

AMENDED AGREEMENT
TO ESTABLISH A JOINT REVIEW PANEL
FOR THE MARATHON PLATINUM GROUP METALS AND
COPPER MINE PROJECT

UNDER SECTION 18(2) OF THE CANADA-ONTARIO AGREEMENT ON
ENVIRONMENTAL ASSESSMENT COOPERATION

Between
The Minister of the Environment, Canada
- and -
The Minister of the Environment, Ontario

PREAMBLE

WHEREAS this is a project-specific agreement pursuant to the Canada-Ontario Agreement on Environmental Assessment Cooperation signed by both Ministers on November 1st, 2004, pursuant to provincial Order in Council 1988/2004 and pursuant to paragraph 58(1)(d) of the *Canadian Environmental Assessment Act*; and

WHEREAS the Minister of the Environment, Canada (the federal Minister of the Environment) has statutory responsibilities pursuant to the *Canadian Environmental Assessment Act, 2012*; and

WHEREAS the Minister of Environment, Ontario (the provincial Minister of the Environment) has statutory responsibilities pursuant to the Ontario *Environmental Assessment Act*; and

WHEREAS Stillwater Canada Inc. is proposing to construct and operate a platinum group metals and copper mine in Marathon Township, Ontario, which is subject to environmental assessment requirements under both the *Canadian Environmental Assessment Act, 2012* and the Ontario *Environmental Assessment Act*; and

WHEREAS Stillwater Canada Inc.'s Marathon Platinum Group Metals and Copper Mine Project (Project) was referred to a review panel by the federal Minister of the Environment in accordance with section 29 of the *Canadian Environmental Assessment Act*; and

WHEREAS under section 3.1 of the Ontario *Environmental Assessment Act*, the provincial Minister of the Environment has the authority to harmonize with Canada to facilitate the effective operation of the requirements of both jurisdictions; and

WHEREAS the provincial Minister of the Environment has determined that the Joint Review Panel process will assess the Project in a manner equivalent to the requirements of the Ontario *Environmental Assessment Act*; and

WHEREAS the federal Minister of the Environment and the provincial Minister of the Environment have determined that a Joint Review Panel of the Project will avoid

unnecessary duplication, delays and confusion that could arise from individual reviews by each government; and

WHEREAS the federal Minister of the Environment has determined that a Joint Review Panel should be established pursuant to paragraph 40(2) of the *Canadian Environmental Assessment Act* to consider the Project; and

WHEREAS the *Canadian Environmental Assessment Act* has been repealed and the *Canadian Environmental Assessment Act, 2012* has come into force; and

WHEREAS pursuant to section 126 of the *Canadian Environmental Assessment Act, 2012*, the assessment by the joint review panel is continued under the process established under the *Canadian Environmental Assessment Act, 2012* as if it had been referred to a review panel under section 38 of the *Canadian Environmental Assessment Act, 2012*; and

WHEREAS environmental assessment provides an effective means of integrating environmental factors into planning and decision-making processes in a manner that promotes Sustainable Development to achieve or maintain a healthy Environment and a healthy economy;

THEREFORE, the federal Minister of the Environment hereby establishes a Joint Review Panel for the Project in accordance with the *Canadian Environmental Assessment Act* and with the provisions of this Agreement and the Terms of Reference attached as an Appendix to this Agreement.

1. DEFINITIONS

For the purpose of this Agreement and of the Terms of Reference for the Joint Review Panel,

“**Agency**” means the Canadian Environmental Assessment Agency established by the *Canadian Environmental Assessment Act, 1992* and continued under the *Canadian Environmental Assessment Act, 2012*.

“**Canadian Environmental Assessment Act**” refers to the Canadian Environmental Assessment Act, 2012.

“**Environment**” means,

- (a) air, land or water,
- (b) plant and animal life, including human life,
- (c) the social, economic and cultural conditions that influence the life of humans or a community,
- (d) any building, structure, machine or other device or thing made by humans,
- (e) any solid, liquid, gas, odour, heat, sound, vibration or radiation resulting directly or indirectly from human activities, or
- (f) any part or combination of the foregoing and the interrelationships between any two or more of them.

“Environmental Effect” means,

- (a) any change that the Project may cause in the Environment
- (b) any change to the Project that may be caused by the Environment,

whether any such change or effect occurs within or outside Canada.

