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SNL1961 CHAPTER 51

THE CHURCHILL FALLS (LABRADOR) CORPORATION LIMITED (LEASE) ACT, 1961

Amended:

1963 No2; 1964 No43; 1966-67 No84; 1968 No101; 1969 No77;
1970 No62; 2012 c42 s1

CHAPTER 51

**AN ACT TO AUTHORIZE THE LIEUTENANT-GOVERNMENT IN
COUNCIL TO EXECUTE AND DELIVER AN INDENTURE LEASING
CERTAIN WATER POWERS IN LABRADOR TO CHURCHILL FALLS
(LABRADOR) CORPORATION LIMITED AND TO MAKE PROVISION
RESPECTING OTHER MATTERS CONNECTED THEREWITH**

1961 No51 LT; 1966-67 No84 s2

(March 13, 1961)

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Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

Short title

1. This Act may be cited as *The Churchill Falls (Labrador) Corporation Limited (Lease) Act, 1961* .

1961 No51 s1; 1966-67 No84 s2

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Authority to execute and deliver Lease and other documents

2. The Lieutenant-Governor in Council is authorized to execute and deliver

- (a) a Lease to Hamilton Falls Power Corporation Limited the terms of which shall be substantially similar to the terms of the draft Lease set forth in the Schedule; and
- (b) any sublease, licence or permit, as an intervenor, or any amendment to a sublease, licence or permit pursuant to and in accordance with Clause 7 of Part IV of a Lease executed and delivered in accordance with paragraph (a) of this section.

1961 No51 s2

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Lease to have effect of law

3. The Lease authorized to be executed and delivered under Section 2 shall, upon its execution and delivery, be valid and binding upon the parties thereto, and all and singular the provisions therefor shall have the force and effect of law for all purposes as if expressly enacted in this Act, and the Lessor and Lessee named in the Lease, as well as all others claiming directly or indirectly under the Lessor or the Lessee including without limiting the generality of the foregoing Twin Falls Power Corporation Limited if it is a sublessee, licensee or permittee of the Lessee and the trustee for the holders of any bonds issued by Twin Falls Power Corporation Limited or the assignees of such trustee and any of them have, each of them according to his right, title or interest, full power and authority from time to time to do or perform or omit to do or perform all and singular the several acts, matters and things in and by the Lease provided to be done or not to be done, as the case may be, in the manner and with the effect and under the conditions stipulated and provided in the Lease.

1961 No51 s3

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Sec. 3 to have full effect

4. Section 3 of this Act shall have full effect notwithstanding anything to the contrary contained in *The Crown Lands Act*, chapter 174 of The Revised Statutes of Newfoundland, 1952, or in any other statute or law.

1961 No51 s4

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Part VI of Judicature Act to apply to arbitration

5. Notwithstanding anything to the contrary contained in Section 212 of *The Judicature Act*, chapter 114 of The Revised Statutes of Newfoundland, 1952, Part VI of that Act, except Section 212, shall apply to any arbitration held under a Lease or any amended sublease, licence or permit executed and delivered in accordance with Section 2 of this Act subject to the provisions of such Lease, or amended sublease, licence or permit.

1961 No51 s5

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Exemption from social security assessment

6. (1) Notwithstanding *The Social Security Assessment Act*, chapter 41 of The Revised Statutes of Newfoundland, 1952, as amended from time to time, or any Act standing in place of the said *The Social Security Assessment Act* or any other statute or law, Hamilton Falls Power Corporation Limited, its licensees, sublessees, permittees, transferees or assigns as well as the contractors and subcontractors (whether on a lump sum, fixed price, unit price contract basis or otherwise) of any of them shall on the execution and delivery of a Lease in accordance with Section 2 of this Act have the exemptions provided by that Lease.

Exemption from gasoline tax

(2) Notwithstanding *The Gasoline Tax Act, 1962*, the Act No. 55 of 1962, as amended from time to time, or any Act standing in place of the said Act or any other statute or law, Churchill Falls (Labrador) Corporation Limited, its licensees, sublessees, permittees, transferees or assigns as well as the contractors or subcontractors (whether on a lump sum, fixed price, unit price contract basis or otherwise) of any of them shall, on the execution and delivery of an agreement in accordance with Section 7 of this Act, have and be deemed to have had on and after the first day of January, 1967, the exemptions prescribed in the provisions inserted by Clause 1 of that agreement in the Lease referred to in that clause.

No refund of taxes

(3) Subsection (2) shall not apply in respect of any taxes imposed by or under *The Gasoline Tax Act, 1962*, as amended, and paid by the companies and persons referred to in that subsection at the date of the execution and delivery of the agreement referred to in that subsection and that subsection and the relevant provisions of the Lease referred to in that subsection shall be construed to the end that any such taxes that have been so paid, except those refundable by or under the said *The Gasoline Tax Act, 1962*, shall not be refunded.

1961 No51 s6; 1966-67 No84 s3

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The Public Utilities Act, 1964, not to apply in certain cases

7. (1) *The Public Utilities Act, 1964*, the Act No. 39 of 1964, as now or hereafter amended shall not apply to

- (a) the supply of hydro-electric power from the full output of all units installed at any time and from time to time at the hydro-electric plant site of the Twin Falls Project (which Project is defined in paragraph (d) of Clause 2 of Part I of the form of Lease set forth in the Schedule) to Churchill Falls (Labrador) Corporation Limited or to any person or company engaged in mining, beneficiating, concentrating, agglomerating or otherwise treating or processing iron ore in Labrador which is derived from any mineral deposit in Labrador, under any written agreement with any such person or company, or to the issuance of any securities in connection with or to the financing or construction of facilities for the installation and transmission of hydro-electric power from the said hydro-electric plant site;
- (b) the supply of hydro-electric power developed under the Lease made pursuant to the Act No. 51 of 1961, as now or hereafter amended, at the Churchill Falls Power Plant in Labrador to
 - (i) Quebec Hydro-Electric Commission,
 - (ii) the Newfoundland and Labrador Power Commission, or
 - (iii) any company which, at the date of the enactment of this Act, is being supplied with hydro-electric power by Twin Falls Power Corporation Limited and which is then engaged in mining, beneficiating, concentrating, agglomerating or otherwise treating or processing iron ore in Labrador which is derived from any mineral deposit in Labrador,

under any written agreement with any of such Commissions or companies, or to the issuance of any securities in connection with or to the financing or construction of facilities for the installation and transmission of hydro-electric power from the said Churchill Falls Power Project; or

- (c) the supply of hydro-electric power by Churchill Falls (Labrador) Corporation Limited to Twin Falls Power Corporation Limited and the distribution by Twin Falls Power Corporation Limited of any such power so supplied to it to any company referred to in subparagraph (iii) of paragraph (b), subject to the condition that in every case referred to in this paragraph, the hydro-electric power referred to herein shall be the hydro-electric power supplied by Churchill Falls (Labrador) Corporation Limited to Twin Falls Power Corporation Limited in replacement of power formerly generated at the plant site referred to in paragraph (a) which is not then being generated,

but the said *The Public Utilities Act, 1964* , applies to the production, storage, transmission and supply of all other hydro-electric power developed under or in pursuance of the Lease executed and delivered pursuant to this Act.

