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STATUS OF CHAPTERS

GREEN:	Chapter near completion, subject to minor changes
BLUE:	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.
ORANGE:	Chapter in draft form but has not yet been thoroughly discussed at table or has been discussed but requires more work
BLACK:	Chapter not yet discussed at table

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

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

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

CHAPTER 4: E & E (*footnotes/issue outlined and more discussion required*)

CHAPTER 5: Approval of the Agreement-in-Principle (*near completion*)

CHAPTER 6: Ratification (*footnotes/issue outlined and more discussion required*)

CHAPTER 7: Dehcho Ndehe (*not yet discussed*)

CHAPTER 8: Land Use Planning (*not yet discussed*)

CHAPTER 9: Resource Management/ DCRMA (*not yet discussed*)

CHAPTER 10: Subsurface Resources (*not yet discussed*)

CHAPTER 11: National Parks (*in draft and not thoroughly discussed*)

CHAPTER 12: Protected Areas (*in draft and not thoroughly discussed*)

CHAPTER 13: Expropriation (*footnotes/issue outlined and more discussion required*)

CHAPTER 14: Access (*footnotes/issue outlined and more discussion required*)

CHAPTER 15: Wildlife Harvesting (*footnotes/issue outlined and more discussion required*)

CHAPTER 16: Migratory Bird Harvesting (*near completion*)

CHAPTER 17: Fish Harvesting (*not yet discussed*)

CHAPTER 18: Plant Harvesting (*footnotes/issue outlined and more discussion required*)

CHAPTER 19: Tree Harvesting (*footnotes/issue outlined and more discussion required*)

CHAPTER 20: Harvesters Compensation (*footnotes/issue outlined and more discussion required*)

CHAPTER 21: Culture, Heritage and Language (*in draft and not thoroughly discussed*)

CHAPTER 22: Dehcho Government (*in draft and requires more work*)

CHAPTER 23: Dehcho Community Governments (*footnotes/issue outlined and more discussion required*)

CHAPTER 24: Dehcho Community Lands (*in draft and not thoroughly discussed*)

CHAPTER 25: Early Childhood Education (*near completion*)

CHAPTER 26: K-12 (*near completion*)

CHAPTER 27: Out of School Care (*near completion*)

CHAPTER 28: Post Secondary Education (*near completion*)

CHAPTER 29: Adult Education and Training (*near completion*)

CHAPTER 30: Social Housing (*near completion*)

CHAPTER 31: Income Assistance (*near completion*)

CHAPTER 32: Adoption (*near completion*)

CHAPTER 33: Child and Family Services (*near completion*)

CHAPTER 34: Wills and Estates (*in draft and not thoroughly discussed*)

CHAPTER 35: Guardianship and Trusteeship (*not yet discussed*)

CHAPTER 36: Administration of Justice (*in draft and not thoroughly discussed*)

CHAPTER 37: Taxation (*footnotes/issue outlined and more discussion required*)

DFN ROLLING DRAFT
Draft: January 30, 2012

Without Prejudice
For Discussion Purposes Only

CHAPTER 38: Economic Measures *(in draft and not thoroughly discussed)*

CHAPTER 39: Mineral Royalties *(in draft and not thoroughly discussed)*

CHAPTER 40: Financial Payments *(in draft and not thoroughly discussed)*

CHAPTER 41: Fiscal Relations *(not yet discussed)*

CHAPTER 42: Implementation *(in draft and not thoroughly discussed)*

CHAPTER 43: Dispute Resolution *(near completion)*

CHAPTER 44: Transition *(not yet discussed)*

CHAPTER 44: Matters for the Dehcho Agreement *(not yet discussed)*

DFN ROLLING DRAFT
Draft: [January 30](#), 2012

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PREAMBLE

CHAPTER 1: DEFINITIONS & INTERPRETATION

1.1 DEFINITIONS 1.2 INTERPRETATION

1.1 DEFINITIONS

1.1.1 The following definitions apply in the Dehcho Agreement:

“Act of God” means

“Adult Education” means

“Adult Education and Training” means

“Agreement” means

“Agreement-in-Principle” means

“All-Terrain Vehicles” means

“Appeal Board” means the appeal body established in accordance with 4.6 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

“Capital Transfer” means

“Committee” means

“Commissioner’s Land” means

“Commissioner in Executive” means

“Community” means

“Community Acceptance” means

“Community Government” means

“Community Lands” means

“Compensation” means

“Harvester Compensation” means

“Conflict” means

“Conservation” means¹:

¹ Definition will need to be revisited once Canada has a Fish Harvesting chapter to propose

Deleted: “Canadian Citizen” means¶

- 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

▼ **“Culture and Language Advocate”** means

“Dehcho Agreement” means

“Dehcho Assembly” means

“Dehcho Asserted Territory” means

▼ **“Dehcho Capital”** means

Deleted: “Contract” means

Deleted: “Council” means¶
“Court” means¶

Deleted: “DFN Band Membership List” means¶

“Dehcho Citizen” means a person whose name is on the Dehcho Citizenship Register

“Dehcho Citizenship Register” means the register referred to in 4.5

“Dehcho Community Government” means

“Dehcho Constitution” means

“Dehcho Dene” means

“Dehcho Enterprises” means

“Dehcho Government” means

“Dehcho Government Law” means

“Dehcho Land Use Plan” means

“Dehcho Ndehe” means

“Dehcho Resident” means

“Dehcho Resource Management Authority” means

“Dehcho Settlement Area” means

“Dene” means

“Dene Zhatie” means

“Developer” means

“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

▼ **“Edible Parts”** means

“Education Support Services” means

Deleted: “Economic Development Plan” means¶

“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 6.4.2

“Enrolment Committee” means the committee established under 4.2

Deleted: “Emergency” means¶
¶

“Enrolment” means the list of individuals established by the Enrolment Committee in accordance with the eligibility criteria set out in 4.1

“Enrolment List” means

“Enrolment Period” means

“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 Authority” means

“Federal Law” means

“Federal Public Service” means

“Fish” means

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

“Furbearers”, means

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

“Government Development Programs” means

“Governor in Council” means

“Government” means

“Harvesting”, means

“Heritage Resources” means

“Heritage Site” means

“Impact and Benefit Agreement” means

“Implementation Committee” means

“Implementation Plan” means

“Implementation Working Group” means

“Income Assistance” means

“Interim Park Management Plan” means

“International Legal Obligations” means

“Jurisdiction” means

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

“Land and Resources Agreement” means the final agreement which may be signed among the Government of Canada, the Government of the Northwest Territories and the Northwest Territory Métis Nation

“Lands Titles Office” means

“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

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

“Métis Local Membership List” means

“Minister” means

“National Park Reserve” means

“Harvester Compensation” means

“Navigable” means

“Navigable Waters” means

“Non-Edible Parts” means

“NWT Law” means

“Official Voters List” means the list of individuals created in accordance with 6.3.4

“Party” means

“Person”

“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 as referred to in 4.3.

“Preliminary Voters List” means the list created in accordance with 6.2.2 (f).

Deleted: ¶

“Project” means

“Protected Area” means

“Ratification Committee” means the committee referred to in 6.2

“Ratification Vote” means

“Registrar” means an individual or group of individuals responsible for the creation and maintenance of the Dehcho Citizenship Register in accordance with 4.8

“Regulatory Authorities” means

“Remediation of Contaminated Sites” means

“Sacred Site” means

“Settlement Legislation” means

“Self-Government Agreement” means

“Spiritual Site” means

“Student” means

“Subsistence and Personal Use” means the non-commercial use or consumption of Wildlife, Fish², Trees or Plants by the individual or the family or community of the individual carrying out the hunting, trapping and gathering activity³, or anyone receiving Wildlife, Fish, Trees or Plants through gifting or trading as set out in the Dehcho Agreement.

“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

“Wildlife” means

1.2. INTERPRETATION

² Canada will need to revisit this definition once it has direction on Fish

³ GNWT proposing to replace “hunting, trapping and gathering” with Harvesting”. Parties still need to agree on definition of Harvesting.

- 1.2.1** The Dehcho Agreement may be examined as an aid to interpretation where there is any doubt in respect of the meaning of any Legislation or Dehcho Laws implementing the provisions of the Dehcho Agreement.
- 1.2.2** 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.
- 1.2.3** 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.
- 1.2.4** 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.
- 1.2.5** A reference to a Government, ministry, department or body will include its successor, whether it be in name or function.
- 1.2.6** 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 Legislation⁴.
- 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.

⁴ Canada would like a new provision added “Where the Dehcho Agreement refers to a federal 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”

- 1.2.9** “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** The use of the word “practicable” means “capable of being done”.
- 1.2.12** 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.
- 1.2.13** Where a word is defined, other parts of speech and grammatical forms of the same word have corresponding meanings.
- 1.2.14** 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.
- 1.2.15** 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.
- 1.2.16** 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 APPLICATION OF FEDERAL LAW RELATING TO FIREARMS
 - 2.7 CONSULTATION ON LEGISLATION
 - 2.8 INTERGOVERNMENTAL AGREEMENTS
 - 2.9 APPLICATION OF INDIAN ACT
 - 2.10 REGULATION OF PROFESSIONS
 - 2.11 NWT SUPREME COURT
 - 2.12 CORE PRINCIPLES AND OBJECTIVES
 - 2.13 STATUS OF DEHCHO LANDS
 - 2.14 DEVOLUTION
 - 2.15 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 Citizens from participating in the programs of the governments of Canada and the NWT 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 the governments of Canada and the NWT or from benefiting from them in accordance with the general criteria

established for these programs, except where the Dehcho Agreement provides otherwise.

2.4 TERRITORIAL APPLICATION⁵

- 2.4.1** The provisions of the Dehcho Agreement will apply in the Northwest Territories, except where otherwise provided in the Agreement.⁶
- 2.4.2** 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.⁷
- 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.⁸
- 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.

2.5 CONSTITUTION OF CANADA

- 2.5.1** 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*.
- 2.5.2** The *Canadian Charter of Rights and Freedoms* will apply to the Dehcho Government in respect of all matters within its authority.

2.6 APPLICATION OF FEDERAL LAW RELATING TO FIREARMS

⁵ Move to Certainty?

⁶ Have to await the territorial extent of the certainty approach

⁷ Same as footnote

⁸ Same as footnote

- 2.6.1** Nothing in the Dehcho Agreement affects the application of Federal Law in respect of the possession, use or regulation of firearms.⁹

2.7 CONSULTATION ON LEGISLATION

- 2.7.1** 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.

2.8 INTERGOVERNMENTAL AGREEMENTS

- 2.8.1** 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 or territorial government for the provision of specific programs and services.

2.9 APPLICATION OF INDIAN ACT

- 2.9.1** 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 person where it was being administered by the Minister of Indian Affairs and Northern Development under that Act before the effective date.

2.10 REGULATION OF PROFESSIONS

- 2.10.1** 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.

2.11 NWT SUPREME COURT

⁹ DFN involvement in sentencing to be addressed in Justice chapter.

- 2.11.1 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 persons.

2.12 CORE PRINCIPLES AND OBJECTIVES

- 2.12.1 In consultation with the Dehcho Government, the Government of the Northwest Territories shall 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.

- 2.12.2 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.

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

- 2.12.4 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.

- 2.12.5 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.

- 2.12.6 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.

2.13 STATUS OF DEHCHO LANDS

2.13.1 Dehcho Nhede 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*.

2.14 DEVOLUTION

2.14.1 Nothing in the Dehcho Agreement shall prejudice the devolution or transfer of responsibility or powers from the Government of Canada to the Government of the Northwest Territories.¹⁰

2.15 COMING TO EFFECT

2.15.1 The Dehcho Agreement comes into effect upon its ratification by all Parties as set out in the Ratification Chapter.

¹⁰ 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

CHAPTER 4: ELIGIBILITY AND ENROLMENT

- 4.1 ELIGIBILITY CRITERIA
 - 4.2 ENROLMENT COMMITTEE
 - 4.3 PRELIMINARY ENROLMENT PERIOD
 - 4.4 RESUMPTION OF ENROLMENT
 - 4.5 DEHCHO CITIZENSHIP REGISTER
 - 4.6 APPEAL BOARD
 - 4.7 ENROLMENT RESPONSIBILITIES AFTER EFFECTIVE DATE
 - 4.8 REGISTRAR
 - 4.9 COSTS
-

4.1 ELIGIBILITY CRITERIA¹¹

- 4.1.1 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;
 - d) 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;
 - e) adopted as a child under laws recognized in Canada or by Dehcho Dene custom by an individual eligible for Enrolment; or
 - f) a direct descendant of an individual eligible for Enrolment.
- 4.1.2 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.
- 4.1.3 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

Deleted: c

¹¹ Canada still reviewing the Eligibility Criteria

- 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 Membership Lists¹², unless he or she provides notice of intention to be removed from the other Membership List or withdraws an application for membership.
- 4.1.4 A Dehcho Citizen may not enroll 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.
- 4.1.5 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.
- 4.1.6 Within 120 days of the Effective Date or the date of notification of acceptance of enrolment, an individual referred to in E.1.5 who meets the eligibility criteria set out in E.1.1 and E.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.

¹² Canada requires more information about these Métis Local Lists and how they will be defined in the agreement.

- 4.1.7 An individual referred to in E.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 E.1.6.
- 4.1.8 Until the requirements of E.1.6 have been satisfied, an individual is not entitled to exercise any rights or receive any benefits under the Final Agreement.
- 4.1.9 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 4.1.3.
- 4.1.10 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 or Territorial law, impose any obligation on Canada or the Government of the Northwest Territories to provide rights or benefits.
- 4.2 ENROLMENT COMMITTEE**
- 4.2.1 The Enrolment Committee will be established no later than 60 days following the signing of this Agreement.
- 4.2.2 The Enrolment Committee will be composed of four individuals appointed by the DFN and two individuals appointed by Canada.
- 4.2.3 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
- 4.2.4 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.
- 4.2.5 The Enrolment Committee will establish its own procedures and time limits in accordance with the principles of natural justice and this Agreement.

