mitigate and compensate any identified effects on asserted or

established Aboriginal rights and interests.

For the purposes of its report, the Joint Review Panel shall document claims of Aboriginal or treaty rights as presented by participants and consider the effects of the project on the Aboriginal or treaty rights so presented. The Joint Review Panel may use this information to make recommendations that relate to the manner in which the project may adversely affect the Aboriginal or treaty rights asserted by participants.

The Joint Review Panel shall reference in its report:

- the information provided by participants regarding the manner in which the project may adversely affect asserted or established Aboriginal or treaty rights; and
- the information provided by participants regarding the strength of claim in respect of Aboriginal or treaty rights asserted by a participant, including information about the location, extent, bases and exercise of those asserted Aboriginal or treaty rights in the area of the project.

The Joint Review Panel, based on its assessment of the environmental effects of the project, may recommend measures to mitigate any adverse environmental effects caused by the project that could adversely impact or infringe on those potential or established Aboriginal or treaty rights that were identified.

The Joint Review Panel is not required by these Terms of Reference to make any determinations as to:

- the validity of Aboriginal or treaty rights asserted by a participant or the strength of such claims;
- the scope of the Crown's duty to consult an Aboriginal group; or
- whether the Crown has met its respective duties to consult or accommodate in respect of rights recognized and affirmed by section 35 of the *Constitution Act, 1982*.

Nothing in these Terms of Reference limits the application of section 21 of *REDA* or Part 2 of the *Administrative Procedures and Jurisdiction Act* to the AER, and the Joint Review Panel (in its capacity as a division of the AER) remains at all times subject to the requirements of those provisions, and is entitled to exercise the powers under Part 2 of the *Administrative Procedures and Jurisdiction Act*, including but not limited to section 13 thereof.

Cumulative Effects Assessment

The cumulative effects assessment should take into consideration the approach described in the Agency's Cumulative Effects Assessment Practitioners Guide (1999) and in the Agency's Operation Policy Statement entitled "Assessing Cumulative Environmental Effects under the Canadian Environmental Assessment Act, 2012" updated in May 2013.

The Joint Review Panel should focus its consideration of cumulative effects on key valued components. Without limiting itself thereto, the following components should be considered:

- water quality and quantity;
- air quality and greenhouse gas emissions;
- asserted or established Aboriginal or treaty rights and interests;
- wildlife and wildlife habitat for valued species including: federally and provincially listed species at risk, and migratory birds; and
- valued vegetation communities and wetlands.

The cumulative effects assessment should provide a justification and description of the temporal boundaries and include, but not be limited to, the following:

- a pre-industrial case to allow the Joint Review Panel to take into account the effects that may have already been experienced prior to the project; and
- future foreseeable projects or activities as of the issuance of the Joint Review Panel's Terms of Reference.

Accidents & Malfunctions

In considering the environmental effects of malfunctions or accidents that may occur in connection with the project, the Joint Review Panel should include potential malfunctions or accidents associated with the following components:

- tailings management;
- waste management and disposal;
- use, handling or spills of chemicals and hazardous materials on-site;
- the increase in road traffic, and the risk of road accidents; and
- any other project components or systems that have the potential, through accident or malfunction, to adversely affect the natural environment.

The Joint Review Panel should consider the likelihood of occurrence of a malfunction or an accident and the sensitive elements of the environment (e.g. communities, homes, natural sites of interest, areas of major use) that may be affected in the event of any such malfunction or accident.

Plans, measures and systems to reduce the potential occurrence of a malfunction or

accident should be considered in the assessment and should indicate how they will reduce the effects or consequences of any such malfunction or accident.

Effects of Changes to the Environment

The Joint Review Panel shall consider the effects of any changes caused to the components of the environment described in section 5(1) of CEEA 2012.

Change to the Project Caused by the Environment

The Joint Review Panel will also consider any change to the project that may be caused by the environment.

Environmental changes and hazards that may occur and may affect the project shall be described. The Joint Review Panel should also take into account the potential influence of climate change scenarios presented by the proponent and other participants on climate parameters (e.g. precipitation, temperature), and physical environmental processes.

The influence that these environmental changes and hazards may have on the project should be predicted and described. The environmental assessment should describe how these changes and hazards are accounted for in the project design.

Part IV – Review Process Mandate

The Joint Review Panel shall conduct its review in a manner that discharges the responsibilities of the AER under the *REDA*, the requirements set out in CEEA 2012, and the requirements set out in these Terms of Reference that were fixed and approved by the Federal Minister of the Environment and the AER.

The Joint Review Panel shall have all the powers and duties of a panel described in section 45 of CEEA 2012 and of a hearing commissioner panel of the AER described in *REDA* and the rules and regulations thereunder.