(2) Paragraph (1)(a), subparagraph (1)(b)(iii) and paragraph (1)(c) shall cease to apply on January 1, 2015.

(3) Subparagraph (1)(b)(ii) shall cease to apply as of January 1, 2015 in respect of an amount of electrical energy and capacity equal to 225,000 kW at 100% load factor at the 230 kV busbar located at the Churchill Falls (Labrador) Corporation Limited switchyard in Churchill Falls, but in all other respects that subparagraph shall remain in effect.

1966-67 No84 s4; [2012 c42 s1](#)

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Principal Agreement not to apply

8. Notwithstanding anything to the contrary contained in the Principal Agreement as defined in the Lease executed and delivered pursuant to this Act, none of the provisions of the said Principal Agreement as now or hereafter amended shall apply to the said Lease.

1964 No43 s3

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Application of Registration of Deeds Act

9. *The Registration of Deeds Act*, chapter 141 of The Revised Statutes of Newfoundland, 1952, applies to

- (a) a Lease executed and delivered in accordance with Section 2 of this Act;
- (b) an assignment, sublease, licence or permit issued with respect to all or any of the rights and liberties derived by or under that Lease; and
- (c) a mortgage of or charge upon all or any of the rights and liberties derived by or under such Lease, assignment, sublease, licence or permit,

as if that Lease, assignment, sublease, licence, permit, mortgage or charge was specifically mentioned in Section 6 of *The Registration of Deeds Act*.

1961 No51 s9

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Sec. 3 not restricted by Secs. 4 to 9

10. Nothing in Sections 4 to 9 shall be deemed to restrict the generality of Section 3.

1961 No51 s10

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Schedule

This Lease made at St. John's in the Province of Newfoundland this _____ day of _____ One thousand nine hundred and sixty-one BETWEEN His Honour the Honourable Campbell Macpherson, Officer of the Most Excellent Order of the British Empire, Lieutenant-Governor of the Province of Newfoundland in Council (hereinafter called the "Government", which expression shall, unless the context otherwise requires, mean the Government for the time being of the said Province) of the one part AND Churchill Falls (Labrador) Corporation Limited a company duly incorporated under the laws of Canada and having its Head Office in the city of St. John's in the Province of Newfoundland (hereinafter called the "Lessee", which expression shall, unless the context otherwise requires and subject to the provisions of this Lease, include the successors and assigns of the Lessee) of the other part;

WHEREAS under and by virtue of the powers conferred by the Act No. 63 of 1953 of the Province of Newfoundland there was executed on the twenty-first day of May, A.D. 1953, an Agreement in the terms set forth in the Schedule to the said Act between the Government and British Newfoundland Corporation Limited et al.;

AND WHEREAS under and by virtue of the powers conferred by the Act No. 18 of 1954 of the Province of Newfoundland there was executed on the third day of July, A.D. 1954, a Supplemental Agreement in terms set forth in the Schedule to the said Act between the Government and British Newfoundland Corporation Limited et al. amending the said Agreement;

AND WHEREAS under and by virtue of the powers conferred by the Act No. 48 of 1955 of the Province of Newfoundland there was executed on the twenty-sixth day of September, A.D. 1955, a further Supplemental Agreement in the terms set forth in the Schedule to the said Act between the Government and British Newfoundland Corporation Limited et al. further amending the said Agreement (the said Agreement as so amended being hereinafter called the "Principal Agreement");

AND WHEREAS under the Principal Agreement and in accordance with the provisions thereof, British Newfoundland Corporation Limited acquired an option exercisable at any time and from time to time during the period of twenty years from the twenty-first day of May, A.D. 1953, to take an exclusive right and concession (so far as the same should not be inconsistent with any grants or leases of water power rights theretofore granted or agreed to be granted by the Government and subsisting at the date of the Principal Agreement) to harness and make use of waters in Newfoundland and Labrador, including the Hamilton River and to be vested with all hydro-electric and hydraulic power rights in to and in respect of the same;

AND WHEREAS British Newfoundland Corporation Limited in pursuance of Clause 13 of the Principal Agreement did by an Assignment Agreement dated as of the thirtieth day of June, A.D., 1958, assign unto the Lessee, among other things, the option and water power rights which were granted to it by the Principal Agreement in respect of and limited to the portion of the Hamilton River known as the upper Hamilton River as defined in the Assignment Agreement as subsequently amended to bring the said definition into conformity with Clause 1 of this Lease;

AND WHEREAS by notice given by the Lessee to the Government pursuant to the provisions of sub-clause (2) of Clause 9 of the Principal Agreement, the Lessee on the twenty-sixth day of May, A.D. 1960, exercised the option so assigned to it and obliged itself to commence and proceed with due diligence with the development of the supply of electricity from the said upper Hamilton River, commencing with the Twin Falls hydro-electric development on the Unknown River, Labrador (hereinafter defined and referred to as the "Twin Falls Project");

AND WHEREAS the Lessee has applied to the Government for the grant, pursuant to sub-clause (2) of Clause 9 of the Principal Agreement, of such exclusive right and concession for a term of ninety-nine years renewable at the option of the Lessee for a further period of ninety-nine years, in respect of the area or areas covered by said Assignment Agreement upon which the said option was exercised;

AND WHEREAS the Twin Falls Project is being undertaken by Twin Falls Power Corporation Limited, a company organized under the laws of Canada and having its Head Office at St. John's in the said Province, which is to become a sublessee of Churchill Falls (Labrador) Corporation Limited;

AND WHEREAS the Government has deemed it desirable to enter into, execute and deliver this Lease, subject to the terms, conditions, reservations, qualifications and provisions hereinafter set forth;

1961 No51 Sch Preamble; 1966-67 No84 s2

NOW THEREFORE THIS LEASE WITNESSETH that

PART I **RIGHTS AND LIBERTIES LEASED AND RESERVATIONS MADE**

1. In pursuance of the Principal Agreement and for and in consideration of the undertakings of the Lessee herein set forth and subject to the terms, conditions, reservations, exceptions and provisions herein contained, the Government hereby leases and demises unto the Lessee full right and liberty to use exclusively all usable waters upstream of the point of intersection of the Hamilton River with the meridian of 63 ° 40' west of Greenwich and within

