

*NFA General***DRAFT**

IN THE MATTER OF: AN AGREEMENT DATED DECEMBER 16, 1977

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE  
PROVINCE OF MANITOBA,

OF THE FIRST PART,

- and -

THE MANITOBA HYDRO-ELECTRIC BOARD,

OF THE SECOND PART,

- and -

THE NORTHERN FLOOD COMMITTEE, INC.,  
ON ITS OWN BEHALF AND ON BEHALF OF THE NELSON HOUSE  
INDIAN BAND, THE NORWAY HOUSE INDIAN BAND, CROSS  
LAKE INDIAN BAND AND YORK FACTORY INDIAN BAND,

OF THE THIRD PART,

- and -

HER MAJESTY THE QUEEN IN RIGHT OF CANADA as  
represented by THE MINISTER OF INDIAN AFFAIRS AND  
NORTHERN DEVELOPMENT,

OF THE FOURTH PART.

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MEMORANDUM OF UNDERSTANDING

RE RETAINING OF EXPERTS BY COUNSEL

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- 2 -

The Northern Flood Agreement provides that the reasonable costs of consultants and experts retained to assist in the preparation and advancement of claims may be paid under an Order for Costs. In order to facilitate retaining experts and consultants, a Memorandum of Understanding was entered into on October 14, 1986 by representatives of the parties to the Northern Flood Agreement. The parties have agreed that Memorandum of Understanding should be clarified and superceded by this Memorandum.

The parties by their counsel agree that in circumstances where there is an Order for Interim Costs and Expenses and counsel for a claimant desires to retain a expert or has retained an expert and wishes the costs of that expert to be paid by any of Canada, Manitoba or Manitoba Hydro to assist in preparing and advancing a claim, it is intended that procedures hereinafter set out shall govern.

It is understood and agreed between the parties that nothing herein permits Canada, Manitoba or Manitoba Hydro to censor or control the selection and use of consultants or experts. In complying with this Memorandum of Understanding it is not intended that any parties shall be obliged to breach or otherwise waive privilege in respect of any matter or material to be provided or forwarded pursuant to this Memorandum. It is further understood that in all instances the test of reasonableness will be the determining

- 3 -

criteria in reviewing and assessing proposals to retain consultants or experts.

The procedure shall be:

1. Counsel for a Claimant will notify counsel for the other Respondents in a claim, in writing at the earliest possible time of their desire to retain an expert or consultant and that request shall include a consulting proposal outlining:
  - a) purpose of the work;
  - b) scope of work to be performed;
  - c) work plan including time parameters for each facet of the work;
  - d) list of personnel to be employed including hourly rates and curriculum vitae; and
  - e) a preliminary fee and expense budget.
2. The Respondents will have 20 working days to review such proposal and raise any objection to the retention of the expert or consultant or the proposal.

- 4 -

3. In the event of an objection by any Respondent which is not resolved between the parties to the claim:

- a) the Claimant may apply to the Arbitrator;
- b) or any Respondent may apply to the Arbitrator;

for an Order facilitating the retaining of the consultant or expert and, if necessary, the terms of that retainer.

4. In the event that an expert has been retained without consent or without an Order of the Arbitrator and the Claimant desires that the Respondents pay the costs of the expert or consultant, the Claimant shall furnish to the Respondents in the claim:

- a) the information required under paragraph 1 (a) to (e) inclusive;
- b) copies of correspondence retaining and instructing the consultant or expert to proceed;
- c) a summary of progress to date on the work plan;
- d) fees and disbursements incurred by the consultant or expert to the date of request.

- 5 -

5. In respect of a retaining a consultant or expert under paragraph 4 (above), the Respondents will have 20 working days to review such proposal and raise any objection to the retention of the expert or consultant or the proposal.
  
6. In the event of an objection by any Respondent which is not resolved between the parties to the claim and payment of costs incurred to the date of the Order:
  - a) the Claimant may apply to the Arbitrator;
  - b) or any Respondent may apply to the Arbitrator;for an Order facilitating the retaining of the consultant or expert and, if necessary, the terms of that retainer.
  
7. In the event that an expert or consultant has been retained without consent or without an Order of the Arbitrator and the work has been fully completed, and the Claimant wishes to be reimbursed for the costs of the work of the expert or consultant, the Claimant shall provide to the Respondents:
  - a) the information specified in paragraph 1(a) through (e) inclusive;
  
  - b) copies of the work product;

- 6 -

- c) copies of all billings received from the consultant or expert and paid by the Claimant.
8. The Respondents shall have 20 days from date of receipt to object to reimbursing the Claimants for costs incurred for the expert or consultant. In the event an objection by any Respondent, the Claimant may apply to the Arbitrator for an Order directing that one or more Respondents reimburse the Claimant for the costs incurred in respect of the expert or consultant.
9. In all cases the Respondents shall advise the Claimant that the either object or have no objection with respect to retaining of a particular consultant or expert.

It is understood that any matter involving the retention of a consultant or expert either by consent or by Order of the Arbitrator shall not extend to any changes in the work plan or changes in scope made without consent of the Respondents or subsequent Order of the Arbitrator. It is further understood that the effect of consent or an Order of the Arbitrator shall not extend to an amount of fees and disbursements in excess of those initially provided absent further consent or further Order of the Arbitrator.

- 7 -

It is understood that the foregoing is without prejudice to the right of any Respondent to take issue or raise objection that the work product ultimately produced by the consultant or expert does not reasonably correspond to the proposal and work plan submitted. In the case of such objection, the matter shall be referred to the Arbitrator.

It is further understood that the foregoing is without prejudice to the right of any party or parties to advance any argument as to the meaning of any provision of the Northern Flood Agreement, including Article 24.35.

This Memorandum of Understanding agreed by each of the parties shall take affect from, on and after the 28th day of January, 1992.

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Counsel for Her Majesty the  
Queen in right of the Province  
of Manitoba

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Counsel for the Northern Flood  
Committee Inc.

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Counsel for the Manitoba Hydro-  
Electric Board

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Counsel for Her Majesty the  
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