4.2.6 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.

4.3 **PRELIMINARY ENROLMENT PERIOD**

4.3.1 Following its establishment, the Enrolment Committee will commence the Preliminary Enrolment Period for the purpose of creating the Enrolment List.

4.3.2 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 4.1;
- 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 4.1.3.
 - 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.

4.3.3 Where the individual to be enrolled is a Dehcho Citizen is a child or is legally incompetent¹³, the application to be added or removed from the Enrolment List must be made by that person's parent, guardian or legal representative.

¹³ Canada currently reviewing alternative language

- 4.3.4 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.
- 4.3.5 Should the Enrolment Committee reject the reconsideration under 4.3.4, the applicant will have an opportunity to appeal the decision to the Appeal Board following its establishment in accordance with 4.6.1.
- 4.3.6 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.
- 4.3.7 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 4.4.1 and 4.4.2. If an appeal is pending, the committee and the board shall remain in function prior to ceasing all activity.
- 4.4 RESUMPTION OF ENROLMENT**
- 4.4.1 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 4.3.
- 4.4.2 The Appeal Board will reconvene following the publication of the Enrolment List under 4.4.1.
- 4.4.3 The Enrolment Committee will resume enrolment after the publication of the Enrolment List under 4.4.1 and will receive and review applications by individuals to be on the Enrolment List based on the eligibility criteria set out in 4.1 and managed pursuant to the same criteria and procedures it established and published under 4.3.
- 4.4.4 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.

- 4.4.5 The process for reconsideration and appeals will be consistent the process established during the Preliminary Enrolment Period as per 4.3.3, 4.3.4 and 4.3.5.
- 4.4.6 Six (6) months after the publication of the Enrolment List under 4.4.1, the Enrolment Committee shall provide the Enrolment List to the Ratification Committee for the purpose of creating the Preliminary Voters List as set out in 6.2.2 f).
- 4.5 DEHCHO CITIZENSHIP REGISTER**
- 4.5.1 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 4.4.4 will be enrolled.
- 4.5.2 Until the Registrar is established under section 4.8.1, 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 4.1 and managed pursuant to the criteria and procedures it established under 4.3.
- 4.5.3 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 the Government of Canada.
- 4.6 APPEAL BOARD**
- 4.6.1 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.
- 4.6.2 The Appeal Board will be composed of three individuals, one appointed by the DFN, one appointed by the Government of Canada and one jointly appointed by the DFN and the Government of Canada.
- 4.6.3 The Appeal Board will:
- a) establish its own procedures applying the principles of natural justice and this Agreement;

- b) set time limits for appeals¹⁴;
 - 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 4.6.5 or 4.6.6; 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.
- 4.6.4 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;
 - c) erred in law; or
 - d) 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.
- 4.6.5 On an application for judicial review under 4.6.4, 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.
- 4.6.6 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.
- 4.6.7 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.

¹⁴ Canada still reviewing whether the agreement should set out the time limits for appeals

- 4.6.8 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

4.7 ENROLMENT RESPONSIBILITIES AFTER EFFECTIVE DATE

- 4.7.1 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 4.8.1.
- 4.7.2 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 the Government of Canada and the Government of the Northwest Territories annually or at another time agreed by the Parties.

4.8 REGISTRAR

- 4.8.1 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.
- 4.8.2 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.
- 4.8.3 The Registrar will establish its own procedures and time limits for applications in accordance with the principles of natural justice.
- 4.8.4 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 4.1.
 - i) remove the names of the following individuals from the Dehcho Citizenship Register:

- ii) an individual who is deceased;
 - iii) an individual who is not eligible to be enrolled pursuant to 4.1.3.
 - iv) an individual enrolled by mistake or on the basis of false or misleading documentation; or
 - v) an individual who applies to be removed from the Dehcho Citizenship Register.
- 4.8.5 Where the individual to be enrolled is a Dehcho Citizen is a child or is legally incompetent¹⁵, the application to be added or removed from the Dehcho Citizenship Register must be made by that person's parent, guardian or legal representative.
- 4.8.6 The Registrar will make corrections to the name of an individual on the Dehcho Citizenship Register upon application and where appropriate.
- 4.8.7 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 Registrar¹⁶. The notice of decision will be in writing, will contain reasons and will inform the individual of the right to appeal.
- 4.8.8 The Registrar will maintain a record of every person whose application to be added to the Dehcho Citizenship Register is rejected or whose name is removed from the Dehcho Citizenship Register.
- 4.8.9 The Registrar will provide each Dehcho Citizen with proof of enrolment on the Dehcho Citizenship Register.
- 4.8.10 The Registrar will publish the Dehcho Citizenship Register at least once a year.
- 4.8.11 The Registrar will send to the Dehcho Government, Government of the Northwest Territories and the Government of Canada, a copy of each annual publication of the Dehcho Citizenship Register as well as notice of any additions to or subtractions from the Dehcho Citizenship Register.

¹⁵ Same issue in 4.3.3

¹⁶ Dehcho will need to decide which body (Dehcho Government?) will be determining appeals.

4.8.12 The Registrar will provide to every person 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 imposed¹⁷.

4.8.13 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.

4.9 COSTS

4.9.1 The Government of Canada will pay the reasonable and necessary costs of enrolment before the Effective Date, and any resulting appeals in accordance with an approved budget.

4.9.2 The Dehcho Government will be responsible for ongoing enrolment costs after the Effective Date, including the costs of its enrolment appeal process.

¹⁷ Canada questioning if there are any privacy issues with making the Dehcho Citizenship Register public

CHAPTER 5: APPROVAL OF THE AGREEMENT-IN-PRINCIPLE

5.1 APPROVAL OF THE AGREEMENT IN PRINCIPLE

- 5.1.1 The chief negotiators will initial the Agreement in Principle when they are prepared to submit it for approval.
- 5.1.2 The initialling of the Agreement in Principle will be done at a location agreed to by the Parties.
- 5.1.3 After the Agreement in Principle has been initialled by the chief negotiators, it will be submitted to the Parties for consideration of approval.
- 5.1.4 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.
- 5.1.5 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.
- 5.1.6 The Government of 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.
- 5.1.7 The Agreement in Principle is not legally binding.

CHAPTER 6: RATIFICATION OF THE DEHCHO AGREEMENT

6.1	RATIFICATION OF THE DEHCHO AGREEMENT
6.2	RATIFICATION COMMITTEE
6.3	APPEALS
6.4	RATIFICATION VOTE
6.5	RATIFICATION BY DFN
6.6	RATIFICATION BY THE GOVERNMENT OF THE NORTHWEST TERRITORIES
6.7	RATIFICATION BY THE GOVERNMENT OF CANADA
6.8	COSTS

6.1 RATIFICATION OF THE DEHCHO AGREEMENT

- 6.1.1 The chief negotiators will initial the Dehcho Agreement when they are prepared to submit it for approval.
- 6.1.2 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.
- 6.1.3 The Dehcho Agreement will be legally binding once ratified by all Parties in accordance with the ratification provisions set out in this chapter.
- 6.1.4 Ratification of the Dehcho Agreement by one party does not obligate any of the other parties to ratify the Dehcho Agreement.

6.2 RATIFICATION COMMITTEE

- 6.2.1 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.
- 6.2.2 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 6.4.

- c) ensure that the Eligible Voters have a reasonable opportunity to have access and to review the Dehcho Agreement and the procedures pursuant to 6.2.2 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 4.4.4 within 90 days of receiving the list.

6.2.3 Following decisions rendered by the Appeal Board with respect to the Preliminary Votes List in accordance with 6.3.3 and 6.3.4, the Ratification Committee will:

- a) publish the Official Voters List in accordance with 6.3.4;
- 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 for whom certification is provided by the close of polls on the last day of the vote, by a qualified practitioner, the individual was physically or mentally incapacitated to the point that they could not have voted on the dates set for voting; and¹⁸
 - 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

Deleted: who provides, within 4 days of the last day of voting, certification by a qualified medical practitioner that

¹⁸ Canada examining whether any additional/alternative procedures are required with respect to mentally incompetent individuals and the timeframe for the 'grace period' for when an individual has to provide certification.

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.

6.2.4 The Ratification Committee will be dissolved upon submitting to the Parties the written report as referred to in 6.2.3 (k).

6.3 APPEALS

6.3.1 Appeals with respect to the Preliminary Voters List will be made to the Appeal Board established under 4.6.1.

6.3.2 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 person being included on the Preliminary Voters List on the basis of ineligibility.

6.3.3 Where an individual makes an appeal under 6.3.2 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 6.4.2.

6.3.4 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 person whose eligibility to vote has been challenged and the Ratification Committee, of its decision.

6.3.5 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.

6.4 RATIFICATION VOTE

6.4.1 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.

6.4.2 An Eligible Voter will be an individual who eligible based on the eligibility criteria set out in 4.1 and is at least 18 years of age on the day that individual is voting

6.4.3 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 6.4.2.; and
- c) declares in writing that they meet the eligibility criteria set out in the Eligibility and Enrolment chapter.

6.4.4 The ballot of an individual described in 6.4.3 counts in determining the outcome of the ratification vote only if the Enrolment Committee determines that the individual is a Dehcho Member.

6.5 RATIFICATION BY THE DFN

6.5.1 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.

6.6 RATIFICATION BY THE GOVERNMENT OF THE NORTHWEST TERRITORIES

6.6.1 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 6.5.1 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.

6.7 RATIFICATION BY THE GOVERNMENT OF CANADA

- 6.7.1 Ratification of the Dehcho Agreement by the Government of Canada will require:
- a) approval of the Dehcho Agreement by the Executive Council of the Government of the Northwest Territories pursuant to 6.6.1 b) and ratification of the Dehcho Agreement by the Dehcho First Nation pursuant to 6.5.1 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.

6.8 COSTS

- 6.8.1 The Government of 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.

DFN ROLLING DRAFT
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Without Prejudice
For Discussion Purposes Only

CHAPTER 7: DEHCHO NDEHE

APPENDIX TO CHAPTER 7– Land Selection Criteria

A.1 DEFINITIONS

Advanced Stage of Development means

A.2 GENERAL

A.2.1 The Parties 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 Prior to land selection the Parties will agree on an Dehcho Settlement Area

Information

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

- (a) current information respecting the location and nature of existing Government 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 for review by Government.

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:
- (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 Selections¹⁹

- 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.

Special Harvesting Areas

- A.3.4 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.

Restrictions on Access

- A.3.5 During land selection the Parties may negotiate locations where access is restricted. These negotiations will be intended to balance the interest of the DFN for exclusive possession of their lands and the interest of the public.

Dehcho Citizen Interests

- A.3.6 The DFN may, with the consent of a Dehcho Citizen who has an 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 Government the written consent of the Dehcho Citizen. Such consent is not required if the interest of that Dehcho Citizen is limited to that of a tenant or occupant of the building or structure.

Selection of Undeveloped Land Administered by Canada

- A.3.7 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.

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.

¹⁹ The GNWT will review.

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

A.4.3 Specific sites are to be areas such as Camps for harvesting or areas currently being used by a Dehcho Citizen.

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 Government the written consent of the Dehcho Citizen.

A.5 COMMUNITY BOUNDARY

A.5.1 Where there are no Community boundaries established, the Development Control Zone boundary will constitute the boundary for the purpose of land selection.

A.5.2 Prior to commencing land selection negotiations, the community boundary will be confirmed by the Parties.

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 Government. The lessee will be given written notice by Government 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 shall not be identified as Dehcho Ndehe.

A.6.6 Land Selection may be restricted in areas of overlap with other Aboriginal groups.

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 Government.
- 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.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 Government 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 Consultation²⁰ 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 paragraph 35, 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, provided that:
 - (a) there will be no significant changes in the terms and conditions of such renewals, replacements, extensions or transfers; and

²⁰ Consultation with other Aboriginal groups would start prior to the initialing of the maps

- (b) the interest holder will be given notice of the withdrawal and advised by Government that the lands have been selected.

A.8.6 Paragraph 34 will not be construed to affect any discretion of Government 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 person 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 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.8.10 For greater certainty, withdrawn lands remain Crown lands or Commissioner's lands under administration and control of the Minister or Commissioner.

A.9 STATUS OF THIS APPENDIX

A.9.1 While this Appendix will form part of the Agreement-in-Principle it will not form part of the Dehcho Agreement.²¹

²¹ May or may not be contained in a Dehcho Agreement. Parties to discuss

CHAPTER 8: LAND USE PLANNING

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CHAPTER 9: RESOURCE MANAGEMENT / DCRMA

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CHAPTER 10: SUBSURFACE RESOURCES

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CHAPTER 11: NATIONAL PARKS

CHAPTER 12: PROTECTED AREAS

CHAPTER 13: EXPROPRIATION

- 13.1 GENERAL PRINCIPLES
 - 13.2 ATTEMPT TO NEGOTIATE AN AGREEMENT BEFORE EXPROPRIATION
 - 13.3 EXPROPRIATION
 - 13.4 COMPENSATION
 - 13.5 EXCHANGE LANDS
 - 13.6 STATUS OF LANDS
 - 13.7 REQUIRING EXPROPRIATED LANDS
 - 13.8 PUBLIC ROADS
 - 13.9 EMERGENCIES
 - 13.10 CONFLICT
-

Definitions²²

Expropriating Authority: an authority with power of expropriation under federal or territorial legislation of general application, the Dehcho Agreement, or an Act giving legal effect to the Dehcho Agreement.²³

13.1 GENERAL PRINCIPLES

13.1.1 The Parties:

- a) agree that, as a general principle, Dehcho Ndehe will not be expropriated;
- b) agree, notwithstanding 13.1.1 a), the Government of Canada and the Government of the Northwest Territories²⁴ have the power to expropriate interests in Dehcho Ndehe, as set out herein²⁵;
- c) acknowledge the interest of the parties in maintaining the size and integrity of Dehcho Ndehe;²⁶

²² If the definition is not chapter specific, should be removed and placed in the definitions

²³ Canada would like to remove “the Dehcho Agreement, or an Act giving legal effect to the Dehcho Agreement”

²⁴ The DFN position is that the Dehcho Government should also have the power to expropriate Crown lands or Commissioner’s land or private lands, for public purposes, and DFN will provide draft wording to this effect for inclusion in another chapter.