“EIS Guidelines” means the direction provided to the Proponent by the federal Minister of the Environment which must be addressed in the Proponent’s EIS to be prepared for the Joint Review Panel.

“Environmental Impact Statement” (hereinafter EIS) means the environmental impact statement report that is prepared by the Proponent for submission to the Joint Review Panel.

“Federal Authority” has the same meaning as set out in section 2(1) of the *Canadian Environmental Assessment Act, 2012*.

“Joint Review Panel” means the body established by the federal Minister of the Environment under the former Act and considered pursuant to section 126(1) of the *Canadian Environmental Assessment Act, 2012* to be a review panel established under an agreement entered into under this Act, and which meets the requirements of the *Canadian Environmental Assessment Act, 2012* and the *Ontario Environmental Assessment Act*, the members of which are appointed by the federal Minister of the Environment, based on the recommendations of both the Agency, on behalf of Canada, and the Ministry, on behalf of Ontario.

“Ministry” means the Ontario Ministry of the Environment.

“Ontario Environmental Assessment Act” refers to the Environmental Assessment Act R.S.O. 1990, Chapter E. 18.

“Party” means either signatory to this Agreement.

“Precautionary Principle” recognizes that, where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

“Project” refers to the project proposed by the Proponent, a description of which is outlined in Part 1 of the Terms of Reference.

“Proponent” means Stillwater Canada Inc.

“Public Registry” means the Canadian Environmental Assessment Registry established under section 78 of the *Canadian Environmental Assessment Act, 2012*, that will be maintained by the Agency in consultation with the Ontario Ministry of the Environment until the submission of the Joint Review Panel report.

“Report” means the report produced by the Joint Review Panel, which contains the Joint Panel’s rationale, conclusions and recommendations, with respect to the environmental assessment of the Project. This report will serve as recommendations to

both the provincial Minister of the Environment and the federal Minister of the Environment.

“Responsible Authority” has the same meaning as set out in section 2(1) of the *Canadian Environmental Assessment Act, 2012*.

“Sustainable Development” means development that meets the needs of the present, without compromising the ability of future generations to meet their own needs.

2. ESTABLISHMENT OF THE JOINT REVIEW PANEL

- 2.1.** A Joint Review Panel is hereby established for the purposes of conducting an environmental assessment of the Project pursuant to sections 40, 41 and 42 of the *Canadian Environmental Assessment Act*.
- 2.2.** The provincial Minister of the Environment considers that the requirements of the Joint Review Panel process, including the Terms of Reference and EIS guidelines, to be equivalent to the requirements of the Ontario *Environmental Assessment Act*.
- 2.3.** Once established, the Agency and the Ministry will make arrangements to coordinate the announcements of the Joint Review Panel of the Project by both Parties.

3. CONSTITUTION OF THE JOINT REVIEW PANEL

- 3.1.** The Joint Review Panel shall consist of three members, one of whom shall be the chairperson.
- 3.2.** The Agency and the Ministry will jointly recommend a list of three candidates, and will agree on the recommendation of one candidate to be the chairperson.
- 3.3.** The federal Minister of the Environment will appoint the members of the Joint Review Panel, including the chairperson.
- 3.4.** At least one member of the Joint Review Panel will have experience with the Ontario *Environmental Assessment Act*, and at least one member will have experience with the *Canadian Environmental Assessment Act*. The members shall have knowledge or experience relevant to the anticipated Environmental Effects of the Project.
- 3.5.** The Joint Review Panel members shall be unbiased and free from any conflict of interest relative to the Project.
- 3.6.** In the event that a Joint Review Panel member resigns or is unable to continue to work, the remaining members shall constitute the Joint Review Panel, unless the Parties determine otherwise. In such circumstances, the Parties may choose to replace the Joint Review Panel member in accordance with the processes set out in 3.2 and 3.3.

