

by the two so chosen, which third arbitrator shall be the chairperson. If within fifteen days of having received a written demand, or such extended time as the Parties agree, a Party fails to either agree to a single arbitrator or to appoint an arbitrator, or if the two arbitrators appointed by the Parties do not agree upon the third arbitrator, then upon written application by either Party such third arbitrator shall be appointed by the superior court having jurisdiction in the NSA.

- 13.3 The arbitration proceedings shall be held within thirty days following the appointment of the Arbitration Panel in a location agreed upon by the Parties or, if the Parties are unable to agree, as determined by the Arbitration Panel. The timing for the panel hearing may be extended by mutual consent of the Parties, not unreasonably being withheld.
- 13.4 The Arbitration Panel shall have jurisdiction to determine all questions of fact or questions of mixed law and fact and to make an award, including interim relief, payment of interest, and costs. If an Arbitration Panel makes no decision as to costs, each Party shall bear its own costs and an equal share of the other costs of the arbitration, including the remuneration and expenses of the Arbitration Panel.
- 13.5 The Arbitration Panel shall render a decision, in writing, within thirty days of the completion of the arbitration hearing and state the reasons on which it is based. The decision is final and binding and is not subject to appeal. Pursuant to Section 17(3)(b) of the *Federal Court Act*, the Parties agree that the Federal Court Trial Division shall have jurisdiction to review the decision of an Arbitration Panel on any grounds set out in Section 18.1(4) of the *Federal Court Act*.
- 13.6 Where a Party to an arbitration fails to comply with any of the terms of the decision of the Arbitration Panel, any Party to the arbitration may file in the office of the Registrar of the superior court having jurisdiction in the NSA, a copy of the decision in the prescribed form, whereupon the decision shall be entered in the same way as a judgement or order of that court, and is enforceable as such.
- 13.7 The Arbitration Panel may, on application, allow anyone to participate in an arbitration as an intervenor, if in the Arbitration Panel's opinion the interest of that person may be directly affected by the arbitration, and on such terms as the Arbitration Panel in its discretion may order.
- 13.8 Unless the Parties otherwise agree, the proceedings and Board's decision shall be made public.

## 14.0 EXPEDITED ARBITRATION

- 14.1 The Parties agree that any matter referred to expedited arbitration pursuant to Sections 5.10, 6.10, 8.3.8 or 12.3 of this Agreement shall be referred to a single arbitrator, chosen from the list of arbitrators in Annex C of this Agreement, who shall make a determination on those specific issues, pursuant to the provisions of the Commercial Arbitration Act (Canada) and Sections 14.1 to 14.12 of this Agreement and for that purpose, this Agreement constitutes an "Arbitration agreement" under the Commercial Arbitration Code set out in the Schedule to the Commercial Arbitration Act (Canada).
- 14.2 Should new or additional arbitrators be required, they should have, to the extent possible, qualifications in one or more of the following areas:
- a) experience in arbitrations dealing with construction or commercial projects;
  - b) experience in arbitrations involving the North;
  - c) experience in arbitration dealing with environmental issues.
- 14.3 No arbitrator chosen shall have a personal or commercial interest in the outcome of the arbitration.
- 14.4 Wherever practical, DND and NTI shall appoint the same arbitrator in the event there is more than one referral to Expedited Arbitration for the same Site clean-up.
- 14.5 The Parties shall jointly appoint an arbitrator from the list of arbitrators contained in Annex C to this agreement within three (3) days of one Party giving the other Party written notice of its intention to refer a matter to expedited arbitration. Where the Parties do not appoint an arbitrator within three days, the arbitrator shall be the person whose name appears first on the list of arbitrators in Annex C. If that person should be unable to serve as arbitrator, then the arbitrator shall be the person whose name appears next on the list, and so on, until the name of a person who is able to serve as arbitrator is reached.
- 14.6 The arbitration proceedings shall be held within two weeks of the appointment of an arbitrator. The arbitration proceedings shall be in a location agreed upon by the Parties, or if the Parties are unable to agree, as determined by the arbitrator. The timing for the hearing may be extended only by the mutual consent of the Parties, acting reasonably.
- 14.7 The arbitrator shall have all of the powers granted under the Commercial Arbitration Act (Canada) to conduct the arbitration, may compel the

attendance of the Parties and any required witnesses and the tendering of any documents or things and dispose of any further matters that arise out of the arbitration decision (if raised by the Parties within five (5) days of the completion of the arbitrator's written decision).