²⁵ DFN considering language on the expropriation of cultural sites

- d) agree that as a general principle they will attempt to acquire lands for public purposes through negotiated agreements with the Dehcho Government, as set out in 13.2;
- e) agree that should expropriation be necessary, the minimum interest required will be taken;²⁷ and
- f) agree that expropriation of an interest in Dehcho Ndehe will occur only as necessary for a Public Purpose.

13.1.2 Canada or the Government of the Northwest Territories prior to making a decision to expropriate any part of Dehcho Ndehe, shall 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.

13.1.3 The size of Dehcho Ndehe, as of the effective date, inclusive of surface and subsurface lands, will be maintained and will not be reduced through expropriation or other means, but may be enlarged.^{28,29}

13.2 ATTEMPT TO NEGOTIATE AN AGREEMENT BEFORE EXPROPRIATION

13.2.1 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 attempt³⁰ to negotiate an agreement with the Dehcho Government for the transfer of the required interest so as to avoid the need for expropriation.

13.2.2 When an agreement is not reached under 13.2.1 (b) between the Expropriating Authority and the Dehcho Government, the

²⁶ Canada would like provision modified “Canada acknowledges the interest of the Dehcho Government in maintaining the quantum and integrity of the Dehcho Ndehe”

²⁷ DFN would like additional language “ordinarily the subsurface isn’t taken”

²⁸ This is a core principle for DFN. Canada’s position is that compensation must have the option to be either lands, money or a combination thereof.

²⁹ GNWT may not have land to exchange in the future

³⁰ DFN would like “attempts” to be made

Expropriating Authority may proceed with expropriating an interest in Dehcho Ndehe.

- 13.2.3 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.

13.3 EXPROPRIATION

- 13.3.1 The Expropriating Authority will exercise that power of expropriation in accordance with applicable laws, subject to the Dehcho Agreement and implementing legislation.

- 13.3.2 Any federal or territorial expropriation legislation coming into force after the date of ratification of the Dehcho Agreement shall, insofar as it applies to Dehcho Ndehe, conform to this Agreement and provide for the following minimum procedures:

- a) notice of intention to expropriate served on the Dehcho Government;
- b) an opportunity for the Dehcho Government to object to the expropriation on the basis that the expropriation is not necessary for a public purpose, or that the expropriating authority has not complied with the expropriation legislation, and an opportunity to be heard on that objection, including public hearings; and
- c) the determination of compensation by negotiation or mediation or, failing that, by reference to arbitration, as set out in chapter DR xx.³¹

13.4 COMPENSATION

- 13.4.1 Compensation for expropriated Dehcho Ndehe will be an exchange of lands, and will include an exchange of lands plus a cash component where the exchanged lands are of lesser market value or of lesser

³¹ This entire section is consistent with 12.4.4 of the NILCA except for b) “including public hearings”. The provision, however, is not found in other NWT agreements.

- Traditional Value³² to the Dehcho Government or Dehcho Citizens than the expropriated lands.³³
- 13.4.2 The total value of compensation, whether exchanged lands or exchanged lands³⁴ and a cash component, 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 the notice of expropriation is made;³⁵
 - b) the replacement value of any improvement to Dehcho Ndehe in which an interest has been expropriated;
 - 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;³⁶
 - 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
- 13.4.3 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

³² DFN considering to define term

³³ As noted above, compensation for DFN must include the same quantum of lands, but may include lands plus money where lands are of lesser value. There is a fundamental disagreement on this core issue, as Canada has suggested that either lands or money can be compensation for expropriated lands.

³⁴ Same issue raised previously. Canada's position is that compensation will be exchanged lands or exchanged lands and a cash component or a cash component.

³⁵ Same as in fed draft tabled Feb. 2008 except "at the time notice of expropriation is made" added.

³⁶ Requires discussion. Canada suggests "recognized in law and held by the Dehcho First Nations, and provided that there will be no increase in the total value of compensation on account of any Section 35 Rights stemming from the Constitution Act, 1982".

interest that is acceptable to the Dehcho Government, cash³⁷ or a combination thereof. If a fee simple interest in land is acquired by the Dehcho Government pursuant to this provision, the parcel of land may, with the agreement of the Parties, become Dehcho Ndehe.

- 13.4.4 A dispute on the valuation of exchange lands under 13.4.3 will not delay the expropriation by the Expropriating Authority to expropriate the interest in Dehcho Ndehe.³⁸

13.5 EXCHANGE LANDS

- 13.5.1 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 Federal or Territorial Expropriation Authority and the person holding that interest consent;
 - b) occupied or used³⁹ by the Federal or Territorial 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
- 13.5.2 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.⁴⁰

³⁷ As a general principle, DFN do not agree with cash only being an option for compensation. Compensation must include land.

³⁸ DFN considering new language

³⁹ DFN would like "owned" to be added

⁴⁰ Consistent with Tlicho 20.4.1, although Canada notes that "it is important to note that this clause was acceptable in Tlicho because they selected one contiguous block of land, equal surface and subsurface. Also, the language in Tlicho is that the expropriating authority shall offer available lands

- 13.5.3 Where an expropriation authority expropriates Dehcho Ndehe and the exchange lands are acceptable to the Dehcho Government, the authority shall acquire and offer as partial or full compensation for the expropriation of Dehcho Ndehe exchange lands in the Dehcho Settlement Area.
- 13.5.4 Where an expropriation authority expropriates Dehcho Ndehe, if no exchange lands are available in the Dehcho Settlement Area, exchange lands shall be in the NWT portions of the Dehcho First Nations' asserted traditional territory, as shown in Appendix A of the Dehcho First Nations Framework Agreement, and these lands may become Dehcho Ndehe, and be subject to the Dehcho Agreement.⁴¹
- 13.5.5 In situations involving the expropriation of both the surface and subsurface, where a federal or territorial 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, shall offer both the surface and the subsurface to the Dehcho Government.

13.6 STATUS OF LANDS

- 13.6.1 Where an expropriating authority expropriates a fee simple interest in Dehcho Ndehe, those lands will no longer be Dehcho Ndehe.
- 13.6.2 Where an expropriating authority expropriates less than a fee simple interest in Dehcho Ndehe,
- a) those lands will remain Dehcho Ndehe;

that are adjacent to Tlicho lands. Key words here being 'offer' and 'available'. Dehcho's 2.6 does not have either of those, therefore limiting the possibility of finding suitable replacement lands."

⁴¹ This is not something Canada can agree to for two reasons. First, the Dehcho's asserted traditional territory, as identified in Appendix A of the Framework Agreement, falls into jurisdictions outside of the NWT and this agreement will only address DFN assertions in the NWT. Secondly, the assertions identified in the map overlap into other Aboriginal groups' settled areas, Sahtu for example, and again Canada cannot guarantee that lands in another Aboriginal group's settled area will be available as exchange lands. The federal position is to say that exchange lands will be provided in the Dehcho's settlement area. The Dehcho's settlement area will be defined as the area in which the Final Agreement will apply, which does not include areas outside of the NWT or areas that overlap with other Aboriginal groups.

- b) those lands remain subject to Dehcho Government laws, except to the extent those laws are inconsistent with the use of the lands for the purpose of expropriation;⁴² 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.⁴³

13.7 REACQUIRING EXPROPRIATED LANDS

13.7.1 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) they may not be alienated to any party other than the Dehcho Government, where such lands are wholly surrounded by Dehcho Ndehe, without the consent of the Dehcho Government;⁴⁴
- c) the expropriating authority may not dispose of those lands for a price less than the price offered to the Dehcho Government; and
- d) subject to __, the Dehcho Government may offer to return exchanged lands for expropriated lands, or may offer a combination of exchanged lands and a cash component for expropriated lands;
- e) the price for the Dehcho Government to re-acquire expropriated lands shall take into account:⁴⁵

⁴² Preferred federal language to replace “for the purpose of expropriation” with “federal or territorial public purposes as determined by the Federal or Territorial Expropriating Authority”.

⁴³ Canada and DFN agree to add “as determined by the Expropriating Authority”. GNWT still considering.

⁴⁴ Concept introduced by DFN to help maintain the original integrity of Dehcho Ndehe. Canada cannot agree to this provision as this allows for a veto for the DFN.

⁴⁵ Canada sees a number of problems of listing the considerations in 2.14 e), primarily because it is the Expropriating Authority who will determine the price for the reacquisition of the lands. Also, how would the parties determine an appropriate annual % increase? What would this be based on? What if

- i) degradation to the economic or cultural value or utility of the lands to Dehcho Citizens or the Dehcho Government arising from the expropriation;
- ii) outstanding liability to restore or reclaim the integrity of the lands to pre-expropriation conditions;
- iii) an annual ____ % cap on the increase in monetary value from the time of expropriation;
- iv) lands offered by the Dehcho Government to the expropriating authority in exchange for the return of expropriated lands.

13.8 PUBLIC ROADS

- 13.8.1 An Expropriating Authority may expropriate Dehcho Ndehe in accordance with 13.1.1 for use as a public road or public road allowance without compensation to the Dehcho Government⁴⁶.
- 13.8.2 No lands expropriated under 13.8.1 may be used for any purpose other than a public road or public road allowance without the payment of compensation.
- 13.8.3 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 13.8.1 may be referred by a Party for resolution in accordance with the Dispute Resolution chapter.
- 13.8.4 Where any lands expropriated under 13.8.1 or conveyed without compensation to Government for a public road are no longer needed for a public road, Government will grant back to the Dehcho Government the fee simple interest in those lands and those lands become Dehcho Ndehe.
- 13.8.5 The amount of land expropriated under 13.8.1 or conveyed without compensation to Government for a public road and not granted back

the value of land takes a FALL in monetary value? Would the Dehcho be expected to accept less as a result?

⁴⁶ Parties recognize this provision applied in the context of what was negotiated in the Tlicho Agreement. Parties to consider what this would mean for the Dehcho Agreement.

to the Dehcho Government will not exceed, at any time, X square kilometres.

13.9 EMERGENCIES

13.9.1 Nothing in the Agreement will affect or limit the application to Dehcho Ndehe of the *Emergencies Act (Canada)* or any successor legislation.

13.10 CONFLICT

13.10.1 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.

CHAPTER 14: ACCESS

CHAPTER 15: WILDLIFE HARVESTING

15.1	GENERAL
15.2	GIFTING AND TRADING
15.3	ACCESS
15.4	CONSULTATION
15.5	WILDLIFE MANAGEMENT
15.6	EMERGENCIES

15.1 GENERAL

- 15.1.1 Dehcho Citizens have the right to Harvest all species of Wildlife⁴⁷, including Furbearers, throughout the area shown in the map attached as Appendix A at all times of the year, in accordance with the Dehcho Agreement.
- 15.1.2 Dehcho Citizens 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.
- 15.1.3 Subject to 15.1.5 and 15.1.6, the right recognized in 15.1.1 may be limited or restricted⁴⁸:
- a) by provisions of the Dehcho Agreement; or
 - b) in Legislation, for purposes necessary for conservation, public health and public safety.
- 15.1.4 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.⁴⁹

⁴⁷ Wildlife to be defined to include eggs of non-migratory birds.

⁴⁸ 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.

⁴⁹ 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

- 15.1.5 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.⁵⁰
- 15.1.6 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 15.1.4 and 15.1.5 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.
- 15.1.7 Nothing in the Dehcho Agreement⁵¹ 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.
- 15.1.8 Dehcho Citizens will not be subject to any tax⁵², fee or requirement for license for the harvesting of Wildlife in the area shown in the map attached as Appendix A.
- 15.1.9 Prior to the Dehcho Agreement, the Parties will address the issue of documentation or identification for Dehcho Citizens exercising their

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.

⁵⁰ GNWT prefers co-management throughout the Dehcho Settlement Area.

⁵¹ DFN suggest: "Nothing in this *chapter* will...", because DFN wish to have a chapter on commercial harvesting.

⁵² 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.

right to harvest possess and transport Wildlife as set out in the Dehcho Agreement.

- 15.1.10 Subject to legislation respecting humane harvesting, Dehcho Citizens have the right to use any method, and to possess and use any equipment, for the purpose of Wildlife harvesting.
- 15.1.11 Dehcho Citizens have the right to possess and transport anywhere in Canada the Edible and Non-Edible Parts of Wildlife harvested pursuant to 15.1.1⁵³.
- 15.1.12 When exercising a right pursuant to 15.1.11, Dehcho Citizens will not be required to obtain a license from the Government of Canada or the Government of the Northwest Territories, nor be subject to any fee, but the Dehcho Agreement may provide for requirements for identification of Wildlife to be set out in Legislation.

15.2 **GIFTING AND TRADING**

15.2.1 Dehcho Citizens have the right to Gift:

- a) the Non-Edible Parts of Wildlife harvested to any individual for Subsistence or for Personal Use; and
- b) the Edible Parts of Wildlife to any individual for Subsistence or for Personal Use.

15.2.2 Dehcho Citizens have the right to Trade:

- a) the Non-Edible Parts of Wildlife harvested by any individual for Subsistence or for Personal Use; and
- b) the Edible Parts of Wildlife harvested with:
 - i. other Dehcho Citizens; and
 - ii. members of an Aboriginal group with whom the Dehcho Dene have traditionally traded.⁵⁴

⁵³

⁵⁴ Canada and GNWT want to list Aboriginal groups. GNWT has proposed alternative text in Plants and Trees.

for consumption of the Edible Parts of the Wildlife by the individual or the family of the individual trading for the Edible Parts of the Wildlife, provided trading of Edible Parts of the Wildlife does not represent a significant contribution to the annual income or livelihood of the individual trading Edible Parts of the Wildlife.⁵⁵

15.2.3 The Dehcho Government retains jurisdiction to control and manage commercial trade in Wildlife and Wildlife harvesting on Dehcho Ndehe and in Dehcho Community Lands.⁵⁶

15.2.4 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.⁵⁷

15.3 ACCESS

15.3.1 Subject to 15.3.3, Dehcho Citizens have a right of access to all land and Water within the area shown in the map attached as Appendix A for the purposes of Wildlife harvesting under 15.1.1.

