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#### **STATUS OF CHAPTERS**

<b>GREEN:</b>	<b>Chapter complete or near completion, subject to minor changes</b>
<b>BLUE:</b>	<b>Chapter in draft form, has been discussed with key issues outlined in footnotes and requires more discussion or redraft in development and more discussion required.</b>
<b>ORANGE:</b>	<b>Chapter in draft form but has not yet been thoroughly discussed at table or has been discussed but requires more work</b>
<b>BLACK:</b>	<b>Chapter not yet in Rolling Draft</b>

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PREAMBLE *in Rolling Draft*) (ORANGE)

CHAPTER 1: Definitions and Interpretation (*redraft in development, more discussion required*) (BLUE)

CHAPTER 2: General Provisions (*redraft in development, more discussion required*) (BLUE)

CHAPTER 3: Certainty (*footnotes/issue outlined and more discussion required*) (BLUE)

CHAPTER 4: Dehcho Community Governments (*footnotes/issue outlined and more discussion required*) (BLUE)

CHAPTER 5: Dehcho Community Lands (*footnotes/issue outlined and more discussion required*) (BLUE)

CHAPTER 6: Dehcho Government (*in draft and requires more work*) (ORANGE)

CHAPTER 7: Dehcho Ndehe (*in draft and not thoroughly discussed*) (ORANGE)

CHAPTER 8: Access (*footnotes/issue outlined and more discussion required*) (BLUE)

CHAPTER 9: Jurisdiction on Dehcho Ndehe (*in draft and not thoroughly discussed*) (ORANGE)

CHAPTER 10: Resource Management/ DCRMA (*not yet in Rolling Draft*) (BLACK)

CHAPTER 11: Early Childhood Education (*near completion*) (GREEN)

CHAPTER 12: K-12 (*complete*) (GREEN)

CHAPTER 13: Out of School Care (*complete*) (GREEN)

CHAPTER 14: Post Secondary Education (*complete*) (GREEN)

CHAPTER 15: Adult Education and Training (*complete*) (GREEN)

CHAPTER 16: Social Housing (*complete*) (GREEN)

CHAPTER 17: Income Assistance (*complete*) (GREEN)

CHAPTER 18: Adoption (*near completion*) (GREEN)

CHAPTER 19: Child and Family Services (*near completion*) (GREEN)

CHAPTER 20: Wills and Estates (*near completion*) (GREEN)

CHAPTER 21: Guardianship and Trusteeship (*near completion*) (GREEN)

CHAPTER 22: Language and Culture (*in draft and not thoroughly discussed*) (ORANGE)

CHAPTER 23: TRADITIONAL HEALING AND HEALTH AGREEMENT (*footnotes/issue outlined and more discussion required*) (BLUE)

CHAPTER 24: MARRIAGE (*near completion*) (GREEN)

CHAPTER 25: Administration of Justice (*footnotes/issue outlined and more discussion required*) (BLUE)

CHAPTER 26: Taxation (*footnotes/issue outlined and more discussion required*) (BLUE)

CHAPTER 27: Wildlife Harvesting (*footnotes/issue outlined and more discussion required*) (BLUE)

CHAPTER 28: Migratory Bird Harvesting (*near completion*) (GREEN)

CHAPTER 29: Fish Harvesting (*near completion*) (GREEN)

**Deleted:** (*footnotes/issue outlined and more discussion required*) (BLUE)

CHAPTER 30: Plant Harvesting (*footnotes/issue outlined and more discussion required*) (BLUE)

CHAPTER 31: Tree Harvesting (*footnotes/issue outlined and more discussion required*) (BLUE)

CHAPTER 32: Harvesters Compensation (*footnotes/issue outlined and more discussion required*) (BLUE)

CHAPTER 33: WATER RIGHTS (*in draft and not thoroughly discussed*) (ORANGE)

CHAPTER 34: Subsurface Resources on Crown Land and Existing Interests under Government Administration (not yet in Rolling Draft) (BLACK)

CHAPTER 35: Land Use Planning (near completion) (GREEN)

Deleted: in draft and not thoroughly discussed

Deleted: ORANGE

CHAPTER 36: National Parks (not yet in Rolling Draft) (BLACK)

CHAPTER 37: Protected Areas (not yet in Rolling Draft) (BLACK)

CHAPTER 38: Heritage Resources (not yet in Rolling Draft) (BLACK)

CHAPTER 39: Expropriation (near completion) (GREEN)

Deleted: footnotes/issue outlined and more discussion required

Deleted: BLUE

CHAPTER 40: Economic Measures (in draft and not thoroughly discussed) (BLACK)

CHAPTER 41: Mineral Royalties (footnotes/issue outlined and more discussion required) (BLUE)

CHAPTER 42: Financial Payments (footnotes/issue outlined and more discussion required) (BLUE)

CHAPTER 43: Fiscal Relations (not yet in Rolling Draft) (BLACK)

CHAPTER 44: Implementation (footnotes/issue outlined and more discussion required) (BLUE)

Deleted: (in draft and not thoroughly discussed) (ORANGE)

CHAPTER 45: Transition (not yet in Rolling Draft) (BLACK)

CHAPTER 46: Dispute Resolution (near completion) (GREEN)

CHAPTER 47: E & E (footnotes/issue outlined and more discussion required) (GREEN)

CHAPTER 48: Ratification (completion) (GREEN)

CHAPTER 49: Approval of the Agreement-in-Principle (near completion) (GREEN)

CHAPTER 50: Matters for the Dehcho Agreement (footnotes/issue outlined and more discussion required) (BLUE)

Deleted: (in draft and not thoroughly discussed) (ORANGE)

## PREAMBLE

<sup>1</sup>

WHEREAS the Dehcho Dene assert<sup>2</sup> that they have lived on their homeland according to their own laws and system of government since time immemorial; and

WHEREAS the Dehcho Dene assert that they were placed in their homeland by the Creator as keepers of their waters and lands; and

WHEREAS the Dehcho Dene assert that the Treaties of 1899 and 1921 with the non-Dene recognize the inherent political rights and powers of the Dehcho Dene; and

WHEREAS the Dehcho Dene who identify as Metis assert that they have endured discrimination as a result of their exclusion from programs and services and denial of access to harvesting rights on the grounds that they are not registered “Indians” under the *Indian Act*; and

WHEREAS it is intended that the Dehcho Agreement will eliminate discrimination against the Dehcho Dene who identify as Metis; and

WHEREAS the Dehcho Dene assert that their Aboriginal rights and title cannot be extinguished by any government; and

WHEREAS the Dehcho Dene further assert that their laws from the Creator do not allow them to cede, release, surrender or extinguish their inherent rights;<sup>3</sup> and

WHEREAS the Dehcho Dene intend to uphold the teachings of their Elders as guiding principles of Dehcho government now and in the future, and hereby reaffirm, assert and exercise their inherent rights and powers to govern themselves;<sup>4</sup> and

WHEREAS the Dehcho Dene intend to preserve and enhance the languages and culture of the Dene and Metis; and

WHEREAS the *Constitution Act, 1982* recognizes and affirms the existing Aboriginal and treaty rights of the Aboriginal peoples of Canada; and

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<sup>1</sup> GNWT is still reviewing and will provide comments.

<sup>2</sup> Canada may want wording which clarifies that Canada does not necessarily accept the assertions herein.

<sup>3</sup> May be inconsistent with Canada’s approach to Certainty, which requires surrender in event that non-assertion clause is not upheld by courts.

<sup>4</sup> Canada wants assurance that only rights consistent with Dehcho Agreement will be exercised.

DFN ROLLING DRAFT  
Draft: January 31, 2014

Without Prejudice  
For Discussion Purposes Only

WHEREAS the Parties have negotiated this Agreement-in-Principle in order to describe how a Dehcho final agreement could define and provide certainty in respect of the rights of the Dehcho Dene relating to land, resources and self-government;  
NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

## CHAPTER 1: DEFINITIONS & INTERPRETATION

### 1.1 DEFINITIONS

### 1.2 INTERPRETATION

#### 1.1 DEFINITIONS

1.1.1 The following definitions apply in the Dehcho Agreement:

**“Adult Education”** means education of Adults other than Students

**“Agreement”** means

**“Agreement-in-Principle”** means the land and resource and self-government provisions approved by the Dehcho First Nations, the Government of the Northwest Territories and the Government of Canada as the basis for the Dehcho Agreement.

**“All-Terrain Vehicles”** means an All-Terrain Vehicle as defined under the *All-Terrain Vehicles Act* (NWT)

**“Appeal Board”** means the appeal body established in accordance with 47.6 for the purpose of handling eligibility appeals

**“Archaeological Activity”** means

**“Band Membership”** means

**“Band Membership List”** means a list of individuals that is maintained in accordance with the *Indian Act* or by the Department of Aboriginal Affairs and Northern Development Canada

**“Board”** means

**“Burial Site”** means

**“Camp”** means

**“Canada”** means, unless the context otherwise requires, Her Majesty the Queen in right of Canada

**“Capital Transfer”** means an amount paid by Canada to Dehcho First Nations under the Financial Payments chapter.

**“Census”** means a count of a population derived from (a) the Federal Government Census, (b) a Census conducted by a Dehcho Community Government, or (c) currently available statistics from the Government of the Northwest Territories.

**“Child”** means an individual less than the age of majority under Legislation.



**“Child and Family Services”** means services provided for:

- a) the protection of Children, where the primary objective is the safety and well-being of Children, having due regard for the protection from abuse, neglect and harm, or the threat of abuse, neglect or harm, and any need for intervention; and
- b) the support of families and care givers to provide a safe environment and prevent abuse, neglect and harm, or the threat of abuse, neglect or harm, including:
  - (i) the support of kinship ties and a Child’s attachment to the extended family; and
  - (ii) the promotion of a well-functioning family and community life.

**“Client”** means an individual in the Dehcho Settlement Area who has applied for or is receiving Income Assistance; and

**“Committee”** means

**“Commissioner’s Land”** means lands to which the *Commissioner’s Land Act* (NWT) applies.

**“Commissioner in Executive”** means the Commissioner acting by and with the advice and consent of the Executive Council.

**“Community Acceptance”** means acceptance as a Dehcho Citizen through a process set out in the Dehcho Constitution.

**“Compensation”** means

**“Conflict”** means

**“Conservation”** means<sup>5</sup>:

- a) the maintenance of the integrity of ecosystems by measures such as the protection and reclamation of Wildlife habitat and, Migratory Bird habitat and, where necessary, restoration of Wildlife habitat; and
- b) the maintenance of vital, healthy Wildlife, and Migratory Bird populations capable of sustaining Harvesting under the Agreement.

**“Construction Materials”** means

**“Consult”** means

**“Consultation”** means

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<sup>5</sup> Definition will need to be revisited once Canada has a Fish Harvesting chapter to propose

**“Correction Services”** means services provided to administer sanctions pursuant to a Dehcho Law and includes the establishment of Correctional Facilities and the provision of probation services.

**“Correctional Facilities”** means

**“Crown Land”** means lands belonging to Her Majesty in right of Canada.

**“Culture and Language Advocate”** means

**“Dehcho Agreement”** means the final land claims and self-government agreement among the Parties based upon the Agreement in Principle.

**“Dehcho Assembly”** means a meeting of representatives of Dene and Metis communities of the Dehcho for the purpose of considering whether to approve the draft AiP or Dehcho Agreement.

**“Dehcho Asserted Territory”** means

**“Dehcho Capital”** means

**“Dehcho Citizen”** means an individual whose name is on the Dehcho Citizenship Register

**“Dehcho Citizenship Register”** means the register referred to in 47.5 containing the names of all Dehcho Citizens

**“Dehcho Community”** means the community of Ft. Providence, West Point, Ka’a’gee Tu, Jean Marie River, Ft. Simpson, Sambaa K’e, Nahanni Butte, Pehdzeh Ki. **“Dehcho Community Government”** means

**“Dehcho Community Lands”** means lands owned by a Dehcho Community Government in fee simple within the boundaries of that community

**“Dehcho Constitution”** means

**“Dehcho Dene”** means an individual who is a descendant of a Dene who resided on, used or occupied land in the Dehcho Asserted Territory (as shown in Appendix A) prior to December 31, 1922, and who identifies as a Dene or as a Métis, or an individual who was adopted as a child under laws recognized in Canada or by Dehcho Dene custom by a Dehcho Dene who resided on, used or occupied land in the Dehcho Asserted Territory prior to December 31, 1922, or is a descendant of an individual so adopted.

**“Dehcho Enterprises”** means

**“Dehcho Government”** means the government of the Dehcho First Nations established in accordance with Chapter 6.

**“Dehcho Land Use Plan”** means a land use plan developed in accordance with 35.3.

**“Dehcho Land Use Planning Committee”** means

**“Dehcho Law”** means

- a) any law made by the Dehcho Government under a law-making authority provided for in this Agreement, and
- b) the Dehcho Constitution.

**“Dehcho Ndehe”** means

**“Dehcho Resident”** means

**“Dehcho Resource Management Authority”** means

**“Dehcho Settlement Area”** means the area shown in the map attached as Appendix A

**“Dene”** means

**“Dene Zhatie”** means

**“Developer”** means

**“Development”** means the stage after a decision to go into Production has been made, but before actual Production commences.

**“Direct Taxation”** has the same meaning, for the purposes of distinguishing between a direct tax and an indirect tax, as in class 2 of section 92 of the *Constitution Act, 1867*

**“Disputant”** means

**“Dispute Resolution”** means

**“Domestic Purposes”** means the non-commercial use or consumption of Wildlife, Migratory Birds, Trees or Plants by the individual or the family or community of the individual carrying out the hunting, trapping and gathering activity<sup>6</sup>, or anyone receiving Wildlife, Trees or Plants through gifting or trading as set out in the Dehcho Agreement.

**“Edible Parts”** means any substance that can be used as food.

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<sup>6</sup> GNWT proposing to replace “hunting, trapping and gathering” with Harvesting”. Parties still need to agree on definition of Harvesting.

**“Education Support Services”** means assistance provided in the form of a grant, loan or scholarship, counselling and administrative services for individuals accessing post-secondary education, Adult Education or Training

**“Effective Date”** means the date on which the Dehcho Agreement takes effect and both the territorial and federal Settlement Legislation have come into force.

**“Eligible Voter”** means an individual who is eligible to vote under 48.4.2

**“Enrolment Committee”** means the committee established under 47.2

**“Enrolment List”** means the list of individuals established by the Enrolment Committee in accordance with the eligibility criteria set out in 47.1

**“Environment”** means the physical environment, including air, land, Water, Wildlife, Fish, Migratory Birds, and Heritage Resources, and the social and cultural environment, including Harvesting of Wildlife, Fish, Migratory Birds, Plants and Trees.

**“Executive Council”** means

**“Expropriation”** means the compulsory taking of lands or any interests in lands.

**“Expropriation Authority”** means

**“Federal Law”** includes federal statutes, regulations, ordinances, Orders-in-Council and the common law.

**“Fish”** means fish as defined in the *Fisheries Act*.

**“Forest Management”** means forest conservation, forest fire control, timber management, reforestation, silviculture and management of a forest for wildlife and recreation.

**“Furbearers”** means

**“Gas”**, means natural gas and includes all substances, other than Oil, that are produced in association with natural gas.

**“Gift”**, means a voluntary transfer of property to another gratuitously and without consideration.

**“Government of the Northwest Territories”** means

**“Government of the Northwest Territories Economic Development Programs”** means for the purposes of this chapter, programs established by the Government of the Northwest

Territories on a territory-wide basis with the primary objective of stimulating business activities.

**“Harvester Compensation”** means

**“Harvesting”**, means in relation to:

- a) Wildlife: hunting and trapping;
- b) Migratory Birds: hunting;
- c) Fish: fishing; and
- d) Plants or Trees: gathering or cutting.

**“Harvesting Activities”**, means

**“Heritage Resources”** means

**“Heritage Site”** means

**“Impact and Benefit Agreement”** means

**“Implementation Plan”** means the plan developed by the Parties under the Implementation chapter to manage the implementation of the Dehcho Agreement.

**“Income Assistance”** means any form of aid, monetary or otherwise, by the Dehcho Government, that is provided to assist an individual in need within the Dehcho Settlement Area.

**“Intellectual Property”**

**“Interim Land Use Plan”** means

**“Interim Park Arrangement”** means

**“International Legal Obligations”** means

**“Jurisdiction”** means the power to enact laws.

**“Land Claims Agreement”** means a land claims agreement within the meaning of section 35 of the Constitution Act, 1982

**“Lands Titles Office”** means the Land Title Office as established and described in the *Land Title Act*.

**“Law”** means

**“Learning Outcomes”** means the desired learning outcome for primary (Kindergarten to grade 2, intermediate (grades 4-6), junior (grades 7-9) and senior (grades 10-12) grade levels.

**“Legislation”**, means

**“Liquor”**, means any beer, cider, wine, spirits or other product intended for human consumption having a percentage of alcohol by volume that exceeds 0.5%

**“Major Mining Projects”** means

**“Métis Local Membership List”** means

“Migratory Bird” means a migratory bird defined in the *Migratory Birds Convention Act*, and includes eggs, embryos and parts of the bird.

**“Minerals”** means a precious or base metal or other inorganic, naturally occurring substance that is found on or under any surface of land, and includes coal, oil and gas, but does not include Water, construction stone, carving stone, limestone, soapstone, marble, gypsum, shale, clay, sand, gravel, volcanic ash, diatomaceous earth, ochre, granite, slate, marl, loam, earth, flint, sodium chloride or soil

**“Minister”** means the Minister of the Government of Canada or of the Government of the Northwest Territories, as the context requires, responsible for the subject matter referred to.

**“National Park Reserve”** means

**“Navigable”** means

**“Official Voters List”** means the list of individuals created in accordance with 48.3.4

**“Oil”** means

**“Party/Parties”** means one of the Parties to the Agreement in Principle, namely the Dehcho First Nations, the Government of the Northwest Territories and Canada.<sup>7</sup>

**“Person”** means

**“Plants”**, means flora, other than Trees, in a wild state and includes fungi and algae in a wild state and also includes all seeds and parts

**“Preliminary Enrolment Period”** means the period of 18 months commenced by the Enrolment Committee under 47.3.1.

**“Preliminary Voters List”** means the list created in accordance with 48.2.2 (f).

**“Pre-school Child”** means an individual who resides in the Settlement Area and is not older than six years at the beginning of the school year and is not a Student

**“Project”** means

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<sup>7</sup> While agreement has been noted in the Agreement in Principle, the need will arise at a later date to review whether to use the singular or plural form.

**“Proponent”** means

**“Protected Area”** means

**“Ratification Committee”** means the committee referred to in 48.2

**“Registrar”** means an individual or group of individuals responsible for the creation and maintenance of the Dehcho Citizenship Register in accordance with 47.8

**“Regulatory Authorities”** means

**“Remediation of Contaminated Sites”** means

**“Sacred Site”** means

**“Settlement Legislation”** means the federal and territorial legislation that provides the Agreement is approved, given effect, declared valid, and has the force of law

**“Self-Government Agreement”** means

**“Social Housing”** means home ownership and rental programs that subsidize the purchase, construction, renovation or rental of residential housing for individuals in need of housing assistance.

**“Specified Substances”** means carving stone, clay, construction stone, diatomaceous earth, earth, flint, gravel, gypsum, limestone, marble, marl, ochre, peat, sand, shale, slate, sodium chloride, soil and volcanic ash.

**“Spiritual Site”** means

**“Student”** means an individual enrolled in kindergarten to grade 12 in the Settlement Area

**“Territorial Law”** includes territorial statutes, regulations, ordinances, Orders-in-Council, by-laws and the common law

**“Trade”** means to barter, exchange, buy or sell as set out in the Dehcho Final Agreement

**“Traditional Activities Advocate”** means

**“Training”**, means

**“Tree”**, means a woody, perennial plant generally with a single well-defined stem and more or less definitively formed crown, including all seeds, parts and products, which is found in a wild state in the Northwest Territories

**“Water”** means surface and subterranean water in liquid or frozen state located in or derived from a natural channel, a lake or other body of inland water.

**“Wildlife”** means all species and populations of wild mammals, amphibians and non-migratory birds, and all parts and products thereof, but does not include Fish.

**1.2. INTERPRETATION**

- 1.2.1 There will be no presumption that doubtful expressions, terms or provisions in the Dehcho Agreement are to be resolved in favour of any particular Party.
- 1.2.2 Schedules and Appendices to the Dehcho Agreement form part of the Dehcho Agreement, and all of the Dehcho Agreement will be read together and interpreted as one agreement.
- 1.2.3 Unless the Parties otherwise agree, an agreement, plan, guideline or other document made by a Party or Parties that is referred to in or contemplated by the Dehcho Agreement, including an agreement that is reached as a result of negotiations that are required or permitted by the Dehcho Agreement,
- a) is not part of the Dehcho Agreement;
  - b) is not a Treaty or Land Claims Agreement within the meaning of sections 25 and 35 of the Constitution Act, 1982; or
  - c) does not recognize or affirm Aboriginal Rights or Treaty rights, within the meaning of sections 25 and 35 of the Constitution Act, 1982.
- 1.2.4 A reference to a government, ministry, department or body will include its successor, whether it be in name or function.
- 1.2.5 Except where a specific year and chapter number are referenced, citation of Legislation refers to the Legislation as amended from time to time and includes successor Legislation.
- 1.2.6 Where the Dehcho Agreement refers to a Federal Law or Territorial Law, or a provision thereof, that is repealed after the Effective Date for which there is no successor legislation, the Dehcho Agreement shall be read without reference to that Federal Law or Territorial Law or provision thereof.
- 1.2.7 The use of the word “territorial” refers to the Northwest Territories.
- 1.2.8 The use of the word “will” denotes an obligation that must be carried out by one or more of the Parties and, when no time frame is set out, the obligation will be carried out as soon as is practicable after the Effective Date or the event which gives rise to the obligation.
- 1.2.9 “May” is to be construed as permissive, but the use of the words “may not” denotes a negative connotation.



- 1.2.10 The use of the word “including” means “including, but not limited to” and the use of the word “includes” means “includes, but is not limited to”.
- 1.2.11 Headings and sub-headings are for convenience only and in no way define, limit, alter or enlarge the scope or meaning of any provisions of the Dehcho Agreement. A reference to a heading number or subheading number is a reference to the paragraphs under that heading or subheading, as applicable.
- 1.2.12 Where a word is defined, other parts of speech and grammatical forms of the same word have corresponding meanings.
- 1.2.13 A reference to a “chapter” or “schedule” means a chapter or schedule of the Dehcho Agreement, unless the meaning is otherwise clear from the context.
- 1.2.14 The use of the singular includes the plural and the use of the plural includes the singular, unless it is otherwise clear from the context.
- 1.2.15 Defined words will be capitalized in the text of this Agreement- in- Principle and the Dehcho Agreement.

## **CHAPTER 2: GENERAL PROVISIONS**

- 2.1 PURPOSE AND SCOPE OF THE AGREEMENT-IN-PRINCIPLE**
- 2.2 NATURE OF THE DEHCHO AGREEMENT**
- 2.3 ACCESS TO PROGRAMS AND SERVICES**
- 2.4 TERRITORIAL APPLICATION**
- 2.5 CONSTITUTION OF CANADA**
- 2.6 RELATIONSHIP OF LAWS**
- 2.7 APPLICATION AND RELATIONSHIP OF FEDERAL LAW, TERRITORIAL LAW AND DEHCHO AND DEHCHO COMMUNITY LAW**
- 2.8 RELATIONSHIP OF GENERAL PROVISIONS TO THE DEHCHO AGREEMENT**
- 2.9 CANADIAN HUMAN RIGHTS ACT**
- 2.10 APPLICATION OF FEDERAL LAW RELATING TO FIREARMS**
- 2.11 CONSULTATION ON LEGISLATION**
- 2.12 INTERGOVERNMENTAL AGREEMENTS**
- 2.13 APPLICATION OF INDIAN ACT**
- 2.14 REGULATION OF PROFESSIONS**
- 2.15 NWT SUPREME COURT**
- 2.16 CORE PRINCIPLES AND OBJECTIVES**
- 2.17 STATUS OF DEHCHO NDEHE**
- 2.18 DEVOLUTION**
- 2.19 COMING TO EFFECT**
- 2.1 PURPOSE AND SCOPE OF THE AGREEMENT-IN-PRINCIPLE**
- 2.1.1 This Agreement-in-Principle sets out the basic principles guiding the negotiation of the Dehcho Agreement. It is not legally binding on the parties. For greater certainty, it does not create, define or recognize any legal duties or obligations, nor does it abrogate, derogate from or recognize any Aboriginal, Treaty or other rights.
- 2.2 NATURE OF THE DEHCHO AGREEMENT**
- 2.2.1 As of the Effective Date the Dehcho Agreement will be a treaty and give rise to treaty rights under sections 25 and 35 of the Constitution Act, 1982.
- 2.3 ACCESS TO PROGRAMS AND SERVICES**
- 2.3.1 Nothing in the Dehcho Agreement will prevent a Dehcho First Nation community or their residents from participating in the programs of Canada and the Government of the Northwest Territories or from benefiting from them in accordance with the general criteria established for these programs, except where the Dehcho Agreement provides otherwise.

- 2.3.2 Nothing in the Dehcho Agreement will prevent the Dehcho Government or a Dehcho Community Government from participating in the programs of Canada and the Government of the Northwest Territories or from benefiting from them in accordance with the general criteria established for these programs, except where the Dehcho Agreement provides otherwise.

#### **2.4 OTHER RIGHTS, BENEFITS AND PROGRAMS**

- 2.4.1 Nothing in the Agreement will affect the ability of the Dehcho Government and Dehcho Citizens to participate in and benefit from government programs for status Indians, non-status Indians or Métis<sup>8</sup>, as the case may be. Benefits received under such programs will be determined by general criteria established from time to time.
- 2.4.2 When the Dehcho Government applies to Canada or the Government of Northwest Territories for program funding, the determination by that government of the entitlement for funding will take into account the fact that the Dehcho Government is the legal successor of the [list Dehcho First Nation Bands].
- 2.4.3 Nothing in the Agreement will be construed to affect hunting, trapping or fishing rights under a Natural Resources Transfer Agreement, or under treaty, in British Columbia, Alberta, Saskatchewan or Manitoba of any individual who is eligible to be enrolled as a Dehcho Citizen.<sup>9</sup>
- 2.4.4 Rights and benefits provided under the Agreement for the Dehcho First Nation are vested in Dehcho Citizens collectively and may be exercised by individual Dehcho Citizens subject to any limitations established by or under any provisions of the Agreement, including any limitations established by the Dehcho Government. No Dehcho Citizen has a right to land, money or other benefits under the Agreement unless specifically provided for in the Agreement, or by decision of the Dehcho Government.

#### **2.5 REPRESENTATIONS AND WARRANTIES**

- 2.5.1 Each Dehcho First Nation represents and warrants to Canada and the Government of the Northwest Territories that, in respect of the matters dealt with in this Agreement, it represents and has the authority to enter into on behalf of, and enters into this Agreement on behalf of, any and all of those

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<sup>8</sup> Nothing in this agreement prevents anyone from bringing equality rights challenges.

<sup>9</sup> Canada is considering this clause.

individuals who collectively comprise that Dehcho First Nation and who have or may exercise any Aboriginal rights, including Aboriginal title, or may make any claims to those rights.

2.5.2 Canada represents and warrants to each Dehcho First Nation that, in respect of the matters dealt with in this Agreement, it has the authority to enter into this Agreement within its authorities.

2.5.3 The Government of Northwest Territories represents and warrants to each Dehcho First Nation that, in respect of the matters dealt with in this Agreement, it has the authority to enter into this Agreement within its authorities.

## **2.6 TERRITORIAL APPLICATION**

2.6.1 The provisions of the Dehcho Agreement will apply in the Northwest Territories, except where otherwise provided in the Agreement.

2.6.2 Neither the Dehcho Agreement nor the implementation legislation will have the effect of infringing on the rights of the Dehcho Dene as regards land located outside of the limits of the Northwest Territories.

2.6.3 The status of Dehcho Dene rights and interests in the Yukon Territory, British Columbia and Alberta will be addressed prior to the signing of the Dehcho Agreement.

2.6.4 The boundary and overlap issues between the Dehcho First Nations and the Acho Dene Koe, Sahtu, Akaitcho and Dene Tha' will be considered prior to the signing of the Dehcho Agreement.

## **2.7 CONSTITUTION OF CANADA**

2.7.1 The Dehcho Agreement does not alter the Constitution of Canada, including:

- a) the identity of the Dehcho Dene as an aboriginal people of Canada within the meaning of the *Constitution Act, 1982*; and
- b) sections 25 and 35 of the *Constitution Act, 1982*.

2.7.2 The Canadian Charter of Rights and Freedoms will apply to the Dehcho Government in respect of all matters within its authority.

## **2.8 RELATIONSHIP OF LAWS**

- 2.8.1 Subject to the Dehcho Agreement, Federal Law and Territorial Law will apply to Dehcho First Nations, Dehcho Government, Dehcho Community Government, Dehcho Ndehe and Dehcho Citizens.
- 2.8.2 In the event of a conflict between a Dehcho Law or Dehcho Community Law and a Federal Law or Territorial Law, priority will be determined in accordance with the Dehcho Agreement.
- 2.8.3 In the Dehcho Agreement, the Parties will address the issue of consistency of Dehcho Laws and Dehcho Community Laws and Dehcho Government actions with Canada's international legal obligations.
- 2.8.4 The *Statutory Instruments Act* (Canada) does not apply to Dehcho or Dehcho Community Law.
- 2.8.5 Notwithstanding any other rule of priority in the Dehcho Agreement, a Federal Law in relation to peace, order and good government, criminal law<sup>10</sup>, human rights, the protection of the health and safety of all Canadians, or other matters of overriding national importance, prevails to the extent of a conflict with a Dehcho Law or Dehcho Community Law.
- 2.8.6 Notwithstanding any other rule of priority in the Dehcho Agreement, Federal Law and Territorial Law prevails to the extent of a conflict with a Dehcho Law or Dehcho Community Law that has an incidental impact on a subject matter for which Dehcho Government or Dehcho Community Government:
- a) has no power to make laws; or
  - b) has the power to make laws but in respect of which Federal Laws and Territorial Laws prevail in the event of a conflict.
- 2.8.7 Notwithstanding any other rule of priority in the Dehcho Agreement, Federal Law and Territorial Law prevails to the extent of a conflict with a Dehcho Law or Dehcho Community Law that has a double aspect with any federal or territorial legislative jurisdiction for which Dehcho Government or Dehcho Community Government:
- a) has no power to make laws; or
  - b) has the power to make laws but in respect of which Federal Laws and Territorial Laws prevail in the event of a conflict.

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<sup>10</sup> Dehcho raised a concern with respect to criminal law in relation to the accommodation of Dehcho culture in criminal procedures

- 2.8.8 The Dehcho Government or Dehcho Community Government is bound by the provisions of the Canadian Charter of Rights and Freedoms and the rights and freedoms guaranteed by the Charter are enforceable in respect of the Dehcho Government or Dehcho Community Government.<sup>11</sup>
- 2.8.9 In the event of **any inconsistency or** conflict between the Dehcho Agreement or the Settlement Legislation, or both, and other Federal Law or Territorial Law, the Dehcho Agreement or the Settlement Legislation, or both, will prevail to the extent of the Conflict.
- 2.8.10 Where there is any inconsistency or conflict between the Settlement Legislation and the Dehcho Agreement, the Dehcho Agreement will prevail to the extent of the inconsistency or conflict.
- 2.8.11 Any Dehcho Law or Dehcho Community Law that is inconsistent or in conflict with the Dehcho Agreement is of no force or effect to the extent of the inconsistency or conflict.
- 2.8.12 The operation of the Dehcho Agreement will not limit the authority of Canada or the Minister of National Defence to carry out activities related to national defence, security and public safety.<sup>12</sup>
- 2.8.13 In the event of a conflict between a Federal Law relating to species at risk, Migratory Birds, Fish and Fish Habitat<sup>13</sup>, federal buildings and federal undertakings with Dehcho Law or Dehcho Community Law, the Federal Law will prevail to the extent of the conflict.
- 2.8.14 In the event of a conflict between Federal Law or Territorial Law setting out obligations with respect to the collection of statistics and reporting on natural resources in Canada and Dehcho Law or Dehcho Community Law, the Federal Law or Territorial Law will prevail to the extent of the conflict.
- 2.8.15 For greater certainty, the powers of the Dehcho Government and Dehcho Community Governments to make laws, set out in this Agreement, do not include the power to make laws in respect to:
- a) criminal law, including the procedure in criminal matters;

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<sup>11</sup> Dehcho have raised the possibility of a second Charter clause indicating that Dehcho Citizens continue to be able to rely upon and be protected by the Charter

<sup>12</sup> Dehcho asked whether it's necessary to reference the Minister of National Defence if Canada is already referenced. Canada to consider

<sup>13</sup> Dehcho would like to flag Fish Habitat for future discussion

- b) protection of the health and safety of all Canadians;
- c) intellectual property<sup>14</sup>; and
- d) labour relations and working conditions.

**2.9 APPLICATION AND RELATIONSHIP OF FEDERAL LAW, TERRITORIAL LAW  
AND DEHCHO AND DEHCHO COMMUNITY LAW**

- 2.9.1 Except as otherwise provided in this Agreement, Dehcho Law or Dehcho Community Law does not apply to Canada or the Government of the Northwest Territories.

**2.10 RELATIONSHIP OF GENERAL PROVISIONS TO THE DEHCHO AGREEMENT**

- 2.10.1 In the event of a conflict between a provision of this Chapter and any other provision in the Dehcho Agreement, the provision of this Chapter will prevail to the extent of the conflict.

**2.11 CANADIAN HUMAN RIGHTS ACT**

- 2.11.1 Nothing in the Dehcho Agreement restricts the operation of the *Canadian Human Rights Act* or the territorial *Human Rights Act*.

**2.12 APPLICATION OF FEDERAL LAW RELATING TO FIREARMS**

- 2.12.1 Nothing in the Dehcho Agreement affects the application of Federal Law in respect of the possession, use or regulation of firearms.<sup>15</sup>

**2.13 CONSULTATION ON LEGISLATION**

- 2.13.1 Canada and the Government of the Northwest Territories will consult the Dehcho First Nation or, when it is established, the Dehcho Government, in the planning of the institutions established by or under the Dehcho Agreement and the preparation of the Settlement Legislation and other legislation proposed to implement the provisions of the Agreement, including the preparation of any amendments to such legislation.<sup>16</sup>

**2.14 INTERGOVERNMENTAL AGREEMENTS**

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<sup>14</sup> Dehcho considering the effect of “intellectual property” on “traditional knowledge”

<sup>15</sup> DFN involvement in sentencing to be addressed in Justice chapter.

<sup>16</sup> GNWT indicated that the current wording does not accurately reflect the trigger point for consultation. GNWT to propose new wording.

- 2.14.1 Nothing in the Dehcho Agreement will be interpreted so as to limit or extend any authority of the Parties to negotiate and enter into international, national, interprovincial, and inter-territorial agreements, but this will not prevent the Dehcho Government from entering into agreements with a federal, provincial, territorial or Aboriginal government for the provision of specific programs and services.

**2.15 APPLICATION OF INDIAN ACT**

- 2.15.1 The Indian Act will not apply to Dehcho Citizens, except for the purpose of determining whether or not a Dehcho Citizen is an “Indian” under that Act and for the administration of the property of any individual where it was being administered by the Minister of Indian Affairs and Northern Development under that Act before the effective date.

- 2.15.2 Enrolment as a Dehcho Citizen does not affect an individual’s identity as an Indian or Métis.

- 2.15.3 Enrolment as a Dehcho Citizen will not confer any rights or benefits under the *Indian Act* or a right of entry into Canada or of Canadian citizenship.

**2.16 REGULATION OF PROFESSIONS**

- 2.16.1 The Dehcho Government has no Jurisdiction in relation to the certification, licensing, or regulation of occupations, trades, professions, professionals, professional organizations and societies except as otherwise provided in the Agreement.

**2.17 NWT SUPREME COURT**

- 2.17.1 Nothing in the Final Agreement affects the inherent jurisdiction of the Supreme Court of the NWT, including its jurisdiction with respect to children or legally incompetent individuals.

**2.18 CORE PRINCIPLES AND OBJECTIVES**

- 2.18.1 In consultation with the Dehcho Government, the Government of the Northwest Territories will develop and may amend NWT core principles and objectives in relation to:

- a) Early childhood education;
- b) Child and Family Services;
- c) Social Housing;



- d) Income Assistance;
- e) Trusteeship
- f) Guardianship; and
- g) Adoption.

2.18.2 NWT core principles and objectives in relation to:

- a) Early childhood education;
- b) Child and Family Services;
- c) Social Housing;
- d) Income Assistance;
- e) Trusteeship
- f) Guardianship; and
- g) Adoption

reflect the fundamental characteristics of social programs and services in these areas.

2.18.3 The NWT Core principles and objectives will be broad in nature.

2.18.4 Governments in the NWT setting standards compatible with NWT core principles and objectives may take into account the circumstances and conditions that exist for that government.

2.18.5 For greater certainty, standards established by the Dehcho Government referred to in (reference the specific sections in jurisdictions chapters) may take into account the circumstances and conditions that exist in the Dehcho Settlement Area.

2.18.6 For greater certainty, standards established by the Dehcho Government referred to in (reference the specific sections in jurisdictions chapters) may differ from standards established by the Government of the Northwest Territories or other governments in the NWT and still be compatible with NWT core principles and objectives.

## 2.19 STATUS OF DEHCHO NDEHE

2.19.1 Dehcho Ndehe are not “Lands reserved for the Indians” within the meaning of section 91(24) of the Constitution Act, 1867 or reserves within the meaning of the Indian Act.

## 2.20 DEVOLUTION

2.20.1 Nothing in the Dehcho Agreement will prejudice the devolution or transfer of responsibility or powers from Canada to the Government of the Northwest Territories.<sup>17</sup>

**2.21 COMING TO EFFECT**

2.21.1 The Dehcho Agreement comes into effect upon its ratification b

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<sup>17</sup> The DFN state that issues related to jurisdiction and lands should be addressed at the Dehcho Process table and that the Dehcho Agreement will be with prejudice to any devolution agreement between Canada and the GNWT

## **CHAPTER 3: CERTAINTY**

DFN ROLLING DRAFT  
Draft: January 31, 2014

Without Prejudice  
For Discussion Purposes Only

## **CHAPTER 4: DEHCHO COMMUNITY GOVERNMENTS**

- 4.1 DEHCHO COMMUNITY GOVERNMENTS**
- 4.2 STRUCTURE OF DEHCHO COMMUNITY GOVERNMENTS**
- 4.3 DELEGATION**
- 4.4 POWERS TO ENACT LAWS**
- 4.5 INCONSISTENCY OR CONFLICT**
- 4.6 PROGRAMS AND SERVICES**
- 4.7 EXPANSION OF DEHCHO COMMUNITY BOUNDARIES**
- 4.8 DISSOLUTION OR RELOCATION**
- 4.9 ESTABLISHMENT OF NEW DEHCHO COMMUNITY GOVERNMENTS**

### **4.1 DEHCHO COMMUNITY GOVERNMENTS**

4.1.1 The Dehcho Community Governments are the community governments in [list Dehcho communities].

4.1.2 Dehcho Community Governments represent and serve all residents in their respective communities.

4.1.3 The Dehcho Agreement will

- a) describe the boundary of each Dehcho Community;
- b) provide for the structures and administration of Dehcho Community Governments and for their dissolution in accordance with chapter 4.8;
- c) provide for transitional arrangements respecting existing community governments in Dehcho communities, including transfer of their assets and assumption of their liabilities and, where agreed to by the parties, their dissolution;
- d) set out the powers of the Dehcho Community Governments, including the powers to administer Community Lands and to enter into Municipal Service Agreements;
- e) describe the procedures through which the Chiefs and Councillors of Dehcho Community Governments may be selected;
- f) describe the authority, if any, of the Government of the Northwest Territories with respect to the operational and financial accountability of Dehcho Community Governments;
- g) provide for the cancellation of any certificate of title or leases issued before the Effective Date for any land that has become Dehcho Community Lands; and

- h) provide for the issuance of a new certificate of title or lease for an interest listed in Schedule XX, where a certificate of title or lease was issued before the Effective Date and cancelled pursuant to 4.1.2 (g).