4. CONDUCT OF ASSESSMENT BY THE JOINT REVIEW PANEL

- 4.1. The Agency and the Ministry prepared draft EIS guidelines.
- 4.2. The draft EIS guidelines were subject to a public comment period of 60 days. Following the close of the public comment period and in consideration of comments received, final EIS guidelines were approved by the federal Minister of the Environment and issued to the Proponent.
- 4.3. The Joint Review Panel shall conduct its review in a manner that discharges the requirements set out in the *Canadian Environmental Assessment Act, 2012* and the requirements of the harmonization order made under section 3.1 (2) of the Ontario *Environmental Assessment Act* by the provincial Minister of the Environment. The Joint Review Panel shall also conduct its review in a manner that discharges the requirements set out in the Terms of Reference, attached as an Appendix to this Agreement.
- 4.4. The Terms of Reference will be fixed and approved by the federal Minister of the Environment and the provincial Minister of the Environment.
- 4.5. The Joint Review Panel may request clarification of its Terms of Reference by sending a letter signed by the chairperson to the President of the Agency and the Assistant Deputy Minister of Operations Division of the Ministry setting out the request. Upon receiving a request for clarification from the Joint Review Panel, the President of the Agency, on behalf of the federal Minister of the Environment, and the Assistant Deputy Minister of Operations Division of the Ministry, on behalf of the provincial Minister of the Environment, are authorized jointly to provide to the Joint Review Panel such clarification. Should clarification be requested, the President and the Assistant Deputy Minister shall use best efforts to ensure a joint response is provided to the Joint Review Panel's letter within 14 calendar days. The Joint Review Panel shall continue with the review to the extent possible while waiting for the response in order to adhere to the time periods of the original Terms of Reference. The Joint Review Panel shall notify the public of any clarifications to its Terms of Reference.
- 4.6. The Joint Review Panel may seek an amendment to its Terms of Reference by sending a letter signed by the chairperson to the President of the Agency and the Assistant Deputy Minister of Operations Division of the Ministry setting out the request. In seeking an amendment, the Joint Review Panel may recommend to the Parties whether a public comment period on the proposed amendment is warranted. The President of the Agency, on behalf of the federal Minister of the Environment, and the Assistant Deputy Minister of Operations Division of the Ministry, on behalf of the provincial Minister of the Environment, are authorized to jointly consider and, if appropriate, amend the Terms of Reference. Should an amendment be requested, the President and the Assistant Deputy Minister shall use best efforts to ensure a joint response is provided to the Joint Review Panel's letter within 14 days. The Joint Review Panel shall continue with the review to the extent possible while waiting for the response in order to adhere to the time lines of the original Terms of Reference. Any amendments to the Terms of Reference shall be posted on the Public Registry.

- 4.7. The Joint Review Panel will assess the EIS submitted by the Proponent as well as information obtained during the review in accordance with sections 43 and 44 of the *Canadian Environmental Assessment Act, 2012* and its Terms of Reference.
- 4.8. The Joint Review Panel hearings shall be public and the review will provide opportunities for timely and meaningful public participation.
- 4.9. The Joint Review Panel shall have all the powers and duties of a panel described in Section 45 of the *Canadian Environmental Assessment Act, 2012* and those set out in the Terms of Reference.

5. SECRETARIAT

- 5.1. Administrative, technical and procedural support requested by the Joint Review Panel shall be provided by a Secretariat. The Secretariat may include staff from the Canadian Environmental Assessment Agency and Ontario ministries. The Agency and the Ministry shall identify co-managers who will attend hearings, and work together to manage the Secretariat in a coherent manner.
- 5.2. The Secretariat will support the Joint Review Panel and will be structured so as to allow the Joint Review Panel to conduct its review in an efficient and cost-effective manner.
- 5.3. The Secretariat will be structured to avoid any real or perceived conflict of interest.

6. RECORD OF JOINT REVIEW

- 6.1. A Public Registry will be maintained by the Agency in consultation with the Ministry during the course of the review in a manner that provides for convenient public access, and for the purposes of compliance with sections 78 to 81 of the *Canadian Environmental Assessment Act, 2012*.
- 6.2. The Public Registry shall also serve as the Ministry's public record. The internet component of the Public Registry will be linked to the Ministry's on-line Environmental Assessment Projects database.
- 6.3. Subject to subsections 45(4), and 45(5) and section 81 of the *Canadian Environmental Assessment Act, 2012*, the Public Registry will include all records produced, collected or submitted relating to the environmental assessment of the Project.