(a) the catchment area of the Hamilton River upstream of that point; and

- (b) any other catchment areas that, by diversion, can be made tributary to the above-mentioned catchment area of the Hamilton River ,

and the total area of catchment of the waters leased and demised by this Lease (hereinafter called the "Upper Hamilton Watershed") is described in Appendix A to this Lease and delineated on the map shown in that Appendix (And Appendix A is hereby declared to be part and parcel of this Lease, subject to alteration and correction of description and delineation by a supplementary lease when a final survey of the said area is available, but such alteration and correction of description and delineation shall be made without infringing any of the rights reserved to Labrador Mining and Exploration Company Limited under paragraph (d) of this clause, and the waters in respect of which rights and liberties are leased and demised by this Lease are hereinafter called the "Upper Hamilton");

TO HOLD the same unto the Lessee for the full term of ninety-nine years from the _____ day of _____, A.D., 1961 YIELDING AND PAYING therefor the tax to be calculated and paid in the manner prescribed by this Lease TOGETHER WITH the rights described in Clause 2 of this Part and the full right and liberty to flood during the term created by this Lease and any renewal hereof all those areas of the Upper Hamilton Watershed described in Appendix B to this Lease and delineated on the map shown in that Appendix to the levels indicated on the said map (and the said Appendix B is hereby declared to be part and parcel of this Lease, subject to alteration and correction of such description and delineation by a supplementary lease when a final survey of the said areas is available, and those areas of the Upper Hamilton Watershed described and delineated in the said Appendix B are hereinafter called the "main development area") EXCEPTED AND RESERVED to the Government, its licensees, lessees, assignees, transferees or any other persons whomsoever authorized by the Government in that behalf

- (c) (i) all minerals both metallic and non-metallic, coal, oil, salt, natural gas and related hydro-carbons, all quarry materials, surface rights, and all other rights not leased and demised by this Lease, and

- (ii) all timber

on in and under the Upper Hamilton Watershed;

- (d) all of the usable waters upstream of a point that is one and one-half miles downstream from the northeastern face of the main dam at the outlet of Menihek Lakes and the leave, licence, permission, authority and all other rights licensed by the Crown to Labrador Mining and Exploration Company Limited by a Licence dated the first day of December, A.D. 1950, as amended by *The Labrador Mining and Exploration Company, Limited Water Power Licence (Clarification and Revision) Act, 1961* ;

- (e) the full right and liberty for the Government, its licensees, lessees, grantees, assignees, transferees and any other persons whomsoever authorized by the Government in that behalf

- (i) to explore, prospect, search for, work, get, carry away and dispose of all minerals, both metallic and non-metallic, coal, oil, salt, natural gas and related hydro-carbons and other rights in the Upper Hamilton Watershed not leased and demised by this Lease;

- (ii) to fell, cut down, dispose of and carry away all timber in the Upper Hamilton Watershed; and

- (iii) to occupy and use all of the Upper Hamilton Watershed the occupation and use of which is in the opinion of the Government necessary for any of the purposes referred to in this paragraph (e);

AND EXCEPTED AND RESERVED ALSO for all of the purposes referred to in paragraph (e) of this clause

- (f) the right of ingress, egress and regress over the Upper Hamilton Watershed and to make, sink, erect and use all mines, pits, plants, shafts, wells, machinery, buildings, erections, dams, roads and other necessary works and conveniences;

AND EXCEPTED AND RESERVED ALSO

- (g) the right for the public to use freely all lakes, ponds and rivers included in the Upper Hamilton for floating logs or other timber of any kind whatsoever;
- (h) to the Government, its grantees, lessees, licensees and permittees all fishing rights whatsoever on the Upper Hamilton TOGETHER WITH the right of ingress, egress and regress for the purpose of exercising any of such fishing rights; and
- (i) for the public the right subject to applicable laws and regulations now or hereafter existing, to fish, shoot, hunt, trap and travel on and over the Upper Hamilton Watershed and the Upper Hamilton and any and all streams, rivers and lakes included therein and to maintain on the Upper Hamilton for any such purpose any kind of vessel, boat or aircraft.

PROVIDED that subject to the other provisions of this Lease the rights reserved shall be exercised in such a manner as not to cause unnecessary interference with the use and enjoyment of the rights of the Lessee under this Lease.

1961 No51 Sch Part I s1

2. Subject to the provisions, terms, conditions, exceptions and reservations of this Lease, the lease and demise of the Upper Hamilton created hereby includes the grant to the Lessee during the term created by this Lease of

- (a) the exclusive right to harness and make use of the Upper Hamilton ;
- (b) all hydro-electric and hydraulic power rights in, to and in respect of the Upper Hamilton ;
- (c) the exclusive right to utilize all of the Upper Hamilton in all dams, tunnels, canals, diversions, power houses and any and all other works, wheresoever located, necessary for the development of hydro-electric and hydraulic power;
- (d) the exclusive right to store so much of the Upper Hamilton as may be economic and/or beneficial for the purposes of the development by the Lessee of the Upper Hamilton and to regulate the flow of the Upper Hamilton subject to the condition that in so doing the Lessee shall not interfere, to the detriment of downstream proprietors of water power rights without the consent of all such proprietors, with the minimum daily mean unregulated flow of such waters occurring prior to the establishment of a hydro-electric plant at a site on the Unknown River having an initial generating capacity of approximately 120,000 horsepower together with appropriate related facilities including high voltage transmission lines to and a step down station near Wabush Lake (the said plant and facilities being herein called the "Twin Falls Project");
- (e) the right to transmit throughout the Province any electric power generated as the result of the harnessing of the whole or any part of the Upper Hamilton and to export from the Province such power: Provided that upon the request of the Government consumers of electricity in the Province shall be given priority where it is feasible and economic to do so; and
- (f) the right, subject to Clause 3 of Part III, to flood or otherwise impair the land comprised in any grant, lease, licence or other assurance of unoccupied Crown lands located in the main development area or of any rights therein or thereunder made after the date of

execution and delivery of this Lease without paying any compensation, fine or other indemnity in respect of the loss or damage suffered by the grantee, lessee, licensee or other holder of rights in the land.

1961 No51 Sch Part I s2

PART II LESSEE'S COVENANTS

The Lessee hereby covenants with the Government as follows:

Royalty

1. (1) The Lessee shall during the term created by this Lease pay to the Minister of Mines, Agriculture and Resources for the said Province a royalty to be determined and paid in the manner and at the times prescribed by this clause.

(2) The Government shall determine the rate of royalty, applicable to each development or stage thereof, for the supply of electricity from the Upper Hamilton: Provided that the rate so determined shall not exceed the maximum rate of 50 cents (Canadian) per horsepower year generated and sent out of the station and for the purpose of this clause 6535 kilowatt hours shall constitute one horsepower year.