#### 4.2 STRUCTURE OF DEHCHO COMMUNITY GOVERNMENTS<sup>18</sup>

- 4.2.1 A Dehcho Community Government will be comprised of a Chief and an even number of councillors. No Dehcho Community Government will have less than four councillors. The maximum number of councillors for each Community will be determined in relation to the number of residents in the Community, including children, as confirmed by the most recent Census conducted before the election of the councillors, as follows:

<u>Number of Community Residents</u>	<u>Maximum Number of Councillors</u>
Less than 500	6
500-999	8
1,000-19,999	10 <sup>19</sup>
20,000 or more	16

##### 4.2.2 The Dehcho Agreement

- a) will recognize the right of Dehcho Communities to choose their leadership according to Dene custom<sup>20</sup> rather than by election;
- b) will define residency in a Dehcho Community [or in Dehcho Ndehe] for the purposes of this chapter;
- c) [for those Dehcho Communities which elect their Chief and Councillors,] will describe eligibility criteria for Dehcho Community Government elections;
- d) may describe the grounds and the processes for removing a Chief or a Councillor from office;
- e) may describe an acclamation process for a Chief or a Councillor;
- f) may provide for a periodic Census for the purposes of 4.2.1;
- g) may provide for the appointment of a Councillor to act as Sub Chief, who will act as Chief in the absence of the Chief; and
- h) will describe community meetings and the use of referendums.

<sup>18</sup> This model needs to be revisited and will be discussed at the February 2014 negotiation session among the Parties.

<sup>19</sup> Parties to consider: 10 Councillors for 1,000 to 19,999 Community Residents, and Number of Councillors TBD for 20,000 or more Community Residents. Still under review.

<sup>20</sup> May need to define "Dene custom". Is custom consistent with public government? And does it meet a democratic minimal test for people's participation?

- 4.2.3 In Dehcho Community elections, an individual is eligible to vote if that individual
- a) is a Canadian citizen or permanent resident of Canada;
  - b) is resident<sup>21</sup> in the Dehcho Community for at least the six months immediately preceding the election;
  - c) has been resident in Dehcho Ndehe or Settlement Area or in a Dehcho Community for at least the five years<sup>22</sup> immediately preceding the election; and
  - d) is at least 18 years of age on the day of the election.
- 4.2.4 The Chief and Sub-Chief of a Dehcho Community Government must be Dehcho Citizens who are at least 18 years of age and have been resident in the community for at least the two years immediately preceding taking office.
- 4.2.5 A councillor of a Dehcho Community Government must be an eligible voter who is nominated and elected/selected by eligible voters.<sup>23</sup>
- 4.2.6 Subject to 4.2.7, in an election for a Dehcho Community Government those candidates with the most votes will be elected as councillors.<sup>24</sup>
- 4.2.7 At least half of those elected as Community Councillors will be Dehcho Citizens
- 4.2.8 There will be at least one (1) Community Assembly each calendar year
- a) conducted by the Community Government;
  - b) conducted by the Dehcho Government.
- 4.3 DELEGATION**
- 4.3.1 A Dehcho Community Government may delegate any of its powers, except the power to enact laws, to:
- a) a public body or office established by a law of that Dehcho Community Government;

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<sup>21</sup> Should only Citizens be eligible to vote for Chief, as in Tlicho, or all residents who meet residency rule? DFN seeking instructions

<sup>22</sup> GNWT and Canada propose a 2 year minimum. DFN seeking instructions.

<sup>23</sup> Need to consider whether additional criteria are required.

<sup>24</sup> DFN is seeking instruction on the model.

- b) the Dehcho Government or a body or office established by a Dehcho law;
- c) Canada or the Government of the Northwest Territories, including a department, agency or office of either Canada or the Government of the Northwest Territories; or
- d) a public body established by Legislation.

4.3.2 A delegation under 4.3.1 must be in writing and, if under 4.3.1 (b) or (c) must be agreed to by the delegatee.

4.3.3 A Dehcho Community Government has the capacity to enter into agreements to receive powers, including powers to enact laws, by delegation. The delegation agreement may include powers exercisable outside the Dehcho Community and powers to enact laws applicable outside the Dehcho Community.

4.3.4 Where the Dehcho Government has delegated authority to a Dehcho Community Government to deliver programs for which federal or territorial funding would be available to the Dehcho Government if it were delivering the programs, the Dehcho Community Government will be treated as though the Dehcho Government had made the application to Canada or the Government of the Northwest Territories for program funding.

4.3.5 When applying to Canada or the Government of the Northwest Territories for funding under 4.3.4, a Dehcho Community Government will be treated as a separate entity for purposes of calculating the entitlement to and quantum of funding.

#### **4.4 POWERS TO ENACT LAWS<sup>25</sup>**

4.4.1 In addition to [any] other powers provided for in the Dehcho Agreement [for Dehcho Community Governments], a Dehcho Community Government has Jurisdiction of a municipal/community<sup>26</sup> nature within its boundaries with respect to

- a) operations and internal management and procedures;
- b) the purchase and acquisition of real property by the Dehcho Community Government and the sale, lease, disposition, use, holding or development of Dehcho Community Government real property;

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<sup>25</sup> Parties to examine potential s.35 responsibilities for Community Governments (i.e. Assembly A and Assembly B). The Parties will examine in February 2014.

<sup>26</sup> DFN to review



- c) management, use and protection of land and renewable<sup>27</sup> resources, including land use planning, local protected areas, zoning, subdivision, and environmental<sup>28</sup> control;
- d) granting utility franchises;
- e) the health, safety, welfare of people and the protection of people and property;
- f) programs, services, and facilities provided by or on behalf of the Dehcho Community Government including, but not limited to, sewers, drainage systems, water distribution and supply, garbage and waste, ambulance services, and recreation;
- g) people, activities and things in, on, or near a public place, or place that is open to the public, including the imposition of curfews;
- h) licensing of businesses, business activities, and Persons engaged in business;
- i) local transportation systems including, but not limited to, buses and taxis;
- j) community roads, except primary highways designated under the *Public Highways Act* (NWT);
- k) restrictions on the operation of All Terrain Vehicles, except on primary highways as defined under the *Public Highways Act* (NWT);
- l) public nuisances, including unsightly property;
- m) domestic animals and activities in relation to them;
- n) community flag, crest and coat of arms;
- o) **traditional and recreational games**,<sup>2930</sup>

**Deleted:** gaming and recreation contests

4.4.2 Regulation of land under Part 3 of the *Mackenzie Valley Resource Management Act* (Canada) applies to lands within a Dehcho Community except where the Dehcho Community Government exercises Jurisdiction under 4.4.1 in respect of those lands.<sup>31</sup>

<sup>27</sup> Tlcho Agreement does not include renewable resources. GNWT prefers 'land use planning, zoning and subdivision control'. **GNWT is looking into adding "plants and trees"**.

<sup>28</sup> Suggested by DFN.

<sup>29</sup> DFN reviewing.

<sup>30</sup> GNWT will consider jurisdiction regarding traditional games. GNWT proposes the following:

4.4.10 A licence or approval of gaming or gambling in the Community Boundaries will only be issued with the consent of the Dehcho Community Government.

4.4.11 The consent of the Dehcho Community Government pursuant to 4.4.10 may include terms and conditions, provided that any such terms and conditions are consistent with Federal Law and NWT Law.

4.4.12 Nothing in the Dehcho Agreement will be construed to restrict the ability of the Dehcho Community Government to participate in the regulation, conduct or management of gaming and gambling permitted under any Federal Law or NWT Law.

<sup>31</sup> DFN is opposed to this clause.

- 4.4.3 A Dehcho Community Government has Jurisdiction and Authority within the Community Boundaries that are the same as the Jurisdiction and Authority of municipalities under Territorial Law in relation to:
- a) the borrowing of money;
  - b) fire protection and prevention;
  - c) emergency preparedness and emergency measures;
  - d) motor vehicles;
  - e) expropriation of interests in lands;
  - f) property taxation;
  - g) property assessment; and
  - h) any other matter that may be provided for in Territorial Law not addressed by 4.4.1.
- 4.4.4 In exercising its Jurisdiction and Authority pursuant to 4.4.3, the Dehcho Community Government will perform those duties that are the same as with the duties of municipalities under Territorial Law.
- 4.4.5 The Jurisdiction of the Dehcho Community Government set out in 4.4.1 and 4.4.3 does not include:
- a) establishing a land titles system;
  - b) consumer protection;
  - c) regulation of utilities; and
  - d) occupational health and safety.
- 4.4.6 For greater certainty, the authority of a Dehcho Community Government to make laws in respect of a subject matter as set out in the Dehcho Agreement includes the authority to make laws and do other things as may be necessarily incidental to exercising that authority.
- 4.4.7 Dehcho Community Government Laws made pursuant to 4.4.1 and 4.4.3 will ensure that health, safety and environmental standards, and technical codes regarding public works, community infrastructure and local services, that are at least equivalent to federal and NWT health, safety and environmental standards and technical codes.
- 4.4.8 The Government of the Northwest Territories will confer with the Dehcho Community Governments prior to amending or establishing standards and technical codes referred to 4.4.7.
- 4.4.9 A Dehcho Community Government will have standing to make representations to the Public Utilities Board, or any other administrative

decision-maker established pursuant to Territorial Law, when the Board or decision-maker considers any matter which:

- a) is within the jurisdiction of the Board or decision maker affecting the provision of a public utility service within the Dehcho Settlement Area; and
- b) may impact upon the Dehcho Community Government.

4.4.10 Notwithstanding the geographic limits applicable to Dehcho Community Government Laws, by agreement between the Dehcho Community Government and the Government of the Northwest Territories, such Laws may apply outside the community boundaries in order to facilitate the delivery of services.

4.4.11 The Dehcho Community Government has Jurisdiction with respect to the prohibition, taxation,<sup>32</sup> or control of the sale, exchange, possession, or consumption of Liquor within Community Boundaries.

4.4.12 The Jurisdiction under 4.4.11 does not include:

- a) the manufacture of Liquor;
- b) the importing of Liquor into the NWT;
- c) the distribution of Liquor within the NWT; and
- d) the exporting of Liquor.

#### **4.5 INCONSISTENCY OR CONFLICT**

4.5.1 In the event of a conflict between a Dehcho Community Government Law made pursuant to 4.4.1 or 4.4.11 and a Federal Law or Territorial Law, the Dehcho Community Government Law prevails to the extent of the conflict.

4.5.2 In the event of a conflict between a Dehcho Community Government Law made pursuant to 4.4.3 and a Federal Law or Territorial Law, the Federal Law or Territorial Law prevails to the extent of the conflict.

4.5.3 In the case of conflict between a Dehcho law and a law enacted by a Dehcho Community Government, the Dehcho law will prevail to the extent of the conflict.<sup>33</sup>

#### **4.6 PROGRAMS AND SERVICES**

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<sup>32</sup> GNWT and Canada reviewing. Canada notes that this is a matter for Finance Canada.

<sup>33</sup> Canada is considering in context of government models and Constitution.

- 4.6.1 A Dehcho Community Government may enter into agreements with government, other community governments or the Dehcho Government to deliver, administer and manage programs and services for residents of a Dehcho Community.
- 4.6.2 Programs and services delivered and managed by a Dehcho Community Government will be funded at levels comparable to funding levels for similar programs and services in other communities in the Northwest Territories. Where the Dehcho Community Government and the Government of the Northwest Territories do not reach agreement on funding levels, the Dehcho Community government may refer, for resolution under chapter 46, the question as to whether the method used for determining comparable funding levels is equitable.
- 4.6.3 Prior to the Dehcho Agreement, the Parties will discuss practical outcomes for the coordination of programs and services between or among different levels of government.
- 4.7 EXPANSION OF DEHCHO COMMUNITY BOUNDARIES**
- 4.7.1 The boundary of a Dehcho Community may, in accordance with the Dehcho Agreement and the Appendix to this chapter, be expanded.
- 4.8 DISSOLUTION OR RELOCATION**
- 4.8.1 The agreement of the Parties is required before a Dehcho Community Government is dissolved or before a Dehcho Community is relocated.
- 4.8.2 An agreement under 4.8.1 will, subject to chapter 5, make provision for all assets and liabilities of the Dehcho Community Government.
- 4.8.3 In the agreement under 4.8.1, the Parties will describe the amendment to the Dehcho Agreement required to reflect the dissolution of any Dehcho Community Government or the relocation of any Dehcho Community.
- 4.8.4 The dissolution of a Dehcho Community Government or the relocation of a Dehcho Community is not effective until the amendment to the Dehcho Agreement referred to in 4.8.3 is ratified in accordance with the Dehcho Agreement.
- 4.9 ESTABLISHMENT OF NEW DEHCHO COMMUNITY GOVERNMENTS**

- 4.9.1 A new Dehcho Community Government will only be established by agreement among the Parties.
- 4.9.2 In the agreement under 4.9.1, the Parties will describe the amendment to the Agreement required to reflect the establishment of a new Dehcho Community Government.
- 4.9.3 The establishment of a new Dehcho Community Government is not effective until the amendment to the Agreement referred to in 4.9.2 is ratified in accordance with the Dehcho Agreement.

#### APPENDIX TO CHAPTER 4

##### PROCESS FOR EXPANSION OF THE BOUNDARY OF A COMMUNITY (4.7.1)<sup>34</sup>

1. The territorial Minister may not expand the boundary of a Dehcho community except at the written request of the Dehcho community government.<sup>35</sup>
2. The consent of the Dehcho Government is required where the expansion of the boundary would be into an area containing Dehcho Ndehe.
3. Before requesting the territorial Minister to expand the boundary of a Dehcho community into an area containing Dehcho Ndehe, the Dehcho community government will discuss with the Dehcho Government the need for the expansion and will attempt to negotiate an agreement with the Dehcho Government for the conveyance of the Dehcho Ndehe required for the expansion.
4. Where the territorial Minister receives a request from a Dehcho community government but decides not to expand the boundary of the community, the Minister will provide written reasons to the community government for that decision.

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<sup>34</sup> Old wording which was replaced by current wording suggested by GNWT:

1. Canada and the Dehcho Government, when Dehcho Ndehe is involved, or the Government of the Northwest Territories and the Dehcho Government when Commissioner's Land is involved, will negotiate an agreement to expand the boundary of a Dehcho Community at the written request of the Dehcho Community Government.
2. The consent of the Dehcho Government is required where the expansion of the boundary would be into an area containing part of Dehcho Ndehe
3. Before requesting to expand the boundary of a Dehcho Community into an area containing part of Dehcho Ndehe, the Dehcho Community Government will discuss with the Dehcho Government the need for the expansion and will attempt to negotiate an agreement with the Dehcho Government for the conveyance of the portions of Dehcho Ndehe required for the expansion.
4. Where part of Dehcho Ndehe becomes part of Dehcho Community lands under an agreement to expand a Dehcho Community boundary, Crown land of equivalent size and value will be added to Dehcho Ndehe.
5. Where the parties to negotiations under section 1 of this Appendix decide not to expand the boundary of the community, they will provide written reasons for their decision.
6. Before deciding not to expand the boundary of a community, the parties to the negotiations under section 1 of this Appendix will engage in mediation with the affected Dehcho Community Government.

<sup>35</sup> GNWT will propose wording for a process that engages the Community Government before making a decision on the expansion of community boundaries.

## CHAPTER 5: DEHCHO COMMUNITY LANDS

- 5.1 LAND TO BE TRANSFERRED
- 5.2 NATURE OF TITLE
- 5.3 EXISTING INTERESTS
- 5.4 SURVEYS AND ISSUANCE OF TITLE
- 5.5 CONTAMINATED SITES
- 5.6 RIGHT TO ACQUIRE GOVERNMENT LAND

### 5.1 LAND TO BE TRANSFERRED

#### 5.1.1 On the Effective Date:

- a) Dehcho Community Governments are vested with title to unsurveyed Crown lands within the community boundary as identified in Appendices \_\_ of the Dehcho Agreement.
- b) Dehcho Community Governments are vested with title to unsurveyed Commissioner's Land within the community boundary as identified in Appendices \_ of the Dehcho Agreement.
- c) Canada will transfer title to the surveyed Crown land within the community boundary as identified in Appendices \_ of the Dehcho Agreement, to the respective Dehcho Community Government.
- d) the Government of the Northwest Territories will transfer title to the surveyed Commissioner's Land within the community boundary as identified in Appendices \_ of the Dehcho Agreement to the respective Dehcho Community Government.

### 5.2 NATURE OF TITLE<sup>36</sup>

- 5.2.1 Community Land transferred under 5.1.1 will be held in fee simple by a Dehcho Community Government. Community Land will comprise only the surface

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<sup>36</sup> New language proposed by DFN for this section:

#### 5.2 NATURE OF TITLE

5.2.1 Dehcho Community Land transferred under 24.1.1 will be held in fee simple by a Dehcho Community Government. Dehcho Community Land will comprise only the surface interest, including Specified Substances, but will not include mines and minerals.

5.2.2 A Dehcho Community Government may grant interests less than fee simple on Dehcho Community Land.

5.2.3 Except as provided for in 5.2.4, a Dehcho Community Government may not sell, pledge for security or grant fee simple interests in Dehcho Community Land pursuant to 4.4.1(b).

5.2.4 A Dehcho Community Government may sell, pledge for security or grant fee simple interests in Dehcho Community Land pursuant to 4.4.1(b), provided that such sale, pledge or grant has been approved in a Community referendum.

interest, including Specified Substances, but will not include mines and minerals.<sup>37</sup>

5.2.2 The Dehcho Community Government may sell, mortgage, pledge for security or grant an interest on Community Land in accordance with 4.4.1b).<sup>38</sup>

5.2.3 Community Land which has been sold, mortgaged or pledged for security may be seized or sold under court order.

### 5.3 EXISTING INTERESTS

5.3.1 <sup>39</sup>Existing interests on Community Land to be transferred under 5.1.1 on the Effective Date will be identified in Appendices \_ of the Dehcho Agreement.

5.3.2 Existing interests on Community Land on the Effective Date will continue in accordance with their terms and conditions and applicable Legislation.

Deleted: <sup>40</sup>

5.3.3 Prior to the Dehcho Agreement, the Parties will identify any existing interests on Dehcho Community Land that will continue to be administered by Government after the Effective Date.

### 5.4 SURVEYS AND ISSUANCE OF TITLE

5.4.1 Upon Ratification of the Dehcho Agreement by the Parties, Canada will, at its expense, survey the boundaries of all Community Land in accordance with a schedule to be established in the Implementation Plan unless a valid plan of survey exists.

5.4.2 Surveys will be conducted in accordance with the *Canada Lands Surveys Act* and the instructions of the Surveyor General of Canada. The completed surveys will be deposited in the Canada Lands Survey Records and registered with the Land Titles Office.

5.4.3 For purposes other than those set out in the Dehcho Agreement, the cost for surveys within Community Boundaries after the Effective Date, will be the responsibility of the respective Dehcho Community Government and will be conducted in accordance with the *Canada Lands Surveys Act*.

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<sup>37</sup> Tlcho Agreement provides for restrictions on subsurface development within community lands. Dehcho seeking further instructions.

<sup>38</sup> DFN negotiators will seek instructions. DFN will look into the possibility of use of referendum regarding the policy of sale of land.

<sup>39</sup> DFN would begin sentence with "Subject to any exceptions listed in the appendix to this chapter...". There may be existing legal interests that are not recognized by the Dehcho Communities.



- 5.4.4 Upon completion of the plan of survey agreed to by the Parties, a copy of the plan of survey will be deposited with the Land Titles Office or such other officials as may be required along with other necessary documentation so that a certificate of title may be issued.

## 5.5 CONTAMINATED SITES

- 5.5.1 The Dehcho Agreement will provide that where Canada or the Government of the Northwest Territories undertakes any program respecting the Remediation of Contaminated Sites on Crown lands in the Dehcho Settlement Area, the program will apply to Contaminated Sites on Dehcho Community Lands that are identified on Schedule "X" prior to the Effective Date after discussion with the affected Dehcho Community Government.

- 5.5.2 After the Effective Date, the Parties may agree that a Contaminated Site on Dehcho Community Land not identified in Schedule "X" existed prior to the Effective Date and that Schedule "X" will be deemed amended to include that Contaminated Site.

**Deleted:** After Effective Date, the Parties may agree that any site not identified prior to the Effective Date and, upon consent of the Parties, will be considered to be included.

- 5.5.3 If the Parties do not reach an agreement within 90 days or as the Parties may agree, a Party may refer the dispute for resolution in accordance with the Dispute Resolution chapter. If an arbitrator confirms the Contaminated Site existed prior to the Effective Date, Schedule "X" will be deemed amended to include the Contaminated Site.

**Deleted:** Any dispute whether a Contaminated Site existed on the Effective Date may be referred for resolution in accordance with the Dispute Resolution chapter. If a dispute goes to an arbitrator and the arbitrator confirms that a site existed on the Effective Date, the site not identified prior to Effective Date will be included.

- 5.5.4 The standard for Remediation of Contaminated Sites under this section will be the standards set by Canada from time to time under its programs for Remediation of Contaminated Sites in the Northwest Territories.

- 5.5.5 Canada or the Government of the Northwest Territories will be responsible for the costs associated with any Remediation under 5.5.1 on Dehcho Community Lands.

- 5.5.6 A Dehcho Community Government will be solely responsible for the Remediation of Contaminated Sites on Dehcho Community lands which become contaminated following the Effective Date. This provision will not prevent a Dehcho Community Government from recovering any costs associated with the remediation from a Person who is liable for these costs.

**Deleted:** <sup>41</sup>

- 5.5.7 Canada or the Government of the Northwest Territories and the Dehcho Community Government may agree to add an excluded site to Dehcho

**Community Lands after the Remediation of contamination or termination of an existing right or interest at no cost to the Dehcho Community Government.**

- 5.5.8 Canada or the Government of the Northwest Territories may access Dehcho Ndehe and Waters overlying Dehcho Ndehe to Remediate a Contaminated Site on or surrounded by Dehcho Community Lands.
- 5.5.9 Canada or the Government of the Northwest Territories may use such Specified Substances located on Dehcho Community Lands as required for the Remediation of a Contaminated Site on or surrounded by Dehcho Community Lands or a Contaminated Site on Dehcho Ndehe adjacent to a Community Boundary.
- 5.5.10 No rent, fee, charge or compensation will be payable to a Dehcho Community Government for access to Dehcho Community Lands or use of Specified Substances located on Dehcho Community lands where Canada or the Government of the Northwest Territories undertakes Remediation of a Contaminated Site.
- 5.5.11 There will be no compensation payable for necessary or incidental impact or damage which may be caused to Dehcho Community Lands as a result of a Contaminated Site clean up conducted in accordance with the program.
- 5.5.12 Canada, the Government of the Northwest Territories or the Dehcho Community Government is not prevented or limited from pursuing remedies that may exist at law against the Person liable for any damage caused by the Person's negligence in the execution of the remediation.
- 5.5.13 Nothing in the Dehcho Agreement will prevent or limit Canada or the Government of the Northwest Territories from pursuing any remedies that may exist at Law against the Person liable for the contamination.
- 5.5.14 Canada or the Government of the Northwest Territories will not be liable for any loss or damage to a Dehcho Citizen or to a Dehcho Community Government from a Contaminated Site on Dehcho Community Lands whether or not they are known on the Effective Date.

**Deleted: ¶**

5.5.7 Canada, at its sole<sup>42</sup> discretion may, at no cost to a Dehcho Community Government, add an excluded site to Dehcho Community Lands after the Remediation of contamination or termination of an existing right or interest.¶

**Deleted: <sup>43</sup>**

**5.6 RIGHT TO ACQUIRE GOVERNMENT LAND**

- 5.6.1 Where Canada or the Government of the Northwest Territories has determined it no longer requires land that it holds in a Dehcho Community, it will make an offer to convey fee simple title to that land or whatever lesser title it holds, excluding mines and minerals that are not specified substances, to

the respective Dehcho Community Government. In the event that the offer is declined, Canada or the Government of the Northwest Territories may dispose of the land no longer required to another party.

- 5.6.2 A Dehcho Community Government is not liable for the payment of any consideration in respect of the value of lands conveyed to it under 5.6.1 but is liable for any costs incurred by Canada or the Government of the Northwest Territories to effect the conveyance. If there are any improvements on the lands, Canada or the Government of the Northwest Territories may, before conveyance of title to respective Dehcho Community Government, grant an interest, less than fee simple, in relation to the improvements. The title of the respective Dehcho Community Government will be subject to that interest.
- 5.6.3 Canada or the Government of the Northwest Territories is not obligated to convey title to the land referred to 5.6.1 if the land had been acquired by Government from the Dehcho Community Government upon payment of consideration, unless Canada or the Government of the Northwest Territories is paid by the Dehcho Community Government for the value of that consideration.
- 5.6.4 Any dispute as to the amount to be paid to Canada or the Government of the Northwest Territories under 5.6.3 may be referred by the respective Dehcho Community Government or Canada or the Government of the Northwest Territories for resolution in accordance with the Dispute Resolution Chapter.

## CHAPTER 6: DEHCHO GOVERNMENT

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- 6.2 GENERAL POWERS
- 6.3 DELEGATION
- 6.4 LAW MAKING POWERS
- 6.5 JUDICIAL POWERS
- 6.6 CONFLICT OF LAWS
- 6.7 REGISTER OF DEHCHO LAWS
- 6.8 COORDINATION OF PROGRAM AND SERVICE DELIVERY
- 6.9 INTERNATIONAL LEGAL OBLIGATIONS
- 6.10 TRANSITIONAL

- 6.1.1 The Dehcho Government will be recognized at the Effective Date. The Constitution of the Dehcho Government will be approved by a DFN Assembly before the Ratification Vote referred to in EE xxx.
- 6.1.2 Consistent with the Dehcho Agreement, the Dehcho Constitution will provide for:
  - a) governing bodies and the exercise of their powers and duties and their composition, membership and procedures;
  - b) protections for Dehcho Citizens and Residents, and for other individuals to whom Dehcho laws apply, by way of rights and freedoms no less than those set out in the *Canadian Charter of Rights and Freedoms*;
  - c) a system of political and financial accountability to Dehcho Citizens and residents;
  - d) the selection of regional and community leaders through democratic processes;
  - e) the challenging of the validity of Dehcho laws by any Person directly affected by such laws and the striking out of invalid laws;
  - f) implementation of the principle that Persons directly affected by any programs or services delivered by any Dehcho Government institution should have an opportunity to participate in the decision making process with respect to the management and delivery of those programs and services;
  - g) the possibility that individuals who are not Dehcho Citizens may be appointed or elected as members of Dehcho Government institutions;
  - h) amendment of the Constitution;
  - i) Dehcho public assemblies (annual and special); and

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<sup>44</sup> Need to revisit constitution and structure once a governance model is devised. Need to understand who **the** constitution applies to and the amending formula.

j) role of referendums.

6.1.3. The governing body of the Dehcho Government that exercises its law making powers and its primary executive functions will include at least

- a) a Grand Chief, who is a Dehcho Dene, elected at large by eligible Dehcho Residents and Dehcho Citizens;<sup>45</sup>
- b) the Chief of each Dehcho Community Government; and
- c) one representative from each Dehcho Community selected by the residents of that Community.

6.1.4 A majority of the members of the governing body of the Dehcho Government will be Dehcho Citizens.

6.1.5 There will be at least one (1) General Assembly each calendar year.

6.1.6 The Dehcho Government will participate in at least one (1) Community Assembly **in each Dehcho Community** each calendar year.<sup>46</sup>

6.1.7. To the extent of any conflict or inconsistency between the Dehcho Constitution and the Dehcho Agreement, the Agreement will prevail.

Deleted: 6

6.1.8. Every individual will have reasonable access to a copy of the Dehcho Constitution during normal hours, and, upon request, the Dehcho Government will provide, at cost, copies of the Constitution. In addition, the Dehcho Government will make the Constitution available for viewing at any time on the website of the Dehcho Government.

Deleted: 7

## 6.2 GENERAL POWERS

6.2.1 The Dehcho Government is a legal entity with the legal capacity of a natural person, including but not limited to, the ability to

- a) enter into contracts or agreements;
- b) acquire and hold property, including real property, and any interest therein, sell or otherwise dispose of property or any interest therein;
- c) raise, invest, expend and borrow money;
- d) sue or be sued;

<sup>45</sup> DFN seeking instructions on eligibility to vote for GC.

<sup>46</sup> Canada thinks that this should be in the Constitution.

- e) form corporations or any other legal entities; and
- f) do such other things as may be conducive to the exercise of its rights, powers and privileges.

6.2.2 For greater certainty, the Dehcho Government may establish trusts and administrative boards, commissions and tribunals and other bodies to perform functions identified in Dehcho laws.

### **6.3 DELEGATION**

6.3.1 The Dehcho Government may delegate any of its powers, except the power to enact laws, to:

- a) a body or official established by Dehcho law;
- b) Canada or the Government of the Northwest Territories, including a department, agency or office of either Canada or the Government of the Northwest Territories;
- c) a board, or other public body established by federal, territorial or Dehcho legislation; or
- d) a Dehcho Community Government or other municipal government.

6.3.2 A delegation under 6.3.1 must be in writing and, if under 6.3.1 (b), (c) or (d), must be agreed to by the delegate.

6.3.3 The Dehcho Government has the capacity to enter into agreements to receive powers, including powers to enact laws, by delegation.

### **6.4 LAW MAKING POWERS**

6.4.1 In addition to its other powers, as set out in the Dehcho Agreement, the Dehcho Government has the exclusive<sup>47</sup> jurisdiction to enact laws in relation to

- a) the structure of the Dehcho Government and its internal management; and
- b) the management and exercise of rights and benefits provided under the Dehcho Agreement to Dehcho Citizens, to the Dehcho First Nations or to the Dehcho Government, including those relating to the harvesting of Wildlife, Fish, Migratory Birds, Plants and Trees;<sup>48 49</sup>and

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<sup>47</sup> Canada and GNWT are not prepared to recognize any exclusive heads of jurisdiction.

<sup>48</sup> Need to provide that only reps of Dene vote on matters relating to treaties.

- c) any matters ancillary to (a) or (b)<sup>50</sup>

6.4.2 In addition to its other powers, as set out in the Dehcho Agreement the Dehcho Government has the power to enact laws in relation to

- a) businesses, occupations and activities of a local<sup>51</sup> nature on Dehcho Ndehe;
- b) the control or prohibition of the transport, sale, manufacture, possession or use of weapons and dangerous substances on Dehcho Ndehe;
- c) the control or prohibition of the transport, sale, possession or use of intoxicants<sup>52</sup> on Dehcho Ndehe;<sup>53</sup>
- d) protections for the human rights and civil rights of Dehcho Citizens and Residents, and for other individuals to whom Dehcho laws apply, by way of rights and freedoms no less than those set out in the Canadian Charter of Rights and Freedoms, the Canadian Human Rights Act and the NWT Human Rights Act; and
- e) trusts.<sup>54</sup>

6.4.4 For greater certainty, the authority of the Dehcho Government to make laws in respect of a subject matter as set out in the Dehcho Agreement includes the authority to make laws and do other things as may be necessarily incidental to exercising that authority.

## 6.5 JUDICIAL PROCEEDINGS

6.5.1 The Dehcho Government will have standing in any judicial proceedings, including any other dispute resolution proceedings, to act on behalf of any individual Dehcho Citizen or Resident, except where that Dehcho Citizen or Resident objects, or on behalf of the Dehcho First Nations with respect to rights or benefits under the Dehcho Agreement.

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<sup>49</sup> Canada is considering GNWT's proposal: "The Dehcho Government has the power to enact laws consistent with the Dehcho Agreement in relation to the management and exercise of rights and benefits provided under the Agreement to Dehcho Citizens, to the Dehcho First Nation or to the Dehcho Government including those related to harvesting of wildlife, plants and trees."

<sup>50</sup> GNWT is considering this

<sup>51</sup> Municipal

<sup>52</sup> GNWT's preference is to use "liquor". DFN's preference is to define "intoxicants" within the context of recreational controlled substances.

<sup>53</sup> DFN proposes adding 'taxation'.

<sup>54</sup> The Parties are continuing to review. Canada notes that this is a matter for Finance Canada.

6.5.2 In any legal proceedings which could impact on the rights or benefits of Dehcho Citizens or Residents, as set out in the Dehcho Agreement, the courts will give serious consideration to the culture and customs of the Dehcho Dene.

## 6.6 CONFLICT OF LAWS<sup>55</sup>

6.6.1 Unless otherwise provided in the Dehcho Agreement, the powers of the Dehcho Government to enact laws will be concurrent with those of Canada or the Government of the Northwest Territories, as the case may be.

6.6.2 In the event of a conflict between a Dehcho Law made pursuant to 22.4.1 and a Federal or Territorial Law, the Dehcho Law will prevail to the extent of the conflict.

6.6.3 In the event of a conflict between a Dehcho Law made pursuant to 22.4.2 and a Federal or Territorial Law, the Federal or Territorial Law will prevail to the extent of the conflict.

## 6.7 REGISTER OF DEHCHO LAWS

6.7.1 The Dehcho Government will maintain, at its main offices and on its website, a register on which it will enter the text of all Dehcho laws, including any amendment to those laws.

6.7.2 Every individual will have reasonable access to the register.

6.7.3 The Dehcho Government upon request will provide, at cost, hard copies of Dehcho laws.

## 6.8 COORDINATION OF PROGRAM AND SERVICE DELIVERY<sup>56</sup>

6.8.1 The Parties will exercise their respective powers, to the extent practicable, in a manner that coordinates the delivery of programs and services provided to Dehcho Residents and Dehcho Citizens, and to all residents of the Northwest Territories.

**Deleted:** 6.6.2 Except where the Dehcho Agreement provides otherwise, in the case of conflict between federal legislation and a Dehcho law, the Dehcho law will prevail to the extent of the conflict.¶

¶ 6.6.3 . Except where the Dehcho Agreement provides otherwise, in the case of conflict between territorial legislation of general application and a Dehcho law, the Dehcho law will prevail to the extent of the conflict.¶

¶ 6.6.4 In the case of conflict between a Dehcho law and a provision of territorial legislation that implements an obligation of Canada under an international agreement, the provision of the territorial legislation will prevail to the extent of the conflict.¶

<sup>55</sup> The Parties agree that they need conflict clauses for subject matters addressed in 6.4. **DFN reviewing wording provided by Canada.**

<sup>56</sup> The Parties are reviewing.

**Deleted:** Canada to provide wording



6.8.2 Where one of the Parties is of the opinion that there may be or has been a Significant Disruption in the delivery of a program or service on Dehcho Ndehe or in a Dehcho Community, then, on 60 days notice by one of the Parties, the Parties will enter into discussions for the purpose of reaching agreement on whether there has been a disruption and if so, on how best to deal with it, including any cost-sharing arrangements. During the course of these discussions, the Parties will consider

- a) the impact of the disruption on the delivery of the program or service;
- b) the options for maintaining the delivery, financing and administration of the program or service; and
- c) the potential cost implications of such options for each of the Parties.

6.8.3 The Dehcho Government may enter into agreements with Canada or the Government of the Northwest Territories to coordinate the delivery of programs and services or to otherwise harmonize program and service delivery, including arrangements for information sharing, record-keeping, methods of ensuring comparability of standards, cooperation in negotiation of inter-jurisdictional agreements, and any other measures as agreed.

## **6.9 INTERNATIONAL LEGAL OBLIGATIONS<sup>57</sup>**

6.9.1 The following definition applies in 6.9:

“international treaty” means an agreement governed by international law and concluded in written form

- a) between States; or
- b) between one or more States and one or more international organizations,

whether that agreement is embodied in a single instrument or in two or more related instruments and whatever its particular designation.

6.9.2 Prior to consenting to be bound by an international treaty that may affect a right of the Dehcho Government, the Dehcho Government or a Dehcho Citizen, Canada will provide an opportunity for the Dehcho Government to make its views known with respect to the international treaty.

6.9.3 Where Canada informs the Dehcho Government that it considers that a law or other exercise of power of the Dehcho Government causes Canada to be unable to perform an international legal obligation, the Dehcho Government

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<sup>57</sup> Canada is reviewing.

and Canada will discuss remedial measures to enable Canada to perform the international legal obligation. Subject to 6.9.4, the Dehcho Government will remedy the law or other exercise of power to the extent necessary to enable Canada to perform the international legal obligation.

- 6.9.4 Where Canada and the Dehcho Government disagree over whether a law or other exercise of power of the Dehcho Government causes Canada to be unable to perform an international legal obligation, the dispute will be resolved pursuant to chapter DR. If the arbitrator, having taken into account all relevant considerations including any reservations and exceptions available to Canada, determines that the law or other exercise of power of the Dehcho Government does not cause Canada to be unable to perform the international legal obligation, Canada will not take any further action for this reason aimed at changing the Dehcho Law or other exercise of power. If the arbitrator, having taken into account all relevant considerations including any reservations and exceptions available to Canada, determines that the Dehcho Law or other exercise of power causes Canada to be unable to perform the international legal obligation, the Dehcho Government will remedy the law or other exercise of power to enable Canada to perform the international legal obligation.
- 6.9.5 Canada will consult the Dehcho Government in the development of positions taken by Canada before an international tribunal where a law or other exercise of power of the Dehcho Government has given rise to an issue concerning the performance of an international legal obligation of Canada. Canada's positions before the international tribunal will take into account the commitment of the Parties to the integrity of this Agreement.
- 6.9.6 Notwithstanding 6.9.4, if there is a finding of an international tribunal of nonperformance of an international legal obligation of Canada attributable to a law or other exercise of power of the Dehcho Government, the Dehcho Government will, at the request of Canada, remedy the law or action to enable Canada to perform the international legal obligation consistent with the compliance of Canada.
- 6.9.7 For greater certainty, reference to Canada's international legal obligations in the Agreement includes those that are in force on or after the Effective Date.

**6.10 TRANSITIONAL**

- 6.10.1 On the effective date, the Dehcho First Nations and the (list) bands and Métis locals cease to exist and are succeeded by the Dehcho Government and Community Governments.

- 6.10.2 On the Effective Date, the assets and liabilities of the bands referred to in 10.1 will become the assets and liabilities of the Dehcho Government and Community Governments.
- 6.10.3 Any monies held by Canada for the use and benefit of the bands referred to in 10.1 will be transferred to the Dehcho Government and Community Governments as soon as practicable after the Effective Date.
- 6.10.4 On the effective date,
- a) any assets or liabilities of the Dehcho First Nations become the assets and liabilities of the Dehcho Government; and
  - b) the Leadership of the Dehcho First Nations that is in office immediately before that date becomes the governing body of the Dehcho Government until replaced in accordance with the Dehcho Constitution.

## CHAPTER 7: DEHCHO NDEHE

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7.1	DEHCHO TITLE
7.2	SPECIFIED SUBSTANCES
7.3	CONTAMINATED SITES
7.4	BOUNDARIES AND SURVEYS
7.5	REGISTRATION
7.6	ADMINISTRATION OF EXISTING RIGHTS AND INTERESTS
7.7	ROYALTIES AND NON-REFUNDED RENTS

### 7.1 DEHCHO TITLE

- 7.1.1 The Dehcho Government, on behalf of the Dehcho Dene, will be vested with title, which may be referred to as “Dehcho title”, to the lands the boundaries of which are shown on the map described in part 1 of the appendix to this chapter, totaling approximately X<sup>59</sup> square kilometres, including the mines and minerals that may be found to exist within, upon or under such lands, subject to the interests listed in part 2 of the appendix to this chapter, and to any renewals or replacements of such interests, and to the interests granted under 7.1.2.
- 7.1.2 Before the Effective Date, an individual authorized by the Dehcho First Nations may, on behalf of the Dehcho Government, execute an agreement for the granting of an interest described in part 3 of the appendix to this chapter. All such interests will come into effect on the Effective Date and the agreement will bind the Dehcho Government on whose behalf it was executed.
- 7.1.3 Before the Effective Date, the Parties may amend part 3 of the appendix to this chapter by adding thereto the descriptions of additional interests.
- 7.1.4 During the first year after the Effective Date, the Parties will amend part 2 of the appendix to this chapter to include any interests granted before the Effective Date that are still in effect immediately before that date. Any such amendment will be deemed to have been made immediately before the Effective Date.
- 7.1.5 In the case of a dispute among the Parties as to whether any interest has been granted before the Effective Date or is still in effect immediately before that

<sup>59</sup> The Dehcho’s tabled land quantum offer is 70,000 square kilometres and 5% **genereal interest surface and** subsurface ownership of the remaining area excluding the 70,000. Canada’s tabled land quantum offer is 39,336 sq km.

date, one of the Parties may refer the dispute for resolution in accordance with DR. Any interest that an arbitrator determines under DR to have been granted before the Effective Date and to still have been in effect immediately before that date will be deemed to have been included in part 2 of the appendix to this chapter immediately before the Effective Date.