7. OTHER FEDERAL AND PROVINCIAL GOVERNMENT DEPARTMENTS AND MINISTRIES

- 7.1. The Joint Review Panel may request federal authorities and provincial authorities having specialist information or knowledge with respect to the Project to make that information or knowledge available to the Joint Review Panel in a manner acceptable to the Joint Review Panel.

8. REVIEW OF THE EIS AND REPORT

- 8.1.** Upon the submission of the EIS by the Proponent, the Joint Review Panel will assess the EIS according to EIS guidelines and the Terms of Reference. Once the Joint Review Panel is satisfied that sufficient information has been obtained, the Joint Review Panel will provide public notice and hold a public hearing in accordance with the Terms of Reference.
- 8.2.** The Joint Review Panel will prepare a Report, which will be submitted to the federal Minister of the Environment and the provincial Minister of the Environment within ninety days from the date that the chairperson of the Joint Review Panel formally closes the hearing process. Simultaneously, the Report will be published and made available immediately to the public. The Joint Review Panel will also send a hardcopy of the Report to those Aboriginal groups who have participated in the Joint Review process.
- 8.3.** If requested by Aboriginal groups, the Joint Review Panel shall have the executive summary of the Report translated into the relevant Aboriginal languages as determined by the Joint Review Panel (taking into consideration the availability of translators). The translations shall be sent to Aboriginal groups who have participated in the Joint Review process as soon as possible following the submission of the Report.
- 8.4.** Once the Report is published, a copy of the Public Registry documentation maintained by the Agency will be provided to the Ministry.
- 8.5.** The Agency will be responsible for the translation of documents such as public notifications, news releases and the Report, into both of the official languages of Canada. The Agency will use all reasonable efforts to expedite the translation of the Report.

9. DECISION MAKING PROCESSES

- 9.1.** The Parties will coordinate the timing of the release of the federal Minister of the Environment's environmental assessment decision statement and the announcement of the decision of the provincial Minister of the Environment to the greatest extent possible.

Federal Decision Making Process

- 9.2.** Upon submission of the Joint Review Panel Report, the Federal Minister of the Environment shall, in a manner consistent with the *Canadian Environmental Assessment Act, 2012*, issue an environmental assessment decision statement. In issuing the environmental assessment decision statement, the federal Minister of the Environment shall consider the consultation undertaken with Aboriginal groups, including consultation on the Joint Review Panel's Report.
- 9.3.** The federal and/or the provincial Minister of the Environment may, for the purpose of making their decisions referred to in 9.2 and 9.6 respectively, require the Joint

Review Panel to clarify any of the conclusions and recommendations set out in the Report.

- 9.4.** If the federal Minister of the Environment decides that the project is likely to cause significant adverse environmental effects, the Minister must refer to the Governor in Council the matter of whether those effects are justified in the circumstances.
- 9.5.** The federal Minister of the Environment's environmental assessment decision statement will be posted on the Public Registry.

Provincial Decision Making Process

- 9.6.** The provincial Minister of the Environment, pursuant to the harmonization order made under section 3.1 (2) of the Ontario *Environmental Assessment Act*, with the approval of the Lieutenant Governor in Council, may:
- (a) Give approval to proceed with the Project in accordance with the Joint Review Panel Report.
 - (b) Give approval to proceed with the Project subject to such conditions as the Minister considers necessary and in particular requiring or specifying:
 - (i) The methods and phasing of the carrying out of the Project,
 - (ii) The works or actions to prevent, mitigate or remedy effects of the Project on the Environment,
 - (iii) Such research, investigations, studies and monitoring programs related to the Project and reports thereof, as the Minister considers necessary,
 - (iv) Such changes in the Project the Minister considers necessary,
 - (v) That the Proponent enter into one or more agreements related to the Project with any person with respect to such matters as the Minister considers necessary,
 - (vi) That the Proponent complies with all or any of the provisions of the Report that may be incorporated by reference in the approval,
 - (vii) The period of time during which the Project or any part thereof shall be commenced or carried out; or
 - (c) Refuse to give approval to proceed with the Project.
- 9.7.** The provincial Minister of the Environment shall consider the following matters when making the decision in 9.6:
- (a) the purpose of the Ontario *Environmental Assessment Act*,
 - (b) the Joint Review Panel's Report; and
 - (c) such other matters as the Minister considers relevant to his or her decision.
- 9.8.** The provincial Minister of the Environment shall notify the Proponent of his or her decision and shall give the Proponent written reasons for it. The provincial Minister of the Environment shall also provide a copy of the decision to the federal Minister of the Environment and the decision shall be published on the Public Registry.

