

Gazoduq Project Integrated Review Panel Terms of Reference

DRAFT FOR CONSULTATION

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1. INTRODUCTION

On January 22nd, 2020, the Impact Assessment Agency of Canada (the Agency) determined that an impact assessment was required for Gazoduq Inc.'s proposed Gazoduq Project (the Project), in accordance with section 16 of the *Impact Assessment Act* (IAA).

Since the Project includes activities regulated under the *Canadian Energy Regulator Act* (CERA), the Minister of Environment and Climate Change (the Minister) must refer the impact assessment of the Project to a review panel. A review panel whose mandate covers both the IAA and the CERA is called an integrated review panel (the Review Panel).

The *Tailored Guidelines for the Preparation of an Impact Statement for the Gazoduq Project* (the Guidelines) identify for the proponent the minimum information requirements for the preparation of its Impact Statement. The Guidelines specify the nature, scope and extent of the information required in the Impact Statement, including a description of the Project, the baseline conditions, the potential effects, proposed measures to mitigate any adverse effects and potential impacts to the rights of Indigenous peoples. The Guidelines were subject to a comment period in early 2020, and will be released to the proponent and made publicly available on prior to the end of the Planning Phase.

In accordance with subsection 47(1) of the IAA, the Minister must establish the Terms of Reference for the Review Panel, and this must be done in consultation with the Lead Commissioner of the Canada Energy Regulator (CER). In addition to identifying the duties and mandate of the Review Panel, these Terms of Reference also set out the framework of the integrated process including the collaborative process with the Government of Quebec, identify the composition of the Review Panel, and set out the timelines for the process.

2. DESCRIPTION OF THE PROJECT

Gazoduq Inc., the proponent, proposes to construct and operate a natural gas pipeline approximately 780 kilometres long between northeastern Ontario and Saguenay, Quebec. This proposed project would connect TC Energy Limited's existing main natural gas transmission system near Ramore, Ontario to the proposed Énergie Saguenay natural gas liquefaction facility by GNL Quebec in Saguenay, Quebec. The Project would also include three compressor stations, one metering station, approximately 25 block valves and a dedicated control centre. The components of the project to be considered in the impact assessment are identified in the Guidelines.

3. SCOPE OF ASSESSMENT BY THE REVIEW PANEL

- 3.1. In conducting the impact assessment, the Review Panel will include consideration of the factors listed in subsection 22(1) of the IAA:
 - a. the changes to the environment or to health, social or economic conditions and the positive and negative consequences of these changes that are likely to be caused by the carrying out of the Project, including:
 - i. the effects of malfunctions or accidents that may occur in connection with the Project,
 - ii. any cumulative effects that are likely to result from the Project in combination with other physical activities that have been or will be carried out, and
 - iii. the result of any interaction between those effects;
 - b. mitigation measures that are technically and economically feasible and that would mitigate any adverse effects of the Project;
 - c. the impact that the Project may have on any Indigenous groups and any adverse impact that the Project may have on the rights of the Indigenous

peoples¹ of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982*;

- d. the purpose of and need for the Project;
 - e. alternative means of carrying out the Project that are technically and economically feasible, including through the use of best available technologies, and the effects of those means;
 - f. any alternatives to the Project that are technically and economically feasible and are directly related to the Project;
 - g. Indigenous knowledge provided with respect to the Project;
 - h. the extent to which the Project contributes to sustainability;
 - i. the extent to which the effects of the Project hinder or contribute to the Government of Canada's ability to meet its environmental obligations and its commitments in respect of climate change;
 - j. any change to the Project that may be caused by the environment;
 - k. the requirements of the follow-up program in respect of the Project;
 - l. considerations related to Indigenous cultures raised with respect to the Project;
 - m. community knowledge provided with respect to the Project;
 - n. comments received from the public;
 - o. comments from a jurisdiction that are received in the course of consultations conducted under section 21 of the IAA;
 - p. any relevant assessment referred to in section 92, 93 or 95 of the IAA;
 - q. any assessment of the effects of the Project that is conducted by or on behalf of an Indigenous governing body and that is provided with respect to the Project;
 - r. any study or plan that is conducted or prepared by a jurisdiction — or an Indigenous governing body not referred to in paragraph (f) or (g) of the definition *jurisdiction* in section 2 of the IAA — that is in respect of a region related to the Project and that has been provided with respect to the Project;
 - s. the intersection of sex and gender with other identity factors.
- 3.2. In conducting its assessment under the CERA, the Review Panel must take into account – in light of, among other things, any Indigenous knowledge that has been provided to the Review Panel and scientific information and data – all considerations that appear to it to be relevant and directly related to the pipeline, including the factors listed in subsection 183(2) of the CERA, some of which overlap with factors to be considered under IAA:
- a. the environmental effects, including any cumulative environmental effects;
 - b. the safety and security of persons and the protection of property and the environment;
 - c. the health, social and economic effects, including with respect to the intersection of sex and gender with other identity factors;
 - d. the interests and concerns of the Indigenous peoples of Canada, including with respect to their current use of lands and resources for traditional purposes;
 - e. the effects on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982*;
 - f. the availability of oil, gas or any other commodity to the pipeline;

¹ Indigenous peoples of Canada (Indigenous peoples) has the meaning assigned by the definition of Aboriginal peoples of Canada in subsection 35(2) of the *Constitution Act, 1982*.

- g. the existence of actual or potential markets;
 - h. the economic feasibility of the pipeline;
 - i. the financial resources, financial responsibility and financial structure of the applicant, the methods of financing the pipeline and the extent to which Canadians will have an opportunity to participate in the financing, engineering and construction of the pipeline;
 - j. the extent to which the effects of the pipeline hinder or contribute to the Government of Canada's ability to meet its environmental obligations and its commitments in respect of climate change;
 - k. any relevant assessment referred to in sections 92, 93 or 95 of the IAA; and
 - l. any public interest that the Review Panel considers may be affected by the issuance of the certificate or the dismissal of the application.
- 3.3. The scope of the factors set out in clauses 3.1 and 3.2 to be considered in the impact assessment of the Project are outlined in the Guidelines, to be issued by the Agency, in consultation with the CER, at the end of the Planning Phase.