A majority of the Joint Review Panel members constitutes a quorum for the purposes of the proceeding to be conducted by the Joint Review Panel. When a hearing, public meeting, or other activity is conducted by the Joint Review Panel and a member of the Joint Review Panel for any reason does not attend on any day or part of a day, the other members who are sitting at the hearing, public meeting or other activity may continue as fully and effectively as though the absent member was present

Part V – Review Process

The environmental assessment for the project consists of three stages. These stages are referred to as the Pre-Panel Stage, the Joint Review Panel Stage and the Post-Panel Stage. This description of the review process is limited to the Joint Review Panel stage.

The main steps of the joint review during the Joint Review Panel stage of the environmental assessment will be as follows:

Review of the documentation

1. As soon as possible following its appointment, the Joint Review Panel will initiate a public comment period on whether the information available on the public registry is sufficient to allow a review that complies with the Joint Review Panel's Terms of Reference and to proceed to the public hearing phase of the process. The public, Aboriginal groups and government departments and agencies will be provided with a minimum of 30 days to provide comments.
2. Comments received during the comment period will be made available to the public through the public registry as soon as possible.

Determination of sufficiency of information

3. After the public comment period has closed, the Joint Review Panel will decide if it has sufficient information to proceed to hearing. In so doing, the Joint Review Panel will consider its own review of the information, and any written comments from the public, including Aboriginal persons and groups, government departments or agencies, other governments or technical experts, and any written exchanges between the participants and the proponent.
4. Should the Joint Review Panel identify information deficiencies after reviewing the available information and considering any comments received, the Joint Review Panel shall require additional information from the proponent. Any requirement for additional information will be issued by the Joint Review Panel as soon as is reasonably practicable following the close of the public comment period.
5. Should the Joint Review Panel conclude that it has sufficient information to proceed to hearing, it will announce the hearing following the close of the public comment period, providing for a minimum of notice 30 days prior to the commencement of the hearing.
6. Notwithstanding paragraph 4 above, if the Joint Review Panel is of the view that it requires additional information from the proponent but the information deficiency is minor in nature, and the Joint Review Panel receives a commitment from the proponent to provide the outstanding information, the Joint Review Panel may announce the hearing, providing for a minimum of 30 days notice prior to the commencement of the hearing.

Determination of Adequacy of Additional Information Requested by the Joint Review Panel

7. Upon receipt of additional information provided by the proponent pursuant to a requirement under paragraph 4 above, the Joint Review Panel will ensure that the information is made available to the public, Aboriginal groups and government departments and agencies for review and comment for a minimum of 30 days.
8. If, after reviewing the additional information and any written comments from the public, Aboriginal persons and groups, government departments or agencies, other technical experts, the Joint Review Panel concludes that it has sufficient

information to proceed to hearing, it will announce the hearing, providing for a minimum of notice of 30 days prior to the commencement of the hearing.

9. If, after reviewing the additional information and any written comments received from the public, Aboriginal persons and groups, government departments or agencies, other technical experts, the Joint Review Panel is still of the view that it does not have sufficient information to proceed to hearing, it shall inform the proponent of the outstanding information requirements. Any additional information thereafter provided by the proponent will be subject to public comment in the manner described in paragraph 7 above.
10. Notwithstanding paragraph 5 above, if the Joint Review Panel is of the view that it requires additional information from the proponent but the information deficiency is minor in nature, and the Joint Review Panel receives a commitment from the proponent to provide the outstanding information, the Joint Review Panel may announce the hearing, providing a minimum of 30 days notice prior to the commencement of the hearing.
11. If at any time during the review process the Joint Review Panel requests additional information from the proponent, the Joint Review Panel may specify the date by which the proponent must provide the information.

Public Hearing

12. The public hearing will provide Aboriginal groups, interested parties, government authorities and the proponent with an opportunity to participate in the assessment.
13. The public hearing shall provide opportunities for timely and meaningful participation by the public, including Aboriginal persons and groups, in accordance with CEAA 2012 and subsection 34(3) of *REDA*. The Joint Review Panel shall conduct its hearing in substantial accordance with the AER's *Rules of Practice*. The Joint Review Panel will, however, attempt to make the review process as accessible as reasonably possible for individuals or groups who are not represented by legal counsel or who may lack experience with the quasi-judicial nature of the hearing process.
14. The Joint Review Panel shall hold the hearing in a location or locations selected by the Joint Review Panel, and will endeavour to hold at least a portion of the hearing in, or as near to as is practicable to, one or more communities that:
 - the Joint Review Panel believes may be affected by the project; or
 - are nearest to the location where the project is proposed to be carried out.
15. The Joint Review Panel shall make best efforts to complete the public hearing and close the hearing record within 45 days.