10. PARTICIPANT FUNDING

- 10.1.** Participant funding for the review will be provided by the Agency pursuant to the federal Participant Funding Program, and will be administered by the Agency in consultation with the Ministry.

11. COST SHARING

- 11.1. The cost sharing provisions of this agreement will only take effect commencing on the date of the establishment of the Joint Review Panel.
- 11.2. In consultation with the Ministry, the Agency will develop a budget estimate of expenses prior to the initiation of the Joint Review Panel's activities.
- 11.3. The Agency will recover all applicable expenses relating to the review from the Proponent pursuant to section 59 of CEEA 2012 and the *Cost Recovery Regulations, 2012*.
- 11.4. Any expenses not subject to *Cost Recovery Regulations, 2012* shall be shared jointly by the Parties, except for those specified in articles 11.5 and 11.6.
- 11.5. The Agency shall be fully responsible for the following costs:
- Salaries, benefits, and travel-related expenses associated with the review incurred by the Joint Review Panel Secretariat staff employed by Canada
 - Salaries, benefits and travel-related expenses associated with the review incurred by the Joint Review Panel Secretariat staff working on assignment with the Agency;
 - All costs associated with the federal Participant Funding Program;
 - Translation of records and documents, and language translation and interpretation services and facilities related to the evidence of applicants, participants and local interveners as required by the Joint Review Panel; and
 - Costs associated with the Public Registry established pursuant to section 78 of the *Canadian Environmental Assessment Act, 2012*.
- 11.6. The Ministry shall be fully responsible for the following costs:
- Salaries, benefits, and travel-related expenses associated with the review incurred by any Joint Review Panel Secretariat staff employed by Ontario that are not on assignment with the Agency; and
 - Costs associated with the maintenance of the Ministry's on-line Environmental Assessment Projects database.
- 11.7. The Agency, in consultation with the Ministry, will retain independent legal counsel for the Joint Review Panel. The costs of the Joint Review Panel's legal counsel will be jointly shared by the Agency and the Ministry.
- 11.8. Any expenses not included in the *Cost Recovery Regulations, 2012* or in this Agreement will need prior approval of both the Agency and the Ministry if they are to be equally shared.
- 11.9. The Joint Review Panel will have due regard to economy and efficiency when incurring costs during the conduct of the environmental assessment.

12. INVOICING

- 12.1.** The Agency will be responsible for advancing funds for the payment of the shareable costs.
- 12.2.** The Agency will inform the Ministry on a quarterly basis about the expenses incurred for the Project.
- 12.3.** Following the submission of the Report, the Agency will issue a final invoice to the Ministry for the amounts owed under this Agreement. The invoice will cover all shareable costs to be paid by the Ministry.
- 12.4.** The final invoice will be accompanied by a summary description of the costs paid by the Agency, the costs recovered, and the net costs that are to be shared by the Ministry and the Agency. Detailed information about incurred costs will be retained by the Agency and made available upon request.
- 12.5.** Subject to compliance with the above requirements, the Ministry will pay to the Agency the amount stated as being owed to it in the invoice within sixty (60) days of having received such invoice.

13. AMENDING THIS AGREEMENT

- 13.1.** This Agreement comes into force upon its execution by both Parties.
- 13.2.** This Agreement can be amended at any time with mutual consent of both Parties. Amendments to the Terms of Reference shall follow the procedure outlined in article 4.6. The Parties shall determine whether a public comment period is necessary on any proposed amendments to the Agreement.
- 13.3.** Either Party may terminate this Agreement prior to the completion of the joint review by providing written notice to the other party a minimum of 30 days in advance of the intended termination date.
- 13.4.** If the written notice detailed in article 13.3. is provided, the Parties will seek to resolve differences of opinion in the interpretation and application of this Agreement at a working level, through good faith reasonable efforts.