15.3.2 Subject to 15.3.3, within the area shown in the map attached as Appendix A, Dehcho Citizens may establish and use Camps, provided such Camps are reasonably incidental to Wildlife harvesting under 15.1.1.

15.3.3 This right of access does not apply:

- a) on Indian Reserves
- b) on lands held in fee simple or lands subject to a surface lease outside of Dehcho Ndehe
- i) within Community boundaries;

⁵⁵ GNWT disagrees with income being a consideration

⁵⁶ For reasons outlined above, Canada and GNWT do not agree with 2.4, and prefer that management issues be addressed in a separate chapter.

⁵⁷ For reasons outlined above, Canada and GNWT do not agree with 2.4, and prefer that management issues be addressed in a separate chapter.

- ii) outside Community boundaries where the land is less than ten (10) hectares in area and is fenced or otherwise identifiable; or
- iii) where Wildlife 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.

15.3.4 Where Dehcho Citizens have 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, Cabin or any structure, or cut or use any wood other than dead wood, without the consent of the owner, lessee or Government, as the case may be.

15.3.5 A Dehcho Citizen or the Dehcho Government may enter into an agreement with an owner, lessee or Government, as the case may be, regarding the right to access lands described in 15.3.3 for the purpose of Wildlife harvesting under 15.1.1.

15.4 **CONSULTATION**

15.4.1 Government 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.

15.4.2 Pursuant to W.1.5, Government will Consult the Dehcho Government prior to:

- a) amending the terms of an existing commercial authorization to harvest Wildlife;

- b) subject to 15.4.3, issuing a new commercial authorization to harvest Wildlife; or
- c) permitting any commercial activity for the husbandry of a species of Wildlife

that could adversely affect the exercise of the right to harvest Wildlife as set out in the Dehcho Agreement.⁵⁸

15.4.3 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.⁵⁹

15.5 **WILDLIFE MANAGEMENT**

15.5.1 Prior to Dehcho Agreement, the Parties will address Wildlife management within the Dehcho Settlement Area.

15.6 **OVERLAP AND SHARED USE AGREEMENTS**

15.6.1 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 provisions pertaining to Wildlife harvesting may be incorporated into the Dehcho Agreement.

15.7 **EMERGENCIES**

15.7.1 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 persons or property.

⁵⁸ Note that other Agreements restrict the duty to consult within Settlement Areas.

⁵⁹ GNWT okay with Dehcho consent on Dehcho Ndehe but not entire Settlement Area. GNWT wants co-management throughout Settlement Area. Canada agrees.

CHAPTER 16: MIGRATORY BIRDS HARVESTING

- 16.1 GENERAL
 - 16.2 GIFTING AND TRADING
 - 16.3 ACCESS
 - 16.4 CONSULTATION
 - 16.5 MIGRATORY BIRDS MANAGEMENT
 - 16.6 EMERGENCIES
-

16.1 GENERAL

- 16.1.1 Dehcho Citizens have the right to harvest Migratory Birds throughout the area shown in Appendix A at all times of the year, in accordance with the Dehcho Agreement.
- 16.1.2 The right provided for in 16.1.1 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.
- 16.1.3 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.
- 16.1.4 Subject to 16.1.5, Canada will Consult the Dehcho Government prior to imposing a limitation or restriction necessary for Conservation, public health or public safety.
- 16.1.5 In the event of an Emergency, Canada may impose an interim limitation or restriction under 16.1.2 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.
- 16.1.6 Nothing in the Dehcho Agreement will be construed to:

- 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.
- 16.1.7** Dehcho Citizens will not be subject to any tax⁶⁰, fee or requirement for a license for Migratory Bird Harvesting pursuant to 16.1.1.
- 16.1.8** 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 Migratory Birds as set out in the Dehcho Agreement.
- 16.1.9** Dehcho Citizens have the right to use any method, and to possess and use any equipment, for the purpose of Migratory Bird Harvesting pursuant to 16.1.1.
- 16.1.10** Dehcho Citizens have the right to possess and transport anywhere in Canada the Edible and Non-Edible Parts of Migratory Birds harvested pursuant to 16.1.1, subject to any requirements for the identification of Migratory Birds set out in Legislation. When exercising this right, Dehcho Citizens will not be required to obtain a licence from Canada or the Government of the Northwest Territories, nor be subject to any fee.
- 16.2 GIFTING AND TRADING**
- 16.2.1** Dehcho Citizens have the right to Gift:
 - a) the Non-Edible Parts of Migratory Birds harvested pursuant to 16.1.1 to any individual; and
 - b) the Edible Parts of Migratory Birds harvested pursuant to 16.1.1 to any individual for the non-commercial consumption of the Migratory Birds by the recipient of the Migratory Birds or his or her family or community.

⁶⁰ 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.

16.2.2 Dehcho Citizens have the right to Trade:

a) the Non-Edible Parts of Migratory Birds harvested pursuant to 16.1.1 with any individual; and

b) the Edible Parts of Migratory Birds harvested pursuant to 16.1.1 with:

i) other Dehcho Citizens; and

ii) members of another Aboriginal group with whom the Dehcho Dene have traditionally traded⁶¹

for consumption of the Edible Parts of the Migratory Birds by the individual or the family of the individual trading for the Edible Parts of the Migratory Birds, provided trading of Edible Parts of the Migratory Birds does not represent a significant contribution to the annual income or livelihood of the individual trading Edible Parts of the Migratory Birds.

16.3 OVERLAP AND SHARED USE AGREEMENTS

16.3.1 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.

16.4 ACCESS

16.4.1 Subject to 16.4.3 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 area shown in Appendix A for the purpose of Migratory Bird Harvesting under 16.1.1.

16.4.2 Dehcho Citizens may establish and use Camps on Crown Land within the area shown in Appendix A, subject to limitations on access set out in 16.4.3, provided such Camps are reasonably incidental to Migratory Bird Harvesting under 16.1.1.

⁶¹ DFN will consider providing map or list of groups with whom they've traditionally traded.

16.4.3 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.

16.4.4 Where Dehcho Citizens have 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 Government, as the case may be.

16.4.5 A Dehcho Citizen or the Dehcho Government may enter into an agreement with an owner, lessee or Government, as the case may be, regarding the right to access lands described in 16.3.3 for the purpose of Migratory Birds harvesting under 16.1.1.

16.5 CONSULTATION

16.5.1 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.

16.6 MIGRATORY BIRDS MANAGEMENT

16.6.1 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.

16.7 EMERGENCIES

16.7.1 Nothing in the Dehcho Agreement will prevent any individual from killing Migratory Birds for survival in an emergency.

DFN ROLLING DRAFT
Draft: January 30, 2012

Without Prejudice
For Discussion Purposes Only

CHAPTER 17: FISH HARVESTING

CHAPTER 18: PLANT HARVESTING

- 18.1 GENERAL
 - 18.2 GIFTING AND TRADING
 - 18.3 OVERLAP AND SHARED USE AGREEMENTS
 - 18.4 ACCESS
 - 18.5 CONSULTATION
 - 18.6 PLANT MANAGEMENT
 - 18.7 EMERGENCIES
-

18.1.0 GENERAL

- 18.1.1 The Dehcho Government owns the Plants located in Dehcho Ndehe.
- 18.1.2 Subject to 18.6.0, this chapter applies throughout the area shown as Appendix B.
- 18.1.3 Dehcho Citizens have the right to harvest Plants throughout the area shown in Appendix B at all seasons of the year for:
 - 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 for Subsistence or Personal Use.⁶²
- 18.1.4 The right provided for in 18.1.3 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;

⁶² Dehcho prefers dropping the references to a), b) and c). GNWT will review the clause in conjunction with the definition of "Subsistence or Personal Use".

- iv. land management within Community boundaries; and
 - v. protection of the Environment from significant damage.
- 18.1.5 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.⁶³
- 18.1.6 Subject to 18.1.7, Government will Consult the Dehcho Government prior to imposing a limitation or restriction under 18.1.4 (b).
- 18.1.7 In the event of an Emergency, Government may impose an interim limitation or restriction under 18.1.4(b). As soon as possible thereafter, Government will notify the Dehcho Government and provide reasons for the decision. Government will Consult the Dehcho Government with respect to any ongoing terms and conditions which may result from the event.⁶⁴
- 18.1.8 Nothing in the Dehcho Agreement will be construed to:
- a) recognize a right to harvest Plants for commercial purposes or sale;⁶⁵
 - b) confer rights of ownership in Plants, subject to 18.1.1;
 - c) guarantee the supply of Plants;
 - d) entitle Dehcho Citizens to any compensation for damage to or loss of Plants or Plant Harvesting opportunities within the Dehcho Settlement Area⁶⁶;
 - 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.

⁶³ Government is examining "...and will exercise that authority in a manner that is consistent with the Dehcho Agreement."

⁶⁴ Dehcho is concerned about the lack of a reciprocal jurisdiction. Chapter needs to be reviewed after larger jurisdictional issues are settled.

⁶⁵ Dehcho notes that P.1.8.(a) does not appear in the Tlicho agreement and so should be dropped.

⁶⁶ Note: this is linked to an ongoing issue in the Harvester's Compensation Chapter.

- 18.1.9 Dehcho Citizens will not be subject to any tax,⁶⁷ fee, or requirement for a licence for the Harvesting of Plants pursuant to 18.1.3.
- 18.1.10 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.
- 18.1.11 Dehcho Citizens have the right to use any method, and to possess and use any equipment, for the purpose of the Harvesting of Plants pursuant to 18.1.3.
- 18.1.12 Dehcho Citizens have the right to possess and transport anywhere in Canada⁶⁸ the Edible and Non-Edible Parts of Plants harvested pursuant to 18.1.3, subject to any requirements related to the identification of Plants agreed to by the Parties.⁶⁹ When exercising this right, Dehcho Citizens will not be required to obtain a licence from Government⁷⁰, nor be subject to any fee.
- 18.2.0 GIFTING AND TRADING**
- 18.2.1 Dehcho Citizens have the right to Gift Plants harvested under 18.1.3 to any individual for Subsistence⁷¹ or Personal Use.
- 18.2.2 Dehcho Citizens have the right to Trade Plants harvested under 18.1.3 with:
- a) other Dehcho Citizens; and

⁶⁷Dehcho 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

⁶⁸ May need to be subject to provincial laws restricting transport. Review needed.

⁶⁹ 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.

⁷⁰ DFN say “from Government” should be deleted.

⁷¹ Canada suggests reviewing LIA definition.

- b) members of other Aboriginal groups⁷² either with whom the Dehcho Dene have traditionally traded or within the Dehcho Traditional Trading Area⁷³

for Subsistence or Personal Use.

18.3.0 OVERLAP AND SHARED USE AGREEMENTS

- 18.3.1 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.

18.4.0 ACCESS

- 18.4.1 Subject to 18.4.3 and 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 area shown in Appendix B for the purpose of the Harvesting of Plants under 18.1.3.
- 18.4.2 Dehcho Citizens may establish and use Camps on Crown land within the area shown in Appendix “B”, subject to limitations on access set out in 18.4.3, provided such Camps are reasonably incidental to the Harvesting of Plants under 18.1.3.
- 18.4.3 This right of access does not apply:
 - a) on Indian reserve lands⁷⁴;
 - b) on lands held in fee simple, lands subject to an agreement for sale or lands subject to a surface lease;

⁷² Reference to “other Aboriginal groups” is an issue for Dehcho.

⁷³ [New] Identification of the Aboriginal peoples in question may preclude the need for a reference to “Traditional Trading Area” or vice versa⁷⁴ DFN questions the need for (a)

⁷⁴ DFN questions the need for (a)

Deleted: ¶

- c) where it conflicts with any activity carried out under an authorization granted by Government 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.

18.4.4 A Dehcho Citizen or the Dehcho Government may enter into an agreement with an owner, lessee or Government, as the case may be, regarding the right to access lands described in 18.4.2 for the purposes of the Harvesting of Plants under 18.1.3.

18.5.0 CONSULTATION

18.5.1 Government 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.

18.5.2 Government 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;
- c) or permitting any commercial activity for the propagation or cultivation of a species of Plants,

that could adversely affect the exercise of the right to harvest Plants as set out in the Dehcho Agreement.⁷⁵

18.6.0 PLANT MANAGEMENT⁷⁶⁷⁷

⁷⁵ Other land claim agreements only require governments to consult with respect to proposed activities within the Settlement Area.

- 18.6.1 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.⁷⁸

18.7.0 EMERGENCIES

- 18.7.1 Nothing in the Dehcho Agreement will prevent any individual from Harvesting Plants for survival in an Emergency.

⁷⁶ Dehcho prefers negotiating jurisdiction and management rather than deferring it. These provisions differ among the various harvesting chapters depending on which Party has drafted the chapter – these differences reveal unresolved issues between or among the Parties

⁷⁷ Dehcho want to have this discussion in conjunction with the discussion regarding jurisdiction over Dehcho Ndehe.

⁷⁸ Other land claim agreements only purport to include First Nations in management regimes wholly within respective Settlement Areas.

CHAPTER 19: TREE HARVESTING

- 19.1 GENERAL
 - 19.2 GIFTING AND TRADING
 - 19.3 OVERLAP AND SHARED USE AGREEMENTS
 - 19.4 ACCESS
 - 19.5 CONSULTATION
 - 19.6 TREE MANAGEMENT
 - 19.7 EMERGENCIES
-

19.1 GENERAL

- 19.1.1 The Dehcho Government owns the Trees located within Dehcho Ndehe.
- 19.1.2 Subject to T.6.0, this chapter applies throughout the Area shown as Appendix “B”.
- 19.1.3 Dehcho Citizens have the right to harvest all species of Trees throughout the area shown in Appendix “B” at all times of the year for the following purposes:
 - a) firewood for personal use;
 - b) firewood for community purposes within the area shown in Appendix “B”;
 - 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 shown in Appendix “B” .⁷⁹

⁷⁹ Dehcho prefers to delete a) – h). GNWT will review the clause in conjunction with a definition of the phrase “Subsistence or Personal use” and its inclusion in the provision.