4. MANDATE OF THE REVIEW PANEL

- 4.1. The Review Panel will conduct the impact assessment of the Project in a manner consistent with the requirements of the IAA, the CERA and these Terms of Reference.
- 4.2. The Review Panel will ensure that an impact assessment takes into account scientific information, Indigenous knowledge, and community knowledge.
- 4.3. In accordance with subsection 51(1) of the IAA, the Review Panel must:
- a. conduct an impact assessment of the Project;
 - b. ensure that the information that it uses when conducting the impact assessment is made available to the public;
 - c. hold hearings in a manner that offers the public an opportunity to participate meaningfully, in the manner that the Review Panel considers appropriate and within the time period that it specifies, in the impact assessment;
 - d. prepare a report with respect to the impact assessment that:
 - i. sets out the effects that, in the opinion of the Review Panel, are likely to be caused by the carrying out of the Project,
 - ii. indicates which of the effects referred to in subparagraph (i) are adverse effects within federal jurisdiction and which are adverse direct or incidental effects, and specifies the extent to which those effects are significant,
 - iii. subject to section 119 of the IAA, sets out how the Review Panel, in determining the effects that are likely to be caused by the carrying out of the Project, took into account and used any Indigenous knowledge provided with respect to the Project,
 - iv. sets out a summary of any comments received from the public, and
 - v. sets out the Review Panel's rationale, conclusions and recommendations, including conclusions and recommendations with respect to any mitigation measures and follow-up program;
 - e. submit the report with respect to the impact assessment to the Minister; and
 - f. on the Minister's request, clarify any of the conclusions and recommendations set out in its report with respect to the impact assessment.
- 4.4. Pursuant to section 183 of the CERA and subsection 51(3) of the IAA, the Review Panel must include in its report:
- a. its recommendation as to whether or not a certificate under section 183 of the CERA should be issued for all or any part of the pipeline, taking into

account whether the pipeline is and will be required by the present and future public convenience and necessity, and the reasons for that recommendation; and

- b. regardless of the recommendations that the Review Panel makes, all the conditions that it considers necessary or in the public interest to which the certificate should be subject if the Governor in Council were to direct that the certificate be issued.
- 4.5. Further, the Review Panel must, in accordance with these Terms of Reference, include in its report the conclusions or recommendations necessary for an order, permit, licence or authorization to be issued, a leave or an exemption to be granted or a direction or approval to be given under the CERA in relation to the Project, as applied for by the proponent in its Impact Statement.
- 4.6. The Review Panel will use the information collected during the impact assessment process available on the Canadian Impact Assessment Registry (the Public Registry) or submitted in confidence as per the provisions of IAA, including any information collected prior to its appointment, to conduct its assessment.

Impacts on the Rights of Indigenous Peoples in Canada

- 4.7. While the Crown retains the duty to consult, as per the scope of the assessment, the Review Panel shall assess impacts that the Project may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act*, 1982 (hereafter referred to as Aboriginal or Treaty rights), to the extent the Review Panel receives such information as part of the impact assessment process.
- 4.8. The Review Panel will consider the impacts that the Project may have on Aboriginal or Treaty rights as asserted by Indigenous communities and Nations during the impact assessment process.
- 4.9. The Review Panel shall accept as part of the impact assessment:
- a. information presented by Indigenous communities and Nations regarding the location, extent and exercise of Aboriginal or Treaty rights that may be affected by the Project;
 - b. information presented by any participants in the impact assessment process that relates to potential adverse impacts of the Project on Aboriginal or Treaty rights and related interests. Information received by the Review Panel may also be relevant to its assessment of the effects of the Project, including those environmental, social and economic effects that might adversely impact Aboriginal or Treaty rights. Relevant information could include but is not limited to:
 - i. impacts on uses of lands and resources by Indigenous communities and Nations,
 - ii. impacts on hunting, riverine and terrestrial harvesting including fishing, gathering, and other traditional uses of land (e.g. use of sacred sites) in addition to related effects on lifestyle, culture, health, socio-economic conditions and quality of life of Indigenous communities and Nations,
 - iii. alterations to access into areas used by Indigenous communities and Nations for traditional uses, and
 - iv. the ability of future generations to pursue traditional activities or lifestyle;
 - c. information about the potential seriousness of potential impacts of the Project on the exercise of Aboriginal or Treaty rights, and information on approaches to assessing the seriousness of the impacts; and
 - d. information presented by participants in the impact assessment process concerning measures proposed to mitigate and/or accommodate and/or avoid any identified adverse impacts on Aboriginal or Treaty rights and interests.

- 4.10. The Review Panel will ensure that Indigenous communities and Nations are provided an opportunity to meaningfully participate in the impact assessment process, including, but not limited to the following:
- a. where possible and, at the discretion of the Review Panel, holding public hearing sessions in the communities of potentially affected Indigenous communities and Nations;
 - b. as requested, providing interpretation services for Indigenous languages during the public hearing, where practical and available;
 - c. considering the timing of traditional activities and cultural approaches of potentially affected Indigenous communities and Nations in scheduling and carrying out the public hearing;
 - d. as requested, translating the executive summary of its report into relevant Indigenous languages, assuming such services are available;
 - e. subject to the provisions of section 119 of the IAA, accepting Indigenous knowledge provided in confidence;
 - f. inviting Indigenous communities and Nations to provide any information that they may have to the Review Panel as early in the process as possible, and;
 - g. facilitating the presentation of information in different formats (written, oral or other formats) depending on the Indigenous communities and Nations' preferences and the direction of the Review Panel.
- 4.11. In reaching its conclusions and recommendations on the potential impacts of the Project on Aboriginal and Treaty rights and related interests, the Review Panel is encouraged to refer to the Interim Agency's Guidance: [Assessment of Potential Impacts on the Rights of Indigenous Peoples](#).
- 4.12. The Review Panel will not make any conclusions or recommendations as to:
- a. the validity of Aboriginal or Treaty rights asserted by an Indigenous community or Nation or the strength of such claims;
 - b. the scope of the Crown's duty to consult an Indigenous community or Nation;
 - c. whether the Crown has met its respective duty to consult or accommodate in respect of rights recognized and affirmed by section 35 of the *Constitution Act, 1982*;
 - d. whether the Project would be an infringement of Aboriginal or Treaty rights; and
 - e. any matter of Treaty interpretation (historic or modern).