- 7.1.6 During the first year after the Effective Date, the Parties may amend part 2 of the appendix to this chapter to correct an error in the reference to an interest or to remove an interest that did not exist immediately before the Effective Date. Any such amendment will be deemed to have been made immediately before the Effective Date.
- 7.1.7 Dehcho title is held in the form of fee simple title. The form of title will not be construed as having the effect of extinguishing any rights recognized and affirmed by section 35 of the *Constitution Act, 1982*. Title held by the Dehcho Government to Dehcho Ndehe includes title<sup>60</sup> to water in, on or under the lands.
- 7.1.8 Unless otherwise provided on the map described in part 1 of the appendix to this chapter or on a registered plan of survey of the boundaries of Dehcho Ndehe,
- a) Dehcho title will include title to the beds of lakes, rivers and other water bodies wholly contained within the boundaries of Dehcho Ndehe;
  - b) where a boundary of Dehcho Ndehe crosses a lake, river or other water body, Dehcho title will include the portion of the bed of that water body within the boundaries of Dehcho Ndehe; and
  - c) Dehcho title will not include title to the bed of any lake, river or other water body or to any island in a water body where the water body is shown or described as a boundary of Dehcho lands.
- 7.1.9 Fee Simple interests in Dehcho Ndehe may only be conveyed by the Dehcho Government to
- a) A Dehcho Community Government or the Government of the Northwest Territories or Canada; or
  - b) Canada, the Government of the Northwest Territories or another expropriating authority, in circumstances where that authority could expropriate those lands pursuant to the Dehcho Agreement.

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<sup>60</sup> Canada does not intend to include title to water in, on or under the lands. This is consistent with other land claim agreements.

- 7.1.10 The lands conveyed by the Dehcho Government under 7.1.9(b) cease to be Dehcho Ndehe and any lands the fee simple title to which is received in exchange<sup>61</sup> become Dehcho Ndehe.
- 7.1.11 7.1.9 will not be interpreted to prevent the Dehcho Government from granting leases or licences to any person for the use and occupancy of Dehcho Ndehe, or from granting rights to any Person to remove natural resources, including minerals, and to own such resources upon removal.
- 7.1.12 Dehcho Ndehe lands are not subject to seizure or sale under court order, writ of execution or any other process whether judicial or extra-judicial.
- 7.1.13 Dehcho Ndehe will not be mortgaged, charged or given as security.
- 7.1.14 7.1.12 and 7.1.13 do not apply to any leasehold interest in Dehcho Ndehe or to any mortgage, charge or security granted in respect of such a leasehold interest.
- 7.1.15 No Person may acquire by prescription an estate or interest in Dehcho Ndehe.
- 7.1.16 Subject to chapter 8 (Access), any access route across Dehcho Ndehe which is established or improved after the Effective Date will, unless the Dehcho Government otherwise agrees, remain Dehcho Ndehe and not be a highway or public road, by operation of law or otherwise.
- 7.2 SPECIFIED SUBSTANCES**
- 7.2.1 The holder of a mining right listed in part 2 of the appendix to this chapter or that is a renewal or replacement thereof granted by Canada or the Government of the Northwest Territories, has the right to take, use, damage or destroy Specified Substances in those lands, incidentally in the course of exercising that mining right, but will, where practicable, exercise such rights so as to minimize interference with the right of the Dehcho Government to work specified substances.
- 7.2.2 No Compensation will be paid to the Dehcho Government in respect of any Specified Substances taken, used, damaged or destroyed in accordance with 7.2.1.

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<sup>61</sup> Canada is reviewing this clause and qualifying language within settlement area and subsurface rights

- 7.2.3 Any specified substances taken, used, damaged or destroyed in accordance with 7.2.1 will be the property of the holder of the mining right referred to in 7.2.1, except that the specified substances that are still on the land that is subject to that mining right when the right terminates become the property of the Dehcho Government.

### **7.3 CONTAMINATED SITES**

- 7.3.1 Where Canada or the Government of the Northwest Territories undertakes any program respecting the clean-up of contaminated sites on Crown lands in the Settlement Area, the program will, at the discretion of the Dehcho Government, apply to such sites on Dehcho Ndehe that are listed in part 4 of the appendix to this chapter as if the lands were Crown lands.
- 7.3.2 After the Effective Date, the Parties may agree that a site not listed in part 4 of the appendix to this chapter existed on the Effective Date and, upon consent of the Parties, the list in that part of the appendix to this chapter will be considered to have been amended to include that site.
- 7.3.3 Any dispute as to whether a contaminated site existed on the Effective Date may be referred for resolution in accordance with chapter DR by a Party. If a dispute goes to an arbitrator in accordance with chapter DR and if the arbitrator confirms that a site existed on the Effective Date, the list in part 4 of the appendix to this chapter will be considered to have been amended to include that site.
- 7.3.4 Canada or the Government of the Northwest Territories will be responsible for the costs associated with any clean-up under 7.3.1 on Dehcho Ndehe. This provision will not prevent Canada or the Government of the Northwest Territories from recovering any costs associated with the clean-up from a Person who is liable for these costs.
- 7.3.5 The Dehcho Government will be solely responsible for the Remediation of Contaminated Sites which become contaminated on Dehcho Ndehe following the Effective Date. This provision will not prevent the Dehcho Government from recovering any costs associated with the clean-up from a Person who is liable for these costs.
- 7.3.6 No Compensation will be payable for damage which may be caused to Dehcho Ndehe as a result of the clean-up of Dehcho Ndehe under 7.3.1.

7.3.7 Government will <sup>62</sup>be liable for any loss or damage to a Dehcho Citizen, to the Dehcho First Nations or to the Dehcho Government from contaminated sites on Dehcho Ndehe whether or not they are known on the Effective Date. This provision does not affect any obligation of government under 7.3.1 and 7.3.4.

#### 7.4 BOUNDARIES AND SURVEYS<sup>63</sup>

7.4.1 Canada will survey the boundaries of Dehcho Ndehe in accordance with the instructions of the Surveyor General and the *Canada Lands Survey Act* within the time specified in the Implementation Plan.

7.4.2 Canada will be responsible for the cost of the survey conducted under 7.4.1.

7.4.3 During the survey conducted under 7.4.1,

- a) those portions of seismic lines and other artificial features used as reference points for the boundaries of Dehcho Ndehe will be monumented by Canada sufficiently, as determined by the Surveyor General, to define their location; and
- b) natural features used as reference points for boundaries of Dehcho Ndehe will be photographed by Canada.

7.4.4 Where the map described in part 1 of the appendix to this chapter indicates that a part of a boundary of Dehcho Ndehe is defined by reference to natural features but, during the survey conducted under 7.4.1, it is found that the natural features

- a) are not well defined;
- b) do not exist; or
- c) are not located, in relation to other features used as reference points for the boundaries of Dehcho Ndehe, where the map indicates they would be,

the Surveyor General will have the authority, in consultation with the Parties, to mark that part of the boundary on the ground and show it on the plan of survey in a location that reflects as closely as possible the intention of the Parties when the map was finalized.

<sup>62</sup> Canada proposes "Canada and the Government of the Northwest Territories will **not** be liable..."

<sup>63</sup> Devolution **will likely** affect references to Canada. **In the agreement. Review by LTC required.**

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- 7.4.5 The Dehcho Government will be responsible for the cost of surveys associated with the leasing and subdivision of Dehcho Ndehe.
- 7.4.6 Boundaries of Dehcho Ndehe that are defined by reference to natural features will change with the movements of the natural features as long as these movements are gradual and imperceptible from moment to moment.
- 7.4.7 Where there is a dispute respecting the boundary of an interest that is listed in part 2 of the appendix to this chapter or that is a renewal or replacement thereof granted by Canada or the Government of the Northwest Territories between the holder of that interest and the holder of an adjacent interest granted by the Dehcho Government, either holder may refer the dispute to the designated representative of the institution from which it received that interest. Where the representative to whom the dispute was referred and the other designated representative agree, a survey will be conducted in accordance with their agreement. The plan of survey, upon registration, replaces any other description of the boundary. The Minister will, for the purpose of this provision, designate who is the representative of a government institution.
- 7.4.8 Where a survey is conducted under 7.4.7 for an interest created by an instrument that is registered at the Land Titles Office for the Northwest Territories, the plan of the survey may, if it is signed by the representatives who agreed to it being conducted, signifying their acceptance of the plan, be submitted by one of those representatives to the Registrar of Land Titles for the Northwest Territories for registration. Upon submission of the plan in the required form, the Registrar will register it.
- 7.4.9 Where a survey is conducted under 7.4.7, the plan of survey replaces any other description of the boundary of the interests upon registration if the instrument creating the interest is registered, or, in any other case, upon signing by the representatives. The costs of the survey and of the registration of the plan will be borne equally by the institutions that granted the interests, each of which may recover its costs from the holder of the interest it granted.
- 7.5 REGISTRATION**
- 7.5.1 Canada will submit to the Registrar of Land Titles for the Northwest Territories, for registration, the plan of survey of the boundaries of Dehcho Ndehe prepared under 7.4.1 as soon as possible after the plan has been signed by representatives of the Parties, signifying their acceptance of it. Upon submission of the plan in the required form, the Registrar will register it.

7.5.2 The Dehcho Government has a right to obtain a certificate of title of Dehcho Ndehe after the plan of survey prepared under 7.4.1 has been registered, upon making a request in the form prescribed by legislation.

7.5.3 Upon the registration of the plan of survey prepared under 7.4.1, the surveyed boundaries of Dehcho Ndehe replace the description of the boundaries of Dehcho Ndehe shown on the map described in part 1 of the appendix to this chapter, as of the Effective Date.

## **7.6 ADMINISTRATION OF EXISTING RIGHTS AND INTERESTS<sup>64</sup>**

7.6.1 Canada or the Government of the Northwest Territories will continue to administer the interests listed in part 2 of the appendix to this chapter and any renewals or replacements thereof granted by Canada or the Government of the Northwest Territories under legislation, as if the lands had not become Dehcho Ndehe. Canada or the Government of the Northwest Territories will have the power to grant renewals and replacements for those interests under that legislation, as if the lands had not become Dehcho Ndehe, except that, in the case of an interest that is not a mining right, this power does not extend to a renewal or replacement that would authorize an activity of a type or in a location not authorized by the interest renewed or replaced. For greater certainty, any dispute resolution process in the Crown lands legislation continues to apply to interests listed in part 2 of the appendix to this chapter and their renewals and replacements.

7.6.2 Subject to 7.6.4 and chapter 41.5 Canada or the Government of the Northwest Territories may make discretionary decisions respecting an interest referred to in 7.6.1 on the basis of Canada or the Government of the Northwest Territories's resource management policy, including those respecting royalties, rents and other charges.<sup>65</sup>

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7.6.3 Canada or the Government of the Northwest Territories will Consult the Dehcho Government before changing legislation under which any interests referred to in 7.6.1 were granted.

7.6.4 Canada or the Government of the Northwest Territories will notify the Dehcho Government before making any change in any interests referred to in 7.6.1, including a change to the royalties, rents or other charges that apply to them.

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<sup>64</sup> Canada is reviewing this section regarding surface interests.

<sup>65</sup> DFN negotiators seeking instructions.

<sup>66</sup> DFN reviewing Canada's proposal: "Government will be under no fiduciary obligation to the Dehcho First Nations or to the Dehcho Government in the administration under 7.6.1 or in the decision making under 7.6.2."

- 7.6.5 Nothing in 7.1.1 or 7.6.1 will prevent the holder of an interest referred to in 7.6.1 and the Dehcho Government from agreeing to the termination of the interest, with or without a replacement arrangement between the holder and the Dehcho Government.

**7.7 ROYALTIES AND NON-REFUNDED RENTS**

- 7.7.1 Any royalties or non-refunded rents received by Canada or the Government of the Northwest Territories, in respect of the period between the date of the Agreement and the Effective Date, for an interest listed in part 2 of the appendix to this chapter, will be accounted for by that government and an equal amount paid to the Dehcho Government as soon as practicable after the Effective Date.<sup>67</sup>
- 7.7.2 Any royalties or non-refunded rents received by Canada or the Government of the Northwest Territories in respect of the period after the Effective Date for an interest listed in part 2 of the appendix to this chapter or for any replacement thereof will be accounted for by that government and an equal amount paid to the Dehcho Government as soon as practicable after each calendar year quarter.<sup>68</sup>
- 7.7.3 Amounts payable by Canada or the Government of the Northwest Territories under 7.7.1 and 7.7.2 and amounts payable to another Aboriginal people under any similar provision in another land claims agreement in the Mackenzie Valley will not be considered as amounts received by that government for the purpose of the Mineral Royalties chapter.<sup>69</sup>

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<sup>67</sup> DFN negotiators seeking instructions.

<sup>68</sup> DFN negotiators seeking instructions.

<sup>69</sup> DFN negotiators seeking instructions.

## **APPENDIX TO DEHCHO NDEHE<sup>70</sup>**

### **PART 1 BOUNDARIES OF DEHCHO NDEHE (7.1.1)**

#### Official Description

The map with the description of the boundaries of Dehcho Ndehe is the map, consisting of XX mapsheets, numbered 1 to XX, initialled by the Chief Negotiators and filed in the Land Titles Office, Northwest Territories Registration District on (date) as plan number XXX.

#### Illustrative Map

An illustrative map showing Dehcho Ndehe may be found in part XX of the appendix to chapter XX.

#### List of Excluded Parcels

Notes: The lists in this part are intended to be a snapshot of the excluded parcels as of the effective date, and are included in this appendix for general information only. The official descriptions of the excluded parcels are referenced on the map filed in the Land Titles Office on XXX.

“LTO” means Land Titles Office, Northwest Territories Registration District.

“NTS” means National Topographic System.

“CLSR” means Canada Lands Surveys Records.

The boundaries of the excluded parcels are described in the following:

A. Certificates of Title registered in the Land Titles Office, Northwest Territories Registration District:

### **PART 2 EXISTING INTERESTS (7.6.1)**

### **PART 3 NEW INTERESTS WITH DEHCHO GOVERNMENT (7.1.2; 7.1.3)**

### **PART 4 CONTAMINATED SITES (7.3.1; 7.3.2; 7.3.3)**

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<sup>70</sup> The necessity of including this appendix in the AIP will need to be discussed. This applies to the references to the appendix in the text.

## APPENDIX TO CHAPTER 7– Land Selection Criteria

### A.1 DEFINITIONS

**“Advanced Stage of Exploration”** means

### A.2 GENERAL

A.2.1 The Parties<sup>71</sup> agree that the negotiation of lands that will become Dehcho Ndehe will be in accordance with the criteria set out in this Appendix.

#### **Concurrent Land Selection**

A.2.2 The land selection processes for Dehcho land selection within Communities, if any, and outside Communities will be undertaken concurrently, unless otherwise agreed. Any community land selection will be distinct from lands transferred to the Community Government.

#### **Negotiations in NWT**

A.2.3 Land selection negotiations will take place at locations in the Northwest Territories to be determined by a workplan developed by the Parties prior to the commencement of land selection. Where possible, negotiations will take place in the relevant Community.

#### **Funding**

A.2.4 Prior to land selection, the Parties will discuss the level of funding and funding sources required for the DFN to participate in land selection negotiations.

#### **Agreement Area**

A.2.5 Subject to any unresolved overlap agreements with other Aboriginal groups, the Parties will agree on a Dehcho Settlement Area prior to land selection.

#### **Information**

A.2.6 Prior to the commencement of land selection and after the signing of the Agreement-in-Principle, Canada and the Government of the Northwest Territories will provide the DFN with the following information concerning the Dehcho Settlement Area

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<sup>71</sup> DFN position is that, with the possible exception of Part A.5 (Community Boundaries) land selection negotiations should be bilateral, between Cda and DFN since land ownership and selection are core Treaty issues. We note that the iterim land withdrawal agreement of 2003 was bilateral. We also point out that s. 3.4 of the Framework Agreement signed by the Parties in 2001 directs that negotiations relating to Treaty issues will be bilateral between Cda and the DFN. Canada and the GNWT have a different interpretation of the Framework Agreement and both feel that, given the transfer of administrative control through Devolution, the GNWT need to be a Party.

- a) current information respecting the location and nature of existing Canada, the Government of the Northwest Territories and third party interests, including oil and gas permits, commercial fishing licences, surface leases, land use permits and other land use authorizations, agreements for sale, applications for lease, rights-of-way, easements, recorded mining rights, timber permits, outfitters and lodge licences, fee simple grants, quarrying permits and leases;
- b) any available maps and information respecting known deposits of oil, gas, sand, gravel and construction materials;
- c) maps or lists of all proposed parks or other protected areas. The identification of new parks or other protected areas may be considered in the course of land selection negotiations. Provisions relating to particular protected areas may be included in this Agreement;
- d) a list of all identified contaminated waste sites and available information relating to them;
- e) known public routes, utility corridors, pipelines, airstrips and trails; and
- f) any available information regarding known
  - i) unauthorized or traditional use cabins; and
  - ii) burial sites.

#### **DFN Land Use Maps**

- A.2.7 Prior to land selection, the DFN will table land use maps showing DFN cabins and burial sites<sup>72</sup> for review by Canada and the Government of the Northwest Territories.

### **A.3 LAND SELECTION – DEHCHO NDEHE**

#### **DFN Land Selection Maps**

- A.3.1 Initial land selection maps (using 1:250,000 scale National Topographic Series maps) will be prepared by the DFN which may identify up to one and one half times the total land quantum. The maps will show surface and subsurface selections, as well as any existing recognized routes being used on a regular basis, whether year round or intermittently. An estimate of the area of each selection will also be indicated on the maps.
- A.3.2 Land selection for Dehcho Ndehe will be made so as to provide the DFN with land for inclusion in the Dehcho Agreement, while leaving sufficient Crown land:

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<sup>72</sup> Subject to confidentiality guarantees, having regard to the open nature of the Dehcho Process. Dehcho to give further consideration.

- a) which is accessible and available to the Communities for public purposes;
- b) for any affected Aboriginal group not a party to the Dehcho Agreement; and
- c) for public purposes, including access for recreation, and Wildlife and Fish harvesting.

#### Representative Selections<sup>73</sup>

A.3.3 Land selections in the Dehcho Settlement Area will be representative of the topography and quality of the lands in the Dehcho Settlement Area.<sup>74</sup>

A.3.4 Land selections by the DFN will not be restricted or opposed on the basis that the Dehcho First Nations must select a certain portion of Dehcho Ndehe from conservation lands, or that the selection does not fit within a Party's precondition that a certain quantum or percentage of Dehcho Ndehe lands must be either "open" or closed to development.<sup>75</sup>

#### Special Harvesting Areas

A.3.5 Where the objectives of the Parties cannot be met through the process of land selection, negotiations at the time of land selection may provide special opportunities for the DFN for the harvesting of Fish and other species of Wildlife in designated areas.

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#### Restrictions on Access

A.3.6 During land selection, the Parties may determine locations where the public rights of access in 8.1.3 and the commercial rights of access in 8.7.1b) and c) are restricted.

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#### Dehcho Citizen Interests

A.3.7 The DFN may, with the consent of a Dehcho Citizen who has a legal interest in a building or other structure affixed to the land, propose for selection Crown or Commissioner's lands underlying such interests. The DFN will provide Canada and the Government of the Northwest Territories the written consent of the Dehcho Citizen. Such consent is not required if the interest of that

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<sup>73</sup> The GNWT will review.

<sup>74</sup> DFN ask: Why, and what does "representative" mean to Cda? Canada to follow up with drafting of other Agreements. Sahtu Dene Metis Land Claim Agreement, Appendix C, 2.5 and the Gwich'in Comprehensive Land Claim Agreement, Appendix D, clause 2.5

<sup>75</sup> GNWT to review and provide comments.

Dehcho Citizen is limited to that of a tenant or occupant of the building or structure.<sup>77</sup>

#### **Selection of Undeveloped Land Administered by Canada**

A.3.8. Land that is administered by, or reserved in the name of any department or agency of Canada, and that is not required for public purposes, may be selected.

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#### **A.4 SPECIFIC SITES – WITHIN THE DEHCHO SETTLEMENT AREA**

A.4.1 The Parties may negotiate the selection of specific sites within the Dehcho Settlement Area, which will not exceed one hectare in area which will form part of the quantum, unless otherwise agreed, and will not include the subsurface.

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A.4.2 Unless otherwise agreed, and to the extent practical, specific sites will be regular in shape and avoid disproportionately large frontages along water bodies.

A.4.3 Specific Sites are to be areas of traditional and current use by the DFN such as Camps for Harvesting or other traditional uses.

A.4.4 The DFN may, with the consent of a Dehcho Citizen normally occupying or using a specific site, propose that site for selection. The DFN will provide Canada and the Government of the Northwest Territories the written consent of the Dehcho Citizen.<sup>79</sup>

#### **A.5 COMMUNITY BOUNDARY**

A.5.1 Prior to land selection, the Government of the Northwest Territories will confirm the boundary of each Community in the Dehcho Settlement Area.

A.5.2 In the circumstances where there is an existing Community boundary, the Government of the Northwest Territories will:

- a) confer with the municipal government on its needs in relation to the community boundary for the foreseeable future; and

<sup>77</sup> Second and third sentences of this clause relate to internal DFN issues and should be deleted. Canada feels that in areas of overlap some confirmation of whose land claim the interest should be in, if any, is needed.

<sup>79</sup> DFN see this as internal between DFN and its' citizens. Canada feels that in areas of overlap some confirmation of whose land claim the interest should be in, if any, is needed.



- b) Consult the Dehcho First Nation on the Community boundaries and accommodate, where appropriate,

prior to confirming community boundaries in A.5.1.

A.5.3 In the circumstance where there is not an existing Community boundary, the Government of the Northwest Territories will:

- a) confer with that Community to ascertain its needs in relation to the provision of local services for the foreseeable future; and
- b) Consult the Dehcho First Nation on a Community boundary and accommodate, where appropriate,

prior to confirming community boundaries in A.5.1.

#### **A.6 RESTRICTIONS**

A.6.1 Land subject to a fee simple interest or an agreement for sale may not be selected, unless otherwise agreed.

A.6.2 Crown or Commissioner's Land subject to a lease is not available for selection unless the lessee's interest is treated in a manner satisfactory to the DFN and Canada or the Government of the Northwest Territories, as appropriate. The lessee will be given written notice by Canada or the Government of the Northwest Territories, as appropriate, if such land is being considered for selection.

A.6.3 Lands will not be selected within 30.48 metres of the boundary of the Dehcho Settlement Area, unless otherwise agreed.

A.6.4 Contaminated sites that have been identified prior to selection will not be available for selection unless otherwise agreed.

A.6.5 Producing and non producing mines and minerals properties at an Advanced Stage of Exploration will not be identified as Dehcho Ndehe.

A.6.6 Canada and the Government of the Northwest Territories acknowledge that the Dehcho First Nations are committed to having overlap discussions with Aboriginal groups that have overlapping interests regarding land selection in the Dehcho Settlement Area.

- A.6.7 In the course of land selection, Canada and the Government of the Northwest Territories will consult other Aboriginal groups who have established rights protected by section 35 of the *Constitution Act, 1982*, or who assert that they have rights protected by section 35, which may be adversely affected by the land selection and that as a result, Canada and the Government of the Northwest Territories may, with the view to achieving reconciliation, propose changes to the identification of land to be Dehcho Ndehe.

#### **A.7 COMPLETION**

- A.7.1 The land selection maps will, if required, be transposed on to alternative scale maps.
- A.7.2 The transposing of the maps will be the responsibility of Canada or the Government of the Northwest Territories, unless otherwise agreed.
- A.7.3 Land selection will be completed by the initialling by all Parties of all maps, legal descriptions or sketch plans setting out land that may become Dehcho Ndehe outside a Community.
- A.7.4 Consultation with other Aboriginal groups would start prior to the initialling of the maps.

#### **A.8 LAND WITHDRAWAL**

- A.8.1 Land withdrawal pursuant to the *Territorial Lands Act* or the *Commissioner's Land Act* will occur as soon as reasonably possible following agreement between Canada, the Government of the Northwest Territories and the DFN respecting land selection. The initialed maps will form the basis for an Order-in-Council to withdraw the final land selection identifications.
- A.8.2 Upon withdrawal of lands following completion of land selection, both Parties concerned will have 60 days to conduct a period of public review and Consultation concerning the initialed maps.
- A.8.3 Where urgent circumstances require, the Parties may agree to the withdrawal of certain land selections notwithstanding that all land selections have not been completed.
- A.8.4 Upon completion of the review period specified in A.8.2, the initialed maps will be confirmed or amended, and the land withdrawal amended by Order-in-Council.

- A.8.5 The withdrawal of lands will be subject to existing rights, titles or interests, including licenses, permits, authorizations, reservations, reservations by notation and any associated benefits and privileges, including renewals, replacements, extensions in time and transfers as might have been granted or permitted had the land not been withdrawn<sup>80</sup>, provided that:
- a) there will be no significant changes in the terms and conditions of such renewals, replacements, extensions or transfers; and
  - b) the interest holder will be given notice of the withdrawal and advised by Canada or the Government of the Northwest Territories, as appropriate, that the lands have been selected.
- A.8.6 A.8.5 will not be construed to affect any discretion of Canada or the Government of the Northwest Territories to grant or refuse the renewal, replacement, extension of term or transfer of any interest in land or license, permit or authorization.
- A.8.7 Permits may be issued under the *Territorial Quarrying Regulations* or the *Commissioner's Lands Regulations* in respect of sources of construction materials in the following circumstances:
- a) for quarrying sites which were in use or identified prior to the date of the withdrawal order; or
  - b) where, after Consultation with the DFN, the territorial land agent or other designated individual determines there is no alternative source of supply reasonably available in the surrounding area and the materials are required for essential public construction purposes.
- A.8.8 No new timber permits or licenses, other than renewals or replacements of existing timber permits or licenses issued pursuant to the *Forest Management Act*, will be issued in respect of the withdrawn lands except:
- a) with the consent of the DFN; or,
  - b) in cases of overriding public interest<sup>81</sup> as determined by the Minister and after Consultation with the DFN.
- A.8.9 For greater certainty, the provisions of this section will not affect access to or across withdrawn lands for the period of the withdrawal.

## **A.9 STATUS OF THIS APPENDIX**

<sup>80</sup> DFN seeking instructions.

<sup>81</sup> DFN reviewing.

**Deleted:** A.8.10 For greater certainty, withdrawn lands remain Crown lands or Commissioner's lands under administration and control of the Minister or Commissioner.<sup>82</sup>

**Deleted:** Same test as for expropriation?

- A.9.1        While this Appendix will form part of the Agreement-in-Principle it will not form part of the Dehcho Agreement.

## CHAPTER 8: ACCESS

<b>PART I</b>	<b>GENERAL</b>
<b>PART II</b>	<b>PUBLIC ACCESS</b>
<b>PART III</b>	<b>ACCESS BY HOLDERS OF EXISTING INTERESTS</b>
<b>PART IV</b>	<b>COMMERCIAL ACCESS</b>
<b>PART V</b>	<b>GOVERNMENT AND GOVERNMENT REGULATED UTILITIES ACCESS</b>
<b>PART VI</b>	<b>ACCESS TO CONSTRUCTION MATERIAL</b>
<b>PART VII</b>	<b>ACCESS TO CONTAMINATED SITES</b>
<b>PART VIII</b>	<b>WINTER ROAD ACCESS</b>
<b>PART IX</b>	<b>SURFACE RIGHTS BOARD</b>
<b>PART X</b>	<b>LINEAR PROJECTS</b>

### **PART I GENERAL**

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- 8.1.2 Where a Person may exercise access under more than one provision in this chapter, that Person may have access pursuant to the least restrictive provision.
- 8.1.3 Nothing in this Agreement affects the public right of navigation on navigable waters.
- 8.1.4 Any Person may access Dehcho Ndehe and waters overlying such lands without prior notice in an emergency.

### **PART II PUBLIC ACCESS**

#### **8.2 GENERAL**

- 8.2.1 Any individual has the right to enter, cross or stay temporarily on Dehcho Ndehe and waters overlying such lands subject to:
- a) conditions and restrictions set out in 8.3.0;
  - b) additional conditions which may be made in accordance with 8.4.0;
  - c) conditions which result from a resolution or determination under the Dispute Resolution chapter; and
  - d) Legislation. <sup>84</sup><sup>85</sup>

<sup>84</sup> The DFN believe that the provisions of this chapter should reference the Dehcho Land Use Plan. Canada noted that section 46 of the MVRMA links the LUP to Legislation.

<sup>85</sup> DFN propose: "...Legislation enacted by the Dehcho Government after consultation with Canada".

8.2.2 Any individual exercising access to Dehcho Ndehe and waters overlying such lands under 8.2.1 may<sup>86</sup>:

- a) harvest Wildlife, Migratory Birds and Fish; and
- b) employ any mode of transport proportionate to the purpose for which that individual is accessing the land.

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8.2.3 There is no fee, charge, rental or other compensation payable to the Dehcho Government for:

- a) access under 8.2.1; and
- b) any cost incurred by the Dehcho Government in relation to access under 8.2.1.

unless otherwise provided by Legislation enacted after Consultation with the Dehcho Government.<sup>88</sup>

8.2.4 There is no permitting, licensing or screening required for access under 8.2.1 unless otherwise provided by Legislation enacted after Consultation with the Dehcho Government.<sup>89</sup>

8.2.5 Any Individual exercising access under 8.2.1 who does not comply with a provision of this chapter will be considered a trespasser and the common law or applicable Dehcho Law pursuant to 9.1.1f) applying to trespassers on fee simple land will apply to such Individual.

### 8.3 CONDITIONS AND RESTRICTIONS

8.3.1 Unless otherwise agreed to by any Individual and the Dehcho Government, an individual accessing Dehcho Ndehe and waters overlying such lands under 8.2.1 do so at their own risk and have no right of action against the Dehcho Government or any Dehcho Citizen for loss suffered or damage arising therefrom, except for death or injury to such individual or for damage to the property of such individual that results from a danger arising from the wilful or reckless conduct or by the negligent<sup>90</sup> action of the Dehcho Government or any Dehcho Citizen.

<sup>86</sup> DFN suggest "...under 8.2.1 may, with the consent of the Dehcho Government, ..."

<sup>88</sup> DFN propose instead: "...provided by Legislation enacted by the Dehcho Government after consultation with Canada".

<sup>89</sup> The DFN propose the following alternative wording: "...unless otherwise provided by Legislation enacted by the Dehcho Government after consultation with Canada."

<sup>90</sup> The DFN question whether mere negligence on the part of the Dehcho government should give rise to a cause of action in these circumstances. "Gross negligence" may be a more appropriate standard. DFN considering the alternative "negligently created by".

- 8.3.2 Access under 8.2.1 will, where practicable, be exercised upon prior notice to the Dehcho Government
- 8.3.3 Access under 8.2.1 will, where possible, be exercised on a route identified for that purpose by the Dehcho Government; or on an existing route used regularly for such access.<sup>91</sup>
- 8.3.4 Unless otherwise agreed to by the Dehcho Government, an individual exercising access under 8.2.1 is subject to conditions that the individual:
- a) is responsible for unnecessary damage caused to Dehcho Ndehe and waters overlying such lands or structures on Dehcho Ndehe and waters overlying such lands; and
  - b) does not unnecessarily interfere with the use and peaceable enjoyment of Dehcho Ndehe and waters overlying such lands by the Dehcho Government or a Dehcho Citizen.
- 8.3.5 Public access under 8.2.1 does not include the right to:
- a) engage in any commercial activity;
  - b) establish any permanent or seasonal camp;
  - c) establish any permanent or seasonal structure; or
  - d) establish any camp or structure other than for merely casual or temporary purposes.

Deleted:<sup>92</sup>

#### 8.4 ADDITIONAL CONDITIONS BY AGREEMENT<sup>93</sup>

- 8.4.1 The Dehcho Government may propose to Canada and the Government of the Northwest Territories additional conditions on access to Dehcho Ndehe and waters overlying such lands under 8.2.1 provided such conditions pertain only to:
- a) requirements for notice or registration by individuals accessing Dehcho Ndehe and waters overlying such lands; or
  - b) the identification of specific areas, seasons of the year or times of the day in which access may not be exercised in order to:

<sup>91</sup> DFN believe this wording creates uncertainty and suggest that "existing routes" to be developed through the LUP process / DRCMA. Canada and GNWT are considering.

<sup>93</sup> Sections 4.1 – 4.4 are unnecessary if, as the DFN propose, the Dehcho Government has exclusive or paramount jurisdiction to enact legislation governing access to Dehcho Ndehe.

- i) protect the environment;
- ii) conserve Wildlife, Fish, Migratory Birds or their habitats;
- iii) avoid conflict with Harvesting by Dehcho Citizens or with other uses of Dehcho Ndehe and waters overlying such lands by Dehcho Citizens; and
- iv) protect Camps or structures.

8.4.2 If the Dehcho Government and Canada and the Government of the Northwest Territories do not reach agreement on an additional condition proposed under 8.4.1, the Dehcho Government may refer the dispute for resolution or determination under the Dispute Resolution chapter.

8.4.3 The Dehcho Government will take reasonable measures to notify the public of additional conditions which may be established under 8.4.1 or 8.4.2.

8.4.4 Additional conditions on access under 8.2.1 may be established by agreement between the Dehcho Government and the individual with whom such conditions would apply.

### **PART III ACCESS BY HOLDERS OF EXISTING INTERESTS**

#### **8.5 GENERAL**

8.5.1 The holder of:

- a) an interest in an excluded parcel set out in Appendix “X” including its renewal or replacement;
- b) an interest set out in Appendix “Y”, including its renewal or replacement; or
- c) a land use permit granted by the Mackenzie Valley Land and Water Board before the Effective Date,

has a right to enter, cross or stay temporarily on Dehcho Ndehe and waters overlying such lands to allow the exercise of that interest, subject to the conditions and restrictions set out in 8.6.o.

8.5.2 The right of access under 8.5.1 extends to any employee, client, agent or guest of the interest holder.

8.5.3 There is no fee, charge, rental or other compensation payable to the Dehcho Government for:



- a) access under 8.5.1; and
- b) any cost incurred by the Dehcho Government in relation to access under 8.5.1,

unless otherwise provided by Legislation enacted after Consultation with the Dehcho Government.<sup>94</sup>

- 8.5.4 There is no additional permitting, licensing or screening required for access under 8.5.1 unless otherwise provided by Legislation enacted after Consultation with the Dehcho Government.
- 8.5.5 An interest holder exercising access to Dehcho Ndehe and waters overlying such lands under 8.5.1 may employ any mode of transport proportionate to the purpose for which that interest holder is accessing the land.
- 8.5.6 An interest holder exercising access under 8.5.1 who does not comply with a provision of this chapter will be considered a trespasser and the common law applying to trespassers on fee simple land will apply to such Person ~~or where there is a Dehcho Law with respect to trespass enacted pursuant to 9.1.1(f), such Dehcho Law will apply to such Person.~~

Deleted: <sup>95</sup>

## 8.6 CONDITIONS AND RESTRICTIONS

- 8.6.1 Unless otherwise agreed to by the Dehcho Government, holders of existing interests who access Dehcho Ndehe and waters overlying such lands under 8.5.1 do so at their own risk and have no right of action against the Dehcho Government or any Dehcho Citizen for loss suffered or damage arising therefrom, except for death or injury to such Person or for damage to the property of such Person that results from a danger arising from the wilful or reckless conduct or by the negligent<sup>96</sup> action of the Dehcho Government or any Dehcho Citizen.
- 8.6.2 Access under 8.5.1 will be exercised in a manner that is consistent with the terms and conditions of the existing interest
- 8.6.3 Where the exercise of the right of access under 8.5.1 involves any activity of a type or in a location not authorized by the existing interest on the Effective

<sup>94</sup> DFN propose instead: "...provided by Legislation enacted by the Dehcho Government after consultation with Canada".

<sup>96</sup> The DFN question whether mere negligence on the part of the Dehcho government should give rise to a cause of action in these circumstances. "Gross negligence" may be a more appropriate standard. DFN considering the alternative "negligently created by".

Date of the Final Agreement, the exercise of that right of access is subject to the agreement of the Dehcho Government.

8.6.4 Where an agreement is not reached under 8.6.3, the holder of the existing interest may refer the dispute for resolution or determination under the Dispute Resolution chapter, but may not exercise access with respect to the disputed activity until the dispute has been resolved or determined.<sup>97</sup>

8.6.5 The right of access under 8.5.1 is subject to any restrictions or prohibitions established by Legislation.<sup>98</sup>

#### **PART IV COMMERCIAL ACCESS**

##### **8.7 GENERAL**

8.7.1 Any Person has, for travel by water in the course of conducting commercial activity, a right to enter, cross or stay temporarily on or over:

- a) Navigable rivers that overlie Dehcho Ndehe and waters overlying such lands and other Navigable waters that overlie Dehcho Ndehe and waters overlying such lands that can be entered from a navigable river;
- b) Portages on Dehcho Ndehe and waters overlying such lands associated with Navigable rivers and other Navigable Waters; and
- c) Dehcho Ndehe and waters overlying such lands that is Waterfront Land.

8.7.2 Any Person has a right to enter, cross or stay temporarily on or over Dehcho Ndehe and waters overlying such lands to reach adjacent lands or Waters for commercial purposes.

8.7.3 Access under 8.7.1 and 8.7.2 is subject to:

- a) conditions and restrictions set out in 8.8.o;
- b) additional conditions which may be made in accordance with 8.9.o;
- c) additional conditions resulting from a resolution or determination under the Dispute Resolution chapter; and
- d) Legislation<sup>99</sup>.

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<sup>97</sup> DFN propose that the DCRMA act as the Dispute Resolution body.

<sup>98</sup> DFN propose: "Legislation enacted by the Dehcho Government".

<sup>99</sup> DFN propose: "Legislation enacted by the Dehcho Government".

8.7.4 Any Person exercising access under 8.7.1 and 8.7.2 may employ any mode of transport proportionate to the purpose for which that Person is accessing the land.

8.7.5 There is no fee, charge, rental or other compensation payable to the Dehcho Government for:

- a) access under 8.7.1 or 8.7.2; and
- b) any cost incurred by the Dehcho Government in relation to access under 8.7.1 or 8.7.2.

unless otherwise provided by Legislation enacted after Consultation with the Dehcho Government.<sup>100</sup>

8.7.6 There is no permitting, licensing or screening required for access under 8.7.1 or 8.7.2 unless otherwise provided by:

- a) existing Legislation; or
- b) Legislation enacted after Consultation with the Dehcho Government.<sup>101</sup>

8.7.7 Any Person exercising access under 8.7.1 or 8.7.2 who does not comply with a provision of this chapter will be considered a trespasser and the common law applying to trespassers on fee simple land will apply to such Person **or where there is a Dehcho Law with respect to trespass enacted pursuant to 9.1.1(f), such Dehcho Law will apply to such Person.**<sup>102</sup>

## 8.8 CONDITIONS AND RESTRICTIONS

8.8.1 Unless otherwise agreed to by the Dehcho Government, Persons accessing Dehcho Ndehe and waters overlying such lands under 8.7.2 do so at their own risk and have no right of action against the Dehcho Government or any Dehcho Citizen for loss suffered or damage arising therefrom, except for death or injury to such Person or for damage to the property of such Person that results from a danger arising from the wilful or reckless conduct or by the negligent<sup>103</sup> action of the Dehcho Government or any Dehcho Citizen.

<sup>100</sup> DFN propose instead: "...provided by Legislation enacted by the Dehcho Government after Consultation with Canada".

<sup>101</sup> DFN propose instead: "...provided by Legislation enacted by the Dehcho Government after Consultation with Canada".

<sup>102</sup> Canada to redraft language to include references to Dehcho Government trespass authority.

<sup>103</sup> The DFN question whether mere negligence on the part of the Dehcho government should give rise to a cause of action in these circumstances. "Gross negligence" may be a more appropriate standard. DFN considering the alternative "negligently created by".

8.8.2 Access under 8.7.2 must be exercised:

- a) by using the most direct existing route, or if no route exists, by the most practical route that minimizes impact on the land<sup>104</sup>; and
- b) by minimizing use of portages and Waterfront Lands.

Deleted: ...

8.8.3 Access to portages and Waterfront Lands under 8.7.1:

- a) is subject to prior notice being given to the Dehcho Government; and
- b) does not include the right:
  - i) to engage in any commercial activity, other than an activity that is necessarily incidental to travel;
  - ii) to establishing any permanent or seasonal camp or structure; or
  - iii) to establish any camp or structure other than for merely casual or temporary purposes.

8.8.4 Access to Dehcho Ndehe and waters overlying such lands under 8.7.2 is subject to:

- a) the access being of a casual and insignificant nature;
- b) prior notice given to the Dehcho Government;
- c) the route having been previously used for similar commercial access on a regular basis, whether year round or intermittently; and
- d) the access not resulting in a significant alteration in the use of the route.

8.8.5 Unless otherwise agreed to by the Dehcho Government, a Person exercising access under 8.7.2 is subject to conditions that the Person:

- a) does not cause unnecessary damage to Dehcho Ndehe and waters overlying such lands or structures on Dehcho Ndehe and waters overlying such lands, and is responsible for any such damage;
- b) does not unnecessarily interfere with the use and peaceable enjoyment of Dehcho Settlement Land by the Dehcho Government or a Dehcho Citizen.

