

**APPENDIX E**

**BLIND RIVER DAM  
OPERATING AGREEMENT**

**THIS AGREEMENT** made as of the        day of        , 1999.

**BETWEEN:**

**HER MAJESTY THE QUEEN, IN RIGHT OF ONTARIO,  
as represented by the Minister of Natural Resources**

(hereinafter the “Crown”)

**-AND-**

**TOWN OF BLIND RIVER**

(hereinafter the “Contractor”)

**WHEREAS** the Crown owns and operates a dam and water control facilities located on the Blind River, Town of Blind River, District of Algoma,

**AND WHEREAS** the parties have agreed that the Contractor shall perform certain works and services required by the Crown in connection with the operation of the Dam;

**NOW THEREFORE IN CONSIDERATION** of the mutual covenants, terms, undertakings and conditions contained herein, (the receipt and sufficiency of which is hereby acknowledged), the parties hereto do hereby agree as follows:

1. **ARTICLE 1 : Definition**
  - 1.1. “Agreement” means this agreement of the parties and the terms, conditions, covenants and release as set forth herein;
  - 1.2. “Contractor” includes Town of Blind River (its successors and assigns, and all related and affiliated organizations and their officers, directors, agents, employees, members, shareholders, successors and assigns) and all directors, officers, agents, employees, workers, contractors, subcontractors, tenants, sub-tenants, permittees and invitees employed or engaged by the Town of Blind River, and includes all persons permitted by the Town of Blind River on or near the Dam for the purposes as set out herein;

- 1.3. "Crown" includes the Ministry of Natural Resources, (its successors and assigns, and all related and affiliated organizations, agencies, and government bodies and their officers, directors, agents, employees, members, shareholders, successors and assigns) and all directors, officers, agents, employees, workers, contractors, subcontractors, tenants, sub-tenants, permittees and invitees employed or engaged by the Ministry of Natural Resources, and includes all persons permitted by the Ministry of Natural Resources on or near the Dam for the purposes as set out herein;
- 1.4. "Laws" means applicable federal, provincial, municipal, regional municipal or local laws, statutes, regulations or ordinances, including without limitation, all applicable laws relating to the environment, occupational health and safety, product liability and transportation;
- 1.5. "Term" means the initial term of this Agreement as set out in Section 2.1 hereof, and where the contract requires or permits, shall include all extensions and renewals thereof in accordance with Section 2.1 hereof;
- 1.6. "Works" means those works and services to be performed by the Contractor as set out in Section 3 hereof and Schedule "A" attached hereto, as the same may be amended and replaced from time to time by written agreement of the parties.

## 2. ARTICLE II: Term and Fees Charged

- 2.1. The initial term of this Agreement shall commence on the first day of April 1999 to be completed and ended as of March 31, 2000 (the "Term"), and shall be automatically renewed without the necessity of the parties executing any further formal instrument or writing for successive periods of one (1) year thereafter, unless sooner terminated as provided for hereunder or unless written notice is delivered by either party at least sixty (60) days prior to the anniversary date of each successive one (1) year extension.
- 2.2. No payments will be made by the Crown to the Contractor for the Works. The Crown will provide replacement safety boom logs and stoplogs as necessary in 1999 at no cost to the Contractor.
- 2.3. The Crown shall provide at no cost, the initial equipment for Dam operations and worker safety. Any additional requirements, due to wear and tear or loss will be borne by the Contractor.

### ARTICLE III: Works Performed

- 3.1. The Contractor agrees to perform the Works as more particularly described in the document entitled "Description of Dam Works to be Performed" annexed hereto as Schedule "A" and forming a part of this Agreement with the same force and effect as if set out herein. In the event of ambiguity or inconsistency between the terms and conditions of Schedule "A" annexed hereto, as the same may be replaced or amended from time to time by the parties in writing, and the terms and conditions of the main body of this Agreement, the terms and conditions of Schedule "A" shall govern.
- 3.2. The Works to be performed by the Contractor hereunder are expressly limited in accordance with the terms and conditions of Schedule "A" and the parties expressly acknowledge and agree that all other works and services to be performed, including without limitation, structural inspections and structural maintenance, shall remain the sole responsibility of the Crown.
- 3.3. The Works must be performed by the Contractor. The Contract Works cannot be assigned to a third party.
- 3.4. The Works must be performed in accordance with the Occupational Health and Safety Act (OHSA). Workers and workers equipment must conform.
- 3.5. The Contractor agrees that in the event the Contractor fails to perform the Works, a designated representative of the Crown may give written notice to the Contractor of the default complained of and, provided the default is capable of being remedied, the Contractor shall diligently commence to remedy such default.
  - 3.5.1. If the default is allowed to continue but is not remedied within thirty (30) days of delivery of such written notice, the Crown may terminate this Agreement on delivery of written notice to the Contractor.
  - 3.5.2. Depending on the urgency of the default the Crown reserves the right to remedy the situation by other means, with or without the Contractor, and without prejudice to the contract.
- 3.6. Neither party hereunder shall be responsible for failure to perform in accordance with the terms of this agreement to the extent such failure is caused by acts of God, strikes, lockout, labour unrest or disturbance, acts of war, riot, freshet, flood, drought, disease, operation of law, or any other event or circumstance that is beyond their reasonable control.