**14.8 With respect to any such arbitration:**

- a) each Party shall bear its own costs and an equal share of the other costs of the arbitration, including remuneration and expenses of the arbitrator;
- b) the arbitrator shall have jurisdiction to determine all questions of fact, law, and questions of mixed fact and law and make a determination;
- c) all witnesses called to give evidence at the hearing shall be sworn under oath and shall be subject to such examination as the arbitrator determines to be appropriate, and there shall be a court reporter and a formal record of the hearing.

**14.9** The arbitrator shall, on application, allow a Contractor or a Subcontractor directly affected by a decision requested of the arbitrator to participate in the expedited arbitration as an intervenor, on such terms as the arbitrator in his or her discretion may order.

**14.10** The arbitrator shall render a decision in writing and provide such decision to the Steering Committee within one week of the conclusion of the hearing. The decision shall state the reasons on which it is based. The decision is final and binding, and is not subject to appeal.

**14.11** Where a Party to the arbitration fails to comply with any of the terms of the decision of the arbitrator, any Party to the arbitration may file in the office of the Registrar of the Nunavut Court of Justice, a copy of the decision in the prescribed form, whereupon the decision shall be entered in the same way as a judgment or order of the court, and is enforceable as such.

**14.12** Unless the Parties otherwise agree, the proceedings and arbitrator's decision shall be made public.

## **15.0 ENTIRE AGREEMENT**

This Agreement and the Annexes hereto shall constitute the entire and sole agreement between the Parties and shall supersede all other communications, negotiations, arrangements and agreements of any nature among them in relation to this Agreement prior to the date of the Agreement.

## **16.0 SEVERABILITY**

If any provision of this Agreement or its application to any person or circumstance shall, to any extent, be invalid and unenforceable, the remainder of this Agreement, or the application of such provisions to persons or circumstances other than those as to which it is held invalid or unenforceable, shall be valid and enforced to the fullest extent permitted by law and be independent of every other provision of this Agreement.

## **17.0 ENUREMENT**

This Agreement shall enure to the benefit of and be binding upon each of the Parties hereto, their respective heirs, legal representatives, successors and permitted assigns.

## **18.0 APPLICABLE LAW**

This Agreement shall be governed by and construed in accordance with the applicable laws of Canada and Nunavut.

## **19.0 TIME IS OF THE ESSENCE**

The Parties acknowledge that time is of the essence of this Agreement.

## **20.0 PARLIAMENTARY APPROPRIATION**

The implementation of the Agreement is subject to there being an appropriation for the contracts for the fiscal year in which any commitment would come in course of payment.

## **21.0 HOUSE OF COMMONS**

No member of the House of Commons shall be admitted to any share or part of this Agreement, or to any benefit arising thereof.

## **22.0 AMENDMENTS**

- 22.1 If either Party wishes to make changes to this Agreement, it shall provide notice of proposed changes in writing to the other Party. Amendments must be agreed upon by both Parties. Any agreed-upon amendments will be executed and attached as an appendix to this Agreement.
- 22.2 DND and NTI agree to consider amendments in an expeditious manner, particularly where the proposed amendments directly affect the conduct of a Site clean-up that is in progress or one which is scheduled to commence in the near term.

## **23.0 NOTICES**

- 23.1 Where any Party is obliged or entitled to give any notice, request, approval, demand, consent, direction or other communication (i.e. Notice) to the other Party, such Party shall first communicate the substance thereof personally or by telephone. However, such Notice shall not be sufficiently given until sent in writing to the addressees at the address below. Any Notice may be personally delivered or sent by registered mail or telefacsimile and will be effective upon receipt by the addressee.

- 23.2 Notices to DND will be sent to:

Director General Environment  
National Defence Headquarters  
101 Colonel By Drive  
Ottawa, Ontario  
K1A 0K2

- 23.3 Notices to NTI will be sent to:

1<sup>st</sup> Vice President  
Nunavut Tunngavik Incorporated  
Box 1041  
Cambridge Bay  
Nunavut  
X0E 0C0

## **24.0 OFFICIAL LANGUAGES**

- 24.1 The official languages of this Agreement shall be English and Inuktitut. In the case of incompatibility between the two texts, the text of the English version shall prevail.