Cooperative Process

- 4.13. The Government of Canada and the Government of Quebec have negotiated the *Canada-Quebec Cooperation Agreement on the coordination of the environmental and impact assessment processes for the Gazoduq Project* (the Quebec Agreement) (Appendix 1). The Quebec Agreement establishes the terms of the cooperative process for the assessment of the Project including timelines for different phases of the assessment.
- 4.14. Through these Terms of Reference, the Review Panel is mandated to work collaboratively with the Bureau d'audiences publiques sur l'environnement (BAPE) to coordinate joint public participation opportunities as per article 7.4 of the Quebec Agreement.

5. IMPACT ASSESSMENT PROCESS

- 5.1. The Terms of Reference focus on two phases of the impact assessment process, the Impact Statement Phase and the Impact Assessment Phase:
- a. The Impact Statement Phase includes the period between the issuance of the final Guidelines to the proponent and the notice posted on the Public Registry pursuant to subsection 19(4) of the IAA that the Agency is satisfied that the Impact Statement contains the required information or studies.
 - b. The Impact Assessment Phase includes the period of time from the notice posted on the Public Registry pursuant to subsection 19(4) of the IAA until the posting of the Agency's recommendations to assist the Minister in establishing conditions pursuant to section 55.1 of the IAA.

Impact Statement Phase

Preparation of the Impact Statement

- 5.2. The proponent will prepare an Impact Statement and submit it to the Agency. The Impact Statement will contain, to the satisfaction of the Agency, all the information or studies set out in the Guideline issued by the Agency at the end of the Planning Phase.
- 5.3. The Agency and the CER will work with the proponent during the preparation of the Impact Statement to provide clarity on the requirements of the Guidelines and to resolve identified issues in advance of submitting the Impact Statement. The Agency will post any information relevant to the review of the Impact Statement, including meeting notes, on the Public Registry.
- 5.4. As per subsection 19(1) of the IAA, the proponent has up to three years after the day on which the notice of commencement of the impact assessment is posted on the Public Registry to prepare and submit a satisfactory Impact Statement to the Agency.
- 5.5. If more time is required to prepare a satisfactory Impact Statement, the proponent may request an extension of this time limit to the Agency in writing.

Review Panel Appointment

- 5.6. The Review Panel will be established following the receipt of the Impact Statement from the proponent. Pursuant to subsection 47(2) of the IAA, the Agency will appoint one Chairperson and at least two other members. At least one of the members must be a commissioner under the CERA and part of the roster established for that purpose under paragraph 50(1)(c) of the IAA. The members appointed from that roster must not constitute a majority of the members of the Review Panel.
- 5.7. The persons appointed to the Review Panel must be unbiased and free from any conflict of interest relative to the Project and have knowledge or experience relevant to the Project's anticipated effects or have knowledge of the interests and concerns of the Indigenous peoples of Canada that are relevant to the assessment.
- 5.8. The Review Panel's assessment of the sufficiency of the Impact Statement as generally described in clauses 5.21 to 5.27 below is conducted independently from the review of the Impact Statement by the Agency.

Government Review of the Impact Statement

- 5.9. Upon receipt of the Impact Statement, the Agency will make it available on the Public Registry.
- 5.10. The Agency will undertake an initial review of the Impact Statement to determine whether any major deficiencies would prevent the Review Panel and participants from starting their review of the Impact Statement. In doing so, the Agency may consult with federal and provincial authorities as well as

Indigenous communities and Nations. This initial review will be completed within 30 days.

- 5.11. If the Agency identifies deficiencies, it will issue a notice of deficiency to the proponent and provide additional direction on how to address those deficiencies.
- 5.12. Upon receipt of the proponent's response(s), the Agency will determine whether the proponent addressed the major deficiencies adequately and whether the Impact Statement is ready to be reviewed by the Review Panel and participants. The Agency may consult with other federal authorities in making this determination. This review of the proponent's response(s) will be completed within 15 days.
- 5.13. The Agency will notify the Review Panel in writing that the Impact Statement is ready for the Review Panel's independent review within 60 days from receiving the Impact Statement, excluding, as per the Quebec Agreement, any period taken by the proponent to provide additional information or studies.
- 5.14. The Agency will continue its review of the Impact Statement to determine whether the Impact Statement adequately responds to all the required elements outlined in the Guidelines. This review will continue concurrently with the review of the Impact Statement by the Review Panel, described below in clauses 5.21 to 5.27. The Agency's review of the Impact Statement will not influence the Review Panel's sufficiency review process.
- 5.15. The Agency may issue one or more additional notices of deficiency to the proponent as necessary.
- 5.16. As per article 7.2 of the Quebec Agreement, during its review of the Impact Statement, the Agency will cooperate with the Quebec ministère de l'Environnement et de la Lutte contre les changements climatiques (MELCC). The Agency and the MELCC will, to the extent possible, exchange information and coordinate their communications with the proponent related to this review.
- 5.17. Taking into consideration the notice of sufficiency received from the Panel (per clause 5.27 below), the advice of federal and provincial authorities and Indigenous communities or Nations or others, as relevant and appropriate, the Agency will determine whether all the required information and studies have been received from the proponent in accordance with the Guidelines.
- 5.18. As per article 7.3 of the Quebec Agreement, the review of the Impact Statement by the Agency, in collaboration with federal authorities, the MELCC and the Review Panel, will not exceed 180 days following the receipt of the Impact Assessment, excluding any period the proponent takes to respond to questions or provide additional information or surveys requested.
- 5.19. Pursuant to subsection 19(4) of the IAA, a notice will be posted on the Public Registry when the Agency is satisfied that the proponent has provided all of the requested information or studies.
- 5.20. The Agency will post on the Public Registry all relevant correspondence and information received during the review of the Impact Statement, including any deficiency notice(s), response(s) from the proponent, advice received from federal and provincial authorities, and correspondence from the Review Panel and other participants.