4. ARTICLE IV: Indemnity

- 4.1. The Crown agrees to indemnify and save harmless the Contractor from and against claims, demands, losses, costs, damages, actions, suits or proceedings (collectively the "Claims") arising out of the Contractor's performance of the Works to the extent such Claims are attributable to the negligence of the Crown, its servants and agents, or the Contractor carrying out the written instructions of the Crown with respect to the Works, and any other activities that the Crown may request the Contractor to undertake or perform from time to time.
- 4.2. The Contractor agrees to indemnify and save harmless the Crown from and against all loss, damages, or injury, (including death), and all actions, suits, proceedings, costs, charges, damages, expenses, claims or demands attributable to the negligent acts or omissions of the Contractor, provided that the Contractor shall not be liable under this section to the extent that such loss, damage, or injury is caused or contributed to by the neglect or default of owners of adjacent lands, third parties unrelated to the Contractor, the Crown, its servants, agents, permittees and all those for whom in law it is responsible.
- 4.3. The Contractor shall provide written proof of its ability to indemnify and save harmless the Crown. As minimum proof, provide confirmation of general liability insurance for the sum of two (2) million dollars.

5. ARTICLE V: Administration

- 5.1. The Contractor and its employees and representatives shall at all times comply with any and all applicable Laws in respect of the performance of this Agreement.
- 5.2. The failure of the Crown or the Contractor to insist in one or more instances upon the performance by the other of any term or condition of this Agreement shall not operate as a waiver of the future performance of any such term or condition and the obligations of the Crown and the Contractor with respect to such future performance shall continue in full force and effect.
- 5.3. This Agreement shall be construed in accordance with the laws of the Province of Ontario.

5.4 Any notice required or contemplated by any provision of this Agreement shall be given in writing, by registered mail or hand delivered:

5.4.1. In the case of notice to the Crown, to:

District Manager  
Ministry of Natural Resources  
64 Church Street  
Sault Ste. Marie, Ontario P6A 3H3  
Telephone Number: (705) 949-1231 Ext. 210

and copied to:  
Blind River Area Supervisor  
62 Queen Street, Box 190  
Blind River, Ontario P0R 1B0  
Telephone Number: (705) 356-2234

5.4.2. and in the case of notice to the Contractor, to

Town of Blind River  
Attention: Ken Corbiere  
Hudson Street  
Blind River, Ontario P0R 1B0  
Telephone Number: (705) 356-2251

5.5. Either party shall notify the other in writing of any change in address for the purpose of this section, where after all notices shall be given at such new address.

5.6. The parties agree that all of the provisions of this Agreement are to be construed as covenants and agreements as though the words importing such covenants agreements were used in each separate paragraph hereof. Should any provision or provisions of this Agreement be illegal and not enforceable, it or they shall be considered separate and severable from the Agreement and its remaining provisions shall remain in force and be binding upon the parties hereto as though the said provision or provisions had never been included. The captions appearing in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or of any provision hereof.

5.7. This Agreement contains the entire agreement between the parties hereto with respect to the subject matter of this Agreement. The parties acknowledge and agree that they have not relied on any statement, representation, agreement or warranty of the other, except as set out in this Agreement.

5.8. This Agreement shall be binding upon and ensure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

**IN WITNESS WHEREOF**, the parties hereto have set their respective signatures and seals as of the day and year first above written.

