MEMORANDUM OF UNDERSTANDING

FOR INUVIALUIT PARTICIPATION IN THE ENVIRONMENTAL REVIEW OF ANY TRANSREGIONAL GAS PIPELINE PROJECT AND ANY ACCOMPANYING ASSOCIATED GAS FIELD DEVELOPMENT IN THE INUVIALUIT SETTLEMENT REGION

BETWEEN: THE MINISTER OF THE ENVIRONMENT

AND: THE INUVIALUIT, AS REPRESENTED BY THE INUVIALUIT REGIONAL CORPORATION AND THE INUVIALUIT GAME COUNCIL

PREAMBLE

WHEREAS one of the principles of the Inuvialuit Final Agreement (IFA) is to protect and preserve the Arctic wildlife, environment and biological productivity; and

WHEREAS one of the means of protecting and preserving the Arctic wildlife, environment and biological productivity is to ensure the effective integration of the Inuvialuit into all bodies, functions and decisions pertaining to wildlife management and land management in the Inuvialuit Settlement Region; and

WHEREAS the Inuvialuit Regional Corporation and the Inuvialuit Game Council (IGC) represent the collective Inuvialuit interest; and

WHEREAS the Minister of the Environment (Minister) may have statutory responsibilities pursuant to the Canadian Environmental Assessment Act (CEAA) in respect of any future transregional gas pipeline project and any accompanying associated gas field development that would be located in part within the Inuvialuit Settlement Region (Pipeline Project);

WHEREAS the Environmental Impact Screening Committee (EISC), established in accordance with section 11(3) of the IFA, may have responsibilities pursuant to the IFA in respect of the Pipeline Project;

WHEREAS the parties to this Memorandum of Understanding wish to avoid duplication of environmental assessment review processes within the Inuvialuit Settlement Region with respect to a Pipeline Project; and

WHEREAS the parties to this Memorandum of Understanding further wish to ensure that, in the event a Pipeline Project is referred to a review panel under the CEAA review process, and in the event the EISC is to make a determination under subsection 11(13)(b) of the IFA in respect of the Pipeline Project, the CEAA review process can be tailored so as to allow the EISC to conclude that it constitutes a governmental environmental impact review process as contemplated by section 11(15) of the IFA.

THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. GENERAL

1.1 The purpose of this Memorandum of Understanding is to identify the elements that will need to be included in the terms of reference of a review panel established under the CEAA review process to review the Pipeline Project, to ensure that it can constitute a governmental environmental impact review process as contemplated by section 11(15) of the IFA.

1.2 The parties understand that the EISC is not bound by the common understanding of the parties expressed in this Memorandum of Understanding, and that the EISC will not be in a position to make a determination on whether the CEAA panel review constitutes a governmental environmental impact review process as contemplated by section 11(15) of the IFA until the following conditions are met:

> **(a)** a Pipeline Project has been referred to the Minister under the CEAA and the Minister is prepared to establish a review panel;
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> **(b)** the EISC is to make a determination under subsection 11(13)(b) of the IFA in respect of the Pipeline Project, or any part of it; and
>
> **(c)** the Minister informs the EISC of the elements that he will include in the terms of reference of the review panel to be established under the CEAA to ensure that it constitutes a governmental environmental impact review process as contemplated by section 11(15) of the IFA, if the EISC so concludes.

1.3 The parties also understand that the Minister is not in a position to make any final determination regarding the mandate and the composition of a review panel under the CEAA until after a specific project has been referred to the Minister for the establishment of a review panel.

1.4 The parties further understand that, in tailoring a panel review process under the CEAA in a manner that will allow the EISC to conclude that it constitutes a governmental environmental impact review process as contemplated by section 11(15) of the IFA, the Minister will not limit his ability to enter, as appropriate, into any agreement with any other jurisdiction for the purpose of establishing a joint review panel in accordance with sections 40 to 42 of the CEAA, provided that the establishment of such a joint review panel still meets the conditions required for the EISC to conclude that the CEAA panel review process constitutes a governmental environmental impact review process as contemplated by section 11(15) of the IFA.