14. SIGNATURES

Whereas the parties hereto have put their signatures

Appendix Terms of Reference for the Joint Review Panel

PART I - DESCRIPTION OF THE PROJECT

Stillwater Canada Inc. proposes to develop and operate the Marathon Platinum Group Metals and Copper Mine Project ("Project") approximately 10 kilometres north of the Town of Marathon. This Project involves the establishment and operation of an open pit mine and mill for the purpose of extracting and processing ore containing copper and platinum group metals and including, but not limited to, any ancillary activities and the activities outlined below:

- the construction and/or use of equipment, buildings and structures;
- the establishment, construction and operation of tailing impoundment areas, explosives factory and magazine facilities, waste rock storage areas, water management facilities, transmission lines, temporary and emergency generation facilities, and activities to mitigate environmental impacts;
- the decommissioning, closure and abandonment of the mine and mine-related infrastructure; and
- the establishment, construction and/or modification and use of transportation infrastructure including access roads, highways and/or rail lines to support the above-mentioned activities and the transport of final mine concentrate(s).

The scope of project shall include all components of the Project as proposed by the Proponent.

PART II – FACTORS TO BE CONSIDERED IN THE ENVIRONMENTAL ASSESSMENT

- 2.1. The Joint Review Panel will conduct an assessment of the Environmental Effects of the Project referred to in the Description of the Project (Part I) in a manner consistent with the requirements of the *Canadian Environmental Assessment Act, 2012* and the Ontario *Environmental Assessment Act*.
- 2.2. The assessment by the Joint Review Panel will include a consideration of subsection 6.1(2) of the Ontario *Environmental Assessment Act* and section 19 of the *Canadian Environmental Assessment Act, 2012*, including the following factors:
 - a. the purpose of the Project;
 - b. the rationale or need for the Project;
 - c. alternatives to the Project (including the "do nothing" alternative), the Environmental Effects of such alternatives to, and the advantages and disadvantages to the Environment of such alternatives to;
 - d. alternative means of carrying out the Project that are technically and economically feasible, the Environmental Effects of any such alternative means, and the advantages and disadvantages to the Environment of such alternative means;
 - e. the significance of the Environmental Effects, including the following:

- malfunctions or accidents that may occur in connection with the Project; and
 - any cumulative Environmental Effects that are likely to result from the Project in combination with other projects or activities that have been or will be carried out;
- f. measures that are technically and economically feasible and that would mitigate any significant adverse Environmental Effects of the Project
 - g. measures to enhance any beneficial Environmental Effects;
 - h. the capacity of renewable resources that are likely to be significantly affected by the Project to meet the needs of the present and those of the future;
 - i. extent to which biological diversity (e.g. ecosystems and/or species diversity) is affected by the Project, including any listed wildlife species, its critical habitat or the residences of individuals of that species as those terms are defined in subsection 2(1) of the federal *Species at Risk Act*, as well as any impact it may have on a provincially threatened or endangered species and/or its protected habitat;
 - j. extent of application of the Precautionary Principle to the Project;
 - k. the requirements of the follow-up program in respect of the Project;
 - l. description of the consultation undertaken by the Proponent with the public and Aboriginal groups during the preparation of the EIS;
 - m. comments from the public and Aboriginal groups that are received during the review; and
 - n. community knowledge and Aboriginal traditional knowledge, and the current use of lands and resources for traditional purposes by Aboriginal persons.
- 2.3.** The description of the factors to be considered in the environmental assessment include those outlined in the document “Guidelines for the Preparation of the Environmental Impact Statement: Marathon Platinum Group Metals and Copper Mine Project”, as finalized by the federal Minister of the Environment.
- 2.4.** The Joint Review Panel is mandated to invite information from Aboriginal groups related to the nature and scope of asserted or established Aboriginal and Treaty rights in the area of the Project, as well as information on the potential adverse Environmental Effects that the Project may have on asserted or established Aboriginal and Treaty rights.
- 2.5.** The Joint Review Panel will receive:
- (a) information provided by Aboriginal groups regarding the manner in which the Project may adversely affect their asserted or established Aboriginal and Treaty rights; and
 - (b) information provided by Aboriginal persons or groups regarding the strength of claim in respect of asserted Aboriginal and Treaty rights, which may include information about the location, extent, basis and exercise of those asserted or established Aboriginal and Treaty rights in the area of the Project.
- 2.6.** The Joint Review Panel will use the information collected pursuant to 2.4 to make recommendations which relate to the manner in which the Project may adversely affect asserted or established Aboriginal and Treaty rights and to inform its assessment of the potential Environmental Effects of the Project.
- 2.7.** The Joint Review Panel is not mandated to make any determinations as to:

- a. the validity of asserted or established Aboriginal and Treaty rights asserted by Aboriginal groups or the strength of their claimed rights;
 - b. the scope of the Crown's duty to consult Aboriginal groups; and
 - c. whether the Crown has met its duty to consult Aboriginal groups and, where appropriate, accommodate their interests in respect of the potential adverse effects of the Project on their rights, recognized and affirmed in section 35 of the *Constitution Act, 1982*.
- 2.8.** As the Joint Review Panel is not mandated to make any determinations as to the validity of asserted or established Aboriginal and Treaty rights, for the purposes of its Report, it shall document the asserted or established Aboriginal and Treaty rights as presented and consider the adverse effects of the Project on all Aboriginal and Treaty rights as asserted.
- 2.9.** All information obtained by the Joint Review Panel for the environmental assessment of the Project shall be made publicly available, unless the Joint Review Panel determines that sections 45(4) or 45(5) of the *Canadian Environmental Assessment Act, 2012* applies to the information provided by a participant.

PART III – ENVIRONMENTAL ASSESSMENT PROCESS

The main steps of the environmental assessment process will be as follows:

EIS Preparation

- 3.1.** The Joint Review Panel will require the Proponent to prepare the EIS in accordance with the EIS Guidelines, which will be approved by the federal Minister of Environment following a public comment period.

EIS Sufficiency

- 3.2.** Once submitted to the Joint Review Panel, the EIS will be placed on the Public Registry, and will be made available for a minimum of 60 days. The Joint Review Panel will request written comments from Aboriginal groups, the public, governments and other interested parties on the sufficiency of the EIS as measured against the EIS Guidelines and on the technical merit of the information, which may include requests for further information from the Proponent.
- 3.3.** Within 30 days of the completion of the public review of the EIS, the Joint Review Panel, taking into consideration the comments and any information requests received and its own review of the EIS, will determine if the EIS contains sufficient information to proceed to public hearing. If the Joint Review Panel determines that the EIS contains sufficient information to proceed to public hearing, it will schedule and announce the hearing in accordance with the procedures set out in these Terms of Reference.
- 3.4.** If the Joint Review Panel determines that the EIS is not sufficient to proceed to public hearing, it will issue a deficiency statement requesting additional information which the Proponent will provide. At the same time, the Joint Review Panel will place the deficiency statement on the Public Registry and make it available to the public.

- 3.5. The additional information provided by the Proponent will be placed on the Public Registry and made available to the public. The Joint Review Panel will determine the need for a public comment period on any additional information provided by the Proponent in response to deficiencies identified by the Joint Review Panel.
- 3.6. Upon completion of the public review of the additional information, the Joint Review Panel, taking into consideration any comments and any information requests received and its own review of the additional information, will determine within 30 days if the EIS, supplemented by the additional information, is sufficient to proceed to public hearing. The procedures described in articles 3.4 through 3.6 will apply until such time as the Joint Review Panel determines it has sufficient information to proceed to public hearing.

Announcement of Public Hearing

- 3.7. Once the Joint Review Panel determines that the EIS contains sufficient information to proceed to public hearing, it will announce the public hearing. The Joint Review Panel shall provide a minimum of 45 days notice of the start of the public hearing. In scheduling the public hearing, the Joint Review Panel will make reasonable efforts to take into consideration the timing of traditional activities in Aboriginal communities.
- 3.8. The Joint Review Panel will issue procedures for the conduct of the public hearing. These procedures will allow for the public hearings to be conducted in a manner that provides for a full examination of matters determined by the Joint Review Panel to be relevant, and encourages public input and participation in the environmental assessment process.
- 3.9. The procedures for the conduct of the public hearing shall be subject to a public comment period. The public hearing will provide the Proponent, federal, provincial and municipal governments, Aboriginal groups and members of the public with an opportunity to present their views on the Project and to question information that has been provided by other participants.
- 3.10. The Joint Review Panel will endeavour to hold the public hearing in the community(ies) in closest proximity to the proposed Project, including Aboriginal community(ies), to provide convenient public access for potentially affected Aboriginal persons and groups and the public. The Joint Review Panel will use its best efforts to complete the public hearing within 30 days.
- 3.11. The public hearing shall be open to the public, unless the Joint Review Panel determines that subsection 45(3) of the *Canadian Environmental Assessment Act, 2012* applies to the information provided by a participant.