- 19.1.4 The right provided for in 19.1.3 may be limited or restricted:
- a) by provisions of the Dehcho Agreement; or
 - b) for purposes necessary for to:
 - 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.
- 19.1.5 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.⁸⁰
- 19.1.6 Subject to 19.1.7, Government will Consult the Dehcho Government prior to imposing a limitation or restriction pursuant to 19.1.4 (b).
- 19.1.7 In the event of an Emergency, Government may impose an interim limitation or restriction related to 19.1.4 (b). As soon as possible thereafter, Government will notify the Dehcho Government and provide reasons for the decision. Government will Consult the Dehcho Government with respect to any ongoing terms and conditions which may result from the event.
- 19.1.8 Nothing in the Dehcho Agreement⁸¹ will be construed to:
- a) recognize a right to harvest Trees for commercial purposes or sale;

⁸⁰ Government is examining "...and will exercise that authority in a manner that is consistent with the Dehcho Agreement

⁸¹ Dehcho prefers "in this chapter".

- b) confer rights of ownership in Trees, other than 19.1.1;
 - 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 Dehcho Citizens to any compensation for damage to or loss of Trees or Tree Harvesting opportunities within the area shown in Appendix “B”⁸²; or
 - f) affect any responsibility of Government for the fighting of forest fires.
- 19.1.9 Dehcho Citizens will not be subject to any tax,⁸³ fee for Tree Harvesting pursuant to 19.1.3.
- 19.1.10 Prior to Dehcho Agreement, the Parties will address the issue of documentation or identification for Dehcho Citizens exercising their right to harvest, possess and transport Trees as set out in the Dehcho Agreement.
- 19.1.11 Dehcho Citizens will have the right to use any method, and to possess and use any equipment, for the purpose of the Tree Harvesting pursuant to 19.1.3.
- 19.1.12 Dehcho Citizens have the right to possess and transport anywhere in Canada⁸⁴ Trees harvested pursuant to 19.1.3, subject to any requirements for the identification of Trees agreed to by the Parties.⁸⁵ When exercising this right, Dehcho Citizens will not be required to obtain a licence from Government,⁸⁶ nor be subject to any fee.

⁸² Note: This is linked to an ongoing issue in the Harvester’s Compensation chapter

⁸³ 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

⁸⁴ May need to be subject to provincial laws restricting transport. Review needed.

⁸⁵ 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.

⁸⁶ DFN say “from Government” should be deleted.

19.2 GIFTING AND TRADING

- 19.2.1 Dehcho Citizens have the right to Gift Trees harvested pursuant to 19.1.3 to any individual for Subsistence⁸⁷ or Personal Use.
- 19.2.2 Dehcho Citizens will have the right to Trade Trees harvested pursuant to 19.1.3 with:
- a) other Dehcho Citizens; and
 - b) members of other Aboriginal groups⁸⁸ either with whom the Dehcho Dene have traditionally traded or within in the Dehcho Traditional Trading Area.⁸⁹

For Subsistence or Personal Use.

19.3 OVERLAP AND SHARED USE AGREEMENTS

- 19.3.1 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 pertaining to the Harvesting of Trees may be incorporated into the Dehcho Agreement.

19.4 ACCESS

- 19.4.1 Subject to 19.4.3 and subsidiary agreements addressing access for harvesting contemplated by the Dehcho Agreement, Dehcho Citizens will have a right of access to all land within the area shown in Appendix “B” for the purpose of Tree Harvesting under 19.1.3.
- 19.4.2 Dehcho Citizens may establish and use Camps on Crown land within the area shown in Appendix “B”, subject to limitations on access set out in 19.4.3, provided such Camps are reasonably incidental to the Harvesting of Trees under 19.1.3.

⁸⁷ Canada suggests reviewing LIA definition.

⁸⁸ The reference to “other Aboriginal Groups” is an issue for Dehcho.

⁸⁹ [New] Identification of the Aboriginal peoples in question may preclude the need for a reference to “Traditional Trading Area” or vice versa.⁹⁰ DFN questions need for (a) .

Deleted: ¶

- 19.4.3 This right of access does not apply:
- a) on Indian reserve lands⁹⁰;
 - 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 Government 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 .

- 19.4.4 A Dehcho Citizen or the Dehcho Government may enter into an agreement with an owner, lessee or Government, as the case may be, regarding access to lands described in 19.4.3 for the Harvesting of Trees under 19.1.3.

19.5 CONSULTATION

- 19.5.1 Government 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.
- 19.5.2 Government 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,

⁹⁰ DFN questions need for (a) .

that could adversely affect the exercise of the right to harvest Trees as set out in the Dehcho Agreement.⁹¹

19.6 TREE MANAGEMENT

19.6.1 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.⁹²

19.7 EMERGENCIES

19.7.1 Nothing in the Dehcho Agreement will prevent any individual from Harvesting Trees for survival in an Emergency.

⁹¹ Other land claim agreements only require governments to consult with respect to proposed activities within the Settlement Area

⁹² Other land claim agreements only purport to include First Nations in management regimes wholly within respective Settlement Areas

CHAPTER 20: HARVESTERS COMPENSATION

20.1	DEFINITIONS
20.2	GENERAL
20.3	TRADITIONAL ACTIVITIES ADVOCATE

20.1 DEFINITIONS

20.1.1 The following definitions apply in this chapter.

“compensation” means a cash payment, either lump sum or a periodic payment, or non-monetary compensation such as replacement or substitution of damaged or lost land use⁹³, property or equipment, or relocation or transportation of Dehcho Citizens or equipment to a different harvesting locale or a combination of such elements.

“developer” means a Person or government engaged in a project, including a community, Aboriginal, territorial or federal government.

“project” does not include a wildlife harvesting or cultural activity.

“Person” means an individual, sole proprietorship, partnership, corporation, cooperative or a limited company.

“Traditional Activities Advocate” means a person, funded by the Parties⁹⁴, to act as an independent advocate for the protection and enhancement of Dehcho Citizens’ harvesting activities.⁹⁵

“harvesting activities”⁹⁶ means the following sustainable, traditional⁹⁷, and renewable resource harvesting activities by Dehcho Citizens:

- a) hunting of mammals and birds;

⁹³ Canada considers including land as compensation problematic and inconsistent with other agreements.

⁹⁴ Canada and GNWT are not yet prepared to commit to funding for this position.

⁹⁵ GNWT propose “Traditional Activities Advocate” means a person appointed by the Dehcho Government to perform the duties set out in 20.3.1

⁹⁶ Canada asks whether the protection of sacred and cultural sites cannot be achieved through land selection and/or land use planning.

⁹⁷ Canada suggests replacing “sustainable, traditional” with “Subsistence”.

- b) trapping of fur-bearing animals;
- c) fishing for freshwater and anadromous fish;
- d) gathering of traditional Dehcho Dene foods;
- e) gathering of plants, fish or wildlife used for medicinal or ceremonial purposes;⁹⁸
- f) use or construction of shelter or facilities essential to the pursuit of the above activities, but not including Parks Canada operational facilities; or
- g) access to lands or waters for any of the above activities.⁹⁹

20.2 GENERAL

20. 2.1 The purpose¹⁰⁰ of this chapter is to provide for the protection and enhancement of harvesting activities by Dehcho Citizens, and to compensate persons 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.
20. 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 harvesting¹⁰¹ activities.
20. 2.3 Notwithstanding section H.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.

⁹⁸ Canada sees this as unacceptable.

⁹⁹ Is this dealt with in Access?

¹⁰⁰ Canada prefers not to have 'purpose' sections in AiP chapters.

¹⁰¹ Canada suggests "harvested" instead of "harvesting".

20. 2.4 Dehcho Citizens, Regulatory Authorities¹⁰² and the Dehcho Government shall make reasonable efforts to mitigate any losses or damage referred to in XX.2.1.
20. 2.5 A claim for compensation under this chapter shall be drafted by a Dehcho Citizen, who may request the assistance of the Traditional Activities Advocate.
20. 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 the Dehcho Government, either party may refer the dispute for resolution in accordance with chapter DR xx¹⁰³.
20. 2.7 Following a reference under XX2.4, if an arbitrator is appointed under XXX, and that arbitrator determines the Developer is liable under 20.2.2, that arbitrator shall 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 Government¹⁰⁴ 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.
20. 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.
20. 2.9 The Dehcho Government and a Developer may enter into an agreement that replaces or modifies the Developer's liabilities and

¹⁰² Canada questions whether Regulatory Authorities should be included. They are not included in other agreements.

¹⁰³ Need to clarify whether a party could still litigate or whether DR is only option.

¹⁰⁴ Note that Regulatory Authorities are not mentioned in this clause.

obligations under this chapter. Any such agreement will be binding on Dehcho Citizens.

20. 2.10 A Developer will not be liable under 20. 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.

20. 3 TRADITIONAL ACTIVITIES ADVOCATE¹⁰⁵

- 20.3.1 In addition to the duties described in 20.2.4, the Traditional Activities Advocate will issue annual reports on the state of harvesting and traditional activities in the Dehcho Settlement Area. The reports will identify threats and potential threats to harvesting and traditional activities and will make recommendations to Developers and the appropriate Governments for reducing, mitigating or eliminating such threats. The TAA will issue at least one such report per year.¹⁰⁶

¹⁰⁵ GNWT propose: The Dehcho Government may appoint a Traditional Activities Advocate to:

- (a) assist a Dehcho Citizen to make a claim under this chapter;
- (b) advise Dehcho Gvoernment and Government on the state of harvesting and traditional activities in the Dehcho Settlement Area; and
- (c) issue an annual report regarding traditional activities

Note: The parties are also considering a DFN counter proposal.

¹⁰⁶ This clause may be more appropriate in a different chapter of the AiP.

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For Discussion Purposes Only

CHAPTER 21: CULTURE, HERITAGE AND LANGUAGE

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CHAPTER 22: DEHCHO GOVERNMENT

CHAPTER 23: DEHCHO COMMUNITY GOVERNMENTS

23.1	DEHCHO COMMUNITY GOVERNMENTS
23.2	STRUCTURE OF DEHCHO COMMUNITY GOVERNMENTS
23.3	DELEGATION
23.4	POWERS TO ENACT LAWS
23.5	INCONSISTENCY OR CONFLICT
23.4	PROGRAMS AND SERVICES
23.5	EXPANSION OF DEHCHO COMMUNITY BOUNDARIES
23.6	DISSOLUTION OR RELOCATION
23.7	ESTABLISHMENT OF NEW DEHCHO COMMUNITY GOVERNMENTS

23.1 DEHCHO COMMUNITY GOVERNMENTS

23.1.1 The Dehcho Community Governments of [list Dehcho communities] will be recognized by the Dehcho Agreement.¹⁰⁷

23.1.2 The Dehcho Agreement will

- a) delineate 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 23.8;
- c) provide for transitional arrangements respecting existing community governments in Dehcho communities, including transfer of their assets and assumption of their liabilities and, where necessary, their dissolution;
- d) set out the powers of the Dehcho Community Governments;
- e) describe the procedures through which the Chiefs and Councillors of Dehcho Community Governments may be selected;¹⁰⁸

¹⁰⁷ Canada and GNWT prefer to say "... established pursuant to the Dehcho Agreement".

¹⁰⁸ Some Dehcho communities will elect their Chiefs and Councilors, others will continue to use Dene custom to choose their Chief and Council.

- f) delineate the authority 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;
- 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 23.1.2 (g);
- i) provide for the requirements for the issuance of certificates of title for Community Lands and for the registration of instruments related to Community Lands;
- j) set out the powers required for Dehcho Community Governments to administer Community Lands; and
- k) set out the powers required for Dehcho Community Governments to enter into municipal services agreements.

23.2 STRUCTURE OF DEHCHO COMMUNITY GOVERNMENTS

- 23.2.1 A Dehcho Community Government will be comprised of a Chief and an even number of councillors. No Dehcho Community Government will have less than two¹⁰⁹ 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 Councilors</u>
Less than 500	6
500-999	8
1,000 or more	10

¹⁰⁹ GNWT suggests minimum of four Councilors.

- 23.2.2 The Dehcho Agreement provisions recognizing Dehcho Community Governments will
- a) recognize the right of Dehcho Communities to choose their leadership according to Dene custom¹¹⁰ rather than by election;
 - b) 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, describe eligibility criteria for Dehcho Community Government elections;
 - d) describe the grounds and the processes for removing a Chief or a Councillor from office;
 - e) for those Dehcho Communities which elect their Chief and Councillors, provide for a candidate for Chief or for candidates for Councillor seats to be acclaimed without an election where there is only one candidate for Chief or the number of candidates for council seats is less than the number of vacant seats;
 - f) provide for a periodic census for the purposes of 23.2.1; and
 - g) provide for the appointment of a Councillor to act as Sub Chief, who will act as Chief in the absence of the Chief.
- 23.2.3 For those Dehcho Communities which elect their Chief and Councillors, a person is eligible to vote in elections for a Dehcho Community Government if that person
- a) is a Canadian citizen or permanent resident of Canada;
 - b) is resident¹¹¹ in the Dehcho Community for at least the six months immediately preceding the election;

¹¹⁰ May need to define “Dene custom”. Is custom consistent with public government?

¹¹¹ Should only Citizens be eligible to vote for Chief, as in Tlicho, or all residents who meet residency rule?

- c) has been resident in Dehcho Ndehe¹¹² or in a Dehcho Community for at least the five years¹¹³ immediately preceding the election; and
- d) is at least 18 years of age on the day of the election.

23.2.4 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 years¹¹⁴ immediately preceding taking office.