## **25.0 TERMINATION OF THE AGREEMENT**

- 25.1 This Agreement will terminate on the later of December 31<sup>st</sup>, 2008 or when the Clean-Up Work as set out in this Agreement for the Sites listed in Section 3.1 is completed or on such a date agreed to by the Parties in accordance with Section 22.3 of this Agreement.

IN WITNESS HEREOF, the Parties have executed this Agreement.

**Nunavut Tunngavik  
Incorporated**

**Department of National Defence**

\_\_\_\_\_  
Acting President

\_\_\_\_\_  
Minister of National Defence

\_\_\_\_\_  
  
\_\_\_\_\_

this \_\_\_\_ day of \_\_\_\_\_ 2001

## **ANNEXES TO THE AGREEMENT**



## ANNEX A: REPORTS

### A.1 Format for DND Work Force Estimate (Section 5.6)

**Site:**

**Region:**

Occupational Group	Projected Manpower Requirements							
	Year 1		Year 2		Year 3		Overall	
	Positions	Persondays	Positions	Persondays	Positions	Persondays	Positions	Persondays
Project Manager/General Superintendent (Off-site)								
Site Superintendent								
Site Clerk								
Expediter (Off-Site)								
Surveyor								
Surveyor's Assistant								
Service Truck Driver								
Camp Setup Carpenter/ Electrician/Plumber								
Foreman								
Heavy Equipment Operator								
Heavy Equipment Mechanic								
Truck Driver								
Labourer/Scaleperson/Cutter								
Asbestos Labourer								
Hazardous Material Handler								
Cook/Cook's Helper								
Bear Monitor								
Nurse/First Aid								
Other								
Other								
<b>Total:</b>								

Note: The specific Representative Occupational Groupings included in this form may be changed, under Section 5.12, by mutual consent of the Contracting Working Group to reflect variations among Sites. DND's work force estimate may include additional categories of work not listed, as required.

## A.2 Format for NTI Inuit Labour Projection (Section 5.7)

Site: Region:		Projected Manpower Requirements (person days)						Projected Inuit Employment (person days)							
Positions Identified		Year 1		Year 2		Year 3		Year 1		Year 2		Year 3		Overall	
		Pos.	Person Days	Pos.	Person Days	Pos.	Person Days	Pos.	Person Days	Pos.	Person Days	Pos.	Person Days	Pos.	Person Days
Project Management															
Site Superintendent															
Site Clerk															
Expediter															
Surveyor															
Surveyor's Assistant															
Service Truck Driver															
Camp Setup															
Carpenter/Electrician/ Plumber															
Foreman															
Heavy Equipment Operator															
Heavy Equipment Mechanic															
Truck Driver															
Labourer/Scaleperson/Cutter															
Asbestos Labourer															
Hazardous Material Handler															
Cook/Cook's Helper															
Bear Monitor															
Nurse/First Aid															
Other															
Other															
Total Positions															
Projected Inuit Employment															

Note: The specific Representative Occupational Groupings included in this form may be changed, under Section 5.12, by mutual consent of the Contracting Working Group to reflect variations among Sites.

### A.3 DND: Analysis of Contracting Opportunities (Section 6.5)

Site:	
Region:	
Description	% of Total Contract Value
1 Marine Transportation	
2 Commercial Airlines	
3 Local Aircraft Charter	
4 Catering	
5 Small Tools	
6 Camp Supply	
7 Bonds & Insurance	
8 Office Supplies	
9 Communications Equipment	
10 Bear Monitor	
11 Geotextile - Supply & Install	
12 Geomembrane - Supply & Install	
13 Drilling for Instrumentation	
14 Instrumentation	
15 Public Consultation/Translation	
16 Excavate Hazardous/Contaminated Soil	
17 Landfarming	
18 Gravel - Excavate & Place	
19 Excavation	
20 Demolition & Debris	
21 Landfill Excavation	
22 Asbestos Abatement	
23 Project Management and Overhead	
24 Other	
<b>Total</b>	<b>100%</b>

Note: The specific Contracting Opportunities included in this form may be changed, under Section 6.12, by mutual consent of the Contracting Working Group to reflect variations among Sites. DND's analysis of contracting opportunities may include other contracting opportunities not listed, as required.