8.9 ADDITIONAL CONDITIONS BY AGREEMENT

<sup>104</sup> The Parties are considering language.

Deleted: DFN suggests "least damaging".

- 8.9.1 Where a Person exercising access under 8.7.1 or 8.7.2 is unable to comply with the conditions set out in 8.8.o, that Person requires the agreement of the Dehcho Government as to any variation of those conditions.
- 8.9.3 If the Person exercising access under 8.7.1 or 8.7.2 and the Dehcho Government cannot agree on a variation to the conditions set out in 8.8.o, the Person with the right of access may refer the dispute for resolution under the Dispute Resolution chapter, and may only continue to exercise access under the terms and conditions set out in 8.8.o
- 8.9.4 The Dehcho Government may propose<sup>105</sup> to Canada and the Government of the Northwest Territories additional conditions on access to Dehcho Ndehe and waters overlying such lands under 8.7.2 provided such conditions pertain only to:
- a) requirements for notice or registration by any Person accessing under 8.7.1 or 8.7.2; or
  - b) the identification of specific areas, seasons of the year or times of the day in which access may not be exercised in order to:
    - i) protect the environment;
    - ii) conserve Wildlife, Fish Migratory Birds or their habitats;
    - iii) avoid conflict with Harvesting by Dehcho Citizens or with other uses of Dehcho Ndehe and waters overlying such lands by Dehcho Citizens; and
    - iv) protect Camps or structures.
- 8.9.5 If the Dehcho Government and Canada and the Government of the Northwest Territories do not reach agreement on an additional condition proposed under 8.9.3, the Dehcho Government may refer the dispute for resolution in accordance with the Dispute Resolution chapter.
- 8.9.6 The Dehcho Government will take reasonable measures to notify the public of any additional conditions which may result under 8.9.1 or 8.9.4.
- 8.9.7 Additional conditions under 8.9.1 may be established by agreement between the Dehcho Government and the Person with whom such conditions on access would apply.

## **PART V GOVERNMENT AND GOVERNMENT REGULATED UTILITIES ACCESS**

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<sup>105</sup> 9.3 and 9.4 are unnecessary if the Dehcho Government has exclusive or paramount jurisdiction to enact Legislation

**8.10 GENERAL**

8.10.1 Agents, employees, contractors, subcontractors and other representatives of Canada, the Government of the Northwest Territories, Public Utilities, Railways, or the Canadian Armed Forces, and peace officers have access to Dehcho Ndehe and waters overlying such lands in accordance with Federal Law and Territorial Law, at no charge in order to:<sup>106</sup>

- a) deliver and manage programs and services;
- b) carry out duties and obligations under Federal Law and Territorial Law;
- c) enforce laws;
- d) respond to emergencies; or
- e) carry out the terms of this Agreement

8.10.2 When exercising access under 8.10.1 Canada and the Government of the Northwest Territories may establish on Dehcho Ndehe and waters overlying such lands:

- a) navigational aids and safety devices along the shorelines of Navigable Waters prior to the start of a navigation season, provided that the area occupied by each such navigational aid or safety device does not exceed:
  - i) two hectares, for range markers and buoy transits; or
  - ii) 0.1 hectare, for single beacons;
- b) stream gauges and climate stations; and
- c) fuel caches.

8.10.3 Canada or the Government of the Northwest Territories will Consult<sup>107</sup> the Dehcho Government prior to establishing any structures referred to in 8.10.2.

8.10.4 The Department of National Defence and the Canadian Forces have a right of access to Dehcho Ndehe and waters overlying such lands for military exercises<sup>108</sup> with the agreement of the Dehcho Government or, failing an agreement, on conditions established in accordance with the Dispute Resolution chapter. Where the Minister of National Defence and the Dehcho Government do not reach agreement on conditions for the exercise of that right of access, the Minister of National Defence may refer the dispute for resolution in accordance with the Dispute Resolution chapter, but that Department and those Forces may not exercise that right until the dispute has been resolved or determined.

Deleted:

<sup>106</sup> Canada proposed 8.10.1 at the November 20-21, 2012 session – all parties are considering

<sup>107</sup> DFN propose to replace “inform” with “Consult”.

<sup>108</sup> DFN propose that “military exercises” be a defined term. **Canada reviewing.**

- 8.10.5 The Final Agreement will not limit the authority of Canada or the Minister of National Defence to carry out any and all activities related<sup>109</sup> to national defence and national security<sup>110</sup> nor limit the authority of the Minister of National Defence under section 257 of the *National Defence Act*, R.S.C. 1985, c. N-5.
- 8.10.6 Any government representative authorized under Legislation to provide electrical power, telecommunications services or similar public utilities to the public, other than pipelines for the transmission of hydrocarbons, will have a right of access to Dehcho Ndehe and waters overlying such lands to carry out assessments, surveys and studies in relation to the proposed services, provided they Consult with Dehcho Government prior to exercising such right.
- 8.10.7 Any government representative exercising access to Dehcho Ndehe and waters overlying such lands under 8.10.1, 8.10.4 or 8.10.6 may employ any mode of transport.
- 8.10.8 There is no fee, charge, rental or other compensation payable to the Dehcho Government for:
- a) access under 8.10.1, 8.10.4 or 8.10.6; and
  - b) any cost incurred by the Dehcho Government in relation to access under 8.10.1, 8.10.4 or 8.10.6<sup>111</sup>
- unless otherwise provided by Legislation enacted after Consultation with the Dehcho Government.
- 8.10.9 There is no permitting, licensing or screening required for access under 8.10.1, 8.10.4 or 8.10.6 unless otherwise provided by
- a) existing Legislation; or
  - b) Legislation enacted after Consultation with the Dehcho Government.
- 8.10.10 Access under 8.10.1, 8.10.4 or 8.10.6 is subject to:
- a) applicable conditions and restrictions set out in 8.11.0;
  - b) specific additional conditions which may be made in accordance with 8.12.0;
  - c) additional conditions resulting from a resolution or determination under the Dispute Resolution chapter; and

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<sup>109</sup> DFN propose “...necessary to National Defence” rather than “related to...”. *Canada reviewing*

<sup>110</sup> Should “national security” be a defined term? *Canada reviewing*.

<sup>111</sup> DFN believe the Dehcho Government should be compensated for any damage to Dehcho Ndehe.

- d) Legislation<sup>112</sup>.

**8.11 CONDITIONS AND RESTRICTIONS**

- 8.11.1 Unless otherwise agreed to by the Dehcho Government, government representatives accessing Dehcho Ndehe and waters overlying such lands under 8.10.1, 8.10.4 or 8.10.6 do so at their own risk and have no right of action against the Dehcho Government or any Dehcho Citizen for loss suffered or damage arising therefrom, except for death or injury to such government representative or for damage to the property of such government representative that results from a danger arising from the wilful or reckless conduct or by the negligent<sup>113</sup> action of the Dehcho Government or any Dehcho Citizen.
- 8.11.2 Unless otherwise agreed to by the Dehcho Government, access under 8.10.1, 8.10.4 or 8.10.6 is subject to conditions that the government representative exercising the access:
- a) does not cause unnecessary damage to Dehcho Ndehe and waters overlying such lands or structures on Dehcho Ndehe and waters overlying such lands, and is responsible for any such damage; and
  - b) does not unnecessarily interfere with the use and peaceable enjoyment of Dehcho Ndehe and waters overlying such lands by the Dehcho Government or a Dehcho Citizen.
- 8.11.3 Prior to accessing Dehcho Ndehe and waters overlying such lands under 8.10.1, 8.10.4 or 8.10.6, Canada or the Government of the Northwest Territories, as applicable, will give prior notice<sup>114</sup> of such access to the Dehcho Government when it is reasonable to do so except no notice<sup>115</sup> will be given when:
- a) the access concerns an activity related to law enforcement, investigations, inspections or crime prevention; or
  - b) notice would be contrary to the interests of national defence and national security.

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<sup>112</sup> DFN propose that the Agreement require Consultation with the Dehcho Government with respect to any Legislation. Canada to consult internally

<sup>113</sup> The DFN question whether mere negligence on the part of the Dehcho government should give rise to a cause of action in these circumstances. "Gross negligence" may be a more appropriate standard. DFN considering the alternative "negligently created by".

<sup>114</sup> DFN propose: "...will Consult with the Dehcho Government...", rather than "give prior notice..."

<sup>115</sup> DFN propose: "except Consultation will modified as necessary when:"



8.11.4 Excepting the establishment of structures under 8.10.2, or the Remediation of a Contaminated Site under X in Dehcho Ndehe and waters overlying such lands chapter or 5.5 in the Community Lands chapter, if Canada or the Government of the Northwest Territories requires the continuous use or occupancy of any part of the Dehcho Ndehe and waters overlying such lands for more than two years, the Dehcho Government may require Canada or the Government of the Northwest Territories to acquire an interest in the lands for that purpose by agreement or under the Expropriation chapter.

**8.12 ADDITIONAL CONDITIONS BY AGREEMENT**

8.12.1 Subject to 8.12.2, the Dehcho Government may propose to Canada and the Government of the Northwest Territories additional conditions on access to Dehcho Ndehe and waters overlying such lands under 8.10.1 provided such conditions pertain only to:

- a) requirements for notice or registration by government representatives accessing Dehcho Ndehe and waters overlying such lands; or
- b) the identification of specific areas, seasons of the year or times of the day in which access may not be exercised in order to:
  - i) protect the Environment;
  - ii) conserve Wildlife, Fish, Migratory Birds or their habitats;
  - iii) avoid conflict with Harvesting by Dehcho Citizens or with other uses of Dehcho Ndehe and waters overlying such lands by Dehcho Citizens; and
  - iv) protect Camps or structures.

8.12.2 Additional conditions may not be established in accordance with 8.12.1, whether through agreement with Canada and the Government of the Northwest Territories or the process set out in the Dispute Resolution chapter, for the exercise of access rights in relation to law enforcement, investigations, inspections or crime prevention under Federal Law or Territorial Law or for access by the Department of National Defence and the Canadian Forces under 8.10.4.<sup>116</sup>

8.12.4 If the Dehcho Government and Canada and the Government of the Northwest Territories do not reach agreement on a further condition proposed under 8.12.1, the Dehcho Government may refer the dispute for resolution in accordance with the Dispute Resolution chapter.

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<sup>116</sup> DFN may propose to delete 8.12.2. Further discussion required.

8.12.5 The Dehcho Government will take reasonable measures to notify the public of the further conditions which may result from a resolution or a determination under 8.12.4.

8.12.6 Further conditions on access under 8.10.1, 8.10.4 and 8.10.6 may be established by agreement between the Dehcho Government and the Person with whom such conditions would apply.

## **PART VI ACCESS TO CONSTRUCTION MATERIALS**

### **8.13 GENERAL**

8.13.1 The Dehcho Government will provide to any Person, Canada, the Government of the Northwest Territories or Dehcho Community Government:

- a) supplies of Construction Material in Dehcho Ndehe and waters overlying such lands; and
- b) access to Dehcho Ndehe and waters overlying such lands for the purpose of obtaining the supplies of Construction Material,

where the Construction Material is to be used on lands other than Dehcho Ndehe and waters overlying such lands or Dehcho Community Land and where there is no alternative supply within a reasonable proximity to the location of the proposed use.<sup>117</sup>

8.13.2 Excepting 8.13.3, the Dehcho Government is entitled to be paid for:

- a) the value of Construction Material supplied under 8.13.1; and
- b) the exercise of access under 8.13.1.

8.13.3 The Dehcho Government is not entitled to be paid for:

- a) the value of Construction Material supplied under 8.13.1;
- b) the exercise of access under 8.13.1; or
- c) any cost incurred by the Dehcho Government in relation to those Construction Material or for the access under 8.13.1,

if the materials are to be used, for a public purpose, or used in Dehcho Ndehe and waters overlying such lands or used for a public road proximate to Dehcho Ndehe and waters overlying such lands or Dehcho Community Land

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<sup>117</sup> The DFN question whether other governments, including Canada and the GNWT, are subject to similar legal requirements to provide construction materials to other governments and private interests.

where such road will provide access to Dehcho Ndehe and waters overlying such lands or Dehcho Community Land.<sup>118</sup>

- 8.13.4 Any dispute arising under 8.13.1, 8.13.2 or 8.13.3 may be referred to dispute resolution in accordance with the Dispute Resolution chapter.

#### **8.14 CONDITIONS AND RESTRICTIONS**

- 8.14.1 Prior to accessing Dehcho Ndehe and waters overlying such lands under 8.13.1, Canada and the Government of the Northwest Territories will give notice of such access to the Dehcho Government when it is practicable to do so.

Deleted: proper

- 8.14.2 Unless otherwise agreed to by any Person exercising access and the Dehcho Government, a Person accessing Dehcho Ndehe and waters overlying such lands under 8.13.1 do so at their own risk and have no right of action against the Dehcho Government or any Dehcho Citizen for loss suffered or damage arising there from, except for death or injury to such Person or for damage to the property of such Person that results from a danger arising from the wilful or reckless conduct or by the negligent<sup>119</sup> action of the Dehcho Government or any Dehcho Citizen.

### **PART VII ACCESS TO CONTAMINATED SITES**

#### **8.15 GENERAL**

- 8.15.1 Agents, employees and contractors of Canada and the Government of the Northwest Territories have a right of access to Dehcho Ndehe and waters overlying such lands to:
- a) conduct Remediation under Chapters 5 and 7; or
  - b) use Specified Substances or other natural resources on Dehcho Ndehe and waters overlying such lands to the extent necessary to conduct the Remediation.
- 8.15.2 There is no fee, charge, rental or other compensation payable to the Dehcho Government for:
- a) access under 8.15.1;

<sup>118</sup> DFN believe the Dehcho Government should be compensated, at least in some circumstances.

<sup>119</sup> The DFN question whether mere negligence on the part of the Dehcho government should give rise to a cause of action in these circumstances. "Gross negligence" may be a more appropriate standard. DFN considering the alternative "negligently created by".

- b) the use of Specified Substances or other natural resources<sup>120</sup> under 8.15.1; or
- c) any cost incurred by the Dehcho Government in relation to the access or Specified Substances and natural resources under 8.15.1.

8.15.3 There is no permitting, licensing or screening required for access under 8.15.1 unless otherwise provided by Legislation enacted after Consultation with the Dehcho Government.<sup>121</sup>

8.15.4 Agents, employees and contractors of Canada and the Government of the Northwest Territories exercising access to the Dehcho Ndehe and waters overlying such lands under 8.15.1 may employ any mode of transport proportionate to the purpose for which they are accessing the land.

Deleted: <sup>122</sup>

## 8.16 CONDITIONS AND RESTRICTIONS

8.16.1 Unless otherwise agreed to by any Person exercising access and the Dehcho Government, a Person accessing Dehcho Ndehe and waters overlying such lands under 8.15.1 do so at their own risk and have no right of action against the Dehcho Government or any Dehcho Citizen for loss suffered or damage arising there from, except for death or injury to such Person or for damage to the property of such Person that results from a danger arising from the wilful or reckless conduct or by the negligent<sup>123</sup> action of the Dehcho Government or any Dehcho Citizen.

8.16.2 Prior to accessing Dehcho Ndehe and waters overlying such lands under 8.15.1, Canada or the Government of the Northwest Territories, as applicable, will give prior notice of such access to the Dehcho Government when it is practicable to do so.

## PART VIII WINTER ROAD ACCESS

### 8.17 GENERAL

<sup>120</sup> DFN question whether the Dehcho Government should be paid for the use of its natural resources in Remediation.

<sup>121</sup> DFN propose instead: "...provided by Legislation enacted by the Dehcho Government after consultation with Canada".

<sup>123</sup> The DFN question whether mere negligence on the part of the Dehcho government should give rise to a cause of action in these circumstances. "Gross negligence" may be a more appropriate standard. DFN considering the alternative "negligently created by".

- 8.17.1 Agents, employees, and contractors of the Government of the Northwest Territories<sup>124</sup> have a right of access to Dehcho Ndehe and waters overlying such lands to:
- a) establish and build the Winter Roads shown on the map in Appendix “Y”; and
  - b) manage, control, vary or close up those Winter Roads.
- 8.17.2 Any Person has a right to travel on the Roads referred to in 8.17.1 in accordance with Legislation in respect of Public Highways.<sup>125</sup>
- 8.17.3 There is no fee, charge, rental or other compensation payable to the Dehcho Government for:
- a) access under 8.17.1 or 8.17.2; and
  - b) any cost incurred by the Dehcho Government in relation to access under 8.17.1 or 8.17.2,
- unless otherwise provided by Legislation enacted after Consultation with the Dehcho.<sup>126</sup>
- 8.17.4 There is no permitting, licensing or screening required for access under 8.17.1 unless otherwise provided by Legislation enacted after Consultation with the Dehcho Government.<sup>127</sup>
- 8.17.5 Agents, employees and contractors of Government of the Northwest Territories exercising access to Dehcho Ndehe and waters overlying such lands under 8.17.1 may employ any mode of transport proportionate to the purpose for which they are accessing the land.▼
- 8.17.6 Access under 8.17.1 or 8.17.2 is subject to:
- a) applicable conditions and restrictions set out in 8.18.0;
  - b) specific additional conditions which may be made in accordance with 8.19.0;

Deleted:<sup>128</sup>

<sup>124</sup> Will the Dehcho Government have similar access to Crown land and GNWT land for building and managing roads deemed necessary by the Dehcho Government?

<sup>125</sup> The DFN propose that the Dehcho Government will have jurisdiction to restrict use of Winter Roads on Dehcho Ndehe.

<sup>126</sup> DFN propose instead: “...provided by Legislation enacted by the Dehcho Government after consultation with Canada (or the GNWT)”.

<sup>127</sup> DFN propose instead: “...provided by Legislation enacted by the Dehcho Government after consultation with Canada (or the GNWT)”.

- c) additional conditions resulting from a resolution or determination under the Dispute Resolution chapter; and
- d) Legislation.<sup>129</sup>

## **8.18 CONDITIONS AND RESTRICTIONS**

- 8.18.1 Unless otherwise agreed to by any Person exercising access and the Dehcho Government, a Person accessing Dehcho Ndehe and waters overlying such lands under 8.17.1, or 8.17.2 do so at their own risk and have no right of action against the Dehcho Government or any Dehcho Citizen for loss suffered or damage arising there from, except for death or injury to such Person or for damage to the property of such Person that results from a danger arising from the wilful or reckless conduct or by the negligent<sup>130</sup> action of the Dehcho Government or any Dehcho Citizen.
- 8.18.2 Prior to accessing Dehcho Ndehe and waters overlying such lands under 8.17.1, Canada or the Government of the Northwest Territories, as applicable, will give prior notice<sup>131</sup> of such access to the Dehcho Government when it is reasonable to do so.

## **8.19 ADDITIONAL CONDITIONS BY AGREEMENT<sup>132</sup>**

- 8.19.1 Subject to 8.19.2, the Dehcho Government may propose to Canada and the Government of the Northwest Territories additional conditions on access to Dehcho Ndehe and waters overlying such lands under 8.17.1 or 8.17.2 provided such conditions pertain only to:
- a) requirements for notice or registration by Persons accessing Dehcho Ndehe and waters overlying such lands; or
  - b) the identification of specific areas, seasons of the year or times of the day in which access may not be exercised in order to:
    - i) protect the Environment;
    - ii) conserve Wildlife, Fish Migratory Birds or their habitats;

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<sup>129</sup> DFN propose instead: "...provided by Legislation enacted by the Dehcho Government after consultation with Canada (or the GNWT)".

<sup>130</sup> The DFN question whether mere negligence on the part of the Dehcho government should give rise to a cause of action in these circumstances. "Gross negligence" may be a more appropriate standard. DFN considering the alternative "negligently created by".

<sup>131</sup> DFN propose a duty to Consult rather than merely give notice to the Dehcho Government.

<sup>132</sup> Sections 19.1 and 19.2 may be unnecessary if other DFN proposals respecting Winter Roads are agreed to.

- iii) avoid conflict with Harvesting by Dehcho Citizens or with other uses of Dehcho Ndehe and waters overlying such lands by Dehcho Citizens; and
- iv) protect Camps or structures.

- 8.19.2 Additional conditions may not be established in accordance with 8.7.1 whether through agreement with Canada or the Government the Northwest Territories or the process set out in the Dispute Resolution chapter, for the exercise of access rights in relation to law enforcement, investigations, inspections or crime prevention under Federal Law or Territorial Law.
- 8.19.3 If the Dehcho Government and Canada and the Government of the Northwest Territories do not reach agreement on a further condition proposed under 8.19.1, the Dehcho Government may refer the dispute for resolution in accordance with the Dispute Resolution chapter.
- 8.19.4 The Dehcho Government will take reasonable measures to notify the public of the further conditions which may result from a resolution or a determination under 8.19.2.
- 8.19.5 Further conditions on access under 8.17.1 or 8.17.2 may be established by agreement between the Dehcho Government and the Person with whom such conditions would apply.

#### **PART IX SURFACE RIGHTS BOARD**

- 8.20.1 Prior to the Dehcho Agreement, the Parties will review the subject matter of the establishment of a Surface Rights Board in light of current Canada and the Government of the Northwest Territories proposals

#### **PART X LINEAR PROJECTS**

- 8.21.1 Prior to the Dehcho Agreement, the Parties will discuss provisions for access to Dehcho Ndehe and waters overlying such lands for the purpose of planning, constructing, operating and maintaining linear projects.

## **CHAPTER 9: JURISDICTION ON DEHCHO NDEHE**

- 9.1.0 JURISDICTION FOR DEHCHO NDEHE AND NON-RENEWABLE RESOURCES**
- 9.2.0 JURISDICTION FOR FISH**
- 9.3.0 JURISDICTION FOR MIGRATORY BIRDS**
- 9.4.0 JURISDICTION FOR PLANTS AND TREES**
- 9.5.0 JURISDICTION FOR WILDLIFE**
- 9.6.0 LIMITATIONS**
- 9.7.0 CONFLICT OF LAWS**

### **9.1.0 JURISDICTION FOR DEHCHO NDEHE AND NON-RENEWABLE RESOURCES**

- 9.1.1 The Dehcho Government has Jurisdiction with respect to the use, administration, management, control and protection of Dehcho Ndehe and the non-renewable resources found thereon, including:
  - a) granting of interests in Dehcho Ndehe;
  - b) the expropriation of such interests, subject to Chapter 39, Expropriation, except for interests held by Canada or the Government of the Northwest Territories;
  - c) licensing of businesses, occupations and business activities of a local<sup>133</sup> nature on Dehcho Ndehe;
  - d) the requirement for an authorization from the Mackenzie Valley Land and Water Board for the use of Dehcho Ndehe where the Legislation otherwise provides an exemption from such a requirement;
  - e) access on Dehcho Ndehe subject to Chapter 8, Access; and,
  - f) trespass on Dehcho Ndehe subject to Chapter 8, Access.
- 9.1.2 The Dehcho Government has Jurisdiction over land use plans for Dehcho Ndehe. The Dehcho Land Use Plan will be consistent with the provisions of the Dehcho Agreement and Legislation.<sup>134</sup>
- 9.1.3 The regulation of land, water and the environment on Dehcho Ndehe will be carried out within the regulatory framework set out in the Mackenzie Valley Resource Management Act and Legislation.

### **9.2.0 JURISDICTION FOR FISH**

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<sup>133</sup> GNWT prefers 'Municipal' in 47.1.1c and 47.7.1c.

<sup>134</sup> Further discussion is required in the context of a Land Use Planning chapter



- 9.2.1 The Dehcho Government has Jurisdiction in relation to the following matters related to Fish:
- a) who may harvest fish in waters on Dehcho Ndehe;
  - b) which Dehcho Citizens may harvest fish in the Dehcho Settlement Area;
  - c) use of waters on Dehcho Ndehe to promote fishery opportunities or activities such as aquaculture, fish stocking, fish hatcheries, trophy fish harvesting or catch and release fishing<sup>135</sup>;
  - d) limits, other than total allowable harvest levels, on any species or stock of fish which may be harvested,
    - i) by any Person, in waters on Dehcho Ndehe, and
    - ii) by Dehcho Citizens in the Dehcho Settlement Area;
  - e) limits on when fish harvesting may occur, including non-quota limitations such as limits on location, methods, quantities and seasons,
    - i) in relation to any Person, in waters on Dehcho Ndehe, and
    - ii) in relation to Dehcho Citizens, in the Dehcho Settlement Area;
  - f) restrictions on the type of equipment or gear that may be used for fish harvesting, including methods of use and identification of gear and harvested fish
    - i) by any Person, in waters on Dehcho Ndehe, and
    - ii) in relation to Dehcho Citizens, in the Dehcho Settlement Area;
  - g) identification designating
    - i) any Person who is authorized to harvest fish in water on Dehcho Ndehe, and
    - ii) a Dehcho Citizen who is authorized to harvest fish in the Dehcho Settlement Area;
  - h) identification of fish transported outside Dehcho Ndehe or the Dehcho Settlement Area by Dehcho Citizens;

**9.3.0 JURISDICTION FOR MIGRATORY BIRDS**

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<sup>135</sup> Canada is still reviewing what is envisioned by this provision and would propose table discussion

- 9.3.1 The Dehcho Government has Jurisdiction over the Dehcho right to harvest Migratory Birds for:
- a) the distribution of harvested Migratory Birds among Dehcho Citizens;
  - b) designating Dehcho Citizens to harvest Migratory Birds;
  - c) the methods, timing, and location of the harvest of Migratory Birds by Dehcho Citizens; and
  - d) the sale of inedible parts, including down, of harvested Migratory Birds.

**9.4.0 JURISDICTION FOR PLANTS AND TREES**

- 9.4.1 The Dehcho Government has Jurisdiction in relation to the following matters:
- a) who may Harvest Plants and Trees on Dehcho Ndehe;
  - b) limits, on any species of Plant or Tree which may be harvested, by any Person, on Dehcho Ndehe.
  - c) limits on the locations, where, and times Plant and Tree Harvesting may occur on Dehcho Ndehe;
  - d) restrictions on equipment and methods used for the Harvesting of Plants and Trees on Dehcho Ndehe;
  - g) requirements for identification or documentation for those Harvesting Plants and Trees on Dehcho Ndehe; and
  - h) the sale of Plants and Trees Harvested on Dehcho Ndehe.

**9.5.0 JURISDICTION FOR WILDLIFE**

- 9.5.1 The Minister retains the legislative authority to manage and conserve Wildlife and Wildlife habitat and will exercise that authority in a manner that is consistent with the Dehcho Agreement.<sup>136</sup>

**9.6.0 LIMITATIONS<sup>137</sup>**

- 9.6.1 Nothing in the Dehcho Agreement will affect any responsibility of Canada or the Government of the Northwest Territories for the fighting of forest fires.
- 9.6.2 The Jurisdictions set out in 9.1.1 do not include the power to make laws:

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<sup>136</sup> Dehcho disagree. More discussion is needed. Management of wildlife in Settlement Area will be addressed in a separate chapter.

<sup>137</sup> Limitations will need to be cross referenced with other Dehcho Agreement chapters to ensure consistency

- a) authorizing the use of water or the deposit of waste in water on Dehcho Ndehe;
- b) establishing a permitting system for the use of the surface of Dehcho Ndehe<sup>138</sup>;
- c) imposing any conditions on the exercise of an interest listed in Appendix (referred to in 7.6.1), or any renewals, replacements, transfers or extensions of term thereof; and,
- d) respecting environmental assessment.

9.6.3 Before enacting a law in relation to the matters set out in 9.1.1, the Dehcho Government will consult<sup>139</sup> with Canada and the Government of the Northwest Territories.

#### **9.7.0 CONFLICT OF LAWS**

9.7.1 A Dehcho Law prevails to the extent of a conflict with a federal or territorial law for Dehcho Laws respecting:

- a) granting of interests in Dehcho Ndehe;
- b) the expropriation of such interests, subject to Chapter 39, Expropriation, except for interests held by Canada or the Government of the Northwest Territories;
- c) licensing of businesses, occupations and business activities of a local nature on Dehcho Ndehe;
- d) the requirement for an authorization from the Mackenzie Valley Land and Water Board for the use of Dehcho Ndehe where the Legislation otherwise provides an exemption from such a requirement; and
- e) access on Dehcho Ndehe subject to Chapter 8, Access.

9.7.2 Subject to 9.3.1, in the event of a conflict between a Dehcho law enacted pursuant to this chapter and a federal or territorial law, the federal or territorial law prevails to the extent of the conflict.

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<sup>138</sup> Canada is reviewing this clause.

<sup>139</sup> Note that use of the term "consult" will need to be part of the broader consultation discussion

## **CHAPTER 10: RESOURCE MANAGEMENT / DCRMA**

## **CHAPTER 11: EARLY CHILDHOOD EDUCATION**

<b>11.1</b>	<b>JURISDICTION</b>
<b>11.2</b>	<b>STANDARDS</b>
<b>11.3</b>	<b>CONFLICT OF LAWS</b>

### **11.1 JURISDICTION**

- 11.1.1 The Dehcho Government has Jurisdiction in the Dehcho Settlement Area with respect to:
- a) early childhood education and childcare of Pre-school Children who are not Students;
  - b) licensing and regulation of facilities providing early childhood education and childcare; and
  - c) certification of early childhood educators and childcare providers.

### **11.2 STANDARDS**

- 11.2.1 Dehcho Laws made pursuant to 11.2.1 will provide for standards compatible with NWT early childhood education core principles and objectives.

### **11.3.0 CONFLICT OF LAWS**

- 11.3.1 In the event of a conflict between a Dehcho Law made pursuant to this chapter and a Federal Law or Territorial Law, the Dehcho Law prevails to the extent of the conflict.

## CHAPTER 12: KINDERGARTEN TO GRADE 12 EDUCATION

### 12.1 JURISDICTION 12.2 CONSULTATION

#### 12.1 JURISDICTION<sup>140</sup>

- 12.1.1 The Dehcho Government has Jurisdiction in the Dehcho Settlement Area with respect to the kindergarten to grade 12 education of Students residing in the Dehcho Settlement Area.
- 12.1.2 Laws passed by the Dehcho Government under 12.1.1 will establish learning outcomes, curriculum, examination and other standards that permit transfers of Students between school systems in the Northwest Territories at a similar level of achievement and permit entry to provincial and territorial post-secondary education systems.
- 12.1.3 When exercising its jurisdiction pursuant to section 12.1.1 the Dehcho Government will ensure that:
- a) all individuals aged 5 years by December 31 of the school year and not older than 21 years have access to kindergarten to grade 12 education in a regular instructional setting in the Dehcho Settlement Area; and
  - b) teacher certification standards set by the Dehcho Government meet or exceed territorial standards for teacher certification.
- 12.1.4 The Dehcho Government may create exemptions to subsection 12.1.3 where:
- a) a Student has reached the age of sixteen years and has been expelled from school;
  - b) the health and safety of, or the delivery of education to, a Student or other Students would be jeopardized by the presence of a Student in a regular instructional setting; or
  - c) program, medical or behavioural reasons warrant an exemption.
- 12.1.5 In the event of a Conflict between a Dehcho Law made pursuant to 12.1.1 and a Federal Law or Territorial Law, the Dehcho Law prevails to the extent of the Conflict.

#### 12.2 CONSULTATION

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<sup>140</sup> Canada has concern on the program and service delivery aspect

- 12.2.1        The Government of the Northwest Territories will Consult with the Dehcho Government with respect to changes to teacher certification standards

## **CHAPTER 13: OUT OF SCHOOL CARE**

<b>13.1</b>	<b>DEFINITIONS</b>
<b>13.2</b>	<b>JURISDICTION</b>
<b>13.3</b>	<b>CONFLICT OF LAWS</b>

### **13.1 DEFINITIONS**

“Children” means individuals who reside in the Dehcho Settlement Area and, at the beginning of the school year, have attained the age of 5 years and are not older than 12 years.

### **13.2 JURISDICTION**

13.2.1 The Dehcho Government has Jurisdiction in the Dehcho Settlement Area with respect to:

- a) out of school care of Children;
- b) licensing and regulation of facilities providing out of school care; and
- c) certification of out of school caregivers.

### **13.3 CONFLICT OF LAWS**

13.3.1 In the event of a conflict between a Dehcho Law made pursuant to this chapter and a Federal Law or Territorial Law, the Dehcho Law prevails to the extent of the conflict.



## **CHAPTER 14: POST SECONDARY EDUCATION**

### **14.1 JURISDICTION**

- 14.1.1 The Dehcho Government has jurisdiction in the Dehcho Settlement Area with respect to post-secondary education to:
- a) establish post-secondary education programs, services and institutions, including the determination of curriculum; and;
  - b) regulate post-secondary education programs, services and institutions created by the Dehcho Government.
- 14.1.2 For greater certainty, Dehcho Laws made pursuant to 28.1.1 apply only to post-secondary education programs, services or institutions established by the Dehcho Government.
- 14.1.3 In the event of a Conflict between a Dehcho Law made pursuant to 28.1.1 and a Federal Law or Territorial Law, the Dehcho Law will prevail to the extent of the Conflict.

## **CHAPTER 15: ADULT EDUCATION AND TRAINING**

- 15.1 JURISDICTION**
- 15.2 AGREEMENTS**
- 15.3 CONFLICT OF LAWS**

### **15.1 JURISDICTION**

- 15.1.1 The Dehcho Government has Jurisdiction in the Dehcho Settlement Area with respect to:
  - a) Adult Education;
  - b) Training; and
  - c) Education Support Services.

- 15.1.2 For greater certainty, Dehcho Laws made pursuant to 15.1.1(a) and (b) apply only to Adult Education and Training programs, services or institutions established by the Dehcho Government.

### **15.2 AGREEMENTS**

- 15.2.1 Where the Dehcho Government establishes Education Support Services, the Dehcho Government and the Government of the Northwest Territories:
  - a) will enter into negotiations to develop agreements to share information on individuals receiving Education Support Services; and
  - b) may enter into agreements to harmonize and coordinate their Education Support Services.

### **15.3 CONFLICT OF LAWS**

- 15.3.1 In the event of a conflict between a Dehcho Law made pursuant to this chapter and a Federal Law or Territorial Law, the Dehcho Law prevails to the extent of the conflict.

## CHAPTER 16: SOCIAL HOUSING

16.1	JURISDICTION
16.2	STANDARDS
16.3	AGREEMENTS
16.4	CONFLICT

### 16.1 JURISDICTION

- 16.1.1 The Dehcho Government has Jurisdiction in the Dehcho Settlement Area with respect to Social Housing.
- 16.1.2 The Jurisdiction of the Dehcho Government set out in 16.2.1 does not include landlord and tenant relations;

### 16.2 STANDARDS

- 16.2.1 The Dehcho Laws made pursuant to 16.2.1 will include standards in relation to:
- a) equitable access to Social Housing; and
  - b) households in need.
- 16.2.2 Dehcho Laws made pursuant to section 16.1.1 will provide for standards compatible with NWT Social Housing core principles and objectives.
- 16.2.3 Social housing provided by a Dehcho Government Social Housing program must meet or exceed applicable standards established under federal and territorial building and construction codes.

### 16.3 AGREEMENTS

- 16.3.1 Nothing in the Dehcho Agreement will affect, or authorize the Dehcho Government to impose conditions on, the ability of Canada or the Government of the Northwest Territories to establish, implement, maintain or support Social Housing programs in the Dehcho Settlement Area, or to enter into agreements or maintain or amend existing agreements for those purposes.
- 16.3.2 Nothing in the Dehcho Agreement precludes the Dehcho Government from entering into agreement with the Government of the Northwest Territories or Canada in relation to Social Housing.

- 16.3.3 Where the Dehcho Government has enacted Dehcho Laws pursuant to 16.2.1, the Dehcho Government and the Government of the Northwest Territories may enter into agreements regarding the exchange of information to enable Social Housing clients to retain Social Housing benefits and any associated liabilities when transferring between a Dehcho Government program and a Government of the Northwest Territories Social Housing program.
- 16.3.4 Canada, in any agreements with the Government of the Northwest Territories, will not restrict the ability of the Government of the Northwest Territories to enter into agreements with the Dehcho Government for the purposes of Social Housing.
- 16.4 CONFLICT**
- 16.4.1 In the event of a Conflict between a Dehcho Law made pursuant to section 16.3.1 and a Federal Law or Territorial Law, the Dehcho Law prevails to the extent of the Conflict.

## CHAPTER 17: INCOME ASSISTANCE

17.1	<b>JURISDICTION</b>
17.2	<b>STANDARDS</b>
17.3	<b>AGREEMENTS</b>
17.4	<b>CONFLICT</b>

### 17.1 JURISDICTION

- 17.1.1 The Dehcho Government has Jurisdiction in the Dehcho Settlement Area with respect to Income Assistance.
- 17.1.2 The Jurisdiction of the Dehcho Government set out in 17.2.1 does not include setting residency conditions in relation to being eligible for Income Assistance.

### 17.2 STANDARDS

- 17.2.1 Dehcho Laws made pursuant to section 17.2.1 will provide for standards compatible with NWT Income Assistance core principles and objectives.

### 17.3 AGREEMENTS

- 17.3.1 Where the Dehcho Government is providing Income Assistance to Clients in the Dehcho Settlement Area pursuant to Dehcho Law, the Dehcho Government and the Government of the Northwest Territories will enter into negotiations towards reaching agreements for the exchange of information regarding those Clients.

### 17.4 CONFLICT

- 17.4.1 In the event of a conflict between a Dehcho Law made pursuant to this chapter and a Federal Law or Territorial Law, the Dehcho Law prevails to the extent of the conflict.

## CHAPTER 18: ADOPTION

18.1	JURISDICTION
18.2	STANDARDS
18.3	INFORMATION SHARING
18.4	COURT PROCEEDINGS
18.5	CONFLICT

### 18.1 JURISDICTION

- 18.1.1 The Dehcho Government has Jurisdiction with respect to the adoption of Children of:
- a) Dehcho Citizens in the NWT; and
  - b) individuals residing in the Dehcho Settlement Area.
- 18.1.2 A Dehcho Law made pursuant to 18.1.1 will require that the individual or individuals having lawful custody of the Child consent to the application of the Dehcho Laws if:
- a) the Child has a parent who is an Aboriginal person indigenous to the NWT, but that parent is not a Dehcho Citizen; or
  - b) the Child resides outside the Dehcho Settlement Area.
- 18.1.3 Dehcho Law made pursuant to 18.1.1:
- a) will provide that the best interests of the Child are paramount in determining whether an adoption will take place;
  - b) will require that the individual or individuals having lawful custody of the Child consent to the adoption of the Child;
  - c) will give the individual or individuals who have lawful custody of the Child to be adopted the opportunity, if practicable, to express a preference for the adoptive parents; and
  - d) may, if the birth parent or parents do not have lawful custody of the Child to be adopted, give the birth parent or parents the opportunity, if practicable, to express a preference for the adoptive parents.

### 18.2 STANDARDS

- 18.2.1 Dehcho Laws made pursuant to 18.1.1 will provide for standards compatible with NWT Adoption core principles and objectives.

**18.3 INFORMATION SHARING**

18.3.1 The Dehcho Government will provide copies of records of all adoptions occurring under Dehcho Law to the Government of the Northwest Territories and Canada.

18.3.2 When the Dehcho Government exercises Jurisdiction pursuant to 18.1.1, the Dehcho Government and the Government of the Northwest Territories will enter into negotiations towards reaching information-sharing agreements that will include:

- a) how and to whom the Dehcho Government will provide copies of records of all adoptions occurring under Dehcho Law to the Government of the Northwest Territories;
- b) the criteria the Government of the Northwest Territories will use when deciding whether notice is to be given to the Dehcho Government because a Child in the custody of the Director may be a Dehcho Citizen; and
- c) how and to whom the Director will:
  - i) notify the Dehcho Government that the Director has lawful custody of a Child who is a Dehcho Citizen;
  - ii) provide the Dehcho Government any plan for that Child's care that could result in an application to adopt that Child; and
  - iii) provide the Dehcho Government copies of the Director's records with respect to that Child.

**18.4 COURT PROCEEDINGS**

18.4.1 An individual adopting a Child under Dehcho Law may make application to the Supreme Court of the NWT to certify the adoption and upon proper application the court may certify the adoption.

**18.5 CONFLICT**

18.5.1 In the event of a conflict between a Dehcho Law made pursuant to this chapter and a Federal Law or Territorial Law, the Dehcho Law prevails to the extent of the conflict.