Review Panel Sufficiency Review

- 5.21. Concurrent to the review being conducted by the Agency described in clauses 5.10 to 5.12 above, the Review Panel will review the Impact Statement to determine whether, as per subsection 52(2) of the IAA, the information available in relation to the assessment of the Project is sufficient for the purpose of conducting the impact assessment and to proceed to the public hearing.

- 5.22. The Review Panel's sufficiency review must be completed within 170 days from the receipt of the Impact Statement, excluding, as per the Quebec Agreement, any period taken by the proponent to provide additional information or studies.
- 5.23. Following the notice referred to in clause 5.13, the Review Panel will initiate a public comment period of no less than 60 days. The Review Panel will invite Indigenous communities and Nations, the public, government authorities, and other participants to submit their views on whether the information available in relation to the impact assessment of the Project is sufficient for the purpose of conducting the impact assessment and to proceed to the public hearing. Any comments received will be posted on the Public Registry unless provided in confidence as per the provisions of the IAA.
- 5.24. If the Review Panel determines that there is not sufficient information to proceed to a public hearing, it may require additional information to be provided or studies to be undertaken by the proponent or other participants. The Review Panel will publish any such requirements on the Public Registry.
- 5.25. Upon its submission to the Review Panel, the additional information provided or studies submitted by the proponent or other participants will be made available on the Public Registry. The Review Panel may commence, at its discretion, a minimum 15-day public comment period on the additional information provided by the proponent or other participants.
- 5.26. The procedures described in clauses 5.24 and 5.25 will apply until such time as the Review Panel determines it has sufficient information to proceed to a public hearing.
- 5.27. Taking into consideration the record of the review, including any comments received and its own review of the Impact Statement, the Review Panel will determine if it has sufficient information to proceed to the public hearing and will provide a notice of sufficiency to the Agency.

Impact Assessment Phase

- 5.28. The Impact Assessment Phase will commence upon the posting of the notice of the Agency's determination that the Impact Statement contains the required information and studies under subsection 19(4) of the IAA.
- 5.29. The Review Panel must submit its report with respect to the impact assessment of the Project to the Minister and the Minister of Natural Resources within 345 days of the Agency's notice under subsection 19(4) of the IAA.
- 5.30. The Agency may suspend this time limit until any activity that is prescribed in the [Information and Management of Time Limits Regulations](#) is completed. A notice that sets out the reasons for doing so must be posted on the Public Registry.

Public Information Period

- 5.31. As per article 7.4 and article 2 of Schedule 1 of the Quebec Agreement, the Review Panel will jointly hold with the BAPE a public information period of at least 30 days before the start of the public hearing sessions.
- 5.32. As per the Quebec Agreement, the purpose of this public information period will be to explain to the participants how the joint public hearing sessions with the BAPE will proceed, how to participate and the associated time frames.
- 5.33. As per the Quebec Agreement, for the purposes of the public information period, the BAPE and the Review Panel will jointly develop and make available a participation guide for the public hearing sessions.
- 5.34. As per the Quebec Agreement, the Review Panel and the BAPE will provide 30 days notice of the start of the public information period.

Public Hearing

- 5.35. The Review Panel will release a list of potential conditions that could be included in any certificate issued under the CERA and in a Decision Statement under IAA, should the Project be allowed to proceed. Participants and the proponent will be given the opportunity to provide comments on whether the potential conditions are sufficient to address identified effects impacts or issues and concerns arising from the Project.
- 5.36. The Review Panel shall hold public hearing sessions in both Ontario and Quebec. As per article 7.6 of the Quebec Agreement, the hearing sessions held by the Review Panel in Quebec will be held jointly with the BAPE.
- 5.37. As per articles 7.7 and 7.8 of the Quebec Agreement, the public hearing sessions held jointly by the Review Panel and the BAPE in Quebec will follow the BAPE's rules of procedure (Chapter Q-2, r. 45.1) with the necessary adaptations described in Schedule 1 of the Quebec Agreement.
- 5.38. The Review Panel, where practicable, will hold the public hearing in the communities in closest proximity to the Project, including Indigenous communities, to provide convenient access for potentially affected Indigenous communities and Nations and local communities or will arrange for remote participation.
- 5.39. The Review Panel, to the extent possible, will take into account the timing of traditional and cultural activities in local Indigenous communities and Nations when setting the time and location of the public hearing session(s).
- 5.40. As per section 54 of the IAA, the Review Panel must, to the extent that is consistent with the general application of the rules of procedural fairness and natural justice, emphasize flexibility and informality in the conduct of hearings and in particular must allow, if appropriate, the admission of evidence that would not normally be admissible under the rules of evidence.

Impact Assessment Report

- 5.41. Following the close of the record of the review, the Review Panel will prepare and submit to the Minister and the Minister of Natural Resources a report as required in clauses 4.3 and 4.4.
- 5.42. In addition to the elements provided in paragraph 51(1)(d) of the IAA, the Impact Assessment Report will include the Review Panel's recommendation as to whether or not a certificate under section 183 of the CERA should be issued for all or any part of the pipeline, taking into account whether the pipeline is and will be required by the present and future public convenience and necessity and the reasons for that recommendation.
- 5.43. The report will reflect the views of each member of the Review Panel.
- 5.44. The Review Panel will submit with its report an executive summary in both official languages of Canada.
- 5.45. The Review Panel must consider any requests made by Indigenous communities and Nations to have the executive summary of the report translated into their Indigenous languages. If the Review Panel agrees with such a request, the Agency must endeavor to provide any such translations in a timely manner.
- 5.46. Upon receiving the report submitted by the Review Panel, the Minister, pursuant to section 55 of the IAA, will make the report available to the public and will notify the public that the report is available.
- 5.47. In accordance with paragraph 51(1)(f) of the IAA, the Review Panel may be required to clarify any of the conclusions and recommendations set out in its report with respect to the impact assessment.