Specialist Advisors to the Joint Review Panel

- 3.12. The Joint Review Panel may request specialist or expert information or knowledge with respect to the Project from federal and/or provincial authorities in possession of such information or knowledge. As per article 6.3 of the Joint Review Panel Agreement, any information or knowledge provided by federal and/or provincial authorities would be placed on the Public Registry.

- 3.13.** The Joint Review Panel may also retain the services of non-governmental experts to provide advice on certain subjects within the Joint Review Panel's Terms of Reference.
- 3.14.** Should the Joint Review Panel retain the services of non-governmental experts, the names of the experts retained and any documents obtained or created by the experts and that are submitted to the Joint Review Panel will be placed on the Public Registry, subject to the provisions in section 45 of the *Canadian Environmental Assessment Act, 2012*. This excludes any information subject to solicitor-client privilege.

Report

- 3.15.** Following the completion of the public hearing, the Joint Review Panel will prepare and submit to the federal Minister of the Environment and the provincial Minister of the Environment a Report including, but not limited to, a description of the Joint Review Panel process, and the rationale, conclusions and recommendations of the Joint Review Panel relating to the environmental assessment of the Project, including any recommended mitigation measures and follow-up programs. The Joint Review Panel shall also include within its Report a summary of any comments received, including those from the public and Aboriginal groups. The Joint Review Panel shall also provide a hardcopy of its Report to those Aboriginal groups that have participated in the Joint Review Panel process.
- 3.16.** For the purposes of the federal Minister of the Environment, the Report shall include:
- an identification of those conclusions that relate to the environmental effects to be taken into account under section 5 of the *Canadian Environmental Assessment Act, 2012*; and
 - an identification of recommended mitigation measures that relate to the environmental effects to be taken into account under section 5 of the *Canadian Environmental Assessment Act, 2012*.
- 3.17.** For the purposes of the provincial Minister of the Environment, the Report shall include:
- all the commitments identified by the Proponent in its EIS, as well as any other commitments identified by the Proponent during the assessment by the Joint Review Panel; and
 - recommendations as to whether the Project should be given approval to proceed, or be refused, taking into consideration the Proponent's EIS and any other information obtained during the assessment by the Joint Review Panel.

If the Report of the Joint Review Panel recommends that the Project should be given approval to proceed by the provincial Minister of the Environment, the Joint Review Panel may also recommend any conditions necessary to carry out the Project in a manner that provides for the protection, conservation and wise management of the Environment. The Joint Review Panel shall provide reasons for its recommendations in the Report.

- 3.18.** For the purposes of the *Canadian Environmental Assessment Act, 2012*, where, taking into account the implementation of any mitigation measures, the Joint Review Panel concludes that the Project is likely to cause significant adverse Environmental Effects, the Joint Review Panel shall obtain and include in its Report information with respect to the justifiability of any significant adverse Environmental Effects.
- 3.19.** The Report shall reflect the views of each member of the Joint Review Panel.
- 3.20.** The Joint Review Panel will submit its Report to the federal and provincial Ministers of the Environment at the earliest possible date, within 90 days following the date that the chairperson of the Joint Review Panel formally closes the hearing process.
- 3.21.** The federal and/or the provincial Minister of the Environment may require the Joint Review Panel to clarify any of the conclusions and recommendations set out in the Report.

PART IV – TIMELINES

- 4.1.** Subject to article 4.2, the Panel shall complete its mandate and submit its final report to the federal and provincial Ministers of the Environment within 390 days from the submission by the proponent of the EIS to the Panel, as per article 3.2.
- 4.2.** The time period between the issuance by the Panel of any request for information as per articles 3.4 to 3.6 and the submission of the requested information by the proponent is not included in the timeline referred to in article 4.1.
- 4.3.** As may be required in order to meet the timeline referred to in article 4.1, the Panel may, notwithstanding 4.6 of the Joint Review Panel Agreement, modify any timelines referred to in Part III of these Terms of Reference. The Panel shall notify the federal and provincial Ministers of the Environment and the public of any such modification.