## **CHAPTER 19: CHILD AND FAMILY SERVICES**

<b>19.1</b>	<b>JURISDICTION</b>
<b>19.2</b>	<b>STANDARDS</b>
<b>19.3</b>	<b>AGREEMENTS</b>
<b>19.4</b>	<b>COURT PROCEEDINGS</b>
<b>19.5</b>	<b>CONFLICT</b>

### **19.1 JURISDICTION**

- 19.1.1 The Dehcho Government has jurisdiction in the Dehcho Settlement Area with respect to Child and Family Services.
- 19.1.2 The Dehcho Government may not delegate the power to make laws under section 19.2.1.
- 19.1.3 The Dehcho Government will consult the Government of the Northwest Territories at least six months prior to making or amending a Dehcho Law pursuant to section 19.2.1.

### **19.2 STANDARDS**

- 19.2.1 Dehcho Law made pursuant to 19.2.1 will provide for standards provided that such laws include standards:
- a) for the protection of Children; and
  - b) that apply the principle of acting in the best interests of the Child.
- 19.2.2 Dehcho Laws made pursuant to section 19.2.1 will provide for standards compatible with the NWT Child and Family Services core principles and objectives.

### **19.3 AGREEMENTS**

- 19.3.1 The Government of the Northwest Territories will notify the Dehcho Government as soon as is practicable after it applies for the custody of a Child it reasonably believes to be a Dehcho Citizen.
- 19.3.2 Where the Dehcho Government has assumed responsibility for the provision of Child and Family Services in the Dehcho Settlement Area, the Dehcho Government will appoint one individual who will have the statutory authority under Dehcho Law for decisions about the protection of Children who are



Dehcho Citizens from abuse, neglect or harm, or the threat of abuse, neglect or harm, and will notify the Government of the Northwest Territories of the individual's appointment.

19.3.3 Where the Dehcho Government has assumed responsibility for the provision of Child and Family Services in the Dehcho Settlement Area, the Dehcho Government and the Government of the Northwest Territories will negotiate with a view to reaching agreements, as set out in section 19.4.2, relating to delivery and administration of Child and Family Services.

19.3.4 Agreements reached pursuant to section 19.4.1:

- a) will provide for the development of protocols for the protection of Children from abuse and harm and the threat of abuse and harm; including provision for notification, by the Government of the Northwest Territories and the Dehcho Government, where either the Government of the Northwest Territories or the Dehcho Government receives information that a Child may be at risk, or where the Government of the Northwest Territories becomes aware of a custody order providing custody of a Child to the Director; and
- b) may address:
  - i) co-operating on an inter-jurisdictional basis for the transfer of Children and the use of facilities both inside and outside of the Dehcho Settlement Area;
  - ii) information sharing between various governments or agencies that deliver and administer Child and Family Services;
  - iii) reporting and monitoring between various governments or agencies that deliver and administer Child and Family Services; and
  - iv) other matters.

#### **19.4 COURT PROCEEDINGS**

19.4.1 The Dehcho Government has standing in any judicial proceedings where the protection of a Child who is a Dehcho Citizen is in dispute, or where the Government of the Northwest Territories is seeking continuing protection of a Child who is a Dehcho Citizen, and the court will consider any evidence and submissions of the Dehcho Government in respect of Dehcho traditions and customs and what the Dehcho Government believes would be in the best interests of the Child, in addition to any other matters which it is required by law to consider.

19.4.2 The standing of the Dehcho Government in proceedings referred to in section 19.6.1 is subject to the applicable rules of court and does not affect the court's ability to control its process.

**19.5 CONFLICT**

19.5.1 In the event of a Conflict between a Dehcho Law made pursuant to section 19.3.1 and a Federal Law or Territorial Law, the Dehcho Law prevails to the extent of the Conflict.

## **CHAPTER 20: WILLS AND ESTATES**

### **20.1 WILLS AND ESTATES**

- 20.1.1 The Dehcho Government may make laws in relation to
- a) the wills and intestacy of individuals ordinarily resident in the Settlement Area;
  - b) the probating of wills and the administration of estates of individuals ordinarily resident in the Settlement Area at the time of death.
- 20.1.2 Laws made pursuant to section 20.1.1 will provide for the distribution of estates in a manner that makes provision for the support of individuals who were dependent on the deceased owner of the estate.
- 20.1.3 In the event of a Conflict between a Dehcho Law made pursuant to section 20.1.1 and a Federal Law or Territorial Law, the Dehcho Law prevails to the extent of the Conflict.
- 20.1.4 The authority of the Dehcho Government to make laws pursuant to section 20.1.1 does not include the authority to make laws in relation to:
- a) survivorship and the presumption of death;
  - b) the rules governing trusts and the variation of trusts; or
  - c) legal actions with respect to fatal accidents.

## CHAPTER 21: GUARDIANSHIP AND TRUSTEESHIP

### 21.1 GUARDIANSHIP AND TRUSTEESHIP

- 21.1.1 The Dehcho Government may make laws for individuals who are ordinarily resident in the Settlement Area of the age of majority, in relation to guardianship and trusteeship, including:
- a) the appointment of a Guardian to make or assist in making decisions in matters relating to the personal care and well-being of an individual who:
    - i) is not able to understand information that is relevant to making a decision concerning his or her own health care, nutrition, shelter, clothing, hygiene, or safety; and
    - ii) would substantially benefit from having a Guardian;
  - b) the powers and responsibilities of a Guardian referred to in subsection (a);
  - c) the appointment of a Trustee to make or assist in making decisions in matters relating to the real or personal property of an individual who:
    - i) is not able to understand information that is relevant to making a decision concerning his or her own real or personal property; and
    - ii) would substantially benefit from having a Trustee; and
  - d) the powers and responsibilities of a Trustee referred to in subsection (c).
- 21.1.2 The authority of the Dehcho Government to make laws pursuant to section 21.1.1 does not include the authority to make laws in relation to the detainment, involuntary hospitalization or involuntary medical treatment of an individual who:
- a) has threatened, or is attempting to cause bodily harm to himself or herself;
  - b) has behaved or is behaving violently towards another individual;
  - c) has caused or is causing another individual to fear bodily harm from him or her; or
  - d) has shown or is showing a lack of competence to care for himself or herself in such a way as to put himself, herself or another individual in danger.

- 21.1.3 Dehcho Laws made pursuant to section 21.1.1 do not apply to an individual named in a certificate of medical incompetence issued under the Mental Health Act and shall not apply unless and until that certificate has been duly cancelled and notice of the cancellation has been forwarded to the Public Trustee.
- 21.1.4 Dehcho Laws made pursuant to section 21.1.1 will provide for standards compatible with NWT core principles and objectives for Guardianship and Trusteeship.
- 21.1.5 In the event of a Conflict between a Dehcho Law made pursuant to section 21.1.1 and a Federal Law or Territorial Law, the Dehcho Law prevails to the extent of the Conflict.

## CHAPTER 22: LANGUAGE AND CULTURE

22.1	GENERAL
22.2	DELEGATION
22.3	LAW MAKING POWERS
22.4	JUDICIAL POWERS
22.5	CONFLICT OF LAWS
22.6	REGISTER OF DEHCHO LAWS
22.7	COORDINATION OF PROGRAM AND SERVICE DELIVERY

### Definitions:

“Dehcho Dene Zhatie” means the traditional languages of the Dehcho Dene and includes Michif.<sup>141</sup>

#### 22.1 GENERAL<sup>142</sup>

- 22.1.1 The objective of this chapter is to promote awareness, appreciation and understanding of all aspects of Dehcho Dene Zhatie and the culture of the Dehcho First Nations and to ensure that the Dehcho First Nations have primary jurisdiction for preservation, development, teaching, and use of Dehcho Dene Zhatie, culture and tradition.
- 22.1.2 The parties recognize the importance of Dehcho Dene Zhatie to the culture and heritage of the Dehcho Dene and are committed to the preservation, promotion and development of Dehcho Dene Zhatie and culture.<sup>143</sup>
- 22.1.3 The Dehcho Government may enter into agreements with Dehcho Community Governments, Canada, or the Government of Northwest Territories for the delivery of programs and services related to language and culture in the Dehcho Settlement Area.

#### 22.1 CULTURE AND LANGUAGE<sup>144145</sup>

<sup>141</sup> Definition is no longer required if GNWT approach to the chapter is taken

<sup>142</sup> GNWT proposes that this chapter be consistent in style and format to all other self-government chapters in this agreement, therefore propose that the entire 21.1 General sections be deleted

<sup>143</sup> Canada proposes the following change to this provision: “The parties recognize the importance of Dehcho Dene Zhatie to the culture and heritage of the Dehcho Dene.”

<sup>144</sup> The GNWT wants to ensure that there is a clear distinction between the authority of the Dehcho Government to certify persons who teach language and culture in 21.1.1.d) and the authority to certify teachers in K-12.

<sup>145</sup> Old 21.2:

- 22.1.1 The Dehcho Government has Jurisdiction in the Settlement Area with respect to:
- a) the preservation, development and promotion of the languages of the Dehcho Dene;
  - b) the preservation, development and promotion of the culture, including traditional knowledge, spiritual practices, customs and traditions of the Dehcho Dene;
  - c) education related to the languages, culture, traditional knowledge, laws, and spiritual practices, customs, traditions and history of the Dehcho Dene;
  - d) certification of persons who teach the languages, culture, traditional knowledge, laws, and spiritual practices, customs, traditions and history of the Dehcho Dene;
  - e) regulation of individuals certified pursuant to 2.1.1(d);
  - f) the establishment and regulation of facilities, including camps, for the teaching of Dehcho Dene languages and culture; and
  - g) standards and the use of the languages of the Dehcho Dene in the operations of the Dehcho Government, including official languages of the Dehcho Government.
- 22.1.2 The Dehcho Government may provide programs and services in relation to the languages and culture of the Dehcho Dene to Dehcho Citizens residing outside of the Dehcho Settlement Area.

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- 21.2.1 The Dehcho Government has the authority to enact laws in relation to:
- a) the protection, preservation, promotion, development, teaching, and use of spiritual and cultural beliefs, traditions, and practices of the Dehcho First Nations, including Dehcho history, culture and traditional knowledge;
  - b) social and cultural matters, including the design of social and cultural programs and services;
  - c) the practice of traditional medicine and healing activities of the Dehcho Dene, including certification of such practitioners;
  - d) the protection, preservation, promotion, development, teaching and use of Dehcho Dene Zhatie;
  - e) standards and the use of Dehcho Dene Zhatie in operations of the Dehcho Government, including official languages of the Dehcho Government;
  - f) the development of guidelines and standards for Dehcho Dene Zhatie;
  - g) standards and qualifications for education and teaching of Dehcho Dene Zhatie and Dehcho history, culture, and traditional knowledge, including the certification of teachers, educators and experts; and
  - h) regulation of individuals pursuant to 21.2.1(c) and 21.2.1(g).
- 21.2.2 The Dehcho Government may provide programs and services in relation to Dehcho Dene Zhatie and the culture of the Dehcho Dene to Dehcho Citizens residing outside of the Dehcho Settlement Area.

- 22.1.3 For greater certainty, nothing in the Dehcho Agreement will limit any entitlement, right, title or interest of the Dehcho Government or a Dehcho Citizen available under Federal Law in respect of intellectual property.
- 22.1.4 The jurisdiction in 22.1.1 does not include Jurisdiction in respect of the official languages of Canada and the NWT.
- 22.1.5 For greater certainty, nothing in this chapter creates or implies any financial or service delivery responsibilities on the part of Canada or the Government of the Northwest Territories.

### **22.3 LANGUAGES BOARD**

- 22.3.1 The Dehcho Government may establish a Dehcho Languages Board to provide advice to Governments<sup>148</sup> on the preservation, promotion, development, teaching, and use of Dehcho Dene Zhatie.
- 22.3.2 The Dehcho Languages Board will consult and provide advice to Canada and the Government of Northwest Territories on how to facilitate the preservation, promotion, development, teaching and use of Dehcho Dene Zhatie and the culture of the Dehcho Dene within their respective programs and services.<sup>149</sup>
- 22.3.3 The Dehcho Government may appoint representatives to any board established in the Northwest Territories with responsibilities or authorities relating to Dehcho Dene Zhatie.<sup>150</sup>

**Deleted:** 22.1.6 The Dehcho Government will have opportunity to be represented on any board, agency, committee, or body established by Canada or the Government of Northwest Territories, or in any process that may affect<sup>146</sup> Dehcho Dene Zhatie or the culture of the Dehcho Dene.<sup>147</sup> ¶

### **22.4 CULTURE AND LANGUAGE ADVOCATE<sup>151</sup>**

- 22.4.1 As soon as practicable after the Effective Date, a Culture and Language Advocate ~~may~~ be appointed by the Dehcho Government to advise the parties<sup>153</sup> on how to use their respective authorities<sup>154</sup> in ways that respect and promote Dehcho Dene Zhatie and the culture and way of life of the Dehcho Dene.

**Deleted:** will

**Deleted:** <sup>152</sup>

<sup>148</sup> Canada suggests "the Dehcho Government"

<sup>149</sup> GNWT proposes to delete this clause

<sup>150</sup> GNWT requests further information or rationale for this clause.

<sup>151</sup> GNWT proposes to delete this section

<sup>153</sup> Canada suggests "the Dehcho Government"

<sup>154</sup> Canada suggests changing "their respective authorities" to "its authorities" to be consistent with suggested changes in previous footnote.



22.4.2 The Culture and Language Advocate may be appointed for a specified term but is only removable before the expiration of that term for cause.

22.4.3 The Culture and Language Advocate will be Chair of the Dehcho Languages Board.

## 22.5 **FUNDING**<sup>155 156</sup>

22.5.1 Canada and the Government of the Northwest Territories will contribute funds to the Dehcho Government to assist in the protection, revitalization, teaching, and use of Dehcho Dene Zhatie and Dehcho culture and traditions.

22.5.2 The Dehcho Government, Canada, and the Government of the Northwest Territories will jointly fund the Dehcho Languages Board, if it is established.

22.5.3 The Dehcho Government, Canada, and the Government of the Northwest Territories shall jointly fund the Culture and Language Advocate.

22.5.4 Contributions by each Government will be set out in an Appendix to the Culture and Language chapter of the Dehcho Agreement.

## ~~22.6~~ **CONFLICT OF LAWS**

~~22.6.1~~ In the case of conflict between a Federal or Territorial Law and a Dehcho Law, the Dehcho Law will prevail to the extent of the conflict.

**Deleted:** 22.6 . DISPUTE RESOLUTION<sup>157</sup>

¶

22.6.1 Any dispute among the Parties regarding the interpretation or implementation of this chapter may be referred for resolution in accordance with DR. ¶

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**Deleted:** 7.0

**Deleted:** 7

<sup>155</sup> Canada – the recognition and commitment of Dehcho Dene Zhatie neither implies nor creates any additional funding obligations for Canada. Canada notes there will likely be issues with the funding obligations.

<sup>156</sup> Canada and GNWT propose to delete this section

## CHAPTER 23: TRADITIONAL HEALING AND HEALTH AGREEMENTS

<sup>158</sup>

23.1	JURISDICTION
23.2	AGREEMENTS
23.3	CONSULTATION
23.4	CONFLICT

### 23.1 JURISDICTION

23.1.1 The Dehcho Government has Jurisdiction in the Dehcho Settlement Area with respect to:

- a) traditional healing programs and services of the Dehcho Dene; the training of persons providing the traditional healing programs and services referred to in (a);
- b) the regulation and certification of persons providing traditional Aboriginal healing programs and services; And
- c) the establishment or regulation of facilities providing traditional healing programs and services.

23.1.2 The Jurisdiction in 23.1.1 does not include regulation of:

- a) medical or health practices requiring licencing or certification under any Federal Law or Territorial Law, or medical or health practitioners who require licencing or certification under any Federal Law or Territorial Law;
- b) any actions where federally regulated drugs and associated equipment and devices are involved, such as the prescribing, dispensing and administering of controlled substances and scheduled drugs;<sup>159</sup> Or
- c) the establishment and regulation of facilities requiring licencing or certification under any Federal Law or Territorial Law for the purpose of (a) or (b).

### 23.2 AGREEMENTS

23.2.1 At the request of the Dehcho Government, the Dehcho Government and the GNWT shall enter into negotiations toward reaching agreement on the role of the Dehcho Government in relation to the management, administration and delivery of NWT health programs and services in the Dehcho Settlement Area.

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<sup>158</sup> GNWT tabled this chapter in May 2013 and amended it in September 2013. It is still under review by Canada and DFN.

<sup>159</sup> Canada to study chapter and will consult Health Canada on regulation of traditional healers and healing.

23.2.2 Negotiations pursuant to 23.2.1 shall reflect the principle of maintaining the overall integrity of the NWT health care system.

23.2.3 [At the request of the Dehcho Government, the Dehcho Government and Canada shall enter into negotiations toward reaching agreement on the role of the Dehcho Government over the management, administration and delivery of federal aboriginal health programs and services in the Dehcho Settlement Area.]<sup>160</sup>

### **23.3 CONSULTATION**

23.3.1 The GNWT shall Consult the Dehcho Government when proposing the creation or restructuring of a health authority in the Dehcho Settlement Area.

23.3.2 The intergovernmental relationship among the Parties includes an ongoing sharing of information relevant to the delivery of health programs in the Dehcho Settlement Area.

23.3.3 Nothing in 23.3.2 is intended to limit or restrict Consultation among the Parties on health programs in the Dehcho Settlement Area.

23.3.4 In addition to the ongoing intergovernmental relationship among the Parties, the Parties shall meet at least once every two (2) years to:

- a) discuss the delivery of health programs in the Dehcho Settlement Area;
- b) discuss health care priorities; and
- c) review any agreements reached pursuant to 23.2.1 and 23.2.3.

### **23.4 CONFLICT**

23.4.1 In the event of a conflict between a Dehcho Government Law made pursuant to this chapter and a Federal Law or Territorial Law, Dehcho Government Law prevails to the extent of the conflict.

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<sup>160</sup> Canada to review in relation to financial transfer.

## **CHAPTER 24: MARRIAGE**

### **24.1 JURISDICTION**

### **24.1 JURISDICTION**

- 24.1.1 The Dehcho Government may make laws in relation to the solemnization of marriages within the Dehcho Settlement Area, including prescribing conditions under which individuals appointed by the Dehcho Government may solemnize marriages.
- 24.1.2 The authority to make laws pursuant to 24.1.1 does not include any authority greater than that of the Commissioner in Council pursuant to Legislation.
- 24.1.3 The Dehcho Government will provide the GNWT with copies of records of all marriages occurring under Dehcho Law.<sup>161</sup>
- 24.1.4 In the event of a Conflict between a Dehcho Law made pursuant to 24.1.1 and a Territorial Law, the Dehcho Law shall prevail to the extent of the conflict.

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<sup>161</sup> DFN want an exchange of information on marriages with the GNWT. Possible solution could be exchange of information agreements.

## **CHAPTER 25: ADMINISTRATION OF JUSTICE**

<b>25.1</b>	<b>ENFORCEMENT</b>
<b>25.2</b>	<b>SANCTIONS</b>
<b>25.3</b>	<b>ALTERNATIVE MEASURES AND EXTRA-JUDICIAL MEASURES</b>
<b>25.4</b>	<b>PROSECUTIONS</b>
<b>25.5</b>	<b>ALTERNATIVE DISPUTE RESOLUTION</b>
<b>25.6</b>	<b>DEHCHO JUSTICE COUNCIL</b>
<b>25.7</b>	<b>ADMINISTRATIVE BOARDS</b>
<b>25.8</b>	<b>DEHCHO COURT</b>
<b>25.9</b>	<b>TERRITORIAL COURT</b>
<b>25.10</b>	<b>SUPREME COURT OF THE NWT</b>
<b>25.11</b>	<b>PROCEDURES</b>
<b>25.12</b>	<b>DEHCHO CORRECTION SERVICES</b>
<b>25.13</b>	<b>ADMINISTERING SANCTIONS</b>
<b>25.14</b>	<b>APPEAL, REHEARING AND REVIEW OF DECISIONS</b>

### **25.1. ENFORCEMENT**

- 25.1.1 The Dehcho Government may make laws for the enforcement of Dehcho laws and is responsible for the enforcement of Dehcho Laws.
- 25.1.2 Dehcho Law may provide for:
- a) the appointment of officers to enforce Dehcho Law; and
  - b) powers of enforcement, provided such powers will not exceed, those provided by Territorial Law or Federal Law for officers enforcing similar laws in the NWT.
- 25.1.3 Any Dehcho Law pursuant to 25.1.2 will provide for training standards and accountability standards for enforcement officers that are in accordance with generally recognized standards for enforcement officers in other Canadian jurisdictions.

### **25.2 SANCTIONS**

- 25.2.1 Subject to 25.2.2, 25.2.3 and 25.2.4, the Jurisdictions of the Dehcho Government and Dehcho Community Government set out in the Dehcho Agreement include the jurisdiction to provide for the imposition of a term of imprisonment or a fine, or both, as a consequence of a violation of Dehcho Law or Dehcho Community Law.

- 25.2.2 Dehcho Law or Dehcho Community Law may provide for maximum fines or penalties that are no greater than those which may be imposed for comparable regulatory offences punishable on summary conviction offenses under Federal Law or Territorial Law.
- 25.2.3 Where there is no comparable regulatory offence under Federal Law or Territorial Law, the Dehcho Law or Dehcho Community Law may provide for a maximum fine or penalty that is no more than the greater between the general penalty provision for the summary conviction offences under the Criminal Code of Canada or under Territorial Law.
- 25.2.4 Notwithstanding 25.2.2 and 25.3.2, a Dehcho Law or Dehcho Community Law in respect of taxation may provide for a fine or penalty that is greater than the limits referred to in 25.2.2 and 25.2.3 where there is an agreement to that effect made in accordance with 26.3 in the Taxation Chapter.
- 25.2.5 Dehcho Law or Dehcho Community Law may provide other sanctions that are consistent with the culture and values of the Dehcho Dene, provided that such sanctions will not be imposed on an offender without his or her consent.
- 25.2.6 Where a victim's participation is required for a culturally relevant sanction pursuant to 25.2.5 to be carried out, the victim's consent will be required.
- 25.3 ALTERNATIVE MEASURES AND EXTRA-JUDICIAL MEASURES**
- 25.3.1 The Dehcho Government may establish, with respect to the enforcement of Dehcho Law:
- a) alternative measures similar to those provided for in the Criminal Code; and
  - b) extra-judicial measures similar to those provided for in the Youth Criminal Justice Act (Canada),
- to deal with Persons accused of offences created under Dehcho Law.
- 25.3.2 The Parties may enter into discussions for the participation of the Dehcho Government in the delivery of pre-charge and post-charge alternative measures or extra-judicial measures established pursuant to Federal Law or Territorial Law.
- 25.4 PROSECUTIONS**

- 25.4.1 The Dehcho Government is responsible for the prosecution of violations of a Dehcho Law. The Dehcho Government will:
- a) appoint individuals responsible for the prosecution of violations of Dehcho Law or enter into agreements with existing prosecution services; and
  - b) ensure that the prosecutorial services are consistent with standards of a public prosecutor for the prosecution of similar types of offences in Canada.

## **25.5 ALTERNATIVE DISPUTE RESOLUTION**

- 25.5.1 The Dehcho Government may provide alternative dispute resolution services, including those relying on traditional methods and approaches, as an alternative to litigation in civil matters, on the condition that the parties to the dispute agree to use those services.
- 25.5.2 Nothing provided in 25.5.1 restricts the right of any Person to resolve a dispute through the courts.
- 25.5.3 Nothing in the Dehcho Agreement precludes a dispute resolution service provided by or for the Dehcho Government from being an extra-judicial procedure as contemplated by Part 19 of the Rules of the Supreme Court of the NWT as of November 2002.

## **25.6 DEHCHO JUSTICE COUNCIL<sup>162</sup>**

- 25.6.1 The Dehcho Government may make laws to establish a Dehcho Justice Council in accordance with this chapter.
- 25.6.2 The Dehcho Government will provide for the independence of the Dehcho Justice Council when exercising its jurisdiction under X in the Dehcho Government chapter (reference to the Dehcho Government being a legal entity with the legal capacity of a natural person) in relation to the appointment, functions, compensation, accountability and financial management of the Dehcho Justice Council.
- 25.6.3 Dehcho Law may provide that the Dehcho Justice Council:
- a) administer sanctions created under 25.2.5<sup>163</sup>;

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<sup>162</sup> This section is under discussion by the Parties.

<sup>163</sup> LTC to review language.

- b) administer alternative measures and extra-judicial measures referred to in 25.3;
- c) perform the dispute resolution functions referred to in 25.5;
- d) hear appeals and conduct rehearings referred to in 25.13.1; and
- e) exercise other duties and functions assigned to it under Dehcho Law.

## **25.7 ADMINISTRATIVE BOARDS**

25.7.1 The Dehcho Government may establish administrative bodies, tribunals, commissions or other administrative bodies for carrying out functions under Dehcho Law or Dehcho Community Law, including the determination of matters or rights under Dehcho Law and Dehcho Community Law.<sup>164</sup>

## **25.8 DEHCHO COURT<sup>165</sup>**

25.8.1 Subject to 25.8.5, the Dehcho Government has the Jurisdiction in the Settlement Area to establish, maintain, organize and operate a Dehcho Court to:

- a) adjudicate prosecutions of violations of Dehcho Laws;
- b) adjudicate civil disputes arising under Dehcho Laws provided the matter would be within the jurisdiction of the Territorial Court if a similar dispute arose under Territorial Law; and
- c) review administrative decisions of Dehcho Government or Dehcho Government institutions.

25.8.2 Nothing in Chapter 25 provides the Dehcho Court established pursuant to 25.8.1 with inherent jurisdiction.

25.8.3 Dehcho Laws pursuant to 25.8.1 will:

- a) require that the Dehcho Court and its adjudicators adhere to the principles of judicial independence, impartiality and fairness;
- b) set out the qualifications, that have been approved by the Government of the Northwest Territories, for adjudicators;
- c) set out the procedures for the appointment, supervision, discipline and removal of adjudicators in the Dehcho Court; and
- d) set out the remuneration of Dehcho adjudicators.

<sup>164</sup> Clause proposed by Canada. DFN ok with proposal. GNWT to consider.

<sup>165</sup> Canada would like to know more about the GNWT's vision for such a court and the likelihood DFN would exercise this jurisdiction and fully fund it on its own. Generally, Canada has concerns about the affordability of the court and capacity and critical mass to effectively operate such a court.



- 25.8.4 For greater certainty, nothing in 25.8.3 provides the Government of the Northwest Territories a role in the appointment of Dehcho adjudicators.
- 25.8.5 The Dehcho will obtain the Government of the Northwest Territories' approval of the structure and procedures of the Dehcho Court prior to enacting a Dehcho Law pursuant to 25.8.1.
- 25.8.6 Notwithstanding 25.8.1.a) where a Dehcho Law provides a term of imprisonment as a sanction for the violation of that Dehcho Law, an individual accused of violating that Dehcho Law can choose to be tried in the NWT court system rather than the Dehcho Court for the alleged offence.
- 25.8.7 The Supreme Court of the NWT or the Territorial Court, as appropriate, will have exclusive jurisdiction to hear appeals of decisions from the Dehcho Court.
- 25.9 TERRITORIAL COURT<sup>166</sup>**
- 25.9.1 Where no Dehcho Court has been established pursuant to 25.8.1, the Territorial Court will hear and determine civil matters arising under Dehcho Law if the matter would have been within the jurisdiction of the Territorial Court under Federal Law or Territorial Law.
- 25.9.2 Where no Dehcho Court has been established pursuant to 25.8.1, a judge of the Territorial Court or a Justice of the Peace will hear and determine violations of Dehcho Law if the matter would have been within the jurisdiction of the Territorial Court or a Justice of the Peace, as the case may be, under Federal Law or Territorial Law.
- 25.10 SUPREME COURT OF THE NWT<sup>167</sup>**
- 25.10.1 The Supreme Court of the NWT will hear appeals of decisions of the Territorial Court or Justices of the Peace in relation to Dehcho Law.
- 25.10.2 Where no Dehcho Court has been established pursuant to 25.8.1, the Supreme Court of the NWT will hear and determine:
- a) civil matters arising under Dehcho Law; and

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<sup>166</sup> GNWT will require language in the Implementation Plan to consider potential future incremental costs of making use of the NWT court system when adjudicating Dehcho Laws.

<sup>167</sup> Same as above

b) challenges to Dehcho Law,

if the matter would have been within the jurisdiction of the Supreme Court of the NWT under Federal Law or Territorial Law.

25.10.3 In addition to any other remedy available to it, the Dehcho Government may enforce a Dehcho Law by applying to the Supreme Court of the NWT for an injunction in accordance with the Rules of the Supreme Court.

## **25.11 PROCEDURES**

25.11.1 Dehcho Law will adopt:

- a) the summary conviction procedures of Part XXVII of the Criminal Code; or
- b) Territorial Law relating to proceedings in respect of offences that are established by Territorial Law, [with such modifications as may be required]<sup>168</sup>.

25.11.2 Any proceeding under 25.9 will follow the procedures of the Territorial Court.

25.11.3 Any proceeding under 25.10 will follow the Rules of the Supreme Court of the NWT.

## **25.12 DEHCHO CORRECTION SERVICES**

25.12.1 The Dehcho Government has Jurisdiction in the Settlement Area for the establishment, maintenance, organization, administration and regulation of Correction Services for individuals convicted of offences under Dehcho Law.

25.12.2 The provision of Correction Services pursuant to a Dehcho Law pursuant to 25.11.1 will comply with generally accepted Canadian Correction Service standards.

25.12.3 For greater certainty, where an individual has been convicted of the violation of a Dehcho Law in Territorial Court or Supreme Court of the NWT, and the Dehcho Government has enacted Laws pursuant to 25.13.1 that provides Correction Services to administer sanctions involving a term of imprisonment, Dehcho Correction Services will be used to administer the sanction.

## **25.12 ADMINISTERING SANCTIONS**

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<sup>168</sup> GNWT is still reviewing

- 25.13.1 The Dehcho Government is responsible for administering sanctions pursuant to 25.2.5.
- 25.13.2 Where no Dehcho Court has been established pursuant to 25.8.1, the Government of the Northwest Territories is responsible for collecting fines imposed for a violation of Dehcho Law.
- 25.13.3 Unless the Parties otherwise agree, the Government of the Northwest Territories will pay to the Dehcho Government [or a Dehcho Community Government] any fines collected, in respect of a penalty imposed on a Person by the Territorial Court or the Supreme Court of the NWT, as the case may be, for an offence under a violation of a Dehcho Law [or a Dehcho Community Law] on a similar basis as the Government of the Northwest Territories makes payments to Canada for fines that may be collected by the Government of the Northwest Territories for an offence under a Federal Law.<sup>169</sup>
- 25.13.4 If a Dehcho Court is established pursuant to 25.8.1, the Dehcho Court is responsible for collecting fines imposed for a violation of Dehcho Law.
- 25.13.5 Where no Dehcho Correction Services has been established pursuant to 25.11.1, the Government of the Northwest Territories will administer probation and imprisonment sanctions for a violation of Dehcho Law, in accordance with Territorial Law or Federal Law.<sup>170</sup>
- 25.13.6 If Dehcho Correction Services have been established pursuant to 25.11.1, the Dehcho Correction Services will administer probation and imprisonment sanctions for violations of Dehcho Law.
- 25.14 APPEAL, REHEARING AND REVIEW OF DECISIONS**
- 25.14.1 Dehcho Law:
- a) will provide for a right of appeal, or a right to seek a rehearing, to Persons who are directly affected by decisions of the Dehcho Government and Institutions of the Dehcho Government made pursuant to Dehcho Law<sup>171</sup>; and

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<sup>169</sup> LTC Reviewing. Do the courts have to administer the sanction or could the tribunal administer the sanction?

<sup>170</sup> GNWT will require language in the Implementation Plan to consider potential future incremental costs of making use of the NWT Correction Services.

<sup>171</sup> The DFN agrees with the basic concept but questions why this clause is so broad. Canada to consider.

- b) may establish the appropriate appeal and rehearing procedures and mechanisms.

25.14.2 [Where no Dehcho Court has been established pursuant to 25.8.1,] the Supreme Court of the NWT will have exclusive jurisdiction to hear applications for judicial review of the decisions of the Dehcho Government, a Dehcho Community Government or Institutions of the Dehcho Government, except in relation to tax matters where the Parties otherwise agree in a tax agreement concluded pursuant to 26.3 of the Taxation chapter.

## CHAPTER 26: TAXATION

26.1	DEFINITIONS
26.2	DIRECT TAXATION POWERS
26.3	TAXATION POWER AGREEMENTS
26.4	DEHCHO NDEHE
26.5	TRANSFER OF DEHCHO CAPITAL
26.6	INDIAN ACT TAX EXEMPTION AND TRANSITIONAL EXEMPTION
26.7	TAX TREATMENT AGREEMENT
26.8	AGREEMENTS UNDER THIS CHAPTER

### 26.1 DEFINITIONS

In this Chapter:

“Capital Transfer” means an amount paid by Canada to the Dehcho Government under the Financial Payments chapter.

“Dehcho Capital” means all land, cash and other assets transferred to or recognized as owned by the Dehcho Government or a Dehcho Community Government under the Dehcho Agreement.

“Direct” has the same meaning, for purposes of distinguishing between a direct tax and an indirect tax, as in class 2 of section 92 of the *Constitution Act, 1867*; and

“Person” includes an individual, a partnership, a corporation, a trust, a joint venture, an unincorporated association, a government or an agency or subdivision of a government, and their respective heirs, executors, administrators and other legal representatives.

### 26.2 DIRECT TAXATION POWERS

26.2.1 The Dehcho Government may make laws in relation to:

- a) direct taxation of Dehcho Citizens<sup>172</sup>, within Dehcho Ndehe and Dehcho Communities<sup>173</sup>, in order to raise revenue for Dehcho Government purposes; and

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<sup>172</sup> Dehcho would like the Dehcho Government’s direct tax power to apply to all residents, not only to Dehcho citizens. Canada’s approach is to provide a Dehcho Government direct tax power in respect of Dehcho Citizens within Dehcho Ndehe and Dehcho Communities in the final agreement and provide that the parties may negotiate agreements in respect of Dehcho Government direct tax powers over persons other than Dehcho Citizens within Dehcho Ndehe and Dehcho Communities outside the final agreement.

<sup>173</sup> Does the geographic scope of the Dehcho Government’s direct tax power include Hay River? Dehcho would like to discuss this further once the Parties have more information.

- b) the implementation of any taxation agreement entered into between it and Canada or the Government of the Northwest Territories, or both.
- c) The Dehcho Government law-making authority under 26.2.1 will not limit the taxation powers of Canada or the Government of the Northwest Territories.

26.2.3 Any Dehcho Law made under this chapter or any exercise of power by the Dehcho Government is subject to and will conform with Canada's International Legal Obligations in respect of taxation.

### **26.3 TAXATION POWER AGREEMENTS**

26.3.1 From time to time, at the request of the Dehcho Government, Canada and Government of the Northwest Territories, together or separately, may negotiate and attempt to reach agreement<sup>174</sup> with the Dehcho Government respecting:

- a) the extent to which the Direct taxation law-making authority of the Dehcho Government under 26.2.1 (a) may be extended to apply to Persons other than Dehcho Citizens, within Dehcho Ndehe or Dehcho Communities; and
- b) the manner in which the Dehcho Government law-making authority under 26.2.1 (a), as extended by the application of 26.3.1 (a), will be coordinated with existing federal or territorial tax systems, including:
  - i) the amount of tax room that Canada or Northwest Territories may be prepared to vacate in favour of taxes imposed by the Dehcho Government, and
  - ii) the terms and conditions under which Canada or Northwest Territories may administer, on behalf of the Dehcho Government, taxes imposed by the Dehcho Government.<sup>175</sup>

26.3.2 Notwithstanding Chapter 25, an agreement under 26.3.1 may provide for an alternative approach to the appeal, adjudication or enforcement of matters related to a Dehcho Law in respect of taxation.

### **26.4 DEHCHO NDEHE AND DEHCHO COMMUNITY LANDS**

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<sup>174</sup> Dehcho would like the final agreement to set out a process for the coordination of tax powers. The parties to discuss alternative mechanisms to achieve Dehcho's interest.

<sup>175</sup> Dehcho proposes further discussion with GNWT on tax sharing.

- 26.4.1 The Dehcho Government is not subject to taxation of Dehcho Ndehe or Dehcho Community Lands or interests in Dehcho Ndehe or Dehcho Community Lands on which there is no improvement or on which there is an improvement all or substantially all of which is used for a public purpose and not for a profitable purpose.<sup>176</sup>
- 26.4.2 A Dehcho Community Government is not subject to taxation of its Dehcho Community Lands or interests in its Dehcho Community Lands on which there is no improvement or on which there is an improvement all or substantially all of which is used for a public purpose and not for a profitable purpose.
- 26.4.3 For greater certainty, the exemption from taxation in 26.4.1 and 26.4.2 does not apply to a taxpayer other than the Dehcho Government or a Dehcho Community Government nor does it apply with respect to a disposition of Dehcho Ndehe or Dehcho Community Lands, or interests in those lands, by the Dehcho Government or a Dehcho Community Government.
- 26.4.4 For federal and territorial income tax purposes, proceeds of disposition received by the Dehcho Nation or a Dehcho Community Government on expropriation of Dehcho Ndehe or Dehcho Community Lands in accordance with Chapter 39 will not be taxable.
- 26.5 TRANSFER OF DEHCHO CAPITAL**
- 26.5.1 A transfer under this Agreement of Dehcho Capital and recognition of ownership of Dehcho Capital under this Agreement is not taxable.
- 26.5.2 For purposes of 26.5.1, an amount paid to a Dehcho Citizen is deemed to be a transfer of Dehcho Capital under this Agreement if the payment:
- a) can reasonably be considered to be a distribution of a Capital Transfer received by the Dehcho Government; and
  - b) becomes payable to the Dehcho Citizen within 90 days and is paid to the Dehcho Citizen within 270 days from the date that the Dehcho Government receives the Capital Transfer.<sup>177</sup>
- 26.5.3 For federal and territorial income tax purposes, Dehcho Capital is deemed to have been acquired by the Dehcho Government or a Dehcho Community Government, as the case may be, at a cost equal to its fair market value on the latest of:

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<sup>176</sup> Tax Working Group to review the wording of 26.4.1 and 26.4.2 and 26.4.3

<sup>177</sup> Canada views this provision as optional. Dehcho to consider further.

- a) the Effective Date; and
- b) the date of transfer of ownership or the date of recognition of ownership, as the case may be.

## **26.6 INDIAN ACT TAX EXEMPTION AND TRANSITIONAL EXEMPTION**

- 26.6.1 The Dehcho Agreement will provide that section 87 of the Indian Act will not apply to the Dehcho Nation, Dehcho Dene or any Dehcho Ndehe as of the Effective Date.
- 26.6.2 The Dehcho Agreement may provide for transitional tax measures to address the fact that section 87 of the Indian Act will no longer apply as of the Effective Date.

## **26.7 TAX TREATMENT AGREEMENT**

- 26.7.1 Prior to the Dehcho Agreement, the Parties will enter into a tax treatment agreement, which will come into effect on the Effective Date. The tax treatment agreement will address the following subject matters:
  - a) the income tax treatment of the Dehcho Government and its entities;
  - b) the sales tax treatment of the Dehcho Government and its entities;
  - c) the tax treatment of the transfer of Dehcho Capital between the Dehcho Government and its subsidiaries;
  - d) the tax treatment of a Dehcho settlement trust;
  - e) donations, including artifacts , made to the Dehcho Government; and
  - f) any other matters agreed to by the Parties.<sup>178</sup>

## **26.8 AGREEMENT UNDER THIS CHAPTER**

- 26.8.1 Any taxation power agreement or tax treatment agreement negotiated in accordance with this chapter would not be part of the Dehcho Agreement, nor be a treaty or land claims agreement within the meaning of sections 25 and 35 of the Constitution Act, 1982.

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<sup>178</sup> Dehcho would like a provision stating that if the TTA is terminated, the parties will make best efforts to negotiate a new one.