(3) During the term created by this Lease, the Lessee shall on or before every twenty-eighth day of February occurring after the delivery of electricity from any installation utilizing the whole or any part of the Upper Hamilton is commenced submit to the Government all data required by it for determining the amount of the royalty for the calendar year (January 1 to December 31) or part thereof immediately preceding that twenty-eighth day of February, and all such data shall be certified by a responsible officer of the Lessee and shall be treated by the Government as confidential information.

(4) The royalty calculated from the data submitted to the Government as aforesaid shall be paid by the Lessee on or before the thirty-first day of March immediately following the end of each calendar year (January 1 to December 31).

1961 No51 Sch Part II s1

Government inspection

2. The Government by its servants and agents may at all reasonable times during the term of this Lease enter upon the Upper Hamilton and examine the condition thereof.

1961 No51 Sch Part II s2

Due diligence

3. The Lessee will commence and proceed with due diligence with the development of the supply of electricity from the Upper Hamilton, beginning with the development by Twin Falls Power Corporation Limited of a supply of electricity from the Twin Falls Project.

1961 No51 Sch Part II s3

Newfoundland labour and materials

4. The Lessee shall in the procuring of materials, equipment and labour for any work undertaken by it or for its account under the terms of this Lease give preference, where it is feasible and economic to do so, to material and equipment originating, manufactured or distributed and serviced in the Province of Newfoundland and prior opportunity to workmen whose usual place of residence is in the said Province and shall use its best endeavours to give effect to this provision.

1961 No51 Sch Part II s4

Flow gauging information

5. When as and if the Lessee undertakes recording information concerning the characteristics of the Upper Hamilton, or any part thereof, it will supply and furnish to the Government upon request copies of such flow gauging information and data at least once each year.

1961 No51 Sch Part II s5

Operating practices

6. The Lessee shall keep and maintain in good working order all structures, works and plant erected from time to time for the development and utilization of the Upper Churchill on the premises demised by this Lease or by any of the leases or licenses referred to in Clause 7 of Part III of this Lease which have been or in the future shall be granted to the Lessee and which structures, works and plant in accordance with sound utility practice are required in connection with or incidental to said development and utilization, and the Lessee shall attend to all necessary repairs in order to secure the normal and satisfactory working of all such structures, works and plant. The Lessee shall, however, be entitled at any time and from time to time to alter any structures, works and plant erected from time to time for the development and utilization of the Upper Churchill on such demised premises and to remove any thereof when desirable in the conduct of its business in accordance with sound utility practice, to change the position of any thereof, to replace or renew any thereof and to dismantle and remove any thereof no longer useful in the conduct of its business in accordance with sound utility practice.

1969 No77 Sch s1

6A. The Government acknowledges that, so long as this Lease or any of the leases or licenses referred to in Clause 7 of Part III of this Lease shall be in force, all right, title and interest in and to all fixtures, structures and other improvements located on the premises demised by this Lease or such other leases or licenses (but not any personal property located thereon), and all proceeds and avails of such fixtures, structures and improvements shall be part of the Lessee's leasehold estate and may, subject to the restrictions on alienation of the leasehold estate and to the other covenants of the Lessee contained in this Lease and said other leases and licenses, be assigned together with the Lessee's other rights hereunder as security or otherwise disposed of by the Lessee without restriction; provided, however, that (under reserve of the Lessee's right to remove upon, or within a reasonable period following, termination of the demise, all trade fixtures and all other fixtures not being landlord's fixtures) all fixtures, structures and other improvements remaining on the premises demised by this Lease or by said other leases or licenses shall, upon termination thereof, become the property of the Government.

1969 No77 Sch s1

7. During the term created by this Lease, the Lessee will once at least in every calendar year procure the preparation of a Consolidated Statement of Profit and Loss of the Lessee and its subsidiary companies for the preceding calendar year. In addition, the Lessee undertakes to procure to be made out a Consolidated Balance Sheet of the Lessee and its subsidiary companies as at the dates to which the said Consolidated Statements of Profit and Loss are made up. The said Consolidated Statement of Profit and Loss and Consolidated Balance Sheet are hereinafter referred to as the "Consolidated Accounts". For the purposes of this Lease a subsidiary company means a company in which the Lessee holds directly, or through a nominee, shares comprising more than fifty per centum (50%) of the issued share capital of that other company, or shares entitling the Lessee to more than fifty per centum (50%) of the voting power of that other company or a company

of which the Lessee has power directly or indirectly to appoint the majority of the directors, and a subsidiary company shall include a subsidiary company of a subsidiary company: Provided, however, that the Lessee shall not be required to procure the preparation of Consolidated Accounts for any year prior to the calendar year 1964, except on the written request of the Government.

1964 No43 Sch s1

8. (1) The Lessee shall pay a rental in each year during the term created by this Lease equal to eight per centum (8%) of the net profits of the Lessee as hereinafter defined.

(2) For the purpose of this Lease, the expression "net profits" means the net profits less losses of the Lessee and its subsidiary companies in so far as they are attributable to the Lessee's holding therein computed in accordance with generally accepted Canadian accounting principles and as shown in the Consolidated Accounts approved by the auditors of the Lessee in any financial year of the Lessee excluding any profit or loss arising on the disposal of fixed assets of the Lessee or of any subsidiary company of the Lessee otherwise than in connection with the assignment, sublease, licence or alienation of any of the rights and liberties granted to or hereby to be granted to the Lessee and after charging all usual and proper expenses, other than the rental payable pursuant to this clause but including the royalty payable under sub-clause (2) of Clause 1 of this Part II, interest payable in respect of borrowed moneys, provisions for depreciation, depletion and amortization based on but not exceeding amounts expended and all other provisions as charged in the Consolidated Accounts in respect of such financial year but before making any charge or provision for Federal and Provincial Income Tax or any other taxes on income whether of a Federal or Provincial nature and before charging any dividends paid or payable on any class of shares of the Lessee and before making any appropriations for reserves of a capital or revenue nature not allowable for the purposes of Canadian Federal taxation: Provided, always, that if the Lessee or any of its subsidiary companies shall carry on any activities other than operations the subject of the rights and liberties granted or to be granted under this Lease the net profits or losses attributable to such activities shall be excluded.

(3) The rental payable by the Lessee to the Government under this clause shall be paid on the completion and adoption of the audited accounts of the Lessee in every year and shall be certified by the auditors for the time being of the Lessee.

(4) Provided, always, that if the computation of net profits pursuant to this clause shall in any year result in net losses the amount of such net losses shall be set off against the first subsequent net profits.

(5) The rental payable under this clause shall be calculated and paid only on the profits of the Lessee as herein defined and shall not devolve upon or be payable by any assignee of the Lessee.