6. PRINCIPLES OF PUBLIC ENGAGEMENT AND PARTICIPATION

- 6.1. Pursuant to paragraph 51(1)(c) of the IAA, the Review Panel must hold hearings in a manner that offers the public an opportunity to participate

meaningfully, in the manner the Review Panel consider appropriate. Furthermore, section 54 of the IAA provides that the Review Panel must emphasize flexibility and informality in the conduct of hearings to the extent that it is consistent with the general application of the rules of procedural fairness and natural justice. Hence, the Review Panel will be responsible for designing its approach to public engagement and participation in compliance with the IAA but also in taking into consideration the principles regarding meaningful engagement included in the Public Participation Plan developed by the Agency for the Gazoduq Project, as well as the requirements of the Quebec Agreement.

7. PRINCIPLES OF INDIGENOUS ENGAGEMENT AND PARTICIPATION

- 7.1. The Review Panel will be responsible for designing its approach to Indigenous engagement and participation taking into consideration the principles regarding meaningful engagement included in the Indigenous Engagement and Partnership Plan developed by the Agency, in collaboration with Indigenous communities and Nations, as well as requirements of the Quebec Agreement.
- 7.2. The Review Panel will create a process that allows it to hear Indigenous knowledge. The Review Panel will recognize that Indigenous knowledge is holistic and, in an impact assessment, it can provide information and perspectives for understanding the biophysical environment, as well as social, cultural, economic, health, Indigenous governance and resource use.

8. SUPPORTING THE REVIEW PANEL

- 8.1. The Agency and the CER will establish a Secretariat to support the Review Panel in its duties. The Secretariat will be established upon the establishment of the Review Panel
- 8.2. The Secretariat will be composed of appropriate staff from both the CER and the Agency who will be assigned to provide administrative, technical and procedural support to the Review Panel.
- 8.3. The Secretariat will support the Review Panel and will be structured to allow the Review Panel to conduct the impact assessment in an efficient and cost-effective manner. Members of the Secretariat will maintain the deliberative privilege of the Review Panel.

9. SPECIALIST ADVISORS TO THE REVIEW PANEL

- 9.1. As per section 23 of the IAA, the Review Panel may request specialist or expert information or knowledge with respect to the Project from federal authorities in possession of such information or knowledge. Any such information received from federal authorities will be provided on the Public Registry in accordance with paragraphs 51(1)(b) and 105(3)(d) of the IAA.
- 9.2. The Review Panel may also retain the services of independent non-government experts, including Indigenous knowledge holders, to provide advice on certain subjects within these Terms of Reference. Any such information received will be posted to the Public Registry.
- 9.3. The names of the experts retained by the Review Panel and any documents obtained or created by the experts and that are submitted to the Review Panel will be placed on the Public Registry in accordance with paragraph 51(1)(b) of the IAA. For greater certainty, this will exclude any information subject to solicitor-client privilege where the expert is the legal counsel retained by the Review Panel.
- 9.4. The Review Panel may require any expert referred in clauses 9.1 and 9.2 to appear before the Review Panel at the public hearing and answer questions in regards to the documents they have submitted to the Review Panel that were made public in accordance with paragraph 51(1)(b) of the IAA.

- 9.5. The Review Panel may also request an “External Technical Review” by independent scientific and technical experts or Indigenous knowledge holders. The review could examine specific issues or questions related to the Project, including elements such as the adequacy of the procedures and methods used, the reasonableness of the conclusions, and the level of risk and/or the degree of uncertainty. The Review Panel is encouraged to review the Agency’s policy on [“External Technical Reviews”](#) for more information.

10. CLARIFYING OR AMENDING THE TERMS OF REFERENCE

- 10.1. The 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 Lead Commissioner of the CER setting out the request. The President of the Agency is authorized to act on behalf of the Minister and collaborate with the CER to provide to the Review Panel such clarification. The President of the Agency and the Lead Commissioner of the CER will use best efforts to provide a response to the Review Panel within 14 calendar days. The Review Panel will continue with the review to the extent possible while waiting for the response in order to adhere to the time limits established for the impact assessment. The Review Panel will notify the public of any demand for clarifications to its Terms of Reference. Any requests for clarification under this clause, as well as any response, will be posted on the Public Registry.
- 10.2. The Review Panel may seek an amendment to its Terms of Reference by sending a letter signed by the Chairperson to the Minister and the Lead Commissioner of the CER setting out the request. As appropriate, the Minister may delegate to the President of the Agency the authority to act on the Minister’s behalf and, in collaboration with the CER, consider and respond to any request from the Review Panel to amend the Terms of Reference. The Minister or the President, in case of such delegation, and the Lead Commissioner of the CER will use best efforts to ensure a response is provided to the Review Panel’s letter within 30 calendar days. The Review Panel will continue with the impact assessment to the extent possible while waiting for the response in order to adhere to the time limits for the impact assessment. Any requests for amendments under this clause, as well as any amendments to these Terms of Reference, will be posted on the Public Registry.

11. RECORD OF THE IMPACT ASSESSMENT

- 11.1. The Public Registry shall be maintained as the record of the review and be maintained in a manner that provides for convenient public access and that complies with sections 104 and 105 of the IAA.
- 11.2. The Agency will be responsible for maintaining the Public Registry prior to the establishment of the Review Panel and after the submission of the Review Panel’s report.
- 11.3. The Review Panel will be responsible for maintaining the Public Registry from the time of its establishment until the submission of its report.
- 11.4. Subject to subsection 105(3) of the IAA, the Public Registry will include all records produced, collected or submitted relating to the impact assessment of the Project.
- 11.5. As per article 8 of the schedule of the Quebec Agreement, all documents filed in the context of the public hearing will be accessible simultaneously by the BAPE and the Review Panel.

**APPENDIX 1: CANADA-QUEBEC COOPERATION AGREEMENT ON THE
COORDINATION OF THE ENVIRONMENTAL AND IMPACT ASSESSMENT
PROCESSES FOR THE GAZODUQ PROJECT**

(Draft for Public Consultation – May 2020)

APPENDIX 1 – CANADA-QUEBEC COOPERATION AGREEMENT

CANADA-QUÉBEC COOPERATION AGREEMENT ON THE COORDINATION OF THE ENVIRONMENTAL AND IMPACT ASSESSMENT PROCESSES FOR THE GAZODUQ PROJECT

BETWEEN

THE GOVERNMENT OF CANADA, represented by the Minister of the Environment and Climate Change,

hereafter referred to as "Canada",

AND

THE GOVERNMENT OF QUEBEC, represented by the Minister of the Environment and the Fight Against Climate Change and the Minister Responsible for Canadian Relations and the Canadian Francophonie,

hereafter referred to as "Québec",

Hereinafter referred to individually as a "Party" and collectively as the "Parties".