## CHAPTER 27: WILDLIFE HARVESTING

- 27.1 GENERAL
- 27.2 GIFTING AND TRADING
- 27.3 ACCESS
- 27.4 CONSULTATION
- 27.5 WILDLIFE MANAGEMENT
- 27.6 EMERGENCIES

### 27.1 GENERAL

- 27.1.1 The Dehcho First Nations have the right to Harvest all species of Wildlife, excluding Furbearers which is addressed in 27.1.2, throughout the Dehcho Settlement Area<sup>179</sup> at all times of the year, for Domestic Purposes, in accordance with the Dehcho Agreement.
- 27.1.2 The Dehcho First Nations have the exclusive right to harvest Furbearers in Dehcho Ndehe and Dehcho Community Lands at all times of the year. This right does not preclude others from harvesting Furbearers in Dehcho Ndehe or Dehcho Community Lands with the consent of the Dehcho Government.<sup>181</sup>
- 27.1.3 Within Dehcho Ndehe the Dehcho Government retains the authority to manage and conserve Wildlife and will exercise that authority in a manner that is consistent with the Dehcho Agreement. On Dehcho Community Lands, local Dehcho Community Governments retain these authorities.<sup>182</sup>

Deleted: [

Deleted: ]<sup>180</sup>

<sup>179</sup> DFN have noted that current Treaty 11 harvesting rights extend beyond the proposed Settlement Area. Considering the possibility of using a General Hunting Licence as a solution. DFN is reviewing the language in the Métis Agreement. **The GNWT has provided information on the most recent Wildlife Act. DFN is reviewing this information.**

<sup>181</sup> GNWT proposed wording:

#### W.4.0 HARVESTING OF FURBEARERS

- W.4.1 Dehcho First Nations have the exclusive right to harvest Furbearers in Dehcho Ndehe at all times of the year.
- W.4.2 Subject to W.4.3, Dehcho First Nations have the right to harvest Furbearers within the Dehcho Settlement Area at all times of the year.
- W.4.3 Dehcho First Nations will not have a right to harvest Furbearers on lands in the Dehcho Settlement Area that are vested in another Aboriginal group where that Aboriginal group has the exclusive right to harvest Furbearers.
- W.4.4 Nothing in W.4.3 precludes the Dehcho Government from making an agreement with another Aboriginal group concerning shared rights to harvest Furbearers.
- W.4.5 The Parties may address other aspects of the Harvesting of Furbearers prior to the Dehcho Agreement.

<sup>182</sup> **Under review in context of the role for DCRMA and the agreements reached on jurisdiction.**

Deleted: GNWT prefers co-management throughout the Dehcho Settlement Area.

27.1.4 Subject to 27.1.5 and 27.1.6, the right recognized [described?] in 27.1.1 may be limited or restricted<sup>183</sup>:

- a) by provisions of the Dehcho Agreement; or
- b) in Legislation, for purposes necessary for conservation, public health and public safety.

[Or, 27.1.4 The right provided for in 27.1.1 may be limited or restricted: a) by provisions of the Dehcho Agreement; or b) for purposes necessary for: i) conservation; ii) public health; or iii) public safety.]<sup>184</sup>

27.1.5 Outside of Dehcho Ndehe, and subject to the terms of the Dehcho Agreement, the Minister will have the authority to manage and conserve Wildlife. This authority is subject to the concurrent jurisdiction of the Dehcho Government to manage Wildlife and Wildlife habitat in the Dehcho Settlement Area, as set out in the Dehcho Agreement.<sup>185</sup>

[Or, 27.1.5 The Minister has the authority to manage and conserve Wildlife and Wildlife habitat in the Dehcho Settlement Area and will exercise that authority in a manner that is consistent with the Dehcho Agreement]<sup>186</sup>

27.1.6 In the event of an emergency, the Dehcho Government or the Government of the Northwest Territories, as applicable, may impose an interim limitation or restriction pursuant to 27.1.3 and 27.1.5 upon notice to the other government. As soon as possible thereafter the government which imposed the emergency restriction will provide reasons for the decision and will Consult the other government regarding any ongoing terms and conditions.

[Or, 27.1.6 In the event of an emergency, Canada or the Government of the Northwest Territories may impose an interim limitation or restriction under 27.1.4 (b). As soon as possible thereafter, Canada or the Government of the Northwest Territories will notify the Dehcho Government and provide reasons for the decision. Canada or the Government of the Northwest T will Consult the

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<sup>183</sup> DFN: The Dehcho Government will have exclusive jurisdiction to limit or restrict harvesting in Dehcho Ndehe and on Dehcho community lands. This entire clause (W.1.4) may be moved to after W.1.6 for clarity in interpretation.

<sup>184</sup> GNWT proposal as an alternative to 15.1.4

<sup>185</sup> GNWT: W.1.5, W.1.6, W.2.4, and W.4.3, are related in these ways: 1) they relate to management harvesting issues whereas the focus of the chapter is on the harvesting of wildlife for subsistence purposes. DFN response: they relate to jurisdiction, not management, of wildlife harvesting. Management is to be developed. 2) GNWT: these do not reflect the GNWT position that the Minister has jurisdiction over wildlife on a regional basis because of the nature of the resource. That jurisdiction is informed by a regional resource management board comprised of all stakeholders on the Dehcho region. DFN response: the DCRMA will manage and administer wildlife management.

<sup>186</sup> GNWT proposal as an alternative to 15.1.5

Dehcho Government with respect to any ongoing terms and conditions which may result from the event.]<sup>187</sup>

27.1.7 Nothing in the Dehcho Agreement<sup>188</sup> will be construed to:

- a) confer rights of ownership in Wildlife;
- b) guarantee the supply of Wildlife; or
- c) recognize a right to commercial harvest of Wildlife.

27.1.8 A Dehcho Citizen will not be subject to any tax<sup>189</sup>, fee or requirement for license for the harvesting of Wildlife pursuant to 27.1.1.

27.1.9 Prior to the Dehcho Agreement, the Parties will address the issue of documentation or identification for Dehcho Citizens exercising their right to harvest, possess and transport Wildlife as set out in the Dehcho Agreement.

27.1.10 Subject to legislation respecting humane trapping, a Dehcho Citizen has the right to use any method, and to possess and use any equipment, for the purpose of Wildlife harvesting.

27.1.11 Dehcho Citizens have the right to possess and transport anywhere in Canada the Edible and non-Edible Parts of Wildlife harvested pursuant to 27.1.1, subject to any requirements related to the possession or identification of Wildlife set out in Legislation. When exercising this right, the Dehcho Citizens will not be required to obtain a licence nor be subject to any fee from Canada or the Government of the Northwest Territories.

Deleted: <sup>190</sup>

## 27.2 GIFTING AND TRADING

27.2.1 Dehcho Citizens have the right to Gift the Edible and non-Edible Parts of Wildlife harvested pursuant to 27.1.1 to any individual for the recipient's Domestic Purposes.

27.2.2 Dehcho Citizens have the right to Trade:

- a) the non-Edible Parts of Wildlife harvested pursuant to 27.1.1 with any individual for the recipient's Domestic Purposes; and
- b) the Edible Parts of Wildlife harvested pursuant to 27.1.1 with:

<sup>187</sup> GNWT proposal as an alternative to 15.1.6

<sup>188</sup> DFN suggest: "Nothing in this *chapter* will...", because DFN wish to have a chapter on commercial harvesting.

DFN will consult with leadership.

<sup>189</sup> Dehcho remain concerned about the possibility that harvesters will be taxed on the value of harvested wildlife. Canada and the GNWT will not agree to exemption for tax on harvesting and want the reference to tax removed.

- i) other Dehcho Citizens; and
- ii) members of another Aboriginal group with whom the Dehcho Dene have traditionally Traded<sup>191</sup>

for the recipients' Domestic Purpose.

27.2.3 The Dehcho Government retains jurisdiction to control and manage commercial trade in Wildlife and Wildlife harvesting on Dehcho Ndehe and in Dehcho Community Lands.<sup>192</sup>

27.2.4 The Dehcho Government has the jurisdiction to manage commercial trade in Wildlife and Wildlife harvesting in the Dehcho Settlement Area outside of Dehcho Ndehe, and will exercise that right as set out in the Dehcho Agreement.<sup>193</sup>

### 27.3 ACCESS

27.3.1 Subject to 27.3.3 and any subsidiary agreements addressing access for harvesting contemplated by the Dehcho Agreement, Dehcho Citizens have a right of access to all land and Water within the Dehcho Settlement Area for the purpose of the Wildlife harvesting under 27.1.1.

27.3.2 Dehcho Citizens may establish and use Camps on Crown Lands within the Dehcho Settlement Area, subject to limitations on access set out in 27.5.3, provided such Camps are reasonably incidental to the Harvesting of Wildlife under 27.1.1.

27.3.3 This right of access does not apply:

- a) on Indian reserve lands;
- b) on lands held in fee simple or lands subject to a surface lease:
  - i) within Community Boundaries;
  - ii) outside Community Boundaries where the land is less than ten (10) hectares in area and is fenced or otherwise identified;
  - iii) where the Harvesting of Wildlife would be visibly incompatible with the use of the land; or

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<sup>191</sup> Canada and GNWT want to list Aboriginal groups. DFN propose: YT, NT, NU, BC, AB, SK and MB.

<sup>192</sup> For reasons outlined above, Canada and GNWT do not agree with 2.4, and prefer that management issues be addressed in a separate chapter.

<sup>193</sup> For reasons outlined above, Canada and GNWT do not agree with 2.4, and prefer that management issues be addressed in a separate chapter.

- c) where lands are dedicated to military or national security purposes pursuant to legislation, or to areas temporarily being used for military exercises for the period of such temporary use, after notice of such dedication or use has been provided to the Dehcho Government.

27.3.4 Where a Dehcho Citizen has the right to access lands held in fee simple or lands subject to a surface lease for the purpose of Wildlife harvesting under the Dehcho Agreement they will not:

- a) unreasonably interfere with an occupier's use and peaceable enjoyment of the land; or
- b) establish a Camp or any structure, or cut or use any wood other than dead wood, without the consent of the owner, lessee or Canada or the Government of the Northwest Territories, as the case may be.

27.3.5 A Dehcho Citizen or the Dehcho Government may enter into an agreement with an owner, lessee or Canada or the Government of the Northwest Territories, as the case may be, regarding the right to access lands described in 27.3.3 for the purpose of Wildlife harvesting under 27.1.1.

#### 27.4 CONSULTATION

27.4.1 Canada or the Government of the Northwest Territories will Consult the Dehcho Government prior to introducing new Legislation, or amending existing Legislation, that could adversely affect the exercise of the right to harvest Wildlife set out in the Dehcho Agreement.

27.4.2 Pursuant to 27.1.3, Canada or the Government of the Northwest Territories will Consult the Dehcho Government prior to:

- a) amending the terms of an existing commercial authorization to harvest Wildlife;
- b) subject to 27.4.3, issuing a new commercial authorization to harvest Wildlife; or
- c) permitting any commercial activity for the husbandry of a species of Wildlife

[within the Dehcho Settlement Area] that could adversely affect the exercise of the right to harvest Wildlife as set out in the Dehcho Agreement.<sup>194</sup>

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<sup>194</sup> Note that other Agreements restrict the duty to consult within Settlement Areas. LTC discussed the possibility of a second provision to address consultation arising from activities outside the Dehcho Settlement Area.

27.4.3 No new commercial activity for the harvesting of Wildlife in the Dehcho Settlement Area will be authorized by Canada or the Government of the Northwest Territories without the consent of the Dehcho Government.<sup>195</sup>

## 27.5 WILDLIFE MANAGEMENT

27.5.1 Prior to Dehcho Agreement, the Parties will address Wildlife management within the Dehcho Settlement Area.<sup>196</sup>

## 27.6 OVERLAP AND SHARED USE AGREEMENTS

27.6.1 The Dehcho First Nations or the Dehcho Government may formalize relationships for the harvesting of Wildlife with other Aboriginal groups through the negotiation of overlap or shared use agreements. With the agreement of all Parties, overlap agreement or shared use provisions pertaining to Wildlife harvesting may be incorporated into the Dehcho Agreement.

## 27.7 EMERGENCIES

27.7.1 Nothing in the Dehcho Agreement will prevent any individual from killing Wildlife in the Dehcho Settlement Area for survival in an emergency or to defend or protect individuals or property.

<sup>195</sup> Under review in context of the role for DCRMA and the agreements reached on jurisdiction.

<sup>196</sup> GNWT proposed wording: W.7.1 Prior to concluding the Dehcho Agreement, the Parties will address:  
(a) the manner in which Wildlife will be managed; and  
(b) the participation of the Dehcho Government in the management of Wildlife, in the Dehcho Settlement Area.

**Deleted:** GNWT okay with Dehcho consent on Dehcho Ndehe but not entire Settlement Area. GNWT wants co-management throughout Settlement Area. Canada agrees.

## CHAPTER 28: MIGRATORY BIRDS HARVESTING

28.1	GENERAL
28.2	GIFTING AND TRADING
28.3	ACCESS
28.4	CONSULTATION
28.5	MIGRATORY BIRDS MANAGEMENT
28.6	EMERGENCIES

### 28.1 GENERAL

28.1.1 The Dehcho First Nations have the right to harvest Migratory Birds throughout the area shown in Dehcho Settlement Area<sup>197</sup> at all times of the year **for Domestic Purposes**, in accordance with the Dehcho Agreement.

28.1.2 The right provided for in 28.1.1 may be limited or restricted:

- a) by provisions of the Dehcho Agreement; or
- b) for purposes necessary for:
  - i) Conservation;
  - ii) public health; or
  - iii) public safety.

28.1.3 Canada has the authority to manage and conserve Migratory Birds and Migratory Bird habitat and will exercise that authority in a manner that is consistent with the Dehcho Agreement.

28.1.4 Subject to 28.1.5, Canada will Consult the Dehcho Government prior to imposing a limitation or restriction necessary for Conservation, public health or public safety.

28.1.5 In the event of an emergency, Canada may impose an interim limitation or restriction under 28.1.2 as soon as possible thereafter, Canada will notify the Dehcho Government and provide reasons for the decision. Canada will Consult the Dehcho Government with respect to any on-going terms and conditions which may result from the event.

28.1.6 Nothing in the Dehcho Agreement will be construed to:

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<sup>197</sup> DFN have noted that current DFN treaty 11 rights extend beyond the Settlement Area. Considering the possibility of using a General Hunting Licence as a solution. **The GNWT has provided information on the most recent Wildlife Act. DFN is reviewing this information.**

- a) recognize a right to harvest Migratory Birds for commercial harvest or sale;
- b) confer rights of ownership in Migratory Birds; or
- c) guarantee the supply of Migratory Birds.

28.1.7 A Dehcho Citizen will not be subject to any tax<sup>198</sup>, fee or requirement for a license for Migratory Bird Harvesting pursuant to 28.1.1.

28.1.8 Prior to the Dehcho Agreement, the Parties will address the issue of documentation or identification for a Dehcho Citizen exercising their right to harvest, possess and transport Migratory Birds as set out in the Dehcho Agreement.

28.1.9 A Dehcho Citizen has the right to use any method, and to possess and use any equipment, for the purpose of Migratory Bird Harvesting pursuant to 28.1.1.

28.1.10 A Dehcho Citizen has the right to possess and transport anywhere in Canada the Edible and non-Edible Parts of Migratory Birds harvested pursuant to 28.1.1, subject to any requirements for the identification of Migratory Birds set out in Legislation. When exercising this right, a Dehcho Citizen will not be required to obtain a licence from Canada or the Government of the Northwest Territories, nor be subject to any fee.

## **28.2 GIFTING AND TRADING**

28.2.1 Dehcho Citizens have the right to Gift the Edible and non-Edible Parts of Migratory Birds harvested pursuant to 28.1.1 to any individual for the recipient's Domestic Purposes.

28.2.2 Dehcho Citizens have the right to Trade:

- a) the non-Edible Parts of Migratory Birds harvested pursuant to 161.1 with any individual for the recipient's Domestic Purposes; and
- b) the Edible Parts of Migratory Birds harvested pursuant to 28.1.1 with:
  - i) other Dehcho Citizens; and
  - ii) members of another Aboriginal group with whom the Dehcho Dene have traditionally Traded.<sup>199</sup>

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<sup>198</sup> Dehcho remain concerned about the possibility that harvesters will be taxed on the value of harvested migratory birds. Canada will not agree to exemption for tax on harvesting and want the reference to tax removed.

<sup>199</sup> DFN will consider providing map or list of groups with whom they've traditionally traded.



for the recipients' Domestic Purposes.

### **28.3 OVERLAP AND SHARED USE AGREEMENTS**

28.3.1 The Dehcho First Nations or the Dehcho Government may formalize relationships for the harvesting of Migratory Birds with other Aboriginal groups through the negotiation of overlap or shared use agreements. With the agreement of Canada and the DFN, overlap agreement provisions pertaining to Migratory Bird harvesting may be incorporated into the Dehcho Agreement.

### **28.4 ACCESS**

28.4.1 Subject to 28.4.3 and any subsidiary agreements addressing access for harvesting contemplated by the Dehcho Agreement, a Dehcho Citizen has a right of access to all land and Water within the area shown in Appendix A for the purpose of Migratory Bird Harvesting under 28.1.1.

28.4.2 A Dehcho Citizen may establish and use Camps on Crown Land within the area shown in Appendix A, subject to limitations on access set out in 28.4.3, provided such Camps are reasonably incidental to Migratory Bird Harvesting under 28.1.1.

28.4.3 This right of access does not apply:

- a) on Indian reserve lands;
- b) on lands held in fee simple or lands subject to a surface lease:
  - i) within Community boundaries;
  - ii) outside Community boundaries where the land is less than ten (10) hectares in area and is fenced or otherwise identifiable; or
  - iii) where Migratory Bird Harvesting would be visibly incompatible with the use of the land; or
- c) where lands are dedicated to military or national security purposes pursuant to legislation, or to areas temporarily being used for military exercises for the period of such temporary use, after notice of such dedication or use has been provided to the Dehcho Government.

28.4.4 Where a Dehcho Citizen has the right to access lands held in fee simple or lands subject to a surface lease for the purpose of Migratory Birds Harvesting under the Dehcho Agreement they will not:

- a) unreasonably interfere with an occupier's use and peaceable enjoyment of the land; or
- b) establish a Camp, Cabin or any structure, or cut or use any wood other than dead wood, without the consent of the owner, lessee or Canada or the Government of the Northwest Territories, as the case may be.

28.4.5 A Dehcho Citizen or the Dehcho Government may enter into an agreement with an owner, lessee or Canada or the Government of the Northwest Territories, as the case may be, regarding the right to access lands described in 28.3.3 for the purpose of Migratory Birds harvesting under 28.1.1.

## **28.5 CONSULTATION**

28.5.1 Canada will Consult the Dehcho Government prior to introducing new Legislation, or amending existing Legislation, that could adversely affect the exercise of the right to harvest Migratory Birds set out in this Agreement.

## **28.6 MIGRATORY BIRDS MANAGEMENT**

28.6.1 Prior to concluding the Dehcho Agreement, the Parties will address:

- a) the manner in which Migratory Birds will be managed; and
- b) the participation of the Dehcho Government in the management of Migratory Birds

if the harvesting rights recognized in this chapter could be affected.

## **28.7 EMERGENCIES**

28.7.1 Nothing in the Dehcho Agreement will prevent any individual from killing Migratory Birds for survival in an emergency.

## CHAPTER 29: FISH HARVESTING

29.1	GENERAL
29.2	GIFTING AND TRADING
29.3	OVERLAP AGREEMENTS
29.4	ACCESS
29.5	CONSULTATION
29.6	FISHERIES MANAGEMENT
29.7	EMERGENCIES

Definitions for this chapter:

“Trade” *under review*

“Gift” *under review*

“Fish” *under review*

### 29.1 GENERAL

29.1.1 The Dehcho First Nations have the right to harvest all species of Fish for food, social and ceremonial purposes throughout the Dehcho Settlement Area<sup>200</sup> at all times of the year in accordance with the Dehcho Agreement.

29.1.2 The right provided for in 29.1.1 may be limited or restricted by Canada or the Government of the Northwest Territories:

- a) through Legislation, subject to the provisions of the Dehcho Agreement; or
- b) for purposes related to:
  - i) Conservation;
  - ii) public health; or
  - iii) public safety.

29.1.3 The Minister retains the authority for fisheries management and will exercise that authority in a manner that is consistent with the Dehcho Agreement.

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<sup>200</sup> DFN have noted that current Treaty 11 harvesting rights extend beyond the proposed Settlement Area.

- 29.1.4 To the extent reasonable, and subject to 29.1.5, Canada or the Government of the Northwest Territories will Consult the Dehcho Government prior to imposing a limitation or restriction pursuant to 29.1.2 b).
- 29.1.5 In the event of an emergency, Canada or the Government of the Northwest Territories may impose an interim limitation or restriction pursuant to 29.1.2 b) upon notice, where reasonable, to the Dehcho Government. As soon as possible thereafter, Canada or the Government of the Northwest Territories will provide reasons for the decision to the Dehcho Government. Canada or the Government of the Northwest Territories will Consult the Dehcho Government with respect to any ongoing terms and conditions.
- 29.1.6 Nothing in the Dehcho Agreement will be construed to:
- a) recognize a right to Harvest Fish for commercial purposes or sale;
  - b) confer rights of ownership in Fish; or
  - c) guarantee the supply of Fish.
- 29.1.7 A Dehcho Citizen will not be subject to any fee for the Harvesting of Fish pursuant to 29.1.1.
- 29.1.8 Prior to the Dehcho Agreement, the Parties will address:
- a) the issue of documentation or identification for a Dehcho Citizen exercising the right to harvest Fish as set out in the Dehcho Agreement;
  - b) the monitoring of Fish Harvesting activities by Dehcho Citizens and the collection of data for reporting purposes; and
  - c) the conduct of Fish Harvesting studies and research.
- 29.1.9 A Dehcho Citizen has the right to use any method, and to possess and use any equipment, for the purpose of the Harvesting of Fish pursuant to 29.1.1 and subject to Legislation.
- 29.1.10 A Dehcho Citizen has the right to possess and transport, anywhere in Canada, Fish harvested pursuant to 29.1.1, subject to any requirements related to the possession or identification of Fish established by Legislation. When exercising this right, a Dehcho Citizen will not be required to obtain a licence from nor be subject to any fee from Canada or the Government of the Northwest Territories.

**29.2 GIFTING AND TRADING**

- 29.2.1 A Dehcho Citizen will have the right to Gift Fish Harvested pursuant to 29.1.1 to any individual within Canada for the recipient's personal use or consumption.
- 29.2.2 Prior to the Dehcho Agreement, the Parties will discuss limitations to be placed on the Gifting of Fish Harvested pursuant to 29.1.1.
- 29.2.3 A Dehcho Citizen has the right to Trade Fish harvested pursuant to 29.1.1 with:
- a) other Dehcho Citizens; and
  - b) members of other aboriginal groups in the Dehcho First Nation traditional trading area shown on a map attached as Appendix "C"<sup>201</sup>,
- for the recipients' personal use or consumption.

### **29.3 OVERLAP AGREEMENTS**

- 29.3.1 Prior to the Dehcho Agreement, the Dehcho First Nations may address reciprocal opportunities for the Harvesting of Fish with other aboriginal groups through the negotiation of overlap agreements. With the agreement of all Parties, overlap agreement provisions pertaining to the Harvesting of Fish may be incorporated into the Dehcho Agreement.

### **29.4 ACCESS**

- 29.4.1 A Dehcho Citizen has a right of access to all land and Water within the Dehcho Settlement Area for the purpose of the Harvesting of Fish under 29.1.1.
- 29.4.2 A Dehcho Citizen may establish and use Camps on Crown Lands within the Dehcho Settlement Area, subject to limitations on access set out in 29.4.3, provided such Camps are reasonably incidental to the Harvesting of Fish under 29.1.1.
- 29.4.3 This right of access does not apply:
- a) on lands held in fee simple, lands subject to an agreement for sale or lands subject to a surface lease:
    - i) within Community Boundaries;
    - ii) outside Community Boundaries where the land is less than ten (10) hectares in area and is fenced or otherwise identified;

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<sup>201</sup> DFN will consider providing map or list of groups with whom they've traditionally traded. DFN propose: YT, NT, NU, BC, AB, SK and MB.

- iii) where the Harvesting of Fish would be visibly incompatible with the use of the land; or
- b) on lands or waters that are dedicated to military or national security purposes pursuant to legislation, or to areas temporarily being used for military exercises, from the time that notice has been given to the Dehcho Government until the temporary use is completed.

29.4.5 Where a Dehcho Citizen has the right to access lands held in fee simple or lands subject to a surface lease for the purpose of the Harvesting of Fish under the Dehcho Agreement it will not:

- a) unreasonably interfere with an occupier's use and peaceable enjoyment of the land; or
- b) establish a Camp or any structure, or cut or use any wood, without the consent of the owner, lessee or Canada or the Government of the Northwest Territories, as the case may be.

29.4.6 A Dehcho Citizen or the Dehcho Government may enter into an agreement with an owner, lessee or Canada or the Government of the Northwest Territories owning or using lands, which agreement provides for access and Harvesting of Fish by Dehcho Citizens in accordance with applicable Federal Laws or Territorial Laws.

#### **29.5.0 CONSULTATION**

29.5.1 Canada or the Government of the Northwest Territories will Consult the Dehcho Government prior to introducing new Legislation, or amending existing Legislation, that could adversely affect the exercise of the right to harvest Fish set out in the Dehcho Agreement.

29.5.2 Canada or the Government of the Northwest Territories will Consult the Dehcho Government prior to:

- a) amending the terms of an existing commercial authorization to harvest Fish;
- b) authorizing a new commercial activity to harvest Fish; or
- c) permitting any commercial activity for the propagation or cultivation of a species of Fish,

within the Dehcho Settlement Area, that could adversely affect the exercise of the right to harvest Fish as set out in the Dehcho Agreement.

29.5.3 No new commercial activity for the Harvesting of Fish on Water bodies wholly contained within Dehcho Ndehe will be authorized by Canada or the Government of the Northwest Territories without the consent of the Dehcho Government.

**29.6 FISHERIES MANAGEMENT**

29.6.1 Prior to the Dehcho Agreement, the Parties will address other aspects of Fisheries management within the Dehcho Settlement Area, including total allowable harvest and basic needs level.

**29.7 EMERGENCIES**

29.7.1 Nothing in the Dehcho Agreement will prevent any individual from Harvesting Fish in the Dehcho Settlement Area for survival in an emergency.

## CHAPTER 30: PLANT HARVESTING

30.1	GENERAL
30.2	GIFTING AND TRADING
30.3	OVERLAP AND SHARED USE AGREEMENTS
30.4	ACCESS
30.5	CONSULTATION
30.6	PLANT MANAGEMENT
30.7	EMERGENCIES

### 30.1 GENERAL

30.1.1 The Dehcho Government **on behalf of the Dehcho Citizens**<sup>202</sup> own the Plants on Dehcho Ndehe.

30.1.2 Subject to 30.6, this chapter applies throughout the Dehcho Settlement Area, excluding Dehcho Ndehe.

30.1.3 The Dehcho First Nations have the right to harvest Plants throughout the area shown in Appendix B at all seasons of the year for **Domestic Purposes, including**<sup>203</sup>:

- a) the making of handicrafts and art by Dehcho Citizens;
- b) food, medicinal, traditional or cultural purposes; or
- c) purposes ancillary to Wildlife Harvesting under 15.1.1

**Deleted:** ¶  
for Domestic Purposes.<sup>204</sup>

30.1.4 The right provided for in 30.1.3 may be limited or restricted:

- a) by provisions of the Dehcho Agreement; or
- b) for purposes necessary for:
  - i) Conservation;
  - ii) public health;
  - iii) public safety; **and**
  - iv) protection of the Environment from significant damage.

**Deleted:** iv) land management within  
Community boundaries<sup>205</sup>; and ¶

<sup>202</sup> Under consideration by DFN.<sup>203</sup> **DFN is reviewing.**

<sup>203</sup> **DFN is reviewing.**

**Deleted:** ¶



- 30.1.5 The Minister has the authority to manage and conserve Plants and Plant habitat and will exercise that authority in a manner that is consistent with the Dehcho Agreement.<sup>206</sup>
- 30.1.6 Subject to 30.1.7, Canada or the Government of the Northwest Territories will Consult the Dehcho Government prior to imposing a limitation or restriction under 30.1.4 (b).
- 30.1.7 In the event of an emergency, Canada or the Government of the Northwest Territories may impose an interim limitation or restriction under 30.1.4(b). As soon as possible thereafter, Canada or the Government of the Northwest Territories will notify the Dehcho Government and provide reasons for the decision. Canada or the Government of the Northwest Territories will Consult the Dehcho Government with respect to any ongoing terms and conditions which may result from the event.<sup>207</sup>
- 30.1.8 Nothing in the Dehcho Agreement will be construed to:
- a) recognize a right to harvest Plants for commercial purposes or sale;<sup>208</sup>
  - b) confer rights of ownership in Plants, subject to 30.1.1;
  - c) guarantee the supply of Plants;
  - d) entitle a Dehcho Citizen to any compensation for damage to or loss of Plants or Plant Harvesting opportunities within the Dehcho Settlement Area<sup>209</sup>;
  - e) preclude individuals who are not Dehcho Citizens from Harvesting Plants, except that they may be precluded from doing so by Legislation or a Land Use Plan.
- 30.1.9 A Dehcho Citizen will not be subject to any tax,<sup>210</sup> fee, or requirement for a licence for the Harvesting of Plants pursuant to 30.1.3.
- 30.1.10 Prior to the Dehcho Agreement, the Parties will address the issue of documentation or identification for Dehcho Citizens exercising their right to harvest, possess and transport Plants as set out in the Dehcho Agreement.

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<sup>206</sup> Government is examining "...and will exercise that authority in a manner that is consistent with the Dehcho Agreement."

<sup>207</sup> Dehcho is concerned about the lack of a reciprocal jurisdiction. Chapter needs to be reviewed after larger jurisdictional issues are settled.

<sup>208</sup> Dehcho notes that P.1.8.(a) does not appear in the Tlicho agreement and so should be dropped.

<sup>209</sup> Note: this is linked to an ongoing issue in the Harvester's Compensation Chapter.

<sup>210</sup> Dehcho remain concerned about the possibility that harvesters will be taxed on the value of harvested plants. Canada and the GNWT will not agree to exemption for tax on harvesting and want the reference to tax removed

30.1.11 A Dehcho Citizen has the right to use any method, and to possess and use any equipment, for the purpose of the Harvesting of Plants pursuant to 30.1.3.

30.1.12 A Dehcho Citizen has the right to possess and transport anywhere in Canada<sup>211</sup> Plants harvested pursuant to 30.1.3, subject to any requirements related to the identification of Plants agreed to by the Parties.<sup>212</sup> When exercising this right, a Dehcho Citizen will not be required to obtain a licence from Canada or the Government of the Northwest Territories<sup>213</sup>, nor be subject to any fee.

### **30.2 GIFTING AND TRADING**

30.2.1 A Dehcho Citizen has the right to Gift Plants harvested under 30.1.3 to any individuals for their Domestic Purposes.

30.2.2 A Dehcho Citizen has the right to Trade Plants harvested under 30.1.3 with:

- a) other Dehcho Citizens; and
- b) members of other Aboriginal groups<sup>214</sup> either with whom the Dehcho Dene have traditionally traded or within the Dehcho Traditional Trading Area<sup>215</sup>

for the recipients' Domestic Purposes.

### **30.3 OVERLAP AND SHARED USE AGREEMENTS**

30.3.1 The Dehcho First Nations or the Dehcho Government may formalize relationships for the Harvesting of Plants with other Aboriginal groups through the negotiation of overlap or shared use agreements. With the agreement of all Parties, overlap agreement provisions pertaining to the Harvesting of Plants may be incorporated into the Dehcho Agreement.

### **30.4 ACCESS**

30.4.1 Subject to 30.4.3 and subsidiary agreements addressing access for Harvesting contemplated by the Dehcho Agreement, Dehcho Citizens have a right of

<sup>211</sup> May need to be subject to provincial laws restricting transport. Review needed.

<sup>212</sup> Canada and the GNWT prefer to delete "agreed to by the Parties" and replace it with "set out in Legislation". Parties are also considering adding the phrase "...or in Dehcho Law" to mirror 10.4.1 of the Tlicho Agreement.

<sup>213</sup> Subject to certainty dealing with Dehcho rights outside of the NWT>

<sup>214</sup> Reference to "other Aboriginal groups" is an issue for Dehcho.

<sup>215</sup> [New] Identification of the Aboriginal peoples in question may preclude the need for a reference to "Traditional Trading Area" or vice versa.<sup>216</sup> DFN questions the need for (a). Canada to check the necessity of this clause.

Deleted: ¶

access to all land and Water within the area described in 30.1.2 for the purpose of the Harvesting of Plants under 30.1.3.

30.4.2 A Dehcho Citizen may establish and use Camps on Crown land within the area described in 30.1.2 subject to limitations on access set out in 30.4.3, provided such Camps are reasonably incidental to the Harvesting of Plants under 30.1.3.

30.4.3 This right of access does not apply:

- a) on Indian reserve lands<sup>216</sup>;
- b) on lands held in fee simple, lands subject to an agreement for sale or lands subject to a surface lease;
- c) where it conflicts with any activity carried out under an authorization granted by Canada or the Government of the Northwest Territories such as a timber licence or permit, a forest management agreement or land use permit; and
- d) where lands are dedicated to military or national security purposes pursuant to Legislation, or to areas temporarily being used for military exercises for the period of such temporary use, after notice of such dedication or use has been provided to the Dehcho Government.

30.4.4 A Dehcho Citizen or the Dehcho Government may enter into an agreement with an owner, lessee or Canada or the Government of the Northwest Territories, as the case may be, regarding the right to access lands described in 30.4.2 for the purposes of the Harvesting of Plants under 30.1.3.

### 30.5 CONSULTATION

30.5.1 Canada or the Government of the Northwest Territories will Consult the Dehcho Government prior to introducing new Legislation, or amending existing Legislation, that could adversely affect the exercise of the right to Harvest Plants as set out in the Dehcho Agreement.

30.5.2 Canada or the Government of the Northwest Territories will Consult the Dehcho Government prior to:

- a) amending the terms of an existing commercial authorization to Harvest Plants;
- b) authorizing a new commercial activity to Harvest Plants; or
- c) permitting any commercial activity for the propagation or cultivation of a species of Plants,

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<sup>216</sup> DFN questions the need for (a). Canada to check the necessity of this clause.

that could adversely affect the exercise of the right to harvest Plants as set out in the Dehcho Agreement.<sup>217</sup>

**30.6 PLANT MANAGEMENT**

30.6.1 Prior to the Dehcho Agreement, the Parties will address other aspects of Plant Management in the Dehcho Settlement Area.

**30.7 EMERGENCIES**

30.7.1 Nothing in the Dehcho Agreement will prevent any individual from Harvesting Plants for survival in an emergency.

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<sup>217</sup> Other land claim agreements only require governments to consult with respect to proposed activities within the Settlement Area. GNWT to propose wording.

## CHAPTER 31: TREE HARVESTING

31.1	GENERAL
31.2	GIFTING AND TRADING
31.3	OVERLAP AND SHARED USE AGREEMENTS
31.4	ACCESS
31.5	CONSULTATION
31.6	TREE MANAGEMENT
31.7	EMERGENCIES

### 31.1 GENERAL

31.1.1 The Dehcho Government **on behalf of the Dehcho Citizens**<sup>218</sup> own the Trees on Dehcho Ndehe.

31.1.2 Subject to 31.6, this chapter applies throughout the Dehcho Settlement Area, excluding Dehcho Ndehe.

31.1.3 The Dehcho First Nations have the right to harvest all species of Trees throughout the area described in 31.1.2 at all times of the year for the following purposes:

- a) firewood for personal use;
- b) firewood for community purposes within the area described in 31.1.2;
- c) construction or maintenance of hunting, trapping and fishing Camps for personal use;
- d) the making of handicrafts for personal use;
- e) traditional, cultural or medicinal purposes;
- f) construction of boats and rafts for personal use;
- g) construction of houses for personal occupancy by Dehcho Citizens; and
- h) construction of public structures for community use within the area described in 31.1.2.<sup>219</sup>

31.1.4 The right provided for in 31.1.3 may be limited or restricted:

- a) by provisions of the Dehcho Agreement; or
- b) for purposes necessary for to:

<sup>218</sup> Under consideration by DFN. <sup>219</sup> Dehcho prefers an open list that is not limited to these items. GNWT will review the clause in conjunction with a definition of the phrase "Domestic Purposes" and its inclusion in the provision.

<sup>219</sup> Dehcho prefers an open list that is not limited to these items. GNWT will review the clause in conjunction with a definition of the phrase "Domestic Purposes" and its inclusion in the provision.

Deleted: 1

- i) Conservation;
- ii) public health;
- iii) public safety;
- iv) Forest Management;
- v) land use planning within the Dehcho Settlement Area; and
- vi) protection of the Environment from significant damage.

31.1.5 The Minister has the authority to manage and conserve Trees and Tree habitat and will exercise that authority in a manner that is consistent with the Dehcho Agreement.<sup>220</sup>

31.1.6 Subject to 31.1.7, Canada or the Government of the Northwest Territories will Consult the Dehcho Government prior to imposing a limitation or restriction pursuant to 31.1.4 (b).

31.1.7 In the event of an emergency, Canada or the Government of the Northwest Territories may impose an interim limitation or restriction related to 31.1.4 (b). As soon as possible thereafter, Canada or the Government of the Northwest Territories will notify the Dehcho Government and provide reasons for the decision. Canada or the Government of the Northwest Territories will Consult the Dehcho Government with respect to any ongoing terms and conditions which may result from the event.

31.1.8 Nothing in the Dehcho Agreement<sup>221</sup> will be construed to:

- a) recognize a right to harvest Trees for commercial purposes or sale;
- b) confer rights of ownership in Trees, other than 31.1.1;
- c) guarantee the supply of Trees;
- d) preclude individuals who are not Dehcho Citizens from Harvesting Trees, except that they may be precluded from doing so by Legislation;
- e) entitle a Dehcho Citizen to any compensation for damage to or loss of Trees or Tree Harvesting opportunities within the area described in 31.1.2<sup>222</sup>; or
- f) affect any responsibility of Canada or the Government of the Northwest Territories for the fighting of forest fires.

31.1.9 A Dehcho Citizen will not be subject to any tax,<sup>223</sup> fee for Tree Harvesting pursuant to 31.1.3.

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<sup>220</sup> Government is examining "...and will exercise that authority in a manner that is consistent with the Dehcho Agreement

<sup>221</sup> Dehcho prefers "in this chapter".

<sup>222</sup> Note: This is linked to an ongoing issue in the Harvester's Compensation chapter

- 31.1.10 Prior to Dehcho Agreement, the Parties will address the issue of documentation or identification for a Dehcho Citizen exercising their right to harvest, possess and transport Trees as set out in the Dehcho Agreement.
- 31.1.11 A Dehcho Citizen will have the right to use any method, and to possess and use any equipment, for the purpose of the Tree Harvesting pursuant to 31.1.3.
- 31.1.12 A Dehcho Citizen has the right to possess and transport anywhere in Canada<sup>224</sup> Trees harvested pursuant to 31.1.3, subject to any requirements for the identification of Trees agreed to by the Parties.<sup>225</sup> When exercising this right, a Dehcho Citizen will not be required to obtain a licence from Canada or the Government of the Northwest Territories,<sup>226</sup> nor be subject to any fee.

### **31.2 GIFTING AND TRADING**

- 31.2.1 A Dehcho Citizen has the right to Gift Trees harvested pursuant to 31.1.3 to any individuals for their Domestic Purposes.
- 31.2.2 A Dehcho Citizen will have the right to Trade Trees harvested pursuant to 31.1.3 with:
- a) other Dehcho Citizens; and
  - b) members of other Aboriginal groups<sup>227</sup> either with whom the Dehcho Dene have traditionally traded or within in the Dehcho Traditional Trading Area<sup>228</sup>
- for the recipients' Domestic Purposes.

### **31.3 OVERLAP AND SHARED USE AGREEMENTS**

- 31.3.1 Prior to Dehcho Agreement, the Dehcho First Nations or the Dehcho Government may formalize relationships for the Harvesting of Trees with other Aboriginal groups through the negotiation of overlap or shared use agreements. With the agreement of all Parties, overlap agreement provisions

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<sup>223</sup> Dehcho remain concerned about the possibility that harvesters will be taxed on the value of harvested trees.

Canada and the GNWT will not agree to exemption for tax on harvesting and want the reference to tax removed

<sup>224</sup> May need to be subject to provincial laws restricting transport. Review needed.

<sup>225</sup> Canada and the GNWT prefer to delete "agreed to by the Parties" and replace it with "set out in Legislation".

Parties also considering adding the clause "...or in Dehcho Law" to reflect 10.4.1 of the Tlicho Agreement.

<sup>226</sup> DFN say "from Government" should be deleted.

<sup>227</sup> The reference to "other Aboriginal Groups" is an issue for Dehcho.

<sup>228</sup> [New] Identification of the Aboriginal peoples in question may preclude the need for a reference to "Traditional Trading Area" or vice versa.<sup>229</sup> DFN questions need for (a) .

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pertaining to the Harvesting of Trees may be incorporated into the Dehcho Agreement.

#### **31.4 ACCESS**

31.4.1 Subject to 31.4.3 and subsidiary agreements addressing access for Harvesting contemplated by the Dehcho Agreement, A Dehcho Citizen will have a right of access to all land within the area described in 31.1.2 for the purpose of Tree Harvesting under 31.1.3.