1964 No43 Sch s1

PART III GOVERNMENT'S COVENANTS

The Government hereby covenants with the Lessee as follows:

Quiet enjoyment

1. The Lessee paying the royalty provided for in this Lease and observing, performing and fulfilling the several provisions, covenants, terms and conditions herein contained and on the part of the Lessee to be paid, observed, performed and fulfilled shall peaceably hold and enjoy the rights and liberties hereby leased and demised during the said term without any interruption or interference by the Government or any other person whomsoever rightfully claiming under or in trust for it.

1961 No51 Sch Part III s1

Renewal

2. Subject to all of the provisions of this Lease, the Government will on the written request of the Lessee made before the expiration of the term hereby created, if there shall not at the time of such request be any existing breach of the covenants, terms and conditions of this Lease on the part of the Lessee, grant to it a further lease of the rights and liberties leased and demised by this Lease for the further term of ninety-nine years from the expiration of the term created by this Lease subject to payment of the same royalty and containing the like covenants and conditions as are herein contained, except the covenant for renewal.

1961 No51 Sch Part III s2

Provisions of subsequent grants

3. (1) Whenever after the date of the execution and delivery of this Lease and subject to sub-clause (2) of this clause, a grant, lease, licence or other assurance is made of unoccupied Crown lands located in the main development area or of any rights therein or thereunder, a provision shall be inserted in such grant, lease, licence or other assurance reserving in favour of the Lessee the right to flood or otherwise impair the land comprised in the grant, lease, licence or other assurance and to the extent permitted by this Lease to construct and operate storage reservoirs thereon, therein or thereunder without paying any compensation, fine or other indemnity in respect of the loss or damage suffered by the grantee, lessee, licensee or other holder of rights in the land.

(2) Sub-clause (1) of this clause and paragraph (f) of Clause 2 of Part I shall not apply in respect of

- (a) any option or concession granted by or under any Act or agreement before the execution and delivery of this Lease to any person, company, partnership or association conferring on such person, company, partnership or association the right to acquire and occupy Crown lands or any rights thereon, therein or thereunder by way of grant, lease, licence, permit or other assurance of title; or
- (b) any grant, lease, licence, permit or other assurance of title made at any time before the execution and delivery of this Lease, or made at any time thereafter in pursuance of an option or concession referred to in paragraph (a) of this sub-clause.

1961 No51 Sch Part III s3

Reservation of minerals

4. The Government has reserved and will subject to this Lease keep reserved from the operation of *The Crown Lands (Mines and Quarries) Act, 1961*, as amended from time to time, for the full term created by this Lease all minerals on, in and under the main development area.

1961 No51 Sch Part III s4

Grant of minerals in main development area

5. Notwithstanding the provisions of Clause 4 and subject to the provisions of Clause 3 of this Part, the Government reserves the right to grant, lease or otherwise dispose of all or any part of the minerals referred to in Clause 4 of this Part or any rights in such minerals to any person, company, partnership or association.

1961 No51 Sch Part III s5

Notice

6. (1) Before making any grant or lease of minerals or of land anywhere in the Upper Hamilton Watershed, the Government will subject to this clause inform the Lessee in writing of its intention to do so and allow the Lessee at least sixty (60) days from the date of service of that notice to enable the Lessee to make any objection to such proposal that it wishes to make.

(2) Subject to Clause 3 of this Part, the Government reserves the right to make any grant or lease referred to in sub-clause (1) of this clause on the expiration of the period of notice prescribed by that sub-clause, whether or not the Lessee shall have objected thereto.

(3) The provisions of this clause shall not apply to any grant, lease, licence, permit or other assurance of title referred to in paragraph (b) of sub-clause (2) of Clause 3 of this Part.

1961 No51 Sch Part III s6

Acquisition of Crown lands

7. (1) Subject to sub-clause (2) of this clause, the Government will grant to the Lessee upon reasonable terms and conditions by lease or licence from time to time such Crown lands not then irrevocably granted, leased or otherwise alienated to any third party as may be reasonably necessary in connection with or incidental to any aspect of the development and transmission of hydro-electric power from any part of the Upper Hamilton.

(2) All of the Crown lands referred to above that are required for transmission and communication lines, access roads, dam sites, power sites, transformer stations and canals will be leased or licensed to the Lessee for a term coextensive with the term of this Lease and any renewal thereof and at a rent not exceeding one dollar a year, if demanded.

1961 No51 Sch Part III s7

Acquisition of private lands

8. If the Lessee is desirous at any time of acquiring private lands or any rights therein or thereover, reasonably necessary for or in connection with or incidental to any aspect of the development and transmission of hydro-electric power from any part of the Upper Hamilton, the Government will acquire such lands or rights by purchase, expropriation under *The Expropriation Act, 1957*, as now or hereafter amended, or otherwise (and the mode of acquisition shall be determined by mutual agreement) and the Government will transfer title and possession of such lands or rights to the Lessee at cost.

1961 No51 Sch Part III s8

Legislation to protect Lessee's improvements

9. The Government will use its best endeavours to secure legislation including regulations reasonably necessary to protect the improvements made in the Upper Hamilton Watershed by the Lessee or any sublessee, licensee or permittee of the Lessee from damage by any person exercising any of the rights reserved under paragraphs (g), (h) and (i) of Clause 1 of Part I, but all such legislation shall be consistent with the lawful exercise of such reserved rights.

1961 No51 Sch Part III s9

PART IV MUTUAL COVENANTS

It is mutually agreed by and between the parties to this Lease as follows:

No assignment, etc., without consent

1. (1) Subject to this clause, the rights and liberties hereby demised or any of them may not be assigned, leased, licensed, mortgaged or otherwise howsoever alienated by Churchill Falls (Labrador) Corporation Limited, without the prior consent of the Government in writing, which consent shall not be unreasonably withheld.

(2) Subject to this clause the Lessee may not license or permit any company or body whether associated with it or not to utilize any of the rights and privileges granted hereunder or sublet or otherwise dispose of any of the said rights and privileges to any such company or body, without the prior consent of the Government, in writing, which consent shall not be unreasonably withheld.

(3) This clause shall not be deemed to apply to a permit for a period not exceeding one year issued by the Lessee nor shall this clause nor any corresponding restriction of any lease or license granted pursuant to Clause 7 of Part III hereof, be deemed to apply to any permits, licenses or other rights of utilization under the Power Contract (referred to in Clause 2A of Part IV hereof) or otherwise in respect of the construction of, or for the purpose of assuring the completion, bringing into operation and continued operation of, and delivery of energy from, the Churchill Falls power project in Labrador; provided, however, the giving of any such right by the Lessee shall not affect the Lessee's obligations hereunder.