## ANNEX B: EDUCATION AND SKILLS PROFILES

Position	Essential Qualifications
Superintendent/Construction Manager	3-5 years directly related project management experience, and substantial (minimum 10 years) construction supervision experience, normally combined with trade certification in one or more relevant trades and/or relevant post-secondary education
Clerk	Previous clerical experience
Expediter	2-3 years experience as expeditor for a northern construction company, ideally combined with 2-3 years trade experience in an applicable construction trade
Surveyor Technologists	2-3 year college program and trade certification
Surveying Assistants	Some related training and/or experience
Service Truck Driver	On-the-job training Driver's license appropriate to class of vehicle
Foreman	3 years supervising similar construction activities
Electrician	Trade certification
Carpenter	Trade certification or 3-5 years on the job experience
Welder	Trade certification
Plumber	Trade certification
Heavy Equipment Operator	5 week certification program Valid driver's license
Heavy Equipment Mechanic	Trade certification or 5 years experience
Small Equipment Mechanic	Trade certification or 3-5 years experience
Truck Driver	Valid driver's license Approved medical certificate 3-4 weeks training
Labourer	On-the-job training; physically fit for the proposed work
Asbestos Labourer	12 hours classroom instruction 12 hours practical instruction
Asbestos Foreman	18 hour training course (following minimum of 2 years of experience as asbestos labourer) Certificate from Occupational Health and Safety

Position	Essential Qualifications
Hazardous Materials Handler	5 years + TDG certification through employer
Cooks	Trade certification or 2 years experience
Cooks Helper	Some related experience
First Aid	Training in appropriate first aid courses
Bear Monitor	Experienced polar bear hunter

**Note:** This list of qualifications is for the use of the Contracting Working Group in establishing the MIEC. This list is not intended for any other use by any third party for any purpose, and DND and NTI are not liable for any use of this list by any third party. Bidders or Contractors are required to establish their own criteria for hiring project staff.

## **ANNEX C: LIST OF ARBITRATORS**

Honourable Roger P. Kerans

Roger F. X. Marentette

Daniel Ish Q.C.

Harvey J. Kirsh

Honourable Lorne O. Clarke

Paul-Emile Chiasson

## **ANNEX D BUSINESS ENVIRONMENT STATEMENT**

The following language shall be included in all Solicitations of Interest prepared and distributed by DND's contracting agent, as described in Section 8.2 of this Agreement:

One of the principal objectives of The Nunavut Land Claims Agreement is to provide Inuit with means of participating in economic opportunities through government contracting. Article 24 of the NLCA ("Government Contracting") provides full details of the Government of Canada's obligations to fulfill this objective. In the case of DEW Line Clean Up for which the Department of National Defence (DND) has responsibility, NTI and the Government of Canada, as represented by DND, have entered into an Agreement (see Annex XX of the SOI).

The principal mechanism to which NTI and DND have agreed for provision of economic benefit for Inuit is the use of a Minimum Inuit Employment Content (MIEC) and a Minimum Inuit Content for Contracting (MICC). Companies that are invited to submit tenders for the work following this SOI will be informed of the site specific MIEC and MICC. These levels will be set within the following ranges – MIEC (65-85%); MICC (60-75%). Contractors will be required to achieve the MIEC and MICC in the contract, and DND's contracting agent will monitor levels of MIEC and MICC based on a monthly plan submitted by the Contractor.

In the case of the MIEC the Inuit workforce must be made up of Inuit enrolled under the NLCA. Contractors must understand that they may need to recruit a workforce from a number of communities in Nunavut, and that a significant number of the workers have Inuktitut as their first language. DND's contracting agent will provide bidders with a list of Inuit who have indicated their interest in employment in Site clean-ups, including information regarding their work experience and qualifications. This list will be prepared by NTI approximately six months prior to the commencement of the clean-up of a given Site.

In the case of the MICC, Inuit firms used as Subcontractors must be drawn from the Inuit Firm Registry maintained by NTI.