31.4.2 A Dehcho Citizen may establish and use Camps on Crown land within the area described in 31.1.2 subject to limitations on access set out in 31.4.3, provided such Camps are reasonably incidental to the Harvesting of Trees under 31.1.3.

31.4.3 This right of access does not apply:

- a) on Indian reserve lands<sup>229</sup>;
- b) on lands held in fee simple, lands subject to an agreement for sale or lands subject to a surface lease;
- c) where it conflicts with any activity carried out under an authorization granted by Canada or the Government of the Northwest Territories such as a timber licence or permit, a Forest Management agreement or land use permit; and
- d) where lands are dedicated to military or national security purposes pursuant to Legislation, or areas temporarily being used for military exercises for the period of such temporary use, after notice of such dedication or use has been provided to the Dehcho Government.

31.4.4 A Dehcho Citizen or the Dehcho Government may enter into an agreement with an owner, lessee or Canada or the Government of the Northwest Territories, as the case may be, regarding access to lands described in 31.4.3 for the Harvesting of Trees under 31.1.3.

#### **31.5 CONSULTATION**

31.5.1 Canada or the Government of the Northwest Territories will Consult the Dehcho Government prior to introducing new Legislation, or amending existing Legislation, that could adversely affect the exercise of the right to harvest Trees as set out in the Dehcho Agreement.

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<sup>229</sup> DFN questions need for (a) .



- 31.5.2 Canada or the Government of the Northwest Territories will Consult the Dehcho Government prior to:
- a) amending the terms of an existing commercial authorization to Harvest Trees;
  - b) authorizing a new commercial activity to Harvest Trees, or
  - c) permitting any commercial activity for the propagation or cultivation of a species of Tree,
- that could adversely affect the exercise of the right to Harvest Trees as set out in the Dehcho Agreement.<sup>230</sup>
- 31.6 TREE MANAGEMENT**
- 31.6.1 Prior to the Dehcho Agreement, the Parties will address other aspects of Tree Management in the Dehcho Settlement Area.
- 31.7 EMERGENCIES**
- 31.7.1 Nothing in the Dehcho Agreement will prevent any individual from Harvesting Trees for survival in an emergency.

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<sup>230</sup> Other land claim agreements only require governments to consult with respect to proposed activities within the Settlement Area

## CHAPTER 32: HARVESTERS COMPENSATION

32.1	DEFINITIONS
32.2	GENERAL
32.3	TRADITIONAL ACTIVITIES ADVOCATE

### 32.2 GENERAL

- 32.2.1 The purpose<sup>231</sup> of this chapter is to provide for the protection and enhancement of harvesting activities by Dehcho Citizens, and to compensate individuals who practice harvesting activities in circumstances where loss or damage has occurred in an area used for such activities as a result of actions or omissions by a Developer.
- 32.2.2 A Developer is liable absolutely, without proof of fault or negligence, for the following losses and damage, suffered by a Dehcho Citizens or a Dehcho First Nation community as a result of a project wholly or partly in the Dehcho Settlement Area in which that Developer is engaged:
- a) loss or damage to personal property or equipment used in harvesting activities, or to wildlife harvested;
  - b) present and future loss of income from harvesting activities; and
  - c) present and future loss of harvesting<sup>232</sup> activities.
- 32.2.3 Notwithstanding section 32.2.2, a Developer is not liable where that Developer establishes that the loss or damage was wholly the result of an act of God, war, hostilities, civil war or insurrection.
- 32.2.4 Dehcho Citizens, Regulatory Authorities<sup>233</sup> and the Dehcho Government will make reasonable efforts to mitigate any losses or damage referred to in XX.2.1.
- 32.2.5 A claim for compensation under this chapter will be drafted by a Dehcho Citizen, who may request the assistance of the Traditional Activities Advocate.
- 32.2.6 If agreement has not been reached between a Developer and a Dehcho Citizen or the Dehcho Government with respect to a claim for compensation within 30 days of the submission of a claim in writing by the Dehcho Citizen or

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<sup>231</sup> Canada prefers not to have 'purpose' sections in AiP chapters.

<sup>232</sup> Canada suggests "harvested" instead of "harvesting".

<sup>233</sup> Canada questions whether Regulatory Authorities should be included. They are not included in other agreements.

the Dehcho Government, either party may refer the dispute for resolution in accordance with chapter DR xx<sup>234</sup>.

- 32.2.7 Following a reference under XX2.4, if an arbitrator is appointed under XXX, and that arbitrator determines the Developer is liable under 32.2.2, that arbitrator will determine what compensation to award, and may also
- a) provide for future review of the compensation award, if appropriate;
  - b) recommend that the Developer, the Dehcho Citizen or the Dehcho Government<sup>235</sup> take or refrain from taking certain action in order to mitigate further loss or damage; and
  - c) on review of a previous award, determine whether the Developer, the Dehcho Citizen or the Dehcho Government has adopted adequate mitigative recommendations made under that previous award.
- 32.2.8 A Dehcho Citizen or the Dehcho Government that refers a dispute respecting a claim for compensation under this chapter for resolution in accordance with chapter xxx, cannot exercise any right they might have otherwise had to resolve the dispute in a court.
- 32.2.9 The Dehcho Government and a Developer may enter into an agreement that replaces or modifies the Developer's liabilities and obligations under this chapter. Any such agreement will be binding on Dehcho Citizens.
- 32.2.10 A Developer will not be liable under 32. X for losses suffered by a Dehcho Citizen or the Dehcho Government as a result of the establishment of a National Park, National Park Reserve, or Protected Area or any lawful activity within the National Park or Protected Area, except for direct loss or damage to property or equipment in X (Wildlife Harvesting chapter) pursuant to the Final Agreement.
- 32.3 TRADITIONAL ACTIVITIES ADVOCATE<sup>236</sup>**
- 32.3.1 The Dehcho Government, in consultation with Canada and the Government of the Northwest Territories, may appoint a Traditional Activities Advocate to:
- a) assist a Dehcho Citizen to make a claim under this chapter;
  - b) advocate on behalf of Dehcho harvesters in the Dehcho Settlement Area;

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<sup>234</sup> Need to clarify whether a party could still litigate or whether DR is only option.

<sup>235</sup> Note that Regulatory Authorities are not mentioned in this clause.

<sup>236</sup> GNWT propose an alternative chapeau: "The Dehcho Government may appoint a Traditional Activities Advocate to:" Canada has under review.

- c) advise Dehcho Government and Government on the state of harvesting and traditional activities in the Dehcho Settlement Area;  
and
- d) issue an annual report regarding traditional activities.

## CHAPTER 33: WATER RIGHTS AND MANAGEMENT

33.1	GENERAL
33.2	EXISTING INTERESTS
33.3	GOVERNMENT AND OTHER USERS
33.4	LICENSING
33.5	LEGAL ACTION AND STANDING
33.6	INTERJURISDICTIONAL AGREEMENTS
33.7	CONFLICTING REGULATORY CONDITIONS

### 33.1 GENERAL

33.1.1 Subject to other provisions in the Dehcho Agreement, the Dehcho First Nations, the Dehcho Government and Dehcho Citizens have the exclusive right to use Water and deposit Waste in waters on or that flow through Dehcho Ndehe when such waters are on or flowing through Dehcho Ndehe.

33.1.2 Subject to any use of Water, deposit of Waste or activity authorized by law, including by an authorization issued by the MVLWB or by another competent authority, the Dehcho First Nations, the Dehcho Government and Dehcho Citizens have the right to waters that are substantially unaltered in quality, quantity and rate of flow when such waters are on, adjacent to, or flow through Dehcho Ndehe.

33.1.3 ~~Subject to any negotiated overlaps agreements,~~ the Dehcho First Nations, the Dehcho Government and Dehcho Citizens will have the right to use Water within the Dehcho Settlement Area on lands owned by other Aboriginal people for Harvesting for Domestic Purposes, and heritage or cultural purposes, without licence, permit or other authorization.<sup>237</sup>

**Deleted:** T

**Deleted:** , subject to negotiated overlap agreements

33.1.4 The use of Water and the deposit of Waste in the Dehcho Settlement Area including the rights set out in 33.1.0 are subject to Legislation<sup>238</sup>.

33.1.5 Dehcho Water rights set out in 33.1.0 will not interfere with:

- a) rights of navigation and passage on Water;
- b) the use of Water by an individual for personal<sup>239</sup> or emergency purposes;

<sup>237</sup> ~~DFN considering.~~

<sup>238</sup> DFN: this clause is unnecessary and objectionable in light of other restrictions in this chapter.

<sup>239</sup> ~~Canada looking into adding "non-commercial" to clause.~~

**Deleted:** Is the right exercisable without overlap agreements?

**Deleted:** Excluding commercial purposes? Yes, it excludes commercial purposes.

- c) community use of Water for community purposes; or
- d) any right of access<sup>240</sup> set out in the Dehcho Agreement,

nor will the consent of the Dehcho Government be required with respect to these activities.

33.1.6 The Dehcho First Nations, the Dehcho Government and Dehcho Citizens will not use Water or deposit Waste so as to substantially alter the quality, quantity or rate of flow of waters which are on or flow through or are adjacent to Dehcho Ndehe, unless authorized by the MVLWB.<sup>241</sup>

33.1.7 <sup>242</sup>Nothing in the Dehcho Agreement will be construed as granting the Dehcho First Nations, Dehcho Government, a Dehcho Citizen<sup>243</sup> or any other Person property rights in respect of Water.

### 33.2 EXISTING INTERESTS

33.2.1 Notwithstanding 33.1.1, existing interests on Dehcho Ndehe authorized to use Water or deposit Waste in Water will:

- a) be identified in Appendix X of the Dehcho Agreement; and
- b) continue in accordance with applicable Legislation and the terms and conditions of the authorization.

### 33.3 GOVERNMENT AND OTHER USERS

33.3.1 Notwithstanding both the ownership of Beds of certain Water bodies by the Dehcho Government on Dehcho Ndehe and the Dehcho Water rights set out in 33.1.0, Canada and the Government of the Northwest Territories retains the right<sup>244</sup> to protect, manage and use Water and Beds of such Water bodies, for public purposes which include<sup>245</sup>:

- a) use Water for fighting fires;

<sup>240</sup> Dehcho rights to use water will be subordinate to non-Dene access rights in event of conflict. Yes, the rights are not to interfere with access rights.

<sup>241</sup> DFN propose to change 33.1.6 to: 'No person will use Water or deposit Waste so as to substantially alter the quality, quantity or rate of flow of waters which are on or flow through or are adjacent to Dehcho Ndehe, unless authorized by the MVLWB and the Dehcho Government'.

<sup>242</sup> DFN suggest co-ownership (Crown / Dehcho Gov't) and/or no private water ownership.

<sup>243</sup> who does have property rights in respect of water?

<sup>244</sup> And without any restrictions?

<sup>245</sup> DFN want some restrictions and Consultations with DG, particularly if an open ended list is to be used.

**Deleted:** The Dehcho Gov't would be constitutionally prohibited from approving or constructing large power dams. Will the GNWT and Cda be subject to similar restraints?

**Deleted:** DFN suggest adding "...nor any other Person..."

- b) the protection of Wildlife and Fish and their habitat;
- c) the protection of Water supplies including community Water supplies from contamination and degradation;
- d) research with respect to Water quality and Water quantity; and
- e) flood control and protection of navigation and transportation.

### 33.4 LICENSING

33.4.1 The Mackenzie Valley Land and Water Board<sup>246</sup> (“MVLWB”)<sup>247</sup> will not authorize a use of Water or a deposit of Waste that, in its opinion, is likely to substantially alter the quality, quantity or rate of flow of waters flowing on, flowing through or flowing adjacent to Dehcho Ndehe, unless the MVLWB considers that:

- a) there is no alternative that could reasonably meet the requirements of the applicant; and
- b) there are no reasonable measures by which the applicant could avoid the alteration.

33.4.2 Should the MVLWB authorize a use of Water or a deposit of Waste under 33.4.1, it will not do so unless:

- a) the applicant seeking authorization has entered into an agreement with the Dehcho Government to compensate the Dehcho First Nations for loss or damage which may be caused by such alteration; or
- b) the applicant or the Dehcho Government has applied to the MVLWB for a determination and the MVLWB has determined compensation payable.

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33.4.3 The MVLWB will not authorize a use of Water or a deposit of Waste anywhere in the Dehcho Settlement Area, excluding Dehcho Ndehe which, in its opinion, will likely substantially alter the quality, quantity or rate of flow of waters flowing on or flowing through or flowing adjacent to the Dehcho Settlement Area, unless:<sup>249</sup>

- a) the applicant seeking authorization has entered into an agreement with the Dehcho Government to compensate the Dehcho First Nations for loss or damage which may be caused by such alteration; or

<sup>246</sup> Need to ensure that the D Agmt can and will bind MVLWB, if Agmt contains provisions relating to MVRMA.

<sup>247</sup> DFN position is that the MVRMA does not and will not apply in the Dehcho Settlement Area.

<sup>249</sup> DFN suggest same provisions as in 33.4.1 should apply throughout Settlement Area.

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- b) the applicant or the Dehcho Government has applied to the MVLWB for a determination and the MVLWB has determined compensation payable.

33.4.4 Where a use of Water or a deposit of Waste is proposed outside the Dehcho Settlement Area, but within the Northwest Territories, which, in the opinion of the MVLWB, will likely substantially alter the quality, quantity or rate of flow of waters flowing on or flowing through or flowing adjacent to Dehcho Ndehe, the use of Water or the deposit of Waste will not be authorized unless:

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- a) the applicant has entered into an agreement with the Dehcho Government to compensate the Dehcho First Nations for loss or damage which may be caused by such alteration; or
- b) the applicant or the Dehcho Government has applied to the MVLWB for a determination and the MVLWB has determined compensation payable .

33.4.5 Canada or the Government of the Northwest Territories will Consult with the Dehcho prior to authorizing a use of Water or deposit of Waste in Water that is likely to substantially alter the quality, quantity or rate of flow of Water on, flowing through or adjacent to Dehcho Ndehe when such Water is on, flowing through or adjacent to Dehcho Ndehe.<sup>251</sup>

33.4.6 If the Dehcho Government and the applicant seeking authorization for a use of Water or deposit of Waste described in 33.4.2 or 33.4.3 or 33.4.4 do not reach an agreement on compensation within the time limit established by the MVLWB, either party may refer the matter of compensation for resolution by the MVLWB.

33.4.7 Compensation determined by the MVLWB in respect of a use of Water or a deposit of Waste described in 33.4.2 or 33.4.3 or 33.4.4 may be in the form of a lump sum or periodic cash payment or non-monetary compensation such as replacement or substitution of damaged or lost property or equipment or relocation or transportation of Dehcho Citizens or equipment to a different harvesting locale or a combination of such forms of compensation.<sup>252</sup>

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33.4.8 The MVLWB will consider the following factors in determining the amount of compensation payable to the Dehcho Government in respect of a use of Water or deposit of Waste described in 33.4.2 or 33.4.3 or 33.4.4:

<sup>251</sup> This also is a substantial reduction in Crown's duty to consult. See new s. 33.4.5

<sup>252</sup> This is a closed list of compensation components.



- a) the effect of the use of Water or deposit of Waste on the use by Dehcho Citizens of Water on or adjacent to Dehcho Ndehe;
- b) the effect of the use of Water or deposit of Waste on Dehcho Ndehe, taking into account any cultural or special value of the lands to the Dehcho First Nations;
- c) the nuisance, inconvenience and noise caused by the use of Water or deposit of Waste to Dehcho Citizens on Dehcho Ndehe;
- d) the effect of the use of Water or deposit of Waste on the Harvesting of Wildlife, Fish and Migratory Birds by the Dehcho First Nations; and
- e) subject to Legislation, such other factors as the MVLWB may consider relevant.

### **33.5 LEGAL ACTION AND STANDING**

33.5.1 The Dehcho Government has a cause of action against any Person in respect of any use of Water, deposit of Waste or other activity not authorized by Law<sup>253</sup> which substantially alters the quality, quantity or rate of flow of waters which are on, adjacent to or flow through Dehcho Ndehe, with such remedies available to the Dehcho Government as riparian rights holders.

33.5.2 For the purposes of 33.1.2 or 33.5.1, the Dehcho Government will have standing at all times in a court of competent jurisdiction to seek a declaration respecting the authority of any Person to alter the quality, quantity or rate of flow of Water.

### **33.6 INTERJURISDICTIONAL AGREEMENTS**

33.6.1 Prior to the Dehcho Agreement, the Parties will discuss Consultation issues concerning the management of Water in the context of interjurisdictional agreements<sup>254</sup> affecting the Dehcho Settlement Area.

### **33.7 CONFLICTING REGULATORY CONDITIONS**

33.7.1 For greater certainty, any condition on the use of Waters or the deposit of Waste in Waters which are on or flow through Dehcho Ndehe that is imposed under Legislation, including by an authorization issued by the MVLWB, prevails over any conflicting condition imposed by the the Dehcho Government by or under any authority recognized in the Agreement, including Dehcho Government Laws.<sup>255</sup>

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<sup>253</sup> An activity could be authorized by law, yet give rise to a cause of action, eg. negligence.

<sup>254</sup> Examples of such agreements would be helpful.

<sup>255</sup> DFN say DG laws should be paramount.

**CHAPTER 34: SUBSURFACE RESOURCES ON CROWN LAND AND EXISTING  
INTERESTS UNDER GOVERNMENT ADMINISTRATION**

## CHAPTER 35: LAND USE PLANNING

35.1	INTERIM LAND USE PLAN
35.2	REVIEW OF INTERIM LAND USE PLAN AND TRANSITION TO LAND USE PLAN
35.3	LAND USE PLAN

### 35.1 INTERIM LAND USE PLAN

35.1.1 Upon approval by the Dehcho First Nations, the Interim Land Use Plan shall be submitted for approval by the Government of Canada and the Government of the Northwest Territories at the same time that the Dehcho Agreement-in-Principle is submitted for approval.<sup>256</sup>

35.1.2 The Interim Land Use Plan shall come into effect at a date agreed to by the Parties.

35.1.3 Upon ratification of the Interim Land Use Plan, the Dehcho Land Use Planning Committee shall carry out implementation responsibilities, as set out in the Interim Land Use Plan.

35.1.4 The Interim Land Use Plan will be in effect until replaced by the Land Use Plan authorized under the Dehcho Agreement or when terminated in accordance with provisions set out in the Interim Land Use Plan.

35.1.5 The Interim Land Use Plan will be implemented in accordance with the prevailing regulatory regime in respect of land and resource management in the NWT.

35.1.6 Any opinion of conformity or non-conformity that the Dehcho Land Use Planning Committee provides to the Mackenzie Valley Land and Water Board is not binding upon the Board.

35.1.7 The Interim Land Use Plan will apply to the area identified in the Interim Land Use Plan but not on Community Lands, in National Parks or in National Park Reserves.

### 35.2 REVIEW OF INTERIM LAND USE PLAN AND TRANSITION TO LAND USE PLAN

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<sup>256</sup> DFN disagree with tying the plan with the approval of the AIP.

- 35.2.1 After ~~the signing of the AIP~~, at a time agreed to by the Parties, the ~~Land Use Planning Committee~~<sup>257</sup> will:
- a) Initiate a review of the Interim Land Use Plan to assess the implications of the ~~proposed~~ Dehcho Agreement on the Interim Land Use Plan, or other key considerations;
  - b) Consult the Parties, appropriate regulatory authorities, and other planning partners on key issues and recommended amendments to the Interim Land Use Plan; and
  - c) Forward the recommended amendments to the Parties for their consideration and approval.

**Deleted:** Effective Date

**Deleted:** Dehcho Resource Management Authority

- 35.2.2 The amended land use plan resulting from approved amendments under 35.2.1.c will be the Land Use Plan.

- 35.2.3 The Land Use Plan shall come into effect ~~on or after the Effective Date as~~, agreed to by the Parties.

**Deleted:** at a date

### 35.3 LAND USE PLAN

- 35.3.1 The Land Use Plan shall apply to the Dehcho Settlement Area area but not on Community Lands, in National Parks or in National Park Reserves.<sup>258</sup>

- 35.3.2 Upon the effective date of the Land Use Plan, the Dehcho Resources Management Authority shall carry out implementation responsibilities, as set out in the Land Use Plan.<sup>259</sup>

- 35.3.3 The Land Use Plan will operate in accordance with the provision of the Land Use Plan as amended from time to time.

- 35.3.4 Upon the effective date of the Land Use Plan, the Federal Government, Territorial Government, Dehcho Government and the Dehcho Community Governments and their departments and agencies, including the Mackenzie Valley Land and Water Board, shall exercise their powers in relation to the Dehcho Settlement Area in accordance with the plan.

<sup>257</sup> ~~Under review by the Parties.~~

<sup>258</sup> Need to review where the Plan will apply.

<sup>259</sup> Parties to review as the DCRMA evolves in the context of the Dehcho Agreement.

**Deleted:** Parties will review as the DCRMA evolves in the context of the Dehcho Agreement.

## **CHAPTER 36: NATIONAL PARKS**

## **CHAPTER 37: PROTECTED AREAS**

## **CHAPTER 38: HERITAGE RESOURCES**

## **CHAPTER 39: EXPROPRIATION**

<b>39.1</b>	<b>GENERAL PRINCIPLES</b>
<b>39.2</b>	<b>OTHER AVAILABLE LANDS</b>
<b>39.3</b>	<b>ATTEMPT TO NEGOTIATE AN AGREEMENT BEFORE EXPROPRIATION</b>
<b>39.4</b>	<b>EXPROPRIATION</b>
<b>39.5</b>	<b>COMPENSATION – FEE SIMPLE LANDS EXPROPRIATED</b>
<b>39.6</b>	<b>COMPENSATION – NO EXCHANGE LAND AVAILABLE OR LESS THAN FEE SIMPLE INTEREST IS EXPROPRIATED</b>
<b>39.7</b>	<b>EXCHANGE LANDS</b>
<b>39.8</b>	<b>STATUS OF LANDS</b>
<b>39.9</b>	<b>REACQUIRING EXPROPRIATED LANDS</b>
<b>39.10</b>	<b>PUBLIC ROADS</b>
<b>39.11</b>	<b>EMERGENCIES</b>
<b>39.12</b>	<b>CONFLICT</b>

### **39.1 GENERAL PRINCIPLES**

- 39.1.1 The Parties acknowledge the general principle that the size and integrity of Dehcho Ndehe should be maintained and therefore agree that, as a general principle, Dehcho Ndehe will not be expropriated, except in accordance with this chapter.

### **39.2 OTHER AVAILABLE LANDS**

- 39.2.1 Prior to making a decision to expropriate any part of Dehcho Ndehe, the Expropriating Authority will ensure that lands other than Dehcho Ndehe are used, if other lands are available for the purpose for which the Dehcho Ndehe lands are intended to be expropriated.

### **39.3 ATTEMPT TO NEGOTIATE AN AGREEMENT BEFORE EXPROPRIATION**

- 39.3.1 Before proceeding with a proposed expropriation, the Expropriating Authority will attempt to acquire lands for public purposes through negotiated agreements with the Dehcho Government, as set out in 39.3.2.
- 39.3.2 The Expropriating Authority who proposes to acquire an interest in Dehcho Ndehe will:
- a) notify the Dehcho Government regarding the need to acquire an interest in a parcel of Dehcho Ndehe, including the nature, location, size and duration of the interest to be acquired; and



- b) make a reasonable attempt to negotiate an agreement with the Dehcho Government for the transfer of the required interest so as to avoid the need for expropriation.

#### **39.4 EXPROPRIATION**

- 39.4.1 The Parties agree, notwithstanding 39.1.1, the Government of Canada and the Government of the Northwest Territories have the power to expropriate interests in Dehcho Ndehe, as set out herein.
- 39.4.2 Dehcho Ndehe may only be expropriated in accordance with Legislation and the provisions of this chapter.
- 39.4.3 When an agreement is not reached under 39.3.2 (b) between the Expropriating Authority and the Dehcho Government, the Expropriating Authority may proceed with expropriating an interest in Dehcho Ndehe.
- 39.4.4 The Expropriating Authority will provide the Dehcho Government with at least thirty (30) days notice of its intention to seek the consent of the Governor-in-Council or the Executive Council, as the case may be, for the expropriation of the interest in Dehcho Ndehe.
- 39.4.5 The Expropriating Authority will exercise that power of expropriation in accordance with applicable laws, subject to the Dehcho Agreement and implementing legislation and with the consent of the Governor in council or the Executive Council, as the case may be, under the following conditions:
  - a) only the minimum interest required will be taken; and
  - b) the expropriation of an interest in Dehcho Ndehe will occur only as necessary for a public purpose.
- 39.4.6 For greater certainty, where federal legislation deems an expropriation to be for a public purpose, the expropriation of Dehcho Ndehe will be deemed to be for a public purpose under this agreement.
- 39.4.7 Before the Governor in council or the Executive Council, as the case may be, issues an order consenting to the expropriation of an interest in Dehcho Ndehe, the Expropriating Authority will provide to the Dehcho Government, and make available to the public, a report stating the justification for the expropriation and describing the steps taken to satisfy the requirements of 39.4.5.

- 39.4.8 If the Dehcho Government objects to a proposed expropriation of an interest in Dehcho Ndehe, it may, within 60 days after the report has been provided to the Dehcho Government in accordance with 39.4.7, while at the same time providing notice in writing to the Expropriating Authority, refer the matter to a neutral evaluator<sup>260</sup> for a review of the steps taken to satisfy the requirements described in 39.4.5 in accordance with **Annex X**<sup>261</sup>.
- 39.4.9 The Expropriating Authority may not seek Governor-in-Council or Executive Council, as the case may be, consent to the expropriation of an interest in Dehcho Ndehe before the expiration of the period referred to in 39.4.8 or, if Dehcho Government has referred the matter to a neutral evaluator in accordance with 39.4.8, before the neutral evaluator has delivered an opinion on the matter, such opinion to be rendered within 60 days of the referral being made or within such additional time as the Expropriating Authority and the Dehcho Government may agree.
- 39.4.10 For greater certainty, the opinion of the neutral evaluator under 39.4.9:
- a) is without prejudice to the legal positions that may be taken by the Expropriating Authority and the Dehcho Government in court or in any other forum;
  - b) will not be admissible in any legal proceedings, unless otherwise required by law; and
  - c) is not binding on the Governor-in-Council or Executive Council, as the case may be under 39.4.1 – 39.4.6.

**39.5 COMPENSATION – FEE SIMPLE LANDS EXPROPRIATED**

- 39.5.1 Where a fee simple interest in Dehcho Ndehe is expropriated by an Expropriating Authority, the Expropriating Authority will make reasonable efforts:
- a) to identify exchange land within the Dehcho Settlement Area, being either Crown land, [Commissioner's Land] or land available on a willing-seller willing-buyer basis, of equivalent or greater size and comparable value; and
  - b) if the exchange land is acceptable to the Dehcho Government, to acquire and offer the exchange land to the Dehcho Government as partial or full compensation for the expropriation.

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<sup>260</sup> requires additional DR provisions for a neutral evaluator

<sup>261</sup> Requires additional DR provisions for a neutral evaluator

If the Expropriating Authority and the Dehcho Government are unable to agree on the provision of exchange land as compensation, or the Expropriating Authority, after making reasonable efforts, is unable to provide exchange land, the Expropriating Authority will provide the Dehcho Government with other compensation in accordance with 13.6.

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**39.6 COMPENSATION – NO EXCHANGE LAND AVAILABLE OR LESS THAN FEE SIMPLE INTEREST IS EXPROPRIATED**

39.6.1 The total value of compensation for an expropriated interest in Dehcho Ndehe will be determined by taking into account the following factors:

- a) the market value of the expropriated interest at the time expropriation is confirmed;
- b) the replacement value of any improvement to Dehcho Ndehe in which an interest has been expropriated, to the extent it is not covered under a);
- c) any expenses or losses resulting from a disturbance directly attributable to the expropriation;
- d) any reduction in the value of any interest in the Dehcho Ndehe that is not expropriated which results from the expropriation;
- e) any adverse effect on any cultural or other special value of Dehcho Ndehe in which an interest has been expropriated to the applicable Dehcho First Nation, provided that the cultural or other special value is only applied to an interest in Dehcho Ndehe recognized in law and held by the Dehcho Government **on behalf of Dehcho Citizens**, and provided that there will be no increase in the total value of compensation on account of any Section 35 rights recognized under the Constitution Act, 1982; and
- f) the value of any special economic advantage arising out of or incidental to the occupation or use of Dehcho Ndehe by Dehcho Citizens or the Dehcho Government, to the extent that the value is not otherwise compensated for

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39.6.2 If the Dehcho Government and the Expropriating Authority do not reach an agreement on compensation within sixty (60) days from the first offer of compensation, either one of them may refer to dispute resolution in accordance with the Dispute Resolution chapter. An arbitrator may only make an order of compensation in the form of an interest in land where the land is available in accordance with 39.5.1 and is acceptable to the Dehcho Government, cash or a combination thereof. If a fee simple interest in land is

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acquired by the Dehcho Government pursuant to this provision, the parcel of land may, with the agreement of the Parties, become Dehcho Ndehe.

- 39.6.3 A dispute on the valuation of exchange lands under 39.6.2 will not delay the expropriation by the Expropriating Authority to expropriate the interest in Dehcho Ndehe.

### 39.7 EXCHANGE LANDS

- 39.7.1 Land is not available to be provided as exchange land if it is

- a) subject to a lease or an agreement for sale unless the Expropriation Authority and the Person holding that interest consent;
- b) occupied or used by the Expropriation Authority, a Dehcho Community Government, or required for such future occupation or use;
- c) part of a public road;
- d) within 31 metres of a boundary of the Dehcho Settlement Area; or
- e) for any other reason considered unavailable by an arbitrator under the Dispute Resolution chapter

- 39.7.2 Where requested by the Dehcho Government, the exchange lands acquired by the Dehcho Government in exchange for expropriated Dehcho Ndehe will, whenever possible, be contiguous with Dehcho Ndehe.

- 39.7.3 Where an Expropriation Authority expropriates Dehcho Ndehe and the exchange lands are acceptable to the Dehcho Government, the Expropriation Authority will acquire and offer as partial or full compensation for the expropriation of Dehcho Ndehe exchange lands in the Dehcho Settlement Area.

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- 39.7.4 Where an expropriation authority expropriates Dehcho Ndehe, and the only exchange lands available in the Dehcho Settlement Area are in an area of overlap with another First Nation group, such lands may become Dehcho Ndehe if permitted by an overlap agreement between the Dehcho First Nation and the other First Nation group.

- 39.7.5 In situations involving the expropriation of both the surface and subsurface, where the Expropriating Authority offers exchanged lands the subsurface of which is held by Canada or the Government of the Northwest Territories, Canada or the Government of the Northwest Territories, as the case may be, will offer both the surface and the subsurface to the Dehcho Government.

**39.8 STATUS OF LANDS**

- 39.8.1 Where an expropriating authority expropriates a fee simple interest in Dehcho Ndehe, those lands will no longer be Dehcho Ndehe.
- 39.8.2 Where an expropriating authority expropriates less than a fee simple interest in Dehcho Ndehe,
- a) those lands will remain Dehcho Ndehe;
  - b) those lands remain subject to Dehcho Laws, except to the extent those laws are inconsistent with the use of the lands for federal or territorial public purposes as determined by the Federal or Territorial Expropriating Authority; and
  - c) the Dehcho Government or any Person authorized by the Dehcho Government may continue to use the lands unless that use is inconsistent with the purpose of expropriation as determined by the Expropriating Authority.

**39.9 REACQUIRING EXPROPRIATED LANDS**

- 39.9.1 Where lands or an interest in Dehcho Ndehe which have been expropriated are, in the opinion of the expropriating authority, no longer required:
- a) the Dehcho Government will have first right of refusal to re-acquire the expropriated lands;
  - b) the expropriating authority may not dispose of those lands for a price less than the price offered to the Dehcho Government; and
  - c) subject to \_\_, the Dehcho Government may offer to return exchanged land for expropriated land, or may offer a combination of exchanged land and a cash component for expropriated land;

**39.10 PUBLIC ROADS**

- 39.10.1 An Expropriating Authority may expropriate Dehcho Ndehe in accordance with 39.1.1 for use as a public road or public road allowance without compensation to the Dehcho Government.
- 39.10.2 No lands expropriated under 39.8.1 may be used for any purpose other than a public road or public road allowance without the payment of compensation.
- 39.10.3 Any dispute between an Expropriating Authority and the Dehcho Government as to the location of a public road for which Dehcho Ndehe are to be

expropriated under 39.8.1 may be referred by a Party for resolution in accordance with the Dispute Resolution chapter.

39.10.4 Where any lands expropriated under 39.8.1 or conveyed without compensation to Canada or the Government of the Northwest Territories for a public road are no longer needed for a public road, Canada or the Government will grant back to the Dehcho Government the fee simple interest in those lands and those lands become Dehcho Ndehe.

39.10.5 The amount of land expropriated under 39.8.1 or conveyed without compensation to Canada or the Government of the Northwest Territories for a public road and not granted back to the Dehcho Government will not exceed, at any time, 182 square kilometres<sup>264</sup>.

#### **39.11 EMERGENCIES**

39.11.1 Nothing in the Agreement will affect or limit the application to Dehcho Ndehe of the Emergency Management Act (Canada) or any successor legislation.

#### **39.12 CONFLICT**

39.12.1 In the event of an inconsistency or conflict between this Chapter and Federal or Territorial Laws of general application, this Agreement is paramount to the extent of the conflict.

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<sup>264</sup> This number may be adjusted if the quantum changes.

## **CHAPTER 40: ECONOMIC MEASURES**

## CHAPTER 41: MINERAL ROYALTIES

- 41.1. MACKENZIE VALLEY ROYALTIES
- 41.2. ROYALTIES AND NON-REFUNDABLE RENTS
- 41.3. ANNUAL STATEMENT AND AUDIT
- 41.4. EXCESS MINERAL REVENUES
- 41.5. CONSULTATION

### 41.1 MACKENZIE VALLEY ROYALTIES<sup>265</sup>

41.1.1 Prior to the Dehcho Agreement, Canada and the Dehcho First Nations will calculate the amount of Mineral Royalties collected for the benefit of the Dehcho First Nations as provided under part 2 of the Dehcho Interim Resource Development Agreement, and this amount will be paid out in accordance with a schedule to be negotiated as part of the Dehcho Agreement.

41.1.2 The Dehcho Agreement will provide that Canada will pay to the Dehcho Government, annually, an amount equal to:

- a) X% of the first \$2.0 million of Mineral Royalties received by Canada in that year; and
- b) X% of additional resource royalties received by Canada in that year

in respect of resources in, on or under the Mackenzie Valley.

41.1.3 Amounts payable by Canada or the Government of the Northwest Territories under this chapter will be calculated on the basis of amounts received by Canada or the Government of the Northwest Territories in respect of Minerals produced following the Effective Date of the Dehcho Agreement and will be paid to the Dehcho Government as soon as practicable after each calendar year quarter.

### 41.2 ROYALTIES AND NON-REFUNDABLE RENTS

41.2.1 Royalties or non-refunded rents received by Canada or the Government of the Northwest Territories, in respect of the period between signing of Dehcho Agreement and the Effective Date, for an interest listed in Schedule "X", will be accounted for by Canada or the Government of the Northwest Territories

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<sup>265</sup> DFN consider the amount of royalties collected in the MV to be extremely low



and an equal amount paid to the Dehcho Government by the respective receiver authority as soon as practicable after the Effective Date.

41.2.2 Any Royalties or non-refunded rents received by Canada or the Government of the Northwest Territories in respect of the period after the Effective Date for an interest listed in Schedule "X" or for any replacement thereof will be accounted for by Canada or the Government of the Northwest Territories and an equal amount paid to the Dehcho Government as soon as practicable after each calendar year quarter.

41.2.3 Amounts payable by Canada or the Government of the Northwest Territories under 41.2.2 and 41.2.3 and amounts payable to another Aboriginal People under any similar provision in another Land Claims Agreement or Land and Resource Agreement in the Mackenzie Valley will not be considered as amounts received by Canada or the Government of the Northwest Territories for the purpose of 41.1.3.

#### **41.3 ANNUAL STATEMENT AND AUDIT**

41.3.1 Following the Effective Date, Canada or the Government of the Northwest Territories will provide annually to the Dehcho Government, a statement indicating the basis on which Mineral Royalties were calculated for the preceding year.

41.3.2 On the request of the Dehcho Government, Canada or the Government of the Northwest Territories will request the Auditor General to verify the accuracy of the information in the annual statements.

#### **41.4 EXCESS MINERAL REVENUES**

41.4.1 The Dehcho Government will share Excess Mineral Revenues on Dehcho Ndehe with the Aboriginal People who have completed Land Claims Agreements in the Mackenzie Valley.<sup>266</sup>

41.4.2 The Dehcho Agreement will establish a mechanism through which the Dehcho Government will share Excess Mineral Revenues on Dehcho Ndehe with other Aboriginal People who have completed Land Claims Agreements in the Mackenzie Valley.

#### **41.5 CONSULTATION**

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<sup>266</sup> DFN have concern with the requirement to share its mineral revenues with other groups

- 41.5.1 Canada or the Government of the Northwest Territories will Consult with the Dehcho Government on any proposed Legislation to amend the Mineral Royalty payable to Canada or the Government of the Northwest Territories.
- 41.5.2 Where Canada or the Government of the Northwest Territories has formal discussions with third parties on proposed changes to the fiscal regime affecting the Mineral Royalty payable to Canada or the Government of the Northwest Territories, it will also Consult with the Dehcho Government.

## **CHAPTER 42: FINANCIAL PAYMENTS**

### **42.1. CAPITAL TRANSFER 42.2. NEGOTIATION LOANS REPAYMENTS**

#### **42.1 CAPITAL TRANSFER**

42.1.1. Canada will make a capital transfer to the Dehcho Government in accordance with the Capital Transfer Payments Schedule set out in Part X of the appendix to this chapter.

42.1.2 Canada is discharged from all undertakings and obligations, if any, to the Dehcho First Nation in respect of the Norman Wells Proven Area.

42.1.3 A provisional schedule of payments will be negotiated prior to the Final Agreement which will provide:

- a) a first payment on the Effective Date and subsequent payments on each anniversary of the Effective Date;
- b) the net present value of the amounts listed in the provisional schedule of payments will equal the amount in the Final Capital Transfer Payments Schedule; and
- c) the net present value referred to in paragraph ii) will be calculated using as a discount rate, the most recently approved amortized Consolidated Revenue Fund lending rate available prior to the initialling of the Final Agreement, less one eighth of one percent.

42.1.4 The Capital Transfer Payments Schedule will be determined prior to the Effective Date by multiplying each amount in the provisional schedule by the value of the latest available quarterly Final Domestic Demand Implicit Price Index and by dividing the resulting product by the value of the Final Domestic Demand Implicit Price Index for the quarter in which the amount in paragraph 42.1.1 is offered.

#### **42.2 NEGOTIATION LOANS REPAYMENTS**

42.2.1 The Dehcho Government will make negotiation loan repayments to Canada in accordance with the Negotiation Loans Repayments Schedule.

DFN ROLLING DRAFT  
Draft: January 31, 2014

Without Prejudice  
For Discussion Purposes Only

- 42.2.2 Canada will set off and deduct from a payment made under the Capital Transfer Payments Schedule the amount of a repayment to be made under the Negotiation Loans Repayments Schedule on the same date.

## **CHAPTER 43: FISCAL RELATIONS**

## CHAPTER 44: IMPLEMENTATION

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- 44.1 IMPLEMENTATION PLAN
- 44.2 IMPLEMENTATION PLANNING WORKING GROUP
- 44.3 IMPLEMENTATION COMMITTEE
- 44.4 ANNUAL REPORT

### 44.1 IMPLEMENTATION PLAN

- 44.1.1 Prior to the initialling of the Dehcho Agreement, the Parties will conclude an Implementation Plan.
- 44.1.2 The first Implementation Plan will take effect on the Effective Date and have a term of ten (10) years or such other term as the Parties may agree.
- 44.1.3 Subsequent Implementation Plans will have a term of ten (10) years or such other terms as the Parties may agree.
- 44.1.4 The Implementation Plan will:
  - a) List the obligations in the Dehcho Agreement and describe the implementation activities required to fulfill these obligations, including the Party or Parties responsible for the activities;
  - b) Set the anticipated timeframe for completing the activities;
  - c) Identify the Party responsible for the funding required to fulfill the obligations set out in the Dehcho Agreement;
  - d) Specify how the Implementation Plan is to be amended, renewed or extended; and
  - e) address other matters agreed to by the Parties.
- 44.1.5 The Implementation Plan will not:
  - a) form part of the Dehcho Agreement;
  - b) create legal obligations, unless the Parties otherwise agree in writing;
  - c) alter any rights or obligations set out in the Dehcho Agreement;
  - d) be used to interpret the Dehcho Agreement; and
  - e) preclude any Party from asserting that rights or obligations exist under the Dehcho Agreement even though they are not referred to in the Implementation Plan.
- 44.1.6 If the Parties specify that a specific obligation is legally binding pursuant to 44.1.5 b), the Implementation Plan will stipulate that the performance of such

legally binding obligation will operate as a full and final discharge of that legally binding obligation.