(4) Forthwith, upon the execution of any assignment, sublease, licence or permit or of any assignment of any such assignment, sub-lease, licence or permit, the Lessee shall furnish to the Government a certified copy thereof together with the name and address of the assignee, sublessee, licensee or permittee.

(5) The Lessee shall not be liable to pay any fee or charge in respect of any consent given under this clause.

1961 No51 Sch Part IV s1; 1966-67 No84 s2; 1969 No77 Sch s2

Tax exemptions

2. (1) The Lessee and any of its sublessees, licensees, permittees, and agents, as well as the contractors and subcontractors (whether on a lump sum, fixed price or unit price contract basis or otherwise) of any of them shall be exempt

(a) from all taxes heretofore or hereafter imposed by or under *The Social Security Assessment Act*, chapter 41 of The Revised Statutes of Newfoundland, 1952, as amended to the date of the coming into force of *The Social Security Assessment Act, 1963*, the Act No. 83 of 1963, and from all taxes imposed by the said *The Social Security Assessment Act, 1963*, as amended from time to time or any Act standing in the place thereof and from any similar tax or assessment levied, authorized or imposed by the Province in respect of all machinery, equipment, goods, materials, articles, things, and all other tangible personal property heretofore or hereafter installed, consumed or used in the establishment, construction, equipping or expansion in Labrador of any works, buildings, structures and plant ("facilities") for or incidental to any aspect of the development, generation and transmission within the Province of hydro-electric power from the whole or any part of the Upper Churchill: Provided that such exemption shall not apply in respect of

(i) any machinery, equipment, materials, articles and things and other than tangible personal property consumed or used in the operation of the facilities or in the establishment of any capital replacements made otherwise than in connection with the expansion of any of the facilities, or

(ii) renewals, replacements or repairs;

(b) on and after the 1st day of January, 1967, from all taxes imposed by or under *The Gasoline Tax Act, 1962*, the Act No. 55 of 1962, as amended from time to time, or any Act standing in the place thereof and from any similar tax or assessment levied, authorized or imposed by the Province in respect of gasoline consumed or used in the establishment, construction, equipping or expansion of any facilities established in Labrador for or incidental to any aspect of the development, generation and transmission within the Province of hydro-electric power from the whole or any part of the Upper Churchill: Provided that such exemption shall not apply in respect of

(i) gasoline consumed or used in the operation of any such facilities or in the establishment of any capital replacements made otherwise than in connection with the expansion of any such facilities, or

(ii) renewals, replacements or repairs,

but nothing in this sub-clause (1) shall be deemed to confer any exemption in respect to the operation by Twin Falls Power Corporation Limited of its facilities, or from the tax imposed by or under *The Fuel Oil Tax Act, 1962*, or any Act substituted therefor.

(1A) For greater certainty it is hereby declared that

(a) the completion of any facility or any part thereof shall not prevent the application of any of the exemptions referred to in paragraphs (a) and (b) of sub-clause (1) of this Clause 2 in respect of any uncompleted facility or part thereof; and

(b) the total consumption of any tangible personal property in respect of which the exemption referred to in paragraph (a) of sub-clause (1) of this Clause 2 applies or the partial consumption or use of it to the point where it can no longer be consumed or used shall not prevent the application of that exemption in respect of the consumption or use of additional tangible personal property consumed or used in replacement of that already totally consumed or so partially consumed or used, if such additional tangible personal property is consumed or used for any of the purposes prescribed in the said paragraph (a) in respect of which an exemption is provided.

(2) Should the Lessee or any of its sublessees, licensees or permittees be subject to taxation by any municipality or other local taxing authority in Newfoundland Labrador, the amount of taxes levied by such municipality or other taxing authority against the Lessee or any of its sublessees, licensees or permittees for the year, together with the amount of taxes levied by such municipality or other taxing authority against all other industrial establishments and activities including hydro-electric developments for such year, shall not exceed in the aggregate forty per centum (40%) of the total amount of the taxes levied by such municipality or other taxing authority for such year.

(3) The Lessee and Twin Falls Power Corporation Limited shall not be liable for any taxes other than taxes of general application.

1961 No51 Sch Part IV s2; 1966-67 No84 Sch s1; 1970 No62 Sch s1

Tax exemptions and rebates

2A. (1) In this Clause 2A,

(a) "Lessee" means Churchill Falls (Labrador) Corporation Limited, its successors and assigns and the subsidiaries of Churchill Falls (Labrador) Corporation Limited, except Twin Falls Power Corporation Limited and the successors, assigns and subsidiaries of Twin Falls Power Corporation Limited; and

(b) "Power Contract" means the first contract executed by and between the Lessee and Quebec Hydro-Electric Commission relating to the supply and sale by the Lessee to

Quebec Hydro-Electric Commission of hydro-electric power developed under this Lease at Churchill Falls in Labrador, but does not include any renewal of such contract or the renewal of the term prescribed therein during which the Power Contract is to remain in force, and the said term is expected to be about forty years.

(2) This Clause 2A applies as of and from July 14, 1966, in respect of the development, transmission and supply of hydro-electric power by the Lessee under this Lease during the term of the Power Contract, but this Clause 2A applies only in respect of such development, transmission and supply of hydro-electric power.

(3) Notwithstanding anything to the contrary contained in sub-clause (3) of Clause 2 of this Part IV, this Clause 2A shall have effect to the extent provided in sub-clause (2) of this Clause 2A, and only to that extent, but subject to this Clause 2A, sub-clause (3) of the said Clause 2 shall continue to have full force and effect.

(4) The Lessee shall be exempt from

- (a) any increase in existing taxes,
- (b) any liability with respect to any new or additional taxes that may hereafter be imposed, levied or authorized, and
- (c) any liability with respect to any new or additional charges, dues, fees, rents, levies, royalties or other assessments of whatsoever nature or kind,

that are within the power of the Province or any municipality or subdivision thereof to impose, levy or authorize upon the Lessee, its assets (tangible or intangible), or revenues, including without limitation, its earnings, products, properties, rights, franchises, leases, licences, permits, investments, capital (share or loan), transactions, payrolls, purchases, sales or transfers, or upon any other thing, matter or act whatsoever that is within the corporate power of the Lessee as it is now or may hereafter be constituted: Provided, however, that the above exemptions shall not enlarge the exemptions enjoyed by the Lessee pursuant to sub-clauses (1) and (2) of Clause 2 of this Part IV from the taxes specifically referred to in the said sub-clauses (1) and (2); and provided further that if Canada reduces the rates of taxes on or measured by income at present imposed by it on any class of corporations, in which the Lessee is included, the Government reserves for the Province the right in such event to increase the present rates of taxes on or measured by income imposed by it on the Lessee up to, but not exceeding the reduction in the rates of taxes so made by Canada, provided, however, that the Lessee shall not be obligated to pay an amount greater than that which would have been payable by the Lessee had Canada not reduced such rates of taxes.