1.5 This Memorandum of Understanding must be interpreted in a manner consistent with the CEAA and the IFA. For greater certainty, it is understood that neither the Minister nor the Inuvialuit give up any jurisdiction, right, power, privilege, prerogative or immunity by virtue of this Memorandum of Understanding.

2. TERMS OF REFERENCE AND COMPOSITION OF A CEAA REVIEW PANEL

2.1 INTENT OF THE PARTIES: It is the intent of the parties that the establishment of a review panel under the CEAA review process that includes the following elements will allow the EISC to conclude that it constitutes a governmental environmental impact review process as contemplated by section 11(15) of the IFA.

2.2 SCOPE OF THE REVIEW: The panel review will include a consideration of the matters set out in Schedule I.

2.3 PANEL COMPOSITION: The Inuvialuit Game Council (IGC) will nominate member(s) to the review panel, and the panel members appointed by the Minister will include IGC nominee(s). The Minister will consult the Inuvialuit on the appointment of the chairperson.

All members of the review panel will be unbiased and free from conflict of interest relative to the project and are to have knowledge or experience relevant to the anticipated environmental effects of the project.

2.4 PROCEDURAL REQUIREMENTS: The panel review process will be consistent with the procedural requirements set out in sections 11(24) to 11(27) of the IFA.

2.5 SECRETARIAT TO THE JOINT PANEL: A secretariat will be formed to support and assist the review panel and provide technical support.

2.6 FINANCIAL RESPONSIBILITY AND LIABILITY FOR DAMAGES: The establishment of a review panel under CEAA that constitutes a governmental environmental impact review process as contemplated by section 11(15) of the IFA will not diminish any financial responsibility or liability for damages Canada or a developer may have under sections 13(13) to 13(16) of the IFA.

IN WITNESS WHEREOF, the Parties to this Memorandum of Understanding have signed on the 1st___day of October_____, 2002.

THE MINISTER OF THE ENVIRONMENT

(originally signed by)

CHAIR AND CEO INUVIALUIT REGIONAL CORPORATION	CHAIR INUVIALUIT GAME COUNCIL
(originally signed by) --- -	(originally signed by) --- -

Schedule 1

1. Wildlife Impact Assessment: The review panel shall on the basis of the evidence and information before it, recommend to the government authority empowered to approve the proposed development:

(a) terms and conditions relating to the mitigative and remedial measures that it considers necessary to minimize any negative impact on wildlife harvesting, as referred to in s. 13(11(a)) of the IFA; and

(b) an estimate of the potential liability of the developer, determined on a worst case scenario, taking into consideration the balance between economic factors, including the ability of the developer to pay, and environmental factors, as referred to in s. 13(11(b)) of the IFA.

2. **Yukon North Slope**: The terms of reference of the review panel shall include for any project, or part thereof, on the North Slope of the Yukon, the following additional criteria, as listed in s. 12 (23) of the IFA, in the review panel's consideration of any development proposal:

(a) analysis of the significance of the part or parts of the Yukon North Slope proposed for development use from the standpoint of conservation and harvesting interests;

(b) evaluation of practical alternative locations and of the relative commercial and economic merits of and environmental impact on such locations compared to the part or parts of the area proposed for utilisation in the application;

(c) evaluation of the environmental and social impacts of the proposed development;

(d) weighing of the interests of users, conservationists and harvesters in the Yukon North Slope against public convenience and necessity for development;

(e) evaluation of the ability of the applicant to demonstrate that he has, or will acquire, the proven capability to carry out the project in accordance with established standards of performance, safeguards and other requirements and to carry out the necessary environmental mitigation and restoration; and

(f) requirements for effective machinery to ensure that the development proceeds in accordance with any established terms and conditions