WHEREAS both Parties have environmental and impact assessment responsibilities and shall determine how to carry out these responsibilities for the purposes of applying their respective legislation;

WHEREAS the Parties concluded in 2004 and renewed in 2010 the Canada-Quebec Agreement on Environmental Assessment Cooperation, which was rendered null and void by the Parties' legislative amendments;

WHEREAS the *Impact Assessment Act* provides, in section 21, that the Impact Assessment Agency of Canada or, if the Federal Minister of the Environment and Climate Change has referred the impact assessment of the designated project to a review panel, he or she is required to offer to consult and cooperate with the government of a province with respect to the impact assessment of the project;

WHEREAS the Minister of Environment and Climate Change may, pursuant to paragraphs 114(1)(c) and (f) of the *Impact Assessment Act*, enter into agreements with the government of a province;

WHEREAS the Quebec *Environment Quality Act* provides, in section 31.8.1, that where a project is subject to the environmental impact assessment and review process provided for in that Act is also subject to an environmental assessment process prescribed under an Act of a legislative authority other than the Parliament of Quebec, the Minister of the Environment and the Fight Against Climate Change may enter into an agreement with any relevant authority to coordinate

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the environmental assessment processes, including through the establishment of a unified process;

WHEREAS the Gazoduq Project, initiated by Gazoduq Inc. is currently undergoing an integrated impact assessment under the *Impact Assessment Act*;

WHEREAS the Project is also subject to an environmental impact assessment and review process under the Quebec *Environment Quality Act*;

WHEREAS the Minister of Environment and Climate Change is required, under section 43 of the *Impact Assessment Act*, to refer the impact assessment of the Gazoduq Project under the *Impact Assessment Act* to a review panel;

WHEREAS the Panel is required, pursuant to subsection 51(3) of the *Impact Assessment Act*, to include in its report the conclusions and recommendations necessary for the issuance of certificates, permits, licences, orders, authorizations, approvals or exemptions under the *Canadian Energy Regulator Act* with respect to the Gazoduq Project;

WHEREAS the Impact Assessment Agency of Canada and the Canada Energy Regulator signed a Memorandum of Understanding for integrated impact assessments under the *Impact Assessment Act* in which an administrative framework was put in place to facilitate, among other things, the coordination of their activities and the communication of information in accordance with the legal requirements of the *Impact Assessment Act* and the *Canadian Energy Regulator Act*;

WHEREAS the Parties wish to coordinate the environmental and impact assessment processes with respect to the Gazoduq Project and to work together to reduce, to the extent possible, administrative delays, while ensuring compliance to the jurisdictions and laws and regulations of each Party, as well as the protection of the environment, and to ensure that the public has the opportunity to participate in a meaningful way in these procedures;

WHEREAS the Bureau d'audiences publiques sur l'environnement du Québec and the Impact Assessment Agency of Canada were consulted on the rules of procedure to be applied and adapted in the context of the coordination of the environmental and impact assessment processes for the Gazoduq Project, as well as on the sharing of costs and administrative and technical support.

WHEREAS following this consultation, the Bureau d'audiences publiques sur l'environnement du Québec adapted its rules of procedure as set out in Schedule I of this Agreement;

WHEREAS the Parties agree that the rules of procedure of the Bureau d'audiences publiques sur l'environnement du Québec shall apply with the adaptations set out in Schedule I of this Agreement;

WHEREAS the Parties agree that it is appropriate to specify in a cooperation agreement the terms and conditions for the coordination of the environmental assessment and impact assessment processes for the Gazoduq Project.

THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS

For the purposes of this Agreement :

Agency: Impact Assessment Agency of Canada

BAPE: Bureau d'audiences publiques sur l'environnement du Québec established under section 6.1 of the Quebec *Environment Quality Act*.

BAPE Panel: Panel established by the president of the Bureau d'audiences publiques sur l'environnement pursuant to section 4 of the Rules of Procedure of the Bureau d'audiences publiques sur l'environnement (RLRQ, chapter Q-2, r. 45.1).

Federal Review Panel: A federal review panel established under subsection 47(1) of the *Impact Assessment Act*.

Agreement: This Canada-Quebec Cooperation Agreement on the Coordination of the Environmental Assessment and Impact Assessment Processes for the Gazoduq Project.

MELCC: Ministère de l'Environnement et de la Lutte contre les changements climatiques

IAC: *Impact Assessment Act* (L.C. 2019, ch. 28, art. 1), adopted by Canada.

EQA: Quebec *Environmental Quality Act* (RLRQ, chapter Q-2), adopted by Quebec.

Environmental Impact Assessment Process: the assessment of the environmental effects and impacts of a project conducted in accordance with the *Impact Assessment Act* or the environmental impact assessment and review process provided for in sections 31.1 et seq. and according to the Quebec *Environment Quality Act*.

Project: the Gazoduq Project, initiated by Gazoduq inc.

2. PURPOSE OF THE AGREEMENT

The purpose of this Agreement is to establish the terms and conditions for cooperation and coordination of the Parties' environmental assessment and impact assessment processes for the Project, while ensuring compliance to each Party's jurisdiction, laws and regulations, environmental protection and public participation.

3. INTERPRETATION

- 3.1 Under this Agreement, neither Party waives its obligations, powers, jurisdiction, rights, privileges, prerogatives and immunities.
- 3.2 Nothing in this Agreement, or any actions or practices arising therefrom, modifies or may be construed to diminish or reduce the obligations, powers, jurisdiction, rights, privileges, attributions, appeals or claims of the Governments of Canada and Quebec.

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- 3.3 In the event of any ambiguity, the Agreement shall be interpreted in accordance with the IAA and the EQA.
- 3.4 The Agreement does not in any way affect the independence and autonomy of the BAPE Panel and the Federal Review Panel in carrying out the mandates entrusted to them.