23.2.5 Subject to 23. 2.6, in an election for a Dehcho Community Government those candidates with the most votes shall be elected as councillors.

23.2.6 At least half of Community Councillors will be Dehcho Citizens.

23.3 DELEGATION

23.3.1 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;
- 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.

23.3.2 A delegation under 3.1 must be in writing and, if under 3.1 (b) or (c) must be agreed to by the delegate.

¹¹² Or in Settlement Area. (HR might not be part of Dehcho Ndehe).

¹¹³ Constitution could provide for residency requirement - max 5 years or 2 years.

¹¹⁴ This would require that Councilor who is named Sub-Chief meet 2 year residency requirement.

- 23.3.3** 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.
- 23.3.4** 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 government for program funding.
- 23.3.5** When applying to government for funding under 23.3.4, a Dehcho Community Government will be treated as a separate entity for purposes of calculating the entitlement to and quantum of funding.
- 23.4 POWERS TO ENACT LAWS¹¹⁵**
- 23.4.1** In addition to other powers^{116 117} provided for in the Dehcho Agreement, the Agreement will provide that Dehcho Community Governments have the power to enact laws¹¹⁸ relating to
- a) the operation and internal management of the Dehcho Community Government;
 - b) the borrowing of money by the Dehcho Community Government;
 - c) the administration of and the granting of interests in Community lands; and

¹¹⁵ Compare to GNWT's proposed Local Svcs chapter which used 2 distinct lists of powers.

¹¹⁶ Tlicho does not include phrase "In addition to other powers...".

¹¹⁷ Should these (eg. Housing) be listed in (d) below, or leave in separate chapters?

¹¹⁸ GNWT prefers "laws of a municipal nature...". Would "laws of a LOCAL (or Community) nature" or work?

- d) the following matters in the Dehcho Community:
- (i) management, use and protection of lands and renewable¹¹⁹ resources, including land use planning, local protected areas, zoning and subdivision control;
 - (ii) 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;
 - (iii) expropriation of interests in land¹²⁰;
 - (iv) public order, peace and safety;
 - (v) programs, services, and facilities provided by or on behalf of the Dehcho Community Government including, but not limited to, sewers, drainage, water distribution and supply, garbage and waste, ambulance services, and recreation;
 - (vi) public nuisances, including unsightly property;
 - (vii) by-law enforcement;
 - (viii) intoxicants;
 - (ix) community roads, excluding highways, provided that the Government of the Northwest Territories will consult affected Communities prior to selecting highway routes;
 - (x) local transportation;
 - (xi) business licensing and regulation;
 - (xii) domestic animals and activities in relation to them;
 - (xiii) gaming and recreational contests;

¹¹⁹ Tlicho Agmt does not include renewable resources.

¹²⁰ Cda would exclude expropriation of Crown lands. DFN ask: what Crown lands are in Communities?

- (xiv) fire protection and prevention;
- (xv) motor vehicles;
- (xvi) emergency preparedness and emergency measures;
- (xvii) community flag, crest and coat of arms; and
- (xviii) other matters of a local or private nature, including property assessment and taxation.

- 23.4.2** 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.
- 23.4.3** Where Dehcho Community Government laws made pursuant to 23.4.1 provide for health and safety standards, housing construction codes and technical codes regarding public works, community infrastructure and local services, they will be at least equivalent to federal and NWT health and safety standards and technical codes.
- 23.4.4** The Government of the Northwest Territories will Consult with the Dehcho Community Governments prior to amending or establishing standards and technical codes referred to 23.4.3.
- 23.4.5** A Dehcho Community Government shall have standing to make representations to the Public Utilities Board, or any other administrative decision-maker established pursuant to NWT 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.

- 23.4.6 Notwithstanding the geographic limits applicable to Dehcho Community Government Laws, such Laws may apply outside the community boundaries in order to facilitate the delivery of services.¹²¹

23.5 INCONSISTENCY OR CONFLICT

- 23.5.1 Except where otherwise provided in the Dehcho Agreement, in the case of any inconsistency or conflict between federal legislation and laws enacted by a Dehcho Community Government, the law of the Dehcho Community Government prevails to the extent of the inconsistency or conflict.¹²²

- 23.5.2 Except where otherwise provided in the Dehcho Agreement, in the case of any inconsistency or conflict between laws enacted by a Dehcho Community Government and territorial legislation, the law of the Dehcho Community Government prevails to the extent of the inconsistency or conflict.

- 23.5.3 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.¹²³

23.6 PROGRAMS AND SERVICES

- 23.6.1 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.

- 23.6.2 Programs and services delivered and managed by a Dehcho Community Government will be funded at levels at least¹²⁴ comparable to funding levels for similar programs and services in other communities in the NWT. Where the Dehcho Community Government

¹²¹ The issue of setting and amending Community Boundaries is usually located in a Land Chapter: (a) the GNWT with the Community Government would have the authority to establish and adjust community boundaries; (b) the GNWT would consult with the Dehcho Government when a change in boundary may involve settlement lands.

¹²² Canada prepared to consider community laws prevailing on 'case-by-case' basis, but not as general rule.

¹²³ If Dehcho Gov't is not public gov't, but community gov'ts are, this could be a problem for Cda.

¹²⁴ GNWT wants "least" deleted.

and the Government of the NWT do not agree on funding levels¹²⁵, the Dehcho Government may refer the dispute for resolution under chapter DR.

23.7 EXPANSION OF DEHCHO COMMUNITY BOUNDARIES

23.7.1 The boundary of a Dehcho Community may, in accordance with the Dehcho Agreement and the Appendix to this chapter, be expanded.

23.8 DISSOLUTION OR RELOCATION

23.8.1 The agreement of the Parties is required before a Dehcho Community Government is dissolved or before a Dehcho Community is relocated.

23.8.2 An agreement under 23.8.1 will, subject to chapter XXX, make provision for all assets and liabilities of the Dehcho Community Government.

23.8.3 In the agreement under 23.8.1, 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.

23.8.4 The dissolution or relocation is not effective until the amendment to the Agreement referred to in 8.3 is consented to.

23.9 ESTABLISHMENT OF NEW DEHCHO COMMUNITY GOVERNMENTS

23.9.1 A new Dehcho Community Government will only be established by agreement among the Parties.

23.9.2 In the agreement under 9.1, the Parties will describe the amendment to the Agreement required to reflect the establishment of a new Dehcho Community Government.

23.9.3 The establishment of a new Dehcho Community Government is not effective until the amendment to the Agreement referred to in 9.2 is consented to.

¹²⁵ Tlicho only allows funding methods to be arbitrated, not actual amounts of funding.

APPENDIX TO CHAPTER 23

PROCESS FOR EXPANSION OF THE BOUNDARY OF A COMMUNITY (23.7.1)

1. Canada and the Dehcho Government¹²⁶, when Dehcho Ndehe is involved, or the Government of the Northwest Territories and the Dehcho Government when Commissioner's Land is involved, will¹²⁷ negotiate an agreement to expand the boundary of a Dehcho Community at the written request of the Dehcho Community Government.¹²⁸
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.¹²⁹
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.

¹²⁶ ~~The GNWT will be a party to negotiations where Commissioner's Lands would be affected.~~

¹²⁷ Canada questions why negotiations would be mandatory.

¹²⁸ Tlcho Agmt says Minister of NWT will decide whether to expand community lands.

¹²⁹ Canada questions why Crown land would be added.

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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.

CHAPTER 24: DEHCHO COMMUNITY LANDS

- 24.1 LAND TO BE TRANSFERRED
 - 24.2 NATURE OF TITLE
 - 24.3 EXISTING INTERESTS
 - 24.4 SURVEYS AND ISSUANCE OF TITLE
 - 24.5 CONTAMINATED SITES
 - 24.6 RIGHT TO ACQUIRE GOVERNMENT LAND
-

24.1 LAND TO BE TRANSFERRED

24.1.1 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.

24.2 NATURE OF TITLE

- 24.2.1 Community Land transferred under 24.1.1 will be held in fee simple by a Dehcho Community Government. **Community Land will comprise only of the surface interest, including Specified Substances, but will not include mines and minerals.**¹³⁰
- 24.2.2 The Dehcho Community Government may sell, mortgage, pledge for security or grant an interest on Community Land.¹³¹

¹³⁰ Tlicho Agreement provides for restrictions on subsurface development within community lands.
Dehcho seeking further instructions.

¹³¹ DFN negotiators will seek instructions.

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

24.2.4 Community Land is subject to the application of Legislation¹³² and subject to the bylaws of a Dehcho Community Government.

24.3 EXISTING INTERESTS

24.3.1 Existing interests¹³³ on Community Land transferred under 24.1.1 on the Effective Date will be identified in Appendices _ of the Dehcho Agreement¹³⁴.

24.3.2 ¹³⁵Existing interests on Community Land on the Effective Date will continue in accordance with their terms and conditions and applicable Legislation.

24.3.3 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.

24.4 SURVEYS AND ISSUANCE OF TITLE

24.4.1 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.

24.4.2 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.

¹³² DFN propose: ... "subject to the application of Legislation which is applicable pursuant to this chapter, and subject to..."

¹³³ DFN suggest adding "to be recognized by the Dehcho Agreement" after 'interests'.

¹³⁴ Why not in AiP?

¹³⁵ DFN would begin sentence with "Subject to any exceptions listed in the appendix to this chapter..."

24.4.3 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*.

24.4.4 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.

24.5 CONTAMINATED SITES¹³⁶

24.5.1 The Dehcho Agreement will provide that where Government 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 prior to the Effective Date.

24.5.2 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.

24.5.3 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.

24.5.4 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.¹³⁷

24.5.5 Government will be responsible for the costs associated with any Remediation under 24.5.1 on Dehcho Community Lands.

¹³⁶ DFN say contaminated sites should be listed in an appendix to this chapter.

¹³⁷ Are these standards adequate?

- 24.5.6 ¹³⁸The Dehcho Government will be solely responsible for the Remediation of Contaminated Sites which come into existence¹³⁹ on Dehcho Community lands following the Effective Date.
- 24.5.7 Canada, at its sole¹⁴⁰ discretion may, at no cost to the Dehcho Government, add an excluded site to Dehcho Community Lands after the Remediation of contamination or termination of an existing right or interest.
- 24.5.8 Government may access Dehcho Community Lands and Waters overlying Dehcho Ndehe to Remediate a Contaminated Site on or surrounded by Dehcho Ndehe.
- 24.5.9 Government may use such Construction Materials located on Dehcho Community Lands as required for the Remediation of a Contaminated Site.¹⁴¹
- 24.5.10 No rent, fee, charge or compensation will be payable to the Dehcho Government for access to Dehcho Community Lands or use of Construction Materials located on Dehcho Community lands where Government undertakes Remediation of a Contaminated Site.
- 24.5.11 There will be no compensation payable for damage which may be caused to Dehcho Community Lands as a result of the Remediation of a Contaminated Site.¹⁴²
- 24.5.12 Nothing in the Dehcho Agreement will prevent or limit Government from pursuing any remedies that may exist at Law against the person liable for the contamination.¹⁴³
- 24.5.13 Government will not be liable for any loss or damage to a Dehcho Citizen or to the Dehcho Government from a Contaminated Site on

¹³⁸ DFN suggest beginning this clause with “Subject to the jurisdiction of the Dehcho Government to hold land users responsible for remediation...”

¹³⁹ DFN would replace “come into existence” with “become contaminated”.

¹⁴⁰ Dehcho Government should have option of refusing if not satisfied with remediation.

¹⁴¹ DFN would add “in consultation with affected Dehcho Community Government”.

¹⁴² DFN say comp should be payable.

¹⁴³ Dehcho Governments should also have cause of action.

Dehcho Community Lands whether or not they are known¹⁴⁴ on the Effective Date.

24.6 RIGHT TO ACQUIRE GOVERNMENT LAND

- 24.6.1 Where Government 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, excluding¹⁴⁵ mines and minerals that are not specified substances, to the respective Dehcho Community Government. In the event that the offer is declined, Government may dispose of the land no longer required to another party.
- 24.6.2 A Dehcho Community Government is not liable for the payment of any consideration in respect of the value of lands conveyed to it under 24.6.1 but is liable for any costs incurred by Government to effect the conveyance. If there are any improvements on the lands, Government 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.
- 24.6.3 Government is not obligated to convey title to the land referred to 24.6.1 if the land had been acquired by Government from the Dehcho Community Government upon payment of consideration, unless Government is paid by the Dehcho Community Government for the value of that consideration.
- 24.6.4 Any dispute as to the amount to be paid to Government under 24.6.3 may be referred by the respective Dehcho Community Government or Government for resolution in accordance with the Dispute Resolution Chapter.

¹⁴⁴ DFN suggest “known or knowable...”

¹⁴⁵ DFN ask why communities can’t have opportunity to acquire minerals.

CHAPTER 25: EARLY CHILDHOOD EDUCATION

25.1	DEFINITIONS
25.2	JURISDICTION
25.3	STANDARDS
25.4	CONFLICT OF LAWS

25.1 DEFINITIONS

“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

25.2 JURISDICTION

- 25.2.1 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.

25.3 STANDARDS ¹⁴⁶

- 25.3.1 Dehcho Government Laws made pursuant to X.1.1 shall provide for standards compatible with NWT early childhood education core principles and objectives.

25.4.0 CONFLICT OF LAWS

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

¹⁴⁶ DFN want Building Codes, health and safety standards to apply only within community's boundaries and not to any on-the-land programs. GNWT will add clause to exclude on the land camps.

CHAPTER 26: KINDERGARTEN TO GRADE 12 EDUCATION

- 26.1 DEFINITIONS
 - 26.2 JURISDICTION
 - 26.3 CONSULTATION
-

26.1 DEFINITIONS

- 26.1.1 “Student” means a person enrolled in kindergarten to grade 12 in the Dehcho Settlement Area.

26.2 JURISDICTION¹⁴⁷

- 26.2.1 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.¹⁴⁸

- 26.2.2 Laws passed by the Dehcho Government under 26.2.1 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.