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**  
as represented by:

**Per:** \_\_\_\_\_  
**Name:** Serge Tenaglia  
**Title:** District Manager, Sault Ste. Marie

**TOWN OF BLIND RIVER**

**Per:** \_\_\_\_\_  
**Name:** R.V. Gallagher  
**Title:** Mayor

**Per:** \_\_\_\_\_  
**Name:** K.Corbieri  
**Title:** Clerk-Administrator

**I have authority to bind the Corporation.**

**SCHEDULE "A"**  
**DESCRIPTION OF DAM WORKS TO BE PERFORMED**

In accordance with the terms and conditions of this agreement, the Contractor acknowledges the following information and covenants and agrees to perform the following works and services (the "Works") upon and around the Blind River Dam:

1. The Dam and Watershed:
  - 1.1. The main purpose of the Dam is water level and flood control.
  - 1.2. The Dam also serves as a Lamprey barrier, preventing Lamprey migrating upstream from Lake Huron.
  - 1.3. The Dam was modified in 1998-99 to include small hydro generation. Two 50 kW turbines were installed in Spillway #1 (east) and a motorized gate was installed in Spillway #5 (west).
  - 1.4. The large (1050 sq. km) Blind River watershed is also partially controlled by three other dams; Matinenda Lake Dam ,Chiblow Lake Dam.and Scarfe Lake Dam.
  - 1.5. Operation of the Blind River Dam is linked to the other two dams, the small hydro facilities and weather.
  
2. The Owner:
  - 2.1. The Dam owner is the Crown.
  
3. The Contractor shall:
  - 3.1. be trained by the Owner. Training shall include but not be limited to understanding the annual operation and maintenance of the Dam's four main spillways and hands-on practice.
  - 3.2. be trained by others on the operation and maintenance of the small hydro facilities in the fifth (east) spillway.
  - 3.3. operate the Dam through the lowering and raising of the motorized gate in Spillway #5 (west) and through the placement and removal of stoplogs in Spillways #4, #3, and #2 so that at all times the water level at the Dam is maintained within the allowable operating water level range as described in Item 4 The Operation herein.
  - 3.4. perform visual checks and minor maintenance on the Dam as described in Item 5 The Inspection and Maintenance herein.
  - 3.5. perform any and all maintenance on the small hydro facilities.
  - 3.6. keep records as described in Item 6 The Records herein.
  
4. The Operation
  - 4.1. Historically:
    - 4.1.1. The water level near the Dam has been limited to a range between 3.0 and 3.4 as read on a water level staff gauge located in the river between Hwy 17 and Hudson Street. Water levels were kept within this range for summer and fall then drawn down during winter to provide storage and reaction time to winter thaws and the spring freshet.
    - 4.1.2. Winter water levels have been kept at approximately 3.0.
    - 4.1.3. Water levels exceeding 3.65 threaten property owners docks.

4.1.4. The water levels of 3.0 and 3.4 are measured in units of feet and correlate to imperial geodetic elevations of 588.7 and 589.1.

4.2. 1999 Change:

4.2.1. Because the Dam's primary purpose is to control water and flood levels the control upper limit will be allowed to increase only slightly from 3.4 to 3.5 for secondary small hydro purposes. The Dam operation will be modified to provide optimum water for hydro generation and to minimize the winter drawdown. This will require more monitoring and anticipation of water flows in the watershed, and by necessity more Dam operation.

4.2.2. The small hydro facility would like to operate at the upper range of 3.3 to 3.5.

4.2.3. The new motorized gate will allow more fine tuning and quicker reaction time to controlling water levels.

4.2.4. The present water level gauge may be replaced by a gauge or gauges located nearer to the Dam. The Owner will provide for any replacement.

4.2.4.1. It is expressly acknowledged and agreed by the parties that for the purpose of compliance with the operating water levels, the Contractor is hereby expressly released from all liability that may result from inaccuracies in gauge readings resulting from the failure of the Owner to properly calibrate the gauge(s).

4.3. Generally:

4.3.1. Regularly monitor the water level gauge and report the reading by facsimile to the MNR Blind River representative.

4.3.2. When Lamprey migration is a concern monitor and report the water temperature at the Dam and ensure barriers are in place.

4.3.3. Advise on the capacity of the small hydro facilities to pass water flow.

4.3.4. After the MNR representative acknowledges the reading(s) and checks the operation of the Matinenda Lake Dam and Chiblow Lake Dam and the weather, they will provide direction as to what the water level should be at the Blind River Dam.

4.3.5. Operate the Dam to achieve, in a timely fashion, the water level provided by the MNR representative.

4.3.6. In some cases the MNR representative may not be readily available or may offer pre-approved water level recommendations. Operate the Dam to the best of your knowledge, training, ability and experience.