4. SCOPE OF THE AGREEMENT

- 4.1 This Agreement applies only to the environmental and impact assessment processes under the IAA and the EQA for the Project.

5. COOPERATION PRINCIPLES

The Parties agree to coordinate their environmental and impact assessment processes according to the following principles:

- 5.1 The Parties recognize the importance of working together to establish predictable, efficient and transparent processes for the environmental and impact assessment of the Project and to facilitate public consultation.
- 5.2 The Parties make every attempt to meet the timelines set out in the Agreement.
- 5.3 Each Party retains its prerogative to communicate directly with Gazoduq Inc. but undertakes to keep the other Party informed of such communications, particularly with a view to optimizing exchanges with the latter while protecting the independence of the Federal Review Panel and the BAPE Panel.
- 5.4 The Parties acknowledge the BAPE's public participation expertise.
- 5.5 The Parties recognize the importance of opportunities for meaningful public participation in the environmental and impact assessment processes.
- 5.6 The environmental and impact assessment processes will also be coordinated with a view to sharing information between the Parties.

6. MANAGEMENT OF THE AGREEMENT

- 6.1 The management of the Agreement is entrusted to an Agreement Management Committee.
- 6.2 Each Party shall appoint a co-chairperson to sit on the Management Committee.
- 6.3 The Management Committee will assume the following duties:
- a) Implement and administer jointly the Agreement;
 - b) Ensure that the timelines agreed to in the Agreement are met;
 - c) Facilitate consultation, communication and cooperation between the Parties.
- 6.4 The Director General of Environmental and Strategic Assessment of the MELCC shall be the Quebec co-chair. The Agency Director of Review Panels shall be the Canada co-chair. Each Party will inform the other Party of any change in its designated representative.

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- 6.5 Each co-chair may be accompanied by the appropriate representatives of his or her respective Party to ensure the proper management of the Agreement.
- 6.6 The Management Committee shall meet regularly, at the request of one or the other co-chair, throughout the application of the environmental and impact assessment processes to the project.

7. COORDINATION OF THE ENVIRONMENTAL AND IMPACT ASSESSMENT PROCESSES

- 7.1 The Parties, within their respective jurisdictions, agree to coordinate their environmental assessment and impact assessment processes in accordance with the following provisions.

Admissibility analysis and impact assessment phase

- 7.2 At the stage that consists mainly in determining the conformity of the impact statement with the guidelines issued by the Agency, the Directive of the Quebec Minister of the Environment and the Fight Against Climate Change (the Directive) and the document on comments and issues raised by the public on the Directive, the Parties agree to cooperate with a view to exchanging information, coordinating their communications with Gazoduq Inc. on this subject and, where possible, harmonizing their requests.
- 7.3 From the date of the filing of the Impact Statement by Gazoduq Inc., the notice regarding the admissibility (by MELCC) of the Impact Statement and the notice (by the Agency) pursuant to subsection 19(4) of the IAA shall be sent and posted by the Parties within a period of no more than 180 days. This time limit excludes any period during which the MELCC, the Agency or the Federal Review Panel is waiting for additional information requested from Gazoduq Inc.

Public Participation

- 7.4 Québec and Canada agree to mandate the BAPE and the Federal Review Panel, respectively, to hold jointly the information period prior to the public hearing. The purpose of this information period is to explain to the public how the public hearing sessions that will be held jointly will work, the conditions for participation and the timelines.
- 7.5 The joint holding of the information period prior to the public hearing means that the sessions will be held simultaneously, in the same locations and at the same places. The BAPE Panel and the Federal Review Panel remain independent, autonomous and distinct.
- 7.6 Quebec and Canada agree to mandate the BAPE and the Federal Review Panel, respectively, to jointly hold public hearing sessions to be held in Quebec in relation to the Project.
- 7.7 Joint public hearing sessions means that they will be held simultaneously, in the same locations and at the same placss. The BAPE Panel and the Federal Review Panel remain independent, autonomous and distinct. The Parties acknowledge that the Federal Review Panel may implement measures to facilitate the participation of the Ontario public in sessions held in Quebec.

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- 7.8 The BAPE's rules of procedure (Chapter Q-2, r. 45.1) shall apply with the necessary adaptations for the public hearing sessions held in Quebec and conducted jointly by the BAPE Panel and the Federal Review Panel. These adaptations, as well as the sharing of costs and administrative and technical support between the BAPE and the Agency are provided for in Schedule I of this Agreement to form an integral part thereof.
- 7.9 The time between the first public hearing session held jointly by the BAPE Panel and the Federal Review Panel and the filing of their respective reports shall be a maximum of 240 days for the BAPE Panel and a maximum of 285 days for the Federal Review Panel. This period includes any period during which the Parties are waiting for additional information requested from Gazoduc Inc. To this end, an additional 120 days will be granted to the BAPE for the purposes of the public hearing mandate, which would then be added to the four-month period provided for in section 17 of the *Regulations respecting the environmental impact assessment and review of certain projects* (RLRQ, chapter Q-2, r. 23.1), for a total of 240 days.

Indigenous consultation

- 7.10 For the purposes of the environmental and impact assessment processes of the Project, the constitutional duty to consult and, where applicable, accommodate Indigenous groups is incumbent not on the BAPE Panel or the Federal Review Panel but on the Government of Quebec and the Government of Canada, represented for this purpose by the MELCC and the Agency respectively. The BAPE Panel and the Federal Review Panel may, however, consult Indigenous communities within the framework of their respective mandates.

Decision and authorization requirements

- 7.11 From the date of filing of the Impact Statement by Gazoduc Inc., the recommendation of the Quebec Ministre de l'Environnement et de la Lutte contre les changements climatiques regarding the Project under the first paragraph of section 31.5 of the EQA and the Agency's recommendations under subsection 55.1(2) of the IAA shall be transmitted or posted, as the case may be, within an overall period of no more than 600 days. This time limit excludes any period during which the MELCC, the Agency or the Federal Review Panel is waiting for additional information requested from Gazoduc Inc. in accordance with clause 7.3 of this Agreement.
- 7.12 The Parties agree to work together to promote consistency with respect to any conditions that may be imposed on Gazoduc Inc. with respect to the Project under the EQA and the IAA, as the case may be.
- 7.13 Recognizing that the decisions made under the EQA by the Government of Quebec and under the IAA by the Government of Canada are separate, the Agency and the MELCC will keep each other informed of the timing of the respective decisions and will coordinate, to the extent possible, the announcement of these decisions. To the extent possible, neither Party will communicate its decision directly to Gazoduc Inc. or to the public without first informing the other Party.