Joint Review Panel Report

16. Following the completion of the public hearing, the Joint Review Panel shall prepare and submit to the federal Minister of the Environment a report as

required in article 6.3 of the Agreement. The Panel shall provide the executive summary of the report in both official languages of Canada. The report will include:

- A summary description of the Joint Review Panel's process;
 - The rationale, conclusions, and recommendations of the Joint Review Panel relating to the environmental assessment of the project;
 - Recommended mitigation measures and follow-up programs;
 - an identification of those conclusions that relate to the environmental effects defined in section 5 of CEEA 2012; and
 - an identification of recommended mitigation measures that relate to the environmental effects defined in section 5 of CEEA 2012.
17. The Joint Review Panel shall also include within its report a summary of any comments received, including those from the public, Aboriginal groups and interested parties and the information as outlined in Part III.
 18. The Joint Review Panel shall identify in its report the mitigation measures it recommends, including as appropriate, any commitments identified by the proponent in its EIA Report, or during the Joint Review Panel review process.
 19. If the Joint Review Panel concludes that, taking into account the implementation of mitigation measures, the project is likely to cause significant adverse environmental effects, it may include in its report a summary of any information it has received on the justifiability of any such significant adverse environmental effects.
 20. Under its authority as the AER, the Joint Review Panel shall make a decision on the project application and as appropriate, shall include conclusions about the justifiability of any significant adverse effects. Although this information may be relevant for the Government of Canada in its decision making, the Joint Review Panel shall not have a mandate under these Terms of Reference to make any conclusions or recommendations with respect to the justifiability of any significant adverse environmental effects in relation to its role as a review panel under CEEA 2012.
 21. The report shall take into account and reflect the views of all Joint Review Panel Members.
 22. The Joint Review Panel may consider any requests made by Aboriginal groups to have the executive summary of the report translated into their Aboriginal languages. If the Joint Review Panel agrees with such a request, it must recommend to the Agency and the AER that such translations be provided by the Agency and the AER in a timely manner and include any conditions as to payment of the costs of translation that it considers appropriate.
 23. The Joint Review Panel will submit its report to the federal Minister of the Environment at the earliest possible date, and within the overall time limit established by the Minister of the Environment for the review.

24. Upon receiving the report submitted by the Joint Review Panel, the federal Minister of the Environment and the AER will make the report available to the public and will advise the public that the report is available.
25. In accordance with section 43(1)(f) of CEEA 2012, the Joint Review Panel may be required to clarify any of the conclusions and recommendations set out in its report with respect to the environmental assessment.

Timelines

26. The Joint Review Panel shall complete its mandate and submit its final report to the federal Minister of the Environment within 300 days from the establishment of the Joint Review Panel.
27. The time period between the issuance by the Joint Review Panel of any request for information under paragraphs 4 or 9 hereof, and the Joint Review Panel's receipt of the requested information from the proponent is not included in the timeline referred to in paragraph 26.
28. The Joint Review Panel may request clarification of its Terms of Reference by sending a letter signed by the chairperson to the President of the Agency and the AER setting out the request. Upon receiving such a request, the President is authorized to act on behalf of the federal Minister of the Environment and collaborate with the AER to provide to the Joint Review Panel such clarification. The President and the AER shall use best efforts to provide a response to the Joint Review Panel within 14 calendar days. The Joint Review Panel shall continue with the review to the extent possible while waiting for the response in order to adhere to the time periods of the original Terms of Reference. The Joint Review Panel shall notify the public of any clarifications to its Terms of Reference.
29. Subject to article 25, the Joint Review Panel may seek an amendment to its Terms of Reference by sending a letter signed by the chairperson to the federal Minister of the Environment and the AER setting out the request. As appropriate, the federal Minister of the Environment may delegate to the President of the Agency the authority to act on the federal Minister of the Environment's behalf and, in collaboration with the AER, consider and respond to any request from the Joint Review Panel, to amend the Terms of Reference. The federal Minister of the Environment, or the President in case of such delegation, and the AER shall use best efforts to ensure a response is provided to the Joint Review Panel's letter within 14 calendar days. The Joint Review Panel shall continue with the review to the extent possible while waiting for the response in order to adhere to the timelines of these Terms of Reference. Any requests for amendments under this article, as well as any amendments to these Terms of Reference, shall be posted on the Public Registry.

Appendix 2 Cost Sharing Provisions

1. Cost Sharing

1.1 The AER and the Agency will collaborate to develop a budget estimate of expenses agreeable to both parties prior to the initiation of Joint Review Panel activities.

1.2 The costs of the joint review will be apportioned between the AER and the Agency in the manner set out in articles 1.3, 1.4 and 1.5.