4.3.7. Bear in mind that the primary purpose of the Dam is water and flood control. Hydro generation is secondary.

4.3.8. Provide two copies of your Small Hydro Operating Manual in 1999 and annual updates.

- 4.4. Typical summer and winter:
  - 4.4.1. Maintain a water level range of 3.0 to 3.5 inclusive for water level and flood purposes.
  - 4.4.2. Where possible strive to operate the Dam at a water level range of 3.3 to 3.5 for hydro generation purposes.
- 4.5. Typical spring and fall:
  - 4.5.1. Maintain a water level in the lower range of 3.0 to 3.5 inclusive for water level and flood purposes.
  - 4.5.2. Strive to anticipate weather and watershed conditions.
  - 4.5.3. Acknowledge the Lamprey migration. Ensure barriers are in place.
  - 4.5.4. Acknowledge the outflows from Matinenda and Chiblow Lake Dams as provided by MNR Blind River.
  - 4.5.5. Do not expect to operate the Dam at a water level range of 3.3 to 3.5 for hydro generation purposes.
- 4.6. Emergency Operations:
  - 4.6.1. Assist in preparing an Emergency Preparedness Plan (EPP)
  - 4.6.2. Assist in testing the EPP
- 5. The Inspection and Maintenance
  - 5.1. Provide for Spillways #2 to #5 inclusive, minor maintenance such as greasing winches, loose bolts, cleaning the Dam deck, painting handrails and winches, and debris removal.
  - 5.2. Provide for Spillway #1 (east) and the entire small hydro facility, any and all maintenance.
  - 5.3. At each visit to the Dam visually check the integrity of the security facilities, operating equipment, leakage, signage, floating boom(s) and access to the Dam.
  - 5.4. At least once a month and after major floods or earthquakes, visually scan the Dam structure for misalignment, equipment jamming, concrete cracks, concrete erosion and spalling and shoreline erosion.
  - 5.5. Notify the Owner as soon as possible of any unauthorized uses, acts of vandalism or conditions affecting the integrity of the Dam structure.
  - 5.6. The Contractor will be responsible for maintenance and replacements of Dam stoplogs and warning sign(s).
  - 5.7. The Owner will be responsible for regular intense inspection of the structural integrity of the dam, and subsequent maintenance.
- 6. The Records
  - 6.1. Record the training by the Owner and others.
  - 6.2. Record the data as listed in the attached form entitled "Blind River Dam Diary Record for Water Levels and Spillways Openings".
    - 6.2.1. Typically record the date, water level reading, the height of the motorized gate, the number of stoplogs in the Dam, turbine openings and weather conditions and forecast as provided by Environment Canada website for Elliot Lake.
    - 6.2.2. Make inspection notes separately as required to document and communicate information.

- 6.3. Summer and Winter:
  - 6.3.1. During the summer period from June 1<sup>st</sup>, to September 14<sup>th</sup>, and winter period from November 16<sup>th</sup>, to February 28 (or 29<sup>th</sup>) record at least two (2) times each week, not on consecutive days and more frequently to document particularly wet or dry weather conditions.
  
- 6.4. Spring:
  - 6.4.1. During the spring period from March 1<sup>st</sup> to May 31<sup>st</sup> record at least three (3) times each week, not on consecutive days. Include water temperature at the Dam.
  - 6.4.2. Additionally, during the spring snowmelt and flooding, the recordings are to be done daily.
  - 6.4.3. Additionally, during the spring period, record snow depth for the area at the dam at least one (1) time per week.
  - 6.4.4. Additionally, measure the water temperature at the dam. Monitor for evidence of Lamprey migration.
  
- 6.5. Fall:
  - 6.5.1. During the fall period from September 15<sup>th</sup> to November 15<sup>th</sup>, record at least three (3) times each week, not on consecutive days
  - 6.5.2. Additionally, during the fall rains, the recordings are to be done daily.
  
- 6.6. Record transfer:
  - 6.6.1 Transfer the water levels to the MNR Area Office in Blind River by facsimile immediately after taking the reading.
  
  - 6.6.2 Not later than five (5) days after the end of each calendar month deliver a copy of all records for the previous month to the Area Supervisor of the Blind River Area Office of the Ministry of Natural Resources, P.O. Box 190, Blind River, Ontario P0R 1B0.