- 26.2.3 When exercising its jurisdiction pursuant to section 26.2.1 the Dehcho Government shall ensure that:

- (a) all persons 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.

- 26.2.4 The Dehcho Government may create exemptions to subsection 26.2.3 where:

¹⁴⁷ Canada has concern on the program and service delivery aspect of Option 2.

¹⁴⁸ Insert the following clause in Culture, Land and Heritage Chapter: The Dehcho Government may make laws with respect to certification of persons who teach Dehcho Dene and Metis culture and history and Dene Zhatie.

- (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.

26.2.5 In the event of a Conflict between a Dehcho Government Law made pursuant to 26.2.1 and a Federal Law or Territorial Law, the Dehcho Government Law prevails to the extent of the Conflict.

26.3 CONSULTATION

26.3.1 The Government of the Northwest Territories shall Consult with the Dehcho Government with respect to changes to teacher certification standards

CHAPTER 27: OUT OF SCHOOL CARE

- 27.1 DEFINITIONS
 - 27.2 JURISDICTION
 - 27.3 CONFLICT OF LAWS
-

27.1 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.

27.2 JURISDICTION

27.2.1 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.

27.3 CONFLICT OF LAWS

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

CHAPTER 28: POST SECONDARY EDUCATION

The GOVERNMENT OF THE NORTHWEST TERRITORIES would like to propose a new chapter for Post Secondary Education that would replace the current chapter in its entirety. This new approach proposes additional clauses in the General Provisions chapter and the Chapter on Culture and Heritage Chapter. These are shown in the section below.

28.1 JURISDICTION

- 28.1.1 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.
- 28.1.2 For greater certainty, Dehcho Government laws made pursuant to 28.1.1 apply only to post-secondary education programs, services or institutions established by the Dehcho Government.
- 28.1.3 In the event of a Conflict between a Dehcho Government Law made pursuant to 28.1.1 and a Federal Law or Territorial Law, the Dehcho Government Law shall prevail to the extent of the Conflict.

CHAPTER 29: ADULT EDUCATION AND TRAINING

29.1 JURISDICTION 29.2 AGREEMENTS 29.3 CONFLICT OF LAWS

29.1 JURISDICTION

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

- (a) Adult Education;
- (b) Training; and
- (c) Education Support Services.

29.1.2 The Jurisdiction set out in 29.1.1 does not include post secondary education.

29.2 AGREEMENTS

29.2.1 Where the Dehcho Government establishes Education Support Services, the Dehcho Government and the Government of the Northwest Territories:

- (a) shall enter into negotiations to develop agreements to share information on persons receiving Education Support Services; and
- (b) may enter into agreements to harmonize and coordinate their Education Support Services.

29.3 CONFLICT OF LAWS

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

CHAPTER 30: SOCIAL HOUSING

- 30.1 DEFINITIONS
 - 30.2 JURISDICTION
 - 30.3 STANDARDS
 - 30.4 AGREEMENTS
 - 30.5 CONFLICT
-

30.1 DEFINITIONS

In this Chapter,

“Social Housing” means public programs provided for the construction, acquisition, renovation or rental of housing for households in need.

Or

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

30.2 JURISDICTION

- 30.2.1 The Dehcho Government has Jurisdiction in the Dehcho Settlement Area with respect to Social Housing.
- 30.2.2 The Jurisdiction of the Dehcho Government set out in 30.2.1 does not include landlord and tenant relations;¹⁴⁹

30.3 STANDARDS

- 30.3.1 The Dehcho Government Laws made pursuant to 30.2.1 shall include standards in relation to:
 - (a) equitable access to Social Housing; and
 - (b) households in need.
- 30.3.2 Dehcho Government Laws made pursuant to section SH.1.1 shall provide for standards compatible with NWT Social Housing core principles and objectives.

¹⁴⁹ DFN questions limitations on landlord and tenant relations

- 30.3.3 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.

30.4 AGREEMENTS

- 30.4.1 Nothing in the Dehcho Agreement shall 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.
- 30.4.2 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.
- 30.4.3 Where the Dehcho Government has enacted Dehcho Government Laws pursuant to 30.2.1, 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.
- 30.4.5 Canada, in any agreements with the Government of the Northwest Territories, shall 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.

30.5 CONFLICT

- 30.5.1 In the event of a Conflict between a Dehcho Government Law made pursuant to section 30.3.1 and a Federal Law or Territorial Law, the Dehcho Government Law prevails to the extent of the Conflict.

CHAPTER 31: INCOME ASSISTANCE

- 31.1 DEFINITIONS
 - 31.2 JURISDICTION
 - 31.3 STANDARDS
 - 31.4 AGREEMENTS
 - 31.5 CONFLICT
-

31.1 DEFINITIONS

In this Chapter:

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

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

31.2 JURISDICTION

- 31.2.1 The Dehcho Government has Jurisdiction in the Dehcho Settlement Area with respect to Income Assistance.
- 31.2.2 The Jurisdiction of the Dehcho Government set out in 31.2.1 does not include setting residency conditions in relation to being eligible for Income Assistance.

31.3 STANDARDS

- 31.3.1 Dehcho Government Laws made pursuant to section 31.2.1 shall provide for standards compatible with NWT Income Assistance core principles and objectives.

31.4 AGREEMENTS

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

31.5 CONFLICT

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

CHAPTER 32: ADOPTION

- 32.1 JURISDICTION
 - 32.2 STANDARDS
 - 32.3 INFORMATION SHARING
 - 32.4 COURT PROCEEDINGS
 - 32.5 CONFLICT
-

32.1 JURISDICTION

32.1.1 The Dehcho Government has Jurisdiction with respect to the adoption of Children of:

- a) Dehcho Citizens in the NWT; and
- b) persons residing in the Dehcho Settlement Area.

32.1.2 A Dehcho Government Law made pursuant to 32.1.1 shall require that the person or persons having lawful custody of the Child consent to the application of the Dehcho Government 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.

32.1.3 Dehcho Government Law made pursuant to 32.1.1:

- a) shall provide that the best interests of the Child are paramount in determining whether an adoption will take place;
- b) shall require that the person or persons having lawful custody of the Child consent to the adoption of the Child;
- c) shall give the person or persons 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.

32.2 STANDARDS

32.2.1 Dehcho Government Laws made pursuant to A.1.1 shall provide for standards compatible with NWT Adoption core principles and objectives.

32.3 INFORMATION SHARING

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

32.3.2 When the Dehcho Government exercises Jurisdiction pursuant to 32.1.1, the Dehcho Government and the Government of the Northwest Territories shall enter into negotiations towards reaching information-sharing agreements that shall include:

- a) how and to whom the Dehcho Government shall provide copies of records of all adoptions occurring under Dehcho Government Law to the Government of the Northwest Territories;
- b) the criteria the Government of the Northwest Territories shall 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 shall:
 - 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.¹⁵⁰

¹⁵⁰ DFN request that Aboriginal rights of adopted children are maintained.

32.4 COURT PROCEEDINGS

32.4.1 A person adopting a Child under Dehcho Government 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.

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32.5 CONFLICT

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

CHAPTER 33: CHILD AND FAMILY SERVICES

- 33.1 DEFINITIONS
 - 33.2 JURISDICTION
 - 33.3 STANDARDS
 - 33.4 AGREEMENTS
 - 33.5 COURT PROCEEDINGS
 - 33.6 CONFLICT
-

33.1 DEFINITIONS

In this Chapter:

“Child” means an individual who has not yet attained the age of majority in the Northwest Territories and is ordinarily resident in the Dehcho Settlement Area;

“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.

33.2 JURISDICTION

- 33.2.1 The Dehcho Government has jurisdiction in the Dehcho Settlement Area with respect to Child and Family Services.
- 33.2.2 The Dehcho Government may not delegate the power to make laws under section 33.2.1.
- 33.2.3 The Dehcho Government shall consult the Government of the Northwest Territories at least six months prior to making or amending a Dehcho Law pursuant to section 33.2.1.

33.3 STANDARDS

33.3.1 Dehcho Government Law made pursuant to 33.2.1 shall 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.

33.3.2 Dehcho Government Laws made pursuant to section 33.2.1 shall provide for standards compatible with the NWT Child and Family Services core principles and objectives.

33.4 AGREEMENTS

33.4.1 The Government of the Northwest Territories shall 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 Child.

33.4.2 Where the Dehcho Government has assumed responsibility for the provision of Child and Family Services in the Dehcho Settlement Area, the Dehcho Government shall appoint one individual who shall have the statutory authority under Dehcho Law for decisions about the protection of Dehcho Children from abuse, neglect or harm, or the threat of abuse, neglect or harm, and shall notify the Government of the Northwest Territories of the individual's appointment.

33.4.3 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 shall negotiate with a view to reaching agreements, as set out in section 33.4.2, relating to delivery and administration of Child and Family Services.

33.4.4 Agreements reached pursuant to section 33.4.1:

- a) shall 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.

33.5 COURT PROCEEDINGS

33.5.1 The Dehcho Government has standing in any judicial proceedings where the protection of a Dehcho Child is in dispute, or where the Government of the Northwest Territories is seeking continuing protection of a Dehcho Child, and the court shall 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.

33.5.2 The standing of the Dehcho Government in proceedings referred to in section 33.6.1 is subject to the applicable rules of court and does not affect the court's ability to control its process.

33.5 CONFLICT

33.5.1 In the event of a Conflict between a Dehcho Government Law made pursuant to section 33.3.1 and a Federal Law or Territorial Law, the Dehcho Government Law prevails to the extent of the Conflict.

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For Discussion Purposes Only

CHAPTER 34: WILLS AND ESTATES

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CHAPTER 35: GUARDIANSHIP AND TRUSTEESHIP

CHAPTER 36: ADMINISTRATION OF JUSTICE

- 36.1 GENERAL
 - 36.2 ENFORCEMENT
 - 36.3 SANCTIONS
 - 36.4 ALTERNATIVE MEASURES AND EXTRA-JUDICIAL MEASURES
 - 36.5 PROSECUTIONS
 - 36.6 ALTERNATIVE DISPUTE RESOLUTION
 - 36.7 TERRITORIAL COURT
 - 36.8 SUPREME COURT OF THE NWT
 - 36.9 PROCEDURES
 - 36.10 ADMINISTERING SANCTIONS
 - 36.11 APPEAL, REHEARING AND REVIEW OF DECISIONS
-

36.1 GENERAL

36.1.1 The Dehcho Government shall provide for the independence of the Dehcho Justice Council¹⁵¹ 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.

36.1.2 Dehcho Law may provide that the Dehcho Justice Council:

- a) administer sanctions created under 36.3.4;
- b) administer alternative measures and extra-judicial measures referred to in 36.4;
- c) perform the dispute resolution functions referred to in 36.6;
- d) hear appeals and conduct rehearings referred to in 36.11; and
- e) exercise other duties and functions assigned to it under Dehcho Law.

36.. 2 ENFORCEMENT

AJ 2.1 Dehcho Law may provide for:

- a) the appointment of officers to enforce Dehcho Law; and
- b) powers of enforcement, provided such powers shall not exceed, those provided by NWT Law or Federal Law for officers enforcing similar laws in the NWT.

¹⁵¹ DFN requesting a Dehcho Court. Government reviewing option,

36.3 SANCTIONS

- 36.3.1 Subject to 36.3.2, 36.3.3 and 36.3.4, the Jurisdictions of the Dehcho 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.
- 36.3.2 Dehcho 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.
- 36.3.3 Where there is no comparable regulatory offence under Federal Law or Territorial Law, the Dehcho 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 NWT Law.
- 36.3.4 Notwithstanding 36.3.2 and 36.3.3, a Dehcho Law in respect of taxation may provide for a fine or penalty that is greater than the limits referred to in 36.3.2 and 36.3.3 where there is an agreement to that effect made in accordance with 37.3 in the Taxation Chapter.
- 36.3.4 Dehcho Law may provide other sanctions that are consistent with the culture and values of the Dehcho Dene, provided that such sanctions shall not be imposed on an offender without his or her consent. Where a victim's participation is required for the sanction to be carried out, the victim's consent shall be required.

36.4 ALTERNATIVE MEASURES AND EXTRA-JUDICIAL MEASURES

- 36.4.1 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.
- 36.4.2 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 NWT Law.

36.5 PROSECUTIONS

36.5.1 The Dehcho Government is responsible for the prosecution of violations of a Dehcho Law and the conduct of other matters arising out of a Dehcho Law before the courts of the NWT. The Dehcho Government shall:

- a) appoint persons 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.

36.6 ALTERNATIVE DISPUTE RESOLUTION

36.6.1 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.

36.6.2 Nothing provided in 36.6.1 restricts the right of any person to resolve a dispute through the courts.

36.6.3 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.

36.7 TERRITORIAL COURT

36.7.1 The Territorial Court shall 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 NWT Law.

36.7.2 A judge of the Territorial Court or a Justice of the Peace shall 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 NWT Law.

36.8 SUPREME COURT OF THE NWT

36.8.1 The Supreme Court of the NWT shall hear appeals of decisions of the Territorial Court or Justices of the Peace in relation to Dehcho Law.

36.8.2 The Supreme Court of the NWT shall hear and determine:
a) civil matters arising under Dehcho Law; and
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 NWT Law.

36.8.3 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.

36.9 PROCEDURES

36.9.1 Dehcho Law may provide for procedures to be used in the courts by adopting:

- a) the summary conviction procedures of Part XXVII of the Criminal Code; or
- b) NWT Law relating to proceedings in respect of offences that are established by NWT Law, with such modifications as may be required.

36.9.2 Any proceeding under 36.7 shall follow the procedures of the Territorial Court.

36.9.3 Any proceeding under 36.8 shall follow the Rules of the Supreme Court of the NWT.

36.10 ADMINISTERING SANCTIONS

36.10.1 The Government of the Northwest Territories is responsible for administering fines or terms of probation and imprisonment imposed by the Territorial Court or the Supreme Court of the NWT for violations of Dehcho Law in the same manner as those imposed under Federal Laws and NWT Laws.