(5) Subject to sub-clauses (6), (7), (8) and (9) of this Clause 2A, the Government shall pay or cause to be paid to the Lessee for its own use and benefit forty-seven and nine-tenths per centum (47.9%) of all moneys

- (a) collected by Canada by way of existing taxes on or measured by income of the Lessee; and
- (b) paid by or for Canada to or upon the order of the Province.

(6) If the amount of the rental payable by the Lessee under Clause 8 of Part II hereof is not allowed as a deduction in determining the Lessee's taxable income, then the Government shall pay the Lessee an amount equal to all of the tax on such rental which is

- (a) by reason of such disallowance, collected by Canada by way of existing taxes on or measured by income of the Lessee; and
- (b) paid by or for Canada to or upon the order of the Province,

but the Government shall not make any payments under sub-clause (5) of this Clause 2A in respect of such tax.

(7) If the rates of the taxes on or measured by income at present imposed by Canada on the Lessee shall be increased, then, an amount equal to all additional tax

(a) collected, as a result of the increase of such rates, by Canada by way of taxes on or measured by income of the Lessee, whether or not the rental referred to in sub-clause (6) of this Clause 2A is allowed as a deduction in determining the Lessee's taxable income; and

(b) paid by or for Canada to or upon the order of the Province,

shall be payable by the Government to the Lessee, but the Government shall not make any payments under sub-clause (5) or (6) of this Clause 2A in respect of such additional tax; and if the rates of the taxes on or measured by income at present imposed by Canada on the Lessee shall be decreased, then, no payments shall be made to the Lessee under any provision of this Clause 2A in respect of the amount of the reduction of taxes resulting from the decrease of such rates. In either case of an increase or decrease in such rates of taxes, the Government shall be entitled to receive and to retain in each year an amount up to but not exceeding twenty-two and one-half per centum (22.5%) of the Lessee's taxable income

(c) collected by Canada, from time to time, by way of taxes on or measured by income of the Lessee; and

(d) paid by or for Canada to or upon the order of the Province.

(8) If the amount retained by Canada from taxes on or measured by income imposed by Canada on the Lessee shall be increased above the amount retained at present, namely, an amount equal to four and eight-tenths per centum (4.8%) of taxable income of the Lessee, then, no payments shall be made to the Lessee under any provision of this Clause 2A in respect of the amount of the increase; and if the amount retained by Canada from taxes on or measured by income of the Lessee shall be reduced below the amount retained at present namely, an amount equal to four and eight-tenths per centum (4.8%) of taxable income of the Lessee, then, payments shall be made, in accordance with sub-clauses (5), (6) and (7) of this Clause 2A, in respect of that part of the amount of such reduction which is paid by or for Canada to or upon the order of the Province.

(9) If the tax on or measured by income imposed by the Province shall cease to be collected in whole or in part by Canada, such tax shall nevertheless be treated as if it were so collected for the purpose of determining the sum or sums to be paid to the Lessee under sub-clause (5), (6) or (7) of this Clause 2A.

(10) The parties acknowledge that the Lessee is entering into the Power Contract on the basis that during the term of the Power Contract the methods now applicable for computing the income of the Lessee subject to taxes on or measured by income will not be materially changed, and agree that if the amount of such taxes should be materially increased or decreased by reason of any change in such method of computation, the parties will make adjustments to the sum or sums payable to the Lessee pursuant to this Clause 2A, and/or such amendments to this Lease as may be appropriate to compensate for such increase or decrease: Provided that notwithstanding anything to the contrary contained in Clause 9 of this Part IV, the said Clause 9 shall not apply to or in respect of any dispute arising under this sub-clause (10), and any such dispute shall not be subject to arbitration in the manner prescribed in the said Clause 9 or in any other manner whatsoever.

(11) Notwithstanding any legislation to the contrary, the payments to the Lessee by the Government under this Clause 2A shall not be deemed to be income of the Lessee for the purposes of any tax on or measured by income imposed by the Province, and the Government undertakes that when so requested it will duly certify that payments so made have been paid or otherwise credited to the Lessee.

(12) Notwithstanding any provision of *The Revenue and Audit Act* or any other statute or law of the Province, the Government undertakes to appoint a bank or trust company acceptable to the Lessee and to be paid by the Lessee to act as agent or trustee of the Government for the purpose of receiving from Canada that part of the taxes on or measured by the income of the Lessee which relate to the development, transmission and supply of hydro-electric power by the Lessee during the term of the Power Contract, which shall have been imposed by Canada and which are payable by Canada to the Province pursuant to the *Public Utilities Income Tax Transfer Act*, 14-15 Elizabeth II C. 43 (Statutes of Canada) or amendments thereto or enactments in substitution therefor; and the Government undertakes, in the manner it deems expedient, duly to notify Canada of such appointment and to request it to make such payments to such agent or trustee. Such appointment, which shall be irrevocable, except with the written consent of the Lessee, shall be made by an instrument to which the Government, the Lessee and the bank or trust company thereby appointed shall be parties, and which shall set forth, *inter alia*, the powers, duties and obligations of the agent or trustee (including without limitation of the powers to receive the moneys payable by Canada to the Province as aforesaid, to hold or invest such moneys pending their disbursement and to disburse such moneys in the hands of the agent or trustee and any income earned thereon in such a manner as to give effect to this Clause 2A, taking into account, by appropriate set off or adjustment, payments in respect of taxes on or measured by the income of the Lessee which relate to the development, transmission and supply of hydro-electric power by the Lessee during the term of the Power Contract and which shall have been received directly by the Government from Canada or the Lessee) and shall provide for the appointment of a successor or successors to the agent or trustee in the event such office shall be vacated, all as to be provided in the instrument.

(13) Notwithstanding any provision of this Clause 2A, should the Lessee, because of the operation of the collection arrangements between the Government and Canada, make payments on account of taxes imposed by the Province on or measured by the income of the Lessee which relate to the development, transmission and supply of hydro-electric power by the Lessee during the term of the Power Contract, at a rate in excess of that applicable hereunder, then the Government shall forthwith upon receipt by the Government from the Lessee of satisfactory evidence of any such payment having been made to Canada, refund or cause to be refunded such excess to the Lessee.

1966-67 No84 Sch s2; 1969 No77 Sch s3; 1970 No62 Sch s2

Approval of developments

3. (1) Before commencing any development utilizing the Upper Hamilton or any part thereof, or any major modifications or improvements of any such development then existing, the Lessee shall obtain the written consent of the Minister of Mines, Agriculture and Resources for the said Province and in every such case such consent shall be a condition precedent to such development or modification or improvement but the consent of the said Minister shall not be unreasonably withheld.