1.3 The AER will be solely responsible for the following costs:

- salaries and benefits of the Joint Review Panel Chairperson and the member of the Joint Review Panel not appointed in accordance with article 3.2;
- salaries and benefits of AER staff involved in the joint review; and
- travel-related expenses associated with the review incurred by Joint Review Panel Secretariat members who are AER staff.

1.4 The Agency will be solely responsible for the following costs, subject to the provisions of the Cost Recovery Regulations (SOR/2012-146):

- per diems of the Joint Review Panel member appointed in accordance with article 3.2;
- salaries and benefits of Agency staff involved in the joint review, in accordance with Part 2 of the Cost Recovery Regulations;
- travel-related expenses associated with the review incurred by Joint Review Panel Secretariat members who are Agency staff, in accordance with Part 1 of the Cost Recovery Regulations;
- all costs associated with the Joint Review Panel's legal counsel retained by the Agency for the proceeding;
- all costs associated with the federal Panel process;
- translation of records and documents from the United States of America to Canada other than translation required as outlined in article 3.3 of this Agreement, and in accordance with Part 1 of the Cost Recovery Regulations; and
- all costs associated with the public registry established pursuant to section 78(1) of CEEA 2012.

ADD: "TUS will be conducted with interested parties and Aboriginal participants at the request of the Panel with funding provided by the proponent."

1.5 The AER and the Agency agree to share equally as possible all those costs listed below, incurred as part of the joint review from the signing of this Agreement to the date the report is issued by the Joint Review Panel. For those shareable costs subject to Treasury Board Secretariat directives, the Agency can only be responsible for contributing to costs within the allowable limits. The shareable costs are as follows:

- travel-related expenses associated with the review incurred by the Joint Review Panel members;
- per diems and associated expenses of independent/non-government expert consultants, analysts and communications specialists retained by the Secretariat on behalf of the Panel;
- language translation and interpretation services and facilities related to the evidence of applicants, participants and local interveners as required by the Joint Review Panel, but not including translation service referred to in article 5.5 of this Agreement;
- printing of any reports and documents distributed by the Joint Review Panel necessary for the Joint Review Panel's work;
- the publication of notices and releases;
- photocopying, including the reproduction of documents contained in the public registry, and postage related to the joint review;
- court reporting and transcription services as required by the Joint Review Panel;
- rentals associated with the public hearing public meetings and public information office facilities and equipment;
- audio and audio-visual services at the hearing and public meetings; and
- miscellaneous reasonable expenditures relating to the joint review process, up to a maximum of five percent (5%) of the total budget for the joint review,

1.6 Shareable costs of the joint review as detailed in article 1.5 will be incurred at the sole discretion of the Joint Review Panel with due regard for economy and efficiency.

1.7 All expenses not listed above will need prior approval of both parties if they are to be equally shared.

2. Invoicing

2.1 The AER will be responsible for advancing funds for the payment of the shareable costs and will invoice the Agency for the amounts owed under this Agreement. In the event that the Agency is required to advance shareable funds directly, it will advance funds for payment and will invoice the AER as determined under this Agreement.

2.2 The invoicing will be done either at the end of each month or quarterly at the discretion of the AER. The invoice will cover all shareable costs paid by the AER.

2.3 Each invoice will be accompanied by a summary description of the shareable costs actually incurred and paid for the period covered by the invoice, in a form satisfactory to both parties and will be approved by an official acceptable to both Parties. Detailed information about incurred costs will be retained and made available to either Party upon request.

- 2.4 Subject to compliance with the above requirements, each Party will pay to the other the amount stated as being owed to it in the invoice within sixty (60) days of having received such invoice.
- 2.5 With respect to invoices covering the last period of any fiscal year (ending March 31), and the last invoice to be produced for the Joint Review Panel, each Party may review and deduct from the invoice, any incurred shareable costs that have not been previously recovered, so as to determine a net transfer of shared costs from one party to another. The payment will be made within thirty (30) days of having received such invoice. An accounting of the shared expenses incurred by the Agency will be sent with the year-end and final payments, or earlier as may be requested by the AER.

3. Audit

- 3.1 Subject to this Agreement, both parties will keep open to audit and inspection by the Agency or the AER, or their duly authorized representative, all invoices, receipts, vouchers and documents of any nature or kind whatsoever that have been relied on by either of the two parties to calculate the shared cost of conducting the public review.
- 3.2 The Party exercising its option to audit will be responsible for the cost of the audit.
- 3.3 Where an audit conducted by either Party in connection with this Agreement reveals discrepancies regarding the amount billed to the Agency, and where prompt resolution between the parties is unattainable, an independent auditor acceptable to both parties will resolve the issue.