8. DISPUTE SETTLEMENT

- 8.1 The Parties are committed to cooperate to prevent and, where appropriate, resolve any disputes concerning the implementation or interpretation of this Agreement. The Parties will make every effort to prevent disputes arising from this Agreement by keeping each other informed, in writing, of matters that could give rise to a conflict between them.
- 8.2 In the event of a dispute, the Parties shall attempt to resolve it by negotiating in good faith. Any dispute arising under this Agreement that cannot be resolved by the Management Committee as provided for in section 6.3 shall be submitted, for Quebec, to the Deputy Minister of the Environment and Fight Against Climate Change and, for Canada, to the President of the Agency so they may attempt to resolve it.

9. COMMUNICATIONS

Any notice required under this Agreement, in order to be valid and binding on the Parties, must be given in writing and must be delivered to the following contacts:

For Canada:

Impact Assessment Agency of Canada
Care of Colette Spagnuolo
160 rue Elgin, 22nd Floor
Ottawa, ON
K1A 0H3

For Quebec:

Ministère de l'Environnement et de la Lutte contre les changements climatiques
Direction générale de l'évaluation environnementale et stratégique
Care of Yves Rochon
675 René Lévesque Est, 6th Floor, P.O. Box 83
Québec (Québec) G1R 5V7

10. DURATION, AMENDMENT AND TERMINATION OF THE AGREEMENT

- 10.1 This Agreement shall come into force on the date of the last signature and shall remain in force for the duration of the application of the environmental and impact assessment processes to the Project. The Agreement shall terminate when both Parties have rendered a decision following their respective processes under their respective legislation or when Gazoduc Inc. decides to abandon its Project.
- 10.2 Any changes to the content of this Agreement must be agreed to in writing by the Parties.
- 10.3 Either Party may terminate this Agreement upon at least one month written notice to the other Party. The Agreement will then be terminated automatically at the end of the period indicated in the notice, without further notice or formality.

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IN TESTIMONY THEREOF THE PARTIES HAVE SIGNED, IN TRIPLICATE:

GOVERNMENT OF CANADA

GOVERNMENT OF QUEBEC

Minister of the Environment and Climate
Change
Jonathan Wilkinson

Ministre de l'Environnement et de la Lutte
contre les changements climatiques
Benoit Charette

Date: _____

Date: _____

Ministre responsable des Relations
canadiennes et de la Francophonie
canadienne
Sonia LeBel

Date: _____

SCHEDULE I
ADAPTATING THE RULES OF PROCEDURE OF THE BUREAU D'AUDIENCES
PUBLIQUES SUR L'ENVIRONNEMENT FOR THE PUBLIC HEARING SESSIONS RELATING
TO THE GAZODUQ PROJECT
AND SHARING COSTS AND ADMINISTRATIVE SUPPORT

Announcement of the first part of the public hearing

1. The announcement of the first part of the hearing will be made at least 45 days before the start of the first session of the hearing.

Public Information Period

2. The BAPE and the Federal Review Panel will jointly hold a public information period of at least 30 days before the start of the public hearing sessions.
3. The purpose of this information period is to explain to the public how the public hearing sessions to be held jointly will work, how to participate and the time frames.
4. For the purposes of the public information period, the BAPE and the Federal Review Panel will jointly develop and make public a participation guide for the public hearing sessions.
5. The BAPE and the Federal Review Panel will announce the start of the public information period 30 days before the start of the period.

Co-chairing

6. The public hearing sessions held jointly by the BAPE Panel and the Federal Review Panel will be co-chaired by their respective representatives.
7. The BAPE Panel and the Federal Review Panel will be required to jointly establish the speaking order and the speaking time of participants.

Documents filed at the Public hearing

8. All documents filed in the context of the public hearing will be accessible simultaneously by the BAPE Panel and the Federal Review Panel.

Part I of the Public Hearing

9. During the first part of the session, the BAPE Panel and the Federal Review Panel will take turns reading their respective mandates and explaining their role, their jurisdiction, and the conduct of the public hearing sessions held jointly by the two panels.
10. The first part of the public hearing will include technical sessions in which the BAPE Panel may participate. If appropriate, the BAPE Panel may co-chair these technical sessions.
11. The technical sessions allow registered participants, including Indigenous traditional knowledge holders who wish to participate, to present their analyses and opinions on a specific topic and offer other participants, including Gazoduq Inc. the opportunity to ask questions.

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12. To support their presentation at a technical session, participants will be required to submit their technical document no later than 15 days before the start of the session.
13. Technical documents will be made available within 48 hours of their receipt on the Canadian Impact Assessment Registry and on the BAPE website.
14. Part I of the public hearing will last a maximum of 45 days unless otherwise agreed between the BAPE Panel and the Federal Review Panel.

Part II of the Public Hearing

15. Part II of the public hearing will allow participants to present their views on the project.
16. For these sessions, questions to participants will be reserved for the BAPE Panel and the Federal Review Panel.
17. Part II of the public hearing will last a maximum of 45 days, unless otherwise agreed between the BAPE Panel and the Federal Review Panel.

Additional Sessions

18. The BAPE Panel and the Federal Review Panel could hold additional public meetings as required to fulfill their respective mandates.

Administrative and technical support and cost sharing

19. The BAPE and the Agency will share the costs of organizing and conducting the information period and public hearing sessions held jointly by the BAPE Panel and the Federal Review Panel to be held in Quebec with respect to the Project. Prior to the start of the information period, the BAPE and the Agency will develop budget forecasts and determine the distribution of costs.
20. The total amount of these costs will be shared equitably, in accordance with the respective guidelines and requirements of the BAPE and the Agency, with the objective that the BAPE and the Agency each assume 50% of the costs. Furthermore, the costs incurred by the BAPE Panel and the Federal Review Panel are assumed with a concern for economic efficiency.