#### **44.2 IMPLEMENTATION PLANNING WORKING GROUP**

44.2.1 After the ratification of the Agreement-in-Principle the Parties will establish an Implementation Planning Working Group consisting of one (1) representative from each Party.

44.2.2 The Implementation Planning Working Group will be responsible for:

- a) developing the Implementation Plan;
- b) developing the plan referred to in [reference to Pre-Effective Date Plan to be included in the future Transition Chapter]; and
- c) completing any other activities as agreed to by the Parties.

Deleted: <sup>268</sup>

#### **44.3 IMPLEMENTATION COMMITTEE**

44.3.1 An implementation committee will be established no later than sixty (60) days prior to the Effective Date and will continue until the Parties agree to terminate the committee.

44.3.2 The implementation committee will consist of three individuals. Each Party will appoint one individual as its representative.

44.3.3 Each member of the implementation committee may be accompanied by other individuals to provide support.

44.3.4 The implementation committee will:

- a) establish the procedures and rules for the operation of the Implementation Committee;
- b) prepare a plan to guide the work of the Implementation Committee
- c) identify issues or challenges arising from the implementation of the Dehcho Agreement and provide advice and recommendations to the Parties on ways the implementation of the Dehcho Agreement can be strengthened including whether any amendments to the Dehcho Agreement should be considered;
- d) monitor and assess progress towards the implementation of the Dehcho Agreement;
- e) consider developing a communication strategy to facilitate ongoing communication in respect of the implementation of the Dehcho Agreement;

- f) prepare and provide the Parties with an annual report on the implementation of the Dehcho Agreement;
- g) make all decisions by unanimous agreement; and
- h) meet annually or more often as required.

44.3.5 The Implementation Committee may:

- a) facilitate the resolution of disputes, including disputes referred to in chapter DR;
- b) establish working groups as appropriate;
- c) amend the Implementation Plan, as agreed; and
- d) carry out such other work as agreed to by the Parties.

44.3.6 Each Party will be responsible for the costs of its participation on the implementation committee.

#### **44.4 ANNUAL REPORT**

44.4.1 The annual report of the Implementation Committee, as referred to in 44.3.4 f), will include:

- a) The activities that have been undertaken or completed by the implementation committee in the year covered by the report;
- b) an overview of the successes achieved in the implementation of the Dehcho Agreement in the year covered by the report;
- c) identification of implementation issues; and,
- d) other matters as agreed to by the Parties.

44.4.2 Canada will be responsible for publishing the annual report.<sup>269</sup>

44.4.3 The annual report will be made available to the Parties within six (6) months from the beginning of the new fiscal year.

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<sup>269</sup> DFN would like Canada to be responsible for the cost of translation to Dene Zhatie



## **CHAPTER 45: TRANSITION**

## CHAPTER 46: DISPUTE RESOLUTION

46.1	GENERAL
46.2	ROSTER OF MEDIATORS AND ARBITRATORS
46.3	INFORMAL DISCUSSION
46.4	MEDIATION
46.5	BINDING ARBITRATION OR COURT PROCEEDINGS

### 46.1 GENERAL

46.1.1 This Chapter will apply only to the following types of disputes:<sup>270</sup>

- a) any matter in the Dehcho Agreement where the wording stipulates that a Party or a Person “will refer the dispute for resolution in accordance with the Dispute Resolution Chapter”;
- b) any matter in an ancillary agreement between Canada or the Government of the Northwest Territories and the Dehcho Government where the wording stipulates that a Party or a Person “will refer the dispute for resolution in accordance with the Dispute Resolution Chapter”; or
- c) a dispute between or among the Parties concerning the interpretation or application of the Dehcho Agreement.

46.1.2 Disputes under 46.1.1 (a) and 46.1.1 (b) referred to this Chapter for resolution or determination will progress through the following sequential steps:

- a) informal discussion;
- b) mediation, unless one of the Disputants elects to proceed directly to binding arbitration; and
- c) binding arbitration.

46.1.3 Disputes under 46.1.1 c) referred to this Chapter for resolution or determination will progress through the following sequential steps:

- a) informal discussion;
- b) mediation, if agreed to by the Disputants;
- c) binding arbitration, if agreed to by the Disputants; or
- d) court proceedings if initiated by a Disputant.

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<sup>270</sup> Canada (LTC) will propose another category of matters in the Dehcho Agreement excluded from arbitration.

- 46.1.4 Disputants may agree to vary a procedural requirement contained in this Chapter, as it applies to a particular dispute.
- 46.1.5 Disputants may at any time resolve their dispute by an agreement in writing. Notification and a copy of any such agreement will be provided to all Parties.
- 46.1.6 Notwithstanding 46.1.2, nothing in this Chapter will be construed to prevent the Disputants from agreeing to refer their dispute for a determination under a court process or to an alternate dispute resolution mechanism such as arbitration pursuant to the Arbitration Act, R.S.N.W.T.
- 46.1.7 Nothing in this Chapter prevents a Disputant from commencing proceedings with an arbitrator or court at any time:
- a) to prevent the loss of a right to commence proceedings due to the expiration of a limitation period; or
  - b) to obtain interlocutory or interim relief that is otherwise available pending resolution of the dispute under this Chapter.
- 46.1.8 If a dispute has been referred to mediation or arbitration under this Chapter, no other mediation or arbitration process provided by Legislation applies.
- 46.1.9 If a Dehcho Citizen has a right of action in relation to the Dehcho Agreement, the Dehcho Government may, with the consent of the Dehcho Citizen, bring that action on behalf of the Dehcho Citizen.
- 46.1.10 All communications undertaken by a Disputant during an informal discussion or mediation process under this Chapter will be “without prejudice” to any position the Disputant may take in any other legal process, including arbitration pursuant to this Chapter. Unless the Disputants agree otherwise, they will treat all such communications as confidential.

## **46.2 ROSTER OF MEDIATORS AND ARBITRATORS**

- 46.2.1 The Parties will develop and maintain a roster of candidates to act as mediators and arbitrators who have:
- a) a familiarity with the circumstances of the Parties; and
  - b) the skills, abilities and expertise to act as mediators or arbitrators.

## **46.3 INFORMAL DISCUSSION**

- 46.3.1 Upon notice of a dispute from a Disputant, the Disputants will have an informal discussion within 20 business days in an attempt to resolve the dispute prior to proceeding to mediation or arbitration.

#### **46.4 MEDIATION**

- 46.4.1 If a dispute has not been resolved through informal discussions within 20 business days, or another period agreed to by the Disputants, the Disputants may agree to proceed to mediation.
- 46.4.2 The Disputants will agree on a mediator from the roster under 46.2.1 within 10 business days. In the absence of agreement, a Disputant may apply to the NWT Supreme Court to appoint a mediator.
- 46.4.3 The Disputants will within 10 business days, or an agreed upon time arrange for the commencement of the mediation.
- 46.4.4 Face – to – face mediations will be held in the Northwest Territories unless the Disputants agree otherwise. Alternatively, the Disputants may agree to conduct a mediation by teleconference, videoconference or another method.
- 46.4.5 Each Disputant will bear its own costs to participate in the mediation. All other costs of mediating a dispute, including the remuneration and expenses of the mediator, and costs associated with the process, will be shared equally among the Disputants, unless otherwise provided for in the Dehcho Agreement or the Implementation Plan.
- 46.4.6 Upon termination of the mediation proceedings, the mediator will submit a mediation report to the Disputants. Unless the Disputants agree otherwise, the mediation report will be confidential.

#### **46.5 BINDING ARBITRATION OR COURT PROCEEDINGS**

- 46.5.1 If the Disputants referred the dispute to mediation and there is no resolution within 45 business days, from the date the mediator is appointed, or any other period agreed to by the Disputants or if the Disputants have agreed to go directly to binding arbitration:
- a) in the case of a dispute set out in 46.1.1 (a) and 46.1.1 (b), a Disputant may deliver notice to the other Disputant to proceed to binding arbitration; and
  - b) in the case of a dispute set out in 46.1.1 c):

- i) the Disputants may agree to proceed to binding arbitration, court or another alternative dispute resolution process; or
  - ii) a Disputant may commence court proceedings.
- 46.5.2 Where a dispute proceeds to binding arbitration, the Disputants will agree on an arbitrator from the roster under 46.2.1 within 10 business days. In the absence of agreement, a Disputant may apply to the NWT Supreme Court to appoint an arbitrator.
- 46.5.3 Unless the Disputants agree otherwise, an individual who has acted as mediator in a dispute cannot act as an arbitrator for that dispute.
- 46.5.4 Any Party has standing in any dispute that is referred to arbitration pursuant to this Chapter.
- 46.5.5 On application and on such terms as the arbitrator may order, an arbitrator may allow any Person that is not a Disputant to participate as an intervener in an arbitration if, in the opinion of the arbitrator, the interest of that Person may be directly affected by the arbitration.
- 46.5.6 Subject to the rules established by the Parties, the provisions of the Dehcho Agreement, and the provisions of an agreement referred to in 46.1.1 (b), the arbitrator may, in relation to any matter before the arbitrator:
  - a) determine all questions of procedure, including the method of giving evidence;
  - b) make an award, including interim relief;
  - c) provide for the payment of interest and costs;
  - d) subpoena witnesses;
  - e) administer oaths or affirmations to witnesses; and
  - f) refer questions of law to the Supreme Court of the Northwest Territories.
- 46.5.7 No arbitrator may rule on the validity of the Dehcho Agreement or alter, amend, delete or substitute any provision of the Dehcho Agreement in any manner.
- 46.5.8 A decision of an arbitrator will be conclusive and binding on the Disputants and will not be challenged by appeal or review in any court except on the ground that the arbitrator has erred in law or exceeded his or her jurisdiction.
- 46.5.9 Each Disputant, Party, or intervener participating in the arbitration will bear their own costs. All other costs of arbitrating a dispute, including the

remuneration and expenses of the arbitrator, and costs associated with the process, will be shared equally among the Disputants, unless the arbitrator decides otherwise.

46.5.10 Disputant may, after the expiration of 10 business days from:

- a) the date of the release of an arbitration decision or order; or
- b) the date provided in the decision for compliance

whichever is later, file in the Registry of the Supreme Court of the Northwest Territories a copy of the arbitration decision or order and the decision or order will be entered as if it were a decision or order of the court. On being entered, the arbitration decision or order will be deemed, for all purposes except for an appeal from it, to be an order of the Supreme Court of the Northwest Territories and enforceable as such.

46.5.11 Prior to the finalizing the Dehcho Agreement, the Parties will:

- a) set out the criteria and method for the selection of the roster list of mediators and arbitrators; and
- b) establish procedures for mediation and arbitration, including confidentiality, which will provide for expeditious processes.

## CHAPTER 47: ELIGIBILITY AND ENROLMENT

47.1	ELIGIBILITY CRITERIA
47.2	ENROLMENT COMMITTEE
47.3	PRELIMINARY ENROLMENT PERIOD
47.4	RESUMPTION OF ENROLMENT
47.5	DEHCHO CITIZENSHIP REGISTER
47.6	APPEAL BOARD
47.7	ENROLMENT RESPONSIBILITIES AFTER EFFECTIVE DATE
47.8	REGISTRAR
47.9	COSTS

### 47.1 ELIGIBILITY CRITERIA<sup>271</sup>

- 47.1.1 An individual will be eligible to be enrolled as a Dehcho Citizen in the Final Agreement if he or she is a Canadian citizen, or permanent resident of Canada who is:
- a) a Dehcho Dene;
  - b) ordinarily resident in the Dehcho Settlement Area, who is accepted as a Dehcho Citizen pursuant to the Community Acceptance process set out in the Dehcho Constitution;
  - c) adopted as a child under laws recognized in Canada or by Dehcho Dene custom by an individual eligible for enrolment; or
  - d) a direct descendant of an individual eligible for enrolment.
- 47.1.2 An individual will also be eligible to be enrolled as a Dehcho Citizen in the Final Agreement if he or she is a Dehcho Dene who as a result of adoption as a child became a citizen of a country other than Canada.
- 47.1.3 An individual is not eligible to be enrolled as a Dehcho Citizen while:
- a) that individual is enrolled in another Land Claims Agreement, Lands and Resources Agreement or Self Government Agreement, unless he or she opts to be removed from that other agreement; or
  - b) that individual's name is entered on a non-DFN Band Membership List, unless he or she opts to be removed from the other Band Membership List or withdraws an application for Band Membership; or
  - c) that individual's name is entered on a Métis Local Membership List other than the Fort Simpson or Fort Providence Métis Local

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<sup>271</sup> Canada still reviewing the Eligibility Criteria

Membership Lists<sup>272</sup>, unless he or she provides notice of intention to be removed from the other Membership List or withdraws an application for membership.

- 47.1.4 A Dehcho Citizen may not enrol in another Land Claims Agreement, Lands and Resources Agreement or Self Government Agreement or make application to be on a non-DFN Band Membership List or a Métis Local Membership List unless he or she provides notice to withdraw as a beneficiary under the Dehcho Agreement.
- 47.1.5 Upon applying to be enrolled as a Dehcho Citizen, an individual must notify the Enrolment Committee if he or she is a beneficiary or has applied for enrolment under another Land Claims Agreement, Lands and Resources or Self Government Agreement or if the individual's name is entered on a non-DFN Band Membership List or a Métis Local Membership List.
- 47.1.6 Within 120 days of the Effective Date or the date of notification of acceptance of enrolment, an individual referred to in 47.1.5 who meets the eligibility criteria set out in 47.1.1 and 47.1.2, as applicable, and whose application for enrolment has been accepted, must provide written evidence to the Enrolment Committee demonstrating:
- a) that he or she has ceased to be a beneficiary, or has withdrawn his or her application for enrolment under another Land Claims Agreement, Lands and Resources Agreement or Self Government Agreement; or
  - b) has withdrawn his or her application or has been removed from a non-DFN Band Membership List or a Métis Local Membership List, other than the Fort Simpson or Fort Providence Métis Local Membership Lists.
- 47.1.7 An individual referred to in 47.1.3 and who is accepted to be enrolled as a Dehcho Citizen by the Enrolment Committee will only be added to the Enrolment List and/or the Dehcho Citizenship Register once they are able to provide the required written evidence under 47.1.6.
- 47.1.8 Until the requirements of 47.1.6 have been satisfied, an individual is not entitled to exercise any rights or receive any benefits under the Final Agreement.

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<sup>272</sup> Canada requires more information about these Métis Local Lists and how they will be defined in the agreement.



- 47.1.9 The burden of demonstrating eligibility will be on the applicant, including notifying the Enrolment Committee promptly when an individual becomes ineligible by virtue of a change in status identified in 47.1.3.
- 47.1.10 Enrolment will not confer or deny any rights of entry into Canada, Canadian citizenship or the right to be registered under the *Indian Act* or any rights or benefits under the *Indian Act* or, except as set out under the Dehcho Agreement, Federal Law or Territorial Law, impose any obligation on Canada or the Government of the Northwest Territories to provide rights or benefits.
- 47.2 ENROLMENT COMMITTEE**
- 47.2.1 The Enrolment Committee will be established no later than 60 days following the signing of this Agreement.
- 47.2.2 The Enrolment Committee will be composed of four individuals appointed by the DFN and two individuals appointed by Canada.
- 47.2.3 The Enrolment Committee will be responsible for creating and maintaining the Enrolment List and Dehcho Citizenship Register and keeping information about those applications confidential prior to Effective Date.
- 47.2.4 Subject to decisions rendered by the Appeal Board, the Enrolment Committee will be the decisive body for determining who is eligible to become a Dehcho Citizen and an Eligible Voter for the purpose of the Dehcho Agreement.
- 47.2.5 The Enrolment Committee will establish its own procedures and time limits in accordance with the principles of natural justice and this Agreement.
- 47.2.6 No action may be commenced against the Enrolment Committee or any member of the Enrolment Committee for anything said or done, or omitted to be said or done in good faith in the performance, or intended performance, of a duty or in the exercise of a power under this Chapter.
- 47.3 PRELIMINARY ENROLMENT PERIOD**
- 47.3.1 Following its establishment, the Enrolment Committee will commence the Preliminary Enrolment Period for the purpose of creating the Enrolment List.
- 47.3.2 During the eighteen (18) month duration of the Preliminary Enrolment Period, the Enrolment Committee will:

- a) take reasonable steps to prepare information respecting eligibility to be enrolled as a Dehcho Citizen, including application forms;
  - b) publicize the eligibility criteria, and make the information and forms available to eligible individuals;
  - c) set dates for receiving applications to be on the Enrolment List;
  - d) receive and review applications for the Enrolment List based on the eligibility criteria set out in 47.1;
  - e) amend the Enrolment List to take into account decisions of the Appeal Board;
  - f) update the Enrolment List and, when necessary, remove the names of the following individuals from the Enrolment List:
    - i) an individual who is deceased;
    - ii) an individual who is not eligible to be enrolled pursuant to 47.1.3.
    - iii) an individual enrolled by mistake or on the basis of false or misleading documentation; or
    - iv) an individual who applies to be removed from the Enrolment List.; and
  - g) report on the enrolment process to the Parties.
- 47.3.3 Where the individual to be enrolled as a Dehcho Citizen is a Child or is legally incompetent<sup>273</sup>, the application to be added or removed from the Enrolment List must be made by that individual's parent, guardian or legal representative.
- 47.3.4 If the Enrolment Committee rejects an application to be on the Enrolment List, the applicant may request a reconsideration of the application by the Enrolment Committee. An applicant may only submit a rejected application for reconsideration by the Enrolment Committee once and if the application is rejected and on the condition that the applicant is presenting new information to support his/her eligibility to become a Dehcho Citizen.
- 47.3.5 Should the Enrolment Committee reject the reconsideration under 47.3.4, the applicant will have an opportunity to appeal the decision to the Appeal Board following its establishment in accordance with 47.6.1.
- 47.3.6 The Enrolment Committee will be responsible for providing the applicant a written reason for rejecting an application upon first rejection and upon rejection of reconsideration, as it may apply.

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<sup>273</sup> Canada currently reviewing alternative language

- 47.3.7 At the end of the Preliminary Enrolment Period, the Enrolment Committee and the Appeal Board will cease all activity and will reconvene in accordance with 47.4.1 and 47.4.2. If an appeal is pending, the committee and the board will remain in function prior to ceasing all activity.

#### **47.4 RESUMPTION OF ENROLMENT**

- 47.4.1 At least six months prior to the initialling of the Dehcho Agreement, the Enrolment Committee will reconvene and will publish the Enrolment List created under 47.3.
- 47.4.2 The Appeal Board will reconvene following the publication of the Enrolment List under 47.4.1.
- 47.4.3 The Enrolment Committee will resume enrolment after the publication of the Enrolment List under 47.4.1 and will receive and review applications by individuals to be on the Enrolment List based on the eligibility criteria set out in 47.1 and managed pursuant to the same criteria and procedures it established and published under 47.3.
- 47.4.4 An individual whose name already appears on the Enrolment List need not apply except to have his or her name removed from the Enrolment List.
- 47.4.5 The process for reconsideration and appeals will be consistent the process established during the Preliminary Enrolment Period as per 47.3.3, 47.3.4 and 47.3.5.
- 47.4.6 Six (6) months after the publication of the Enrolment List under 47.4.1, the Enrolment Committee will provide the Enrolment List to the Ratification Committee for the purpose of creating the Preliminary Voters List as set out in 48.2.2 f).

#### **47.5 DEHCHO CITIZENSHIP REGISTER**

- 47.5.1 Following Dehcho Ratification of the Dehcho Agreement, the Enrolment Committee will create the Dehcho Citizenship Register in which all names on the Enrolment List provided to the Ratification Committee under 47.4.4 will be enrolled.
- 47.5.2 Until the Registrar is established under section 47.8.1, the Enrolment Committee may continue to receive applications by individuals for the purpose of being added or removed from the Dehcho Citizenship Registrar,

based on the eligibility criteria set out in 47.1 and managed pursuant to the criteria and procedures it established under 47.3.

- 47.5.3 Prior to the Effective Date, the Enrolment Committee will publish the Dehcho Citizenship Register and, as soon as practicable, provide copies of the Dehcho Citizenship Register to the Dehcho First Nations, Government of the Northwest Territories and Canada.

**47.6 APPEAL BOARD**

- 47.6.1 Any final decision of the Enrolment Committee may be appealed to an Appeal Board to be established by the Parties no later than 60 days following the signing of this Agreement.

- 47.6.2 The Appeal Board will be composed of three individuals, one appointed by the DFN, one appointed by Canada and one jointly appointed by the DFN and Canada.

- 47.6.3 The Appeal Board will:

- a) establish its own procedures applying the principles of natural justice and this Agreement;
- b) set time limits for appeals<sup>274</sup>;
- c) hear and determine any appeal brought forward including:
  - i) determining whether the appellant, or the individual on behalf of whom the appellant appealed, will be enrolled;
  - ii) re-hearing any matters arising from 47.6.5 or 47.6.6; and
  - iii) maintaining a record of those decisions;
- d) provide written reasons for each decision to each appellant and to the Enrolment Committee; and
- e) maintain a record of decisions and provide those decisions to the Enrolment Committee as required.

- 47.6.4 An applicant or a Party may apply to the Supreme Court of the NWT to review a decision of the Appeal Board on the grounds that the Appeal Board:

- a) acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction;
- b) failed to observe procedural fairness; erred in law; or

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<sup>274</sup> Canada still reviewing whether the agreement should set out the time limits for appeals

- c) based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

47.6.5 On an application for judicial review under 47.6.4, the court may dismiss the application, set aside the decision, or refer the matter back to the Appeal Board for determination in accordance with any directions that the court considers appropriate.

47.6.6 If the Appeal Board fails to hear or decide an appeal within a reasonable time, an applicant or Party may apply to the Supreme Court of the NWT for an order directing the enrolment Appeal Board to hear or decide the appeal, in accordance with any directions that the court considers appropriate.

47.6.7 An applicant or Party may apply for judicial review within 60 days of receiving notification of the decision of the enrolment Appeal Board or a longer time as determined by the court.

47.6.8 No action may be commenced against the Appeal Board, or any member of the Appeal Board, for anything said or done or omitted to be said or done in good faith in the performance, or intended performance, of a duty or in the exercise of a power under this chapter

#### **47.7 ENROLMENT RESPONSIBILITIES AFTER EFFECTIVE DATE**

47.7.1 The Enrolment Committee and the Appeal Board will be dissolved when they have rendered decisions in respect of those applications or appeals commenced prior to Effective Date and will provide those results to the Registrar upon its establishment in accordance with 47.8.1.

47.7.2 After Effective Date, the Dehcho Government will be responsible for enrolment procedures, including appeal procedures, and will maintain an enrolment register and ensure that the Registrar provides a copy of the Dehcho Citizenship Register to Canada and the Government of the Northwest Territories annually or at another time agreed by the Parties.

#### **47.8 REGISTRAR**

47.8.1 Prior to the Effective Date, the Dehcho First Nations will designate an individual or group of individuals as the Registrar. The Registrar will be established as soon as practicable after the Effective Date.

- 47.8.2 Following its establishment, the Registrar will prepare information respecting the Dehcho Citizenship Register and the eligibility criteria required to be enrolled as a Dehcho Citizen and make that information available to individuals eligible to be enrolled as Dehcho Citizens.
- 47.8.3 The Registrar will establish its own procedures and time limits for applications in accordance with the principles of natural justice.
- 47.8.4 The Registrar will:
- a) continue to receive and review applications from individuals to be Dehcho Citizens and will add those accepted applications to the Dehcho Citizenship Register based on the eligibility criteria set out in 47.1.
  - b) remove the names of the following individuals from the Dehcho Citizenship Register:
    - i) an individual who is deceased;
    - ii) an individual who is not eligible to be enrolled pursuant to 47.1.3.
    - iii) an individual enrolled by mistake or on the basis of false or misleading documentation; or
    - iv) an individual who applies to be removed from the Dehcho Citizenship Register.
- 47.8.5 Where the individual to be enrolled as a Dehcho Citizen is a Child or is legally incompetent<sup>275</sup>, the application to be added or removed from the Dehcho Citizenship Register must be made by that individual's parent, guardian or legal representative.
- 47.8.6 The Registrar will make corrections to the name of an individual on the Dehcho Citizenship Register upon application and where appropriate.
- 47.8.7 An individual whose application to be added to the Dehcho Citizenship Register is rejected or whose name is removed may, within 60 days of receipt of notice of such decision, appeal in writing to the Registrar. The notice of decision will be in writing, will contain reasons and will inform the individual of the right to appeal.

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<sup>275</sup> Same issue in 4.3.3

- 47.8.8 The Registrar will maintain a record of every individual whose application to be added to the Dehcho Citizenship Register is rejected or whose name is removed from the Dehcho Citizenship Register.
- 47.8.9 The Registrar will provide each Dehcho Citizen with proof of enrolment on the Dehcho Citizenship Register.
- 47.8.10 The Registrar will publish the names on the Dehcho Citizenship Register at least once a year.
- 47.8.11 The Registrar will send to the Dehcho Government, Government of the Northwest Territories and Canada, a copy of each annual publication of the names on the Dehcho Citizenship Register as well as notice of any additions to or subtractions from the Dehcho Citizenship Register.
- 47.8.12 The Registrar will provide to every individual reasonable access to examine the Dehcho Citizenship Register and upon request provide a copy or excerpt. A fee for copies that are requested may be imposed<sup>276</sup>.
- 47.8.13 No action may be commenced against the Registrar or any member of the Registrar for anything said or done, or omitted to be said or done in good faith in the performance, or intended performance, of a duty or in the exercise of a power under this Chapter.
- 47.9 COSTS**
- 47.9.1 Canada will pay the reasonable and necessary costs of enrolment before the Effective Date, and any resulting appeals in accordance with an approved budget.
- 47.9.2 The Dehcho Government will be responsible for ongoing enrolment costs after the Effective Date, including the costs of its enrolment appeal process.

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<sup>276</sup> Canada questioning if there are any privacy issues with making the Dehcho Citizenship Register public

## **CHAPTER 48: RATIFICATION OF THE DEHCHO AGREEMENT**

### **48.1 RATIFICATION OF THE DEHCHO AGREEMENT**

#### **48.2 RATIFICATION COMMITTEE**

#### **48.3 APPEALS**

#### **48.4 RATIFICATION VOTE**

#### **48.5 RATIFICATION BY DFN**

#### **48.6 RATIFICATION BY THE GOVERNMENT OF THE NORTHWEST TERRITORIES**

#### **48.7 RATIFICATION BY CANADA**

#### **48.8 COSTS**

### **48.1 RATIFICATION OF THE DEHCHO AGREEMENT**

48.1.1 The chief negotiators will initial the Dehcho Agreement when they are prepared to submit it for approval.

48.1.2 After the Dehcho Agreement has been initialled by the chief negotiators, it will be submitted to the Parties for the consideration of ratification as set out in this chapter.

48.1.3 The Dehcho Agreement will be legally binding once ratified by all Parties in accordance with the ratification provisions set out in this chapter.

48.1.4 Ratification of the Dehcho Agreement by one party does not obligate any of the other parties to ratify the Dehcho Agreement.

### **48.2 RATIFICATION COMMITTEE**

48.2.1 The Parties will establish a Ratification Committee as soon as practicable but no later than 60 days after the initialling of the Dehcho Agreement, consisting of one representative appointed by each Party, to be responsible for the DFN ratification process, as set out in this chapter.

48.2.2 Following its establishment, the Ratification Committee will:

- a) establish and publish its procedures;
- b) set its own time limits, including the date or dates of the ratification vote referred to in 48.4.
- c) ensure that the Eligible Voters have a reasonable opportunity to have access and to review the Dehcho Agreement and the procedures pursuant to 48.2.2 d);
- d) ensure that the DFN has provided Eligible Voters a reasonable opportunity to review the DFN Constitution;



- e) organize community meetings to provide Eligible Voters an opportunity to review the substance of the Dehcho Agreement; and
- f) prepare and publish a Preliminary Voters List in each Dehcho Dene Community and elsewhere as required based on the Enrolment List provided by the Enrolment Committee under 47.4.4 within 90 days of receiving the list.

48.2.3 Following decisions rendered by the Appeal Board with respect to the Preliminary Voters List in accordance with 48.3.3 and 48.3.4, the Ratification Committee will:

- a) publish the Official Voters List in accordance with 48.3.4;
- b) update the Official Voters List by
  - i) removing from the Official Voters List the name of each individual who died on or before the last day of voting without having voted;
  - ii) removing from the Official Voters List the name of each individual who did not vote and who provides, within 4 days of the last day of voting, certification by a qualified medical practitioner that the individual was physically or mentally incapacitated to the point that they could not have voted on the dates set for voting; and
  - iii) removing from the Official Voters List the name of each individual who has applied, or on whose behalf application has been made, by the close of polls on the last day of voting, to have his or her name removed from the enrolment by the Enrolment Committee, provided the individual has not already voted;
- c) approve the form and content of the ballots;
- d) authorize and provide general direction to voting officers to be employed in the conduct of the votes;
- e) establish rules for the conduct of the vote, including the main-in ballots, handling of ballots and ballot boxes, the establishment of polling stations and all voting, including any advance polls;
- f) oversee the conduct of the votes on the dates it has established;
- g) ensure that information on the ratification process, including the dates set for voting and location of the polling stations, be made publicly available;
- h) oversee tabulation of the results of the votes;
- i) provide the Parties with the result of the votes;
- j) publish the result of the vote to ratify the Dehcho Agreement within seven (7) days of the last day of voting; and

- k) prepare and provide to the Parties a written report on the outcome of the vote to ratify the Dehcho Agreement within 90 days of the last day of voting.

48.2.4 The Ratification Committee will be dissolved upon submitting to the Parties the written report as referred to in 48.2.3 (k).

### **48.3 APPEALS**

48.3.1 Appeals with respect to the Preliminary Voters List will be made to the Appeal Board established under 47.6.1.

48.3.2 After the publication of the Preliminary Voters List, a written appeal may be submitted to the Appeal Board within a period established by the Ratification Committee in consultation with the Appeal Board by an individual:

- a) whose name is not on the Preliminary Voters List;
- b) who would like to have their name removed from the Preliminary Voters List; or
- c) whose name is on the Preliminary Voters List and would like to prevent the name of another individual being included on the Preliminary Voters List on the basis of ineligibility.

48.3.3 Where an individual makes an appeal under 48.3.2 c), the Ratification Committee will make best efforts to contact the affected Eligible Voter, present any contradicting evidence and permit the Eligible Voter to provide further proof that they meet the criteria of an Eligible Voter established under 48.4.2.

48.3.4 Decisions of the Appeal Board in respect of an appeal will be by a majority of voting members and will be final. The Appeal Board will notify the appellant, any individual whose eligibility to vote has been challenged and the Ratification Committee, of its decision.

48.3.5 Within 30 days of the Appeal Board rendering its decisions on applications, the Ratification Committee will forward an amended Preliminary Voters List to all Parties. Upon receipt of this list by the parties, the Ratification Committee will publish this list as the Official Voters List.

### **48.4 RATIFICATION VOTE**

- 48.4.1 The Dehcho First Nations ratification vote will be held no earlier than 30 days after the publication of the Official Voters List on such date(s) as may be agreed to by the Ratification Committee.
- 48.4.2 An Eligible Voter will be an individual who eligible based on the eligibility criteria set out in 47.1 and is at least 18 years of age on the day that individual is voting
- 48.4.3 An individual, who is not yet a Dehcho Citizen and whose name is therefore not included on the Official Voters List, is eligible to vote if that individual:
- a) provides the voting officer with a completed enrolment application form or evidence satisfactory to the voting officer that the individual has submitted an enrolment application form to the Enrolment Committee;
  - b) provides evidence satisfactory to the voting officer that the individual meets the requirement set out in 48.4.2.; and
  - c) declares in writing that they meet the eligibility criteria set out in the Eligibility and Enrolment chapter.
- 48.4.4 The ballot of an individual described in 48.4.3 counts in determining the outcome of the ratification vote only if the Enrolment Committee determines that the individual is a Dehcho Member.

#### **48.5 RATIFICATION BY THE DFN**

- 48.5.1 Ratification of the Dehcho Agreement by the DFN will require:
- a) that Eligible Voters have a reasonable opportunity to review the Dehcho Agreement;
  - b) a resolution by a Dehcho Assembly;
  - c) a vote by Eligible Voters, by way of a secret ballot;
  - d) that at least fifty percent plus one of individuals on the Official Voters List vote in favour of the Dehcho Agreement;
  - e) ratification of the DFN Constitution through the process set out in the Dehcho Agreement; and
  - f) the Dehcho Agreement being signed by the authorized representative of the DFN.

#### **48.6 RATIFICATION BY THE GOVERNMENT OF THE NORTHWEST TERRITORIES**

- 48.6.1 Ratification of the Dehcho Agreement by the Government of the Northwest Territories will require:

- a) ratification of the Dehcho Agreement by the Dehcho First Nations pursuant to 48.5.1 a) through e);
- b) approval of the Dehcho Agreement by the Executive Council;
- c) signing of the Dehcho Agreement by the Minister authorized by the Executive Council; and
- d) the coming into force of territorial Settlement Legislation.

#### **48.7 RATIFICATION BY CANADA**

48.7.1 Ratification of the Dehcho Agreement by Canada will require:

- a) approval of the Dehcho Agreement by the Executive Council of the Government of the Northwest Territories pursuant to 48.6.1 b) and ratification of the Dehcho Agreement by the Dehcho First Nation pursuant to 48.5.1 a) through e);
- b) that the Dehcho Agreement be signed by the Minister of Indian Affairs and Northern Development as authorized by federal Cabinet; and
- c) the coming into force of federal Settlement Legislation.

#### **48.8 COSTS**

48.8.1 Canada will provide an amount of funding agreed upon by the Parties for the Ratification Committee to carry out the duties and responsibilities as set out in this chapter and in the Dehcho Agreement.

## **CHAPTER 49: APPROVAL OF THE AGREEMENT-IN-PRINCIPLE**

### **49.1 APPROVAL OF THE AGREEMENT IN PRINCIPLE**

- 49.1.1 The chief negotiators will initial the Agreement in Principle when they are prepared to submit it for approval.
- 49.1.2 The initialling of the Agreement in Principle will be done at a location agreed to by the Parties.
- 49.1.3 After the Agreement in Principle has been initialled by the chief negotiators, it will be submitted to the Parties for consideration of approval.
- 49.1.4 The Dehcho First Nations will have approved this Agreement in Principle when it is signed by the representatives of the Dehcho First Nations and approved by a Dehcho Assembly.
- 49.1.5 The Government of the Northwest Territories will have approved this Agreement in Principle when it is signed by the Minister authorized as by the Executive Council.
- 49.1.6 Canada will have approved this Agreement in Principle when it is signed by the Minister of Indian Affairs and Northern Development as authorized by federal cabinet.
- 49.1.7 The Agreement in Principle is not legally binding.

## CHAPTER 50: MATTERS FOR THE DEHCHO AGREEMENT

### **Matters in the Dehcho Agreement in Principle Deferred to the Final Agreement<sup>277</sup>** **“consultation”**

**2.4.3** The status of Dehcho Dene rights and interests in the Yukon Territory, British Columbia and Alberta will be addressed prior to the signing of the Dehcho Agreement

**2.4.4** The boundary and overlap issues between the Dehcho First Nations and the Acho Dene Koe, Sahtu, Akaitcho and Dene Tha' will be considered prior to the signing of the Dehcho Agreement.

**27.4.5** The Parties may address other aspects of the Harvesting of Furbearers prior to the Dehcho Agreement

**27.1.9** Prior to the Dehcho Agreement, the Parties will address the issue of documentation or identification for Dehcho Citizens exercising their right to harvest possess and transport Wildlife as set out in the Dehcho Agreement.

**27.5.1** Prior to Dehcho Agreement, the Parties will address Wildlife management within the Dehcho Settlement Area.

**27.7.1** Prior to concluding the Dehcho Agreement, the Parties will address: (a) the manner in which Wildlife will be managed; and (b) the participation of the Dehcho Government in the management of Wildlife, in the Dehcho Settlement Area.

**28.1.8** Prior to the Dehcho Agreement, the Parties will address the issue of documentation or identification for a Dehcho Citizen exercising their right to harvest, possess and transport Migratory Birds as set out in the Dehcho Agreement.

**28.6.1** Prior to concluding the Dehcho Agreement, the Parties will address: a) the manner in which Migratory Birds will be managed; and b) the participation of the Dehcho Government in the management of Migratory Birds if the harvesting rights recognized in this chapter could be affected.

**30.1.10** Prior to the Dehcho Agreement, the Parties will address the issue of documentation or identification for Dehcho Citizens exercising their right to harvest, possess and transport Plants as set out in the Dehcho Agreement.

**30.6.1** Prior to concluding the Dehcho Agreement, the Parties will address: a) the manner in which Plants will be managed in the Dehcho Settlement Area; and b) the participation of the Dehcho Government in the management of Plants in the Dehcho Settlement Area. If the harvesting rights recognized in this chapter could be affected

**30.1.10** Prior to the Dehcho Agreement, the Parties will address the issue of documentation or identification for Dehcho Citizens exercising their right to harvest, possess and transport Plants as set out in the Dehcho Agreement.

**31.3.1** Prior to Dehcho Agreement, the Dehcho First Nations or the Dehcho Government may formalize relationships for the Harvesting of Trees with other Aboriginal groups through the negotiation of overlap or shared use agreements. With the agreement of all

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<sup>277</sup> There are two other categories of deferred items: (1) those deferred to the Effective Date; (2) those deferred until after land selection

Parties, overlap agreement provisions pertaining to the Harvesting of Trees may be incorporated into the Dehcho Agreement.

**31.6.1** Prior to concluding the Dehcho Agreement, the Parties will address: a) the manner in which Trees will be managed in the Dehcho Settlement Area . b) the participation of the Dehcho Government in the management of Trees in the Dehcho Settlement Area. If the harvesting rights recognized in this chapter could be affected.

**5.3.3** Prior to the Dehcho Agreement, the Parties will identify any existing interests on Dehcho Community Land that will continue to be administered by Government after the Effective Date.

**26.7.1** Prior to the Dehcho Agreement, the Parties will enter into a tax treatment agreement, which will come into effect on the Effective Date. The tax treatment agreement will address the following subject matters: a) the income tax treatment of the Dehcho Government and its entities; b) the sales tax treatment of the Dehcho Government and its entities; c) the tax treatment of the transfer of Dehcho Capital between the Dehcho Government and its subsidiaries; d) the tax treatment of a Dehcho settlement trust; e) donations, including artifacts , made to the Dehcho Government; f) any other matters agreed to by the Parties.

**41.1.1** Prior to the Dehcho Agreement, Canada and the Dehcho First Nations will calculate the amount of Mineral Royalties collected for the benefit of the Dehcho First Nations as provided under part 2 of the Dehcho Interim Resource Development Agreement, and this amount will be paid out in accordance with a schedule to be negotiated as part of the Dehcho Agreement.

**42.1.3** A provisional schedule of payments will be negotiated prior to the Final Agreement which will provide: i) a first payment on the Effective Date and subsequent payments on each anniversary of the Effective Date; ii) the net present value of the amounts listed in the provisional schedule of payments will equal the amount in the Final Capital Transfer Payments Schedule; and iii) the net present value referred to in paragraph ii) will be calculated using as a discount rate, the most recently approved amortized Consolidated Revenue Fund lending rate available prior to the initialling of the Final Agreement, less one eighth of one percent.<sup>278</sup>

**44.1.1** Prior to the initialling of the Dehcho Agreement, the Parties will develop an Implementation Plan.

**44.2.1** After the ratification of the Agreement-in-Principle, at such time as agreed to by the Parties, a tripartite implementation planning working group will be established and will be responsible for the development of an Implementation Plan and a list of activities the Parties will need to carry out prior to the Effective Date.

**44.2.2** The implementation planning working group will complete the Implementation Plan prior to the initialling of the Dehcho Agreement.

**46.5.11** Prior to the finalizing the Dehcho Agreement, the Parties will: (a) set out the criteria and method for the selection of the roster list of mediators and arbitrators; and (b)

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<sup>278</sup> DFN's preference is a single payment on Effective Date. Canada is reviewing whether this is possible

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establish procedures for mediation and arbitration, including confidentiality, which will provide for expeditious processes.