36.10.2 The Government of the Northwest Territories shall pay to the Dehcho Government the proceeds of fines imposed by the Territorial Court or the Supreme Court of the NWT for violations of Dehcho Law.

36.10.3 The Dehcho Government is responsible for administering sanctions created under 36.3.4. and for the alternative measures established under 36.4.1.

36.11 APPEAL, REHEARING AND REVIEW OF DECISIONS

36.11.1 Dehcho Law:

- a) shall 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 Law¹⁵²; and
- b) may establish the appropriate appeal and rehearing procedures and mechanisms.

36.11.2 The Supreme Court of the NWT shall have exclusive jurisdiction to hear applications for judicial review of the decisions of the Dehcho 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 37.3 of the Taxation chapter

¹⁵² The DFN agrees with the basic concept but questions why this clause is so broad. Canada to consider.

CHAPTER 37: TAXATION

37.1	DEFINITIONS
37.2	DIRECT TAXATION POWERS
37.3	TAXATION POWER AGREEMENTS
37.4	DEHCHO NDEHE
37.5	TRANSFER OF DEHCHO CAPITAL
37.6	INDIAN ACT TAX EXEMPTION AND TRANSITIONAL EXEMPTION
37.7	TAX TREATMENT AGREEMENT
37.8	AGREEMENTS UNDER THIS CHAPTER

37.1 DEFINITIONS

In this 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.

37.2 DIRECT TAXATION POWERS

37.2.1 The Dehcho Government may make laws in relation to:

- a) direct taxation of Dehcho Citizens¹⁵³, within Dehcho Ndehe and Dehcho Communities¹⁵⁴, in order to raise revenue for Dehcho Government purposes; and
- b) the implementation of any taxation agreement entered into between it and Canada or the Government of the Northwest Territories, or both.

¹⁵³ Dehcho would like the Dehcho Government’s direct tax power to apply to all residents, not only to Dehcho citizens.

¹⁵⁴ Dehcho would like to discuss the geographic scope of the Dehcho Government’s direct tax power. For example, would the Dehcho Government’s direct tax power apply within the town of Hay River?

37.2.2 The Dehcho Government law-making authority under 37.2.1 shall not limit the taxation powers of Canada or the Government of the Northwest Territories.

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

37.3 TAXATION POWER AGREEMENTS

37.3.1 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 agreement¹⁵⁵ with the Dehcho Government respecting:

- a) the extent to which the Direct taxation law-making authority of the Dehcho Government under 37.2.1 (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 37.2.1 (a), as extended by the application of 37.3.1 (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.¹⁵⁶

¹⁵⁵ Dehcho would like the final agreement to set out a process for the coordination of tax powers. Dehcho to provide further details.

¹⁵⁶ Alternative paragraph (b): "the manner in which taxation by the Dehcho Government will be coordinated with federal and territorial tax systems."

- 37.3.2 Notwithstanding Chapter 36, an agreement under 37.3.1 may provide for an alternative approach to the appeal, adjudication or enforcement of matters related to a Dehcho Law in respect of taxation.

37.4 DEHCHO NDEHE

- 37.4.1 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.
- 37.4.2 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.
- 37.4.3 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 13 will not be taxable

37.5 TRANSFER OF DEHCHO CAPITAL

- 37.5.1 A transfer under this Agreement of Dehcho Capital and recognition of ownership of Dehcho Capital under this Agreement is not taxable.
- 37.5.2 For purposes of 37.5.1, an amount paid to a Dehcho Citizen is deemed to be a transfer of Dehcho Capital under this Agreement if the payment:
- a) reasonably can 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.¹⁵⁷

¹⁵⁷ Canada views this provision as optional. Dehcho to consider further.

- 37.5.3 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:
- a) the Effective Date; and
 - b) the date of transfer of ownership or the date of recognition of ownership, as the case may be.

37.6 INDIAN ACT TAX EXEMPTION AND TRANSITIONAL EXEMPTION

- 37.6.1 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.
- 37.6.2 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.

37.7 TAX TREATMENT AGREEMENT

- 37.7.1 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.¹⁵⁸

37.8 AGREEMENT UNDER THIS CHAPTER

- 37.8.1 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.

¹⁵⁸ Dehcho would like to discuss the possibility of a tax credit in respect of amounts contributed to a candidate in a Dehcho Government election. Parties to discuss further.

CHAPTER 38: ECONOMIC MEASURES

CHAPTER 39: MINERAL ROYALTIES

- 39.1. MACKENZIE VALLEY ROYALTIES
- 39.2. ROYALTIES AND NON-REFUNDABLE RENTS
- 39.3. ANNUAL STATEMENT AND AUDIT
- 39.4. EXCESS MINERAL REVENUES
- 39.5. CONSULTATION

39.1 MACKENZIE VALLEY ROYALTIES¹⁵⁹

39.1.1 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.

39.1.2 The Dehcho Agreement will provide that Government 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.

39.1.3 Amounts payable by Government under this chapter will be calculated on the basis of amounts received by Government 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.

39.2 ROYALTIES AND NON-REFUNDABLE RENTS

39.2.1 Royalties or non-refunded rents received by the Government of 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 Government and an equal amount paid to the Dehcho Government by

¹⁵⁹ DFN consider the amount of royalties collected in the MV to be extremely low

the respective receiver authority as soon as practicable after the Effective Date.

39.2.2 Any Royalties or non-refunded rents received by the Government of 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 Government and an equal amount paid to the Dehcho Government as soon as practicable after each calendar year quarter.

39.2.3 Amounts payable by Government under 39.2.2 and 39.2.3 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 Government for the purpose of 39.1.3.

39.3 ANNUAL STATEMENT AND AUDIT

39.3.1 Following the Effective Date, Government will provide annually to the Dehcho Government, a statement indicating the basis on which Mineral Royalties were calculated for the preceding year.

39.3.2 On the request of the Dehcho Government, Government will request the Auditor General to verify the accuracy of the information in the annual statements.

39.4 EXCESS MINERAL REVENUES

39.4.1 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.¹⁶⁰

39.4.2 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.

39.5 CONSULTATION

¹⁶⁰ DFN have concern with the requirement to share its mineral revenues with other groups

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- 39.5.1 Government will Consult with the Dehcho Government on any proposed Legislation to amend the Mineral Royalty payable to Government.
- 39.5.2 Where Government has formal discussions with third parties on proposed changes to the fiscal regime affecting the Mineral Royalty payable to Government, it will also Consult with the Dehcho Government.

CHAPTER 40: FINANCIAL PAYMENTS

40.1. CAPITAL TRANSFER 40.2. NEGOTIATION LOANS REPAYMENTS

40.1 CAPITAL TRANSFER¹⁶¹

- 40.1.1. 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.
- 40.1.2. The Government of Canada is discharged from all undertakings and obligations, if any, to the Dehcho First Nation in respect of the Norman Wells Proven Area.
- 40.1.3. 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.
- 40.1.4. 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 40.1.1 is offered.

¹⁶¹ DFN questioning if there would be an ability to take out loans against the capital transfer

40.2 NEGOTIATION LOANS REPAYMENTS

- 40.2.1 The Dehcho Government will make negotiation loan repayments to Canada in accordance with the Negotiation Loans Repayments Schedule.
- 40.2.2 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 41: FISCAL RELATIONS

CHAPTER 42: IMPLEMENTATION

- 42.1 IMPLEMENTATION PLAN
 - 42.2 IMPLEMENTATION PLANNING WORKING GROUP
 - 42.3 IMPLEMENTATION COMMITTEE
 - 42.3 COSTS
-

42.1 IMPLEMENTATION PLAN

- 42.1.1 Prior to the initialling of the Dehcho Agreement, the Parties will develop an Implementation Plan.
- 42.1.2 The Implementation Plan will be for an initial term of ten years commencing on the Effective Date.
- 42.1.3 The Implementation Plan will:
 - a) identify:
 - i) obligations in the Dehcho Agreement and the activities required to fulfill these obligations;
 - i) the responsible Party or Parties for the completion of an activity;
 - ii) the timeframe for completion of activities;
 - iv) the level and sources of funding and other resources required to implement the Dehcho Agreement;
 - v) how the Implementation Plan may be amended;
 - vi) how the Implementation Plan may be renewed or extended; and
 - b) address such other matters agreed to by the Parties.
- 42.1.4 The Implementation Plan will not:
 - a) form part of the Dehcho Agreement;
 - b) create legal obligations except if specified otherwise in the Implementation Plan; and

c) be used to interpret the Dehcho Agreement.

42.1.5 The Implementation Plan does not preclude any Party from asserting that rights or obligations exist even though they are not referred to in the Implementation Plan.

42.1.6 If the Parties specify that an obligation is legally binding pursuant to 42.1.4 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.

42.2 IMPLEMENTATION PLANNING WORKING GROUP

42.2.1 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.¹⁶²

42.2.2 The Implementation Planning Working Group will complete the Implementation Plan prior to the initialling of the Dehcho Agreement.¹⁶³

42.3 IMPLEMENTATION COMMITTEE

42.3.1 An Implementation Committee will be established within 90 days following the Effective Date and will continue until the Parties agree to terminate the Implementation Committee.

42.3.2 The Implementation Committee will consist of three individuals. Each Party will designate one individual as its representative.

42.3.3 Each member of the Implementation Committee may be accompanied by other individuals to provide support.

42.3.4 The Implementation Committee will:

a) establish its own procedures and operating guidelines;

¹⁶² GNWT proposes a "Pre-Effective Date Plan"

¹⁶³ GNWT would like to include "and the list of activities" after 'Plan'

- b) monitor and coordinate the operation of the Implementation Plan;
- c) be a forum for the Parties to discuss the implementation of the Dehcho Agreement and attempt to resolve any implementation issues arising between or among the Parties with respect to the Final Agreement prior to invoking the provisions of the Dispute Resolution chapter.
- d) review implementation progress;
- e) amend the Implementation Plan, as agreed;
- f) develop a communications strategy in respect of the implementation of the Dehcho Agreement;
- g) prepare and provide the Parties with an annual report on the implementation of the Dehcho Agreement;
- h) make recommendations to the Parties respecting the implementation of the Dehcho Agreement beyond the initial 10 year term of the Implementation Plan;
- i) make all decisions by unanimous agreement; and
- j) carry out such other work as agreed to by the Parties.

42.3.5 Among other things, the annual report under 42.3.4 g) will identify¹⁶⁴:

- a) activities that have been undertaken and/or completed by the Implementation Committee;
- b) summary of the committee's key decisions
- c) outstanding/ongoing issues; and,
- d) the plan for the next year including how the outstanding/ongoing issues will be addressed.

42.4 COSTS

42.4.1 Each Party will be responsible for the costs of its participation on the Implementation Committee.

¹⁶⁴ GNWT would like this to be moved to the Implementation Plan

- 42.4.2 The Government of Canada will be responsible for publishing the annual report.¹⁶⁵

¹⁶⁵ DFN would like Canada to be responsible for the cost of translation to Dene Zhatie

CHAPTER 43: DISPUTE RESOLUTION

- 43.1 GENERAL
 - 43.2 ROSTER OF MEDIATORS AND ARBITRATORS
 - 43.3 INFORMAL DISCUSSION
 - 43.4 MEDIATION
 - 43.5 BINDING ARBITRATION OR COURT PROCEEDINGS
-

43.1 GENERAL

43.1.1 This Chapter will apply only to the following types of disputes:¹⁶⁶

- 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 Government 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.

43.1.2 Disputes under 43.1.1 (a) and 43.1.1 (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.

43.1.3 Disputes under 43.1.1 c) referred to this Chapter for resolution or determination will progress through the following sequential steps:

- a) informal discussion;

¹⁶⁶ Canada (LTC) will propose another category of matters in the Dehcho Agreement excluded from arbitration.

- 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 or if agreed to by the Disputants.
- 43.1.4 Disputants may agree to vary a procedural requirement contained in this Chapter, as it applies to a particular dispute.
- 43.1.5 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.
- 43.1.6 Notwithstanding 43.1.2, 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.
- 43.1.7 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.
- 43.1.8 If a dispute has been referred to mediation or arbitration under this Chapter, no other mediation or arbitration process provided by Legislation applies.
- 43.1.9 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.
- 43.1.10 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.

43.2 ROSTER OF MEDIATORS AND ARBITRATORS

43.2.1 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.

43.3 INFORMAL DISCUSSION

43.3.1 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.

43.4 MEDIATION

43.4.1 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.

43.4.2 The Disputants will agree on a mediator from the roster under 43. 2.1 within 10 business days. In the absence of agreement, a Disputant may apply to the NWT Supreme Court to appoint a mediator.

43.4.3 The Disputants will within 10 business days, or an agreed upon time arrange for the commencement of the mediation.

43.4.4 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.

43.4.5 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.

43.4.6 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.

43.5 BINDING ARBITRATION OR COURT PROCEEDINGS

43.5.1 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 43.1.1 (a) and 43.1.1 (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 43.1.1 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.

43.5.2 Where a dispute proceeds to binding arbitration, the Disputants will agree on an arbitrator from the roster under 43.2.1 within 10 business days. In the absence of agreement, a Disputant may apply to the NWT Supreme Court to appoint an arbitrator.

43.5.3 Unless the Disputants agree otherwise, a person who has acted as mediator in a dispute cannot act as an arbitrator for that dispute.

43.5.4 Any Party has standing in any dispute that is referred to arbitration pursuant to this Chapter.

43.5.5 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.

43.5.6 Subject to the rules established by the Parties, the provisions of the Dehcho Agreement, and the provisions of an agreement referred to in 43.1.1 (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.

43.5.7 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.

43.5.8 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.

43.5.9 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.

43.5.10 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.

Deleted: c

- 43.5.11 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 44: TRANSITION

DFN ROLLING DRAFT
Draft: January 30, 2012

Without Prejudice
For Discussion Purposes Only

CHAPTER 45: MATTERS FOR THE DEHCHO AGREEMENT