(2) When the Lessee seeks the consent of the Minister of Mines, Agriculture and Resources in accordance with sub-clause (1) of this clause, it shall submit to the Minister in support of its application all information and data necessary to inform the Minister of the proposed development or major modifications or improvements, including without limiting the generality of the foregoing,

- (a) profiles and other preliminary drawings showing and describing the projected dams, tunnels, canals, diversions and any and all other works, together with all relevant general plans;
- (b) general plans of the lands required for the purpose of flooding the same, whether for the purpose of storage reservoirs or for regulating the flow of any stream within the Upper Hamilton or otherwise;
- (c) particulars with regard to the capacity of the machinery and its actual or possible production; and

(d) all other information and data that the Minister may request.

(3) In respect of the Twin Falls Project, the Government hereby acknowledges to have received all necessary information and data referred to in sub-clause (2) of this clause and to have approved such development in all its aspects in accordance with sub-clause (1) of this clause.

(4) The Lessee shall not be liable to pay any fee or charge in respect of any consent given under this Clause 3.

1961 No51 Sch Part IV s3

Default provisions

4. (1) If the Lessee, in the opinion of the Government, has failed to observe or perform any term or condition which under this Lease it is required to observe or perform and such failure continues for a period of sixty (60) days from the date that notice thereof in writing has been given by the Government to the Lessee, the Government may, notwithstanding any provisions herein with respect to arbitration, upon giving the Lessee not less than sixty (60) days notice, refer the matter of such non-observance or non-performance to the Supreme Court of Newfoundland or a judge thereof and if the Court or judge finds that the Lessee has failed to observe or perform any term or condition which it is required to perform or observe under the provisions hereof as notified to it by the Government, the Court or judge may

- (a) order performance by the Lessee of the terms of this Lease; or
- (b) order the payment of a sum by way of liquidated damages for the failure of the Lessee to perform said terms; or
- (c) make both of the orders referred to in paragraphs (a) and (b) of this sub-clause.

(2) If any order is made under sub-clause (1) of this clause, and thereafter the non-observance or non-performance on the part of the Lessee shall be continued, or the Lessee shall refuse or fail to comply satisfactorily with such order and the Court or judge shall deem that the remedies referred to in sub-clause (1) of this clause are inapplicable in respect of such non-compliance, the Court or judge may

- (a) authorize any person immediately and without further proceedings to take possession of all works, lands and properties whether real or personal, owned or held by the Lessee within the power system of the Upper Hamilton Watershed and used or useful in respect to the undertaking, including books, statements, accounts, papers and records appertaining to such undertaking and to operate, manage and control the said undertaking, and to do all other things required to be done in the conducting or carrying on of the said undertaking, until
 - (i) a sufficient sum shall have been accumulated, exclusive of all operating expenses and all costs of taking possession, to liquidate the sums payable by the Lessee and interest thereon and the cost of any proceeding connected therewith, or
 - (ii) such other conditions are carried out as may, in the opinion of the Court or judge, have been required to satisfy the terms of this Lease; or
- (b) order that upon a certain date not earlier than twelve months after the date of the order referred to in sub-clause (1) of this clause the lands, works and properties, whether real or personal, owned or held by the Lessee, and used or useful in respect of the power development shall be offered at execution sale.

(3) If an execution sale is ordered under paragraph (b) of sub-clause (2) of this clause, the Government shall fix an upset price below which the properties may not be sold and the Government

shall also prepare a stipulation relative to the rights to be acquired and obligations to be assumed by the successful bidder, and no one shall be permitted to bid at such sale who has not previously agreed in writing to sign and abide by the terms of such stipulation and who has not been accepted by the Government as a bidder.

(4) If there is not a satisfactory buyer at the first execution sale, a second sale shall be held after a lapse of four months, under the same conditions as the first sale, except that the upset price of the sale shall not exceed the sum which represents the obligations of the Lessee to the Government as fixed by the Supreme Court of Newfoundland or a judge thereof and if no bids are received equal to or in excess of this sum from accepted bidders, this Lease shall be cancelled and determined and the Lessee shall forfeit all rights, and the works and undertaking shall become the property of the Government without any compensation to the Lessee.

(5) A completed execution sale made in pursuance of sub-clause (3) or (4) of this clause shall *ipso facto* bring about the cancellation and determination of this Lease.

(6) Any surplus arising out of a sale under sub-clause (3) or (4) of this clause, above the sum which in the opinion of the Court will satisfy the obligations of the Lessee, shall be repaid to the Lessee.

(7) If at any date after an execution sale has been ordered under paragraph (b) of sub-clause (2) of this clause, and if for any reason, the procedure provided in sub-clauses (3) and (4) of this clause has not been completed, the Supreme Court of Newfoundland or a judge thereof may make any order with respect to taking over and operating the works and undertaking of the Lessee for the time being as it may deem equitable under the circumstances.

1961 No51 Sch Part IV s4

Exercise of reserved rights, compensation

5. Whenever any of the rights reserved under paragraphs (e) and (f) of Clause 1 of Part I is duly exercised and thereby the Lessee or any sublessee, licensee or permittee of the Lessee suffers loss by reason of the removal or obstruction of or damage to any of the improvements lawfully made by the Lessee or any sublessee, licensee or permittee of the Lessee on the Upper Hamilton Watershed, the Government shall pay or arrange for the payment to the party suffering such loss of reasonable compensation for the loss so suffered in respect of such improvements, and the compensation in respect of improvements shall, in default of agreement, be determined by arbitration in the manner prescribed by this Lease.

1961 No51 Sch Part IV s5

Definitions

6. The expressions "mine", "minerals" and "quarry materials" shall respectively have the meanings assigned to them by *The Crown Lands (Mines and Quarries) Act, 1961*.

1961 No51 Sch Part IV s6

Rights under certain documents of title on determination of Lease

7. (1) For the purposes of this clause

(a) "document of title" means a sublease, licence or permit whereby the Lessee has granted any or all of the rights and liberties leased and demised to the Lessee by this Lease;

(b) "Twinco" includes

(i) Twin Falls Power Corporation Limited,

- (ii) the trustee for the holders of any Bonds issued by Twin Falls Power Corporation Limited, if that trustee has a mortgage, charge, lien or hypothecation of any of the rights and liberties derived by Twin Falls Power Corporation Limited under a document of title, or
- (iii) any assignee or nominee of a trustee referred to in subparagraph (ii) of this paragraph (b).

(2) If at any time after the execution and delivery of this Lease, the Lessee proposes to grant a document of title to Twin Falls Power Corporation Limited that is reasonably necessary for the development of the maximum economic capacity at the hydro-electric plant site of the Twin Falls Project the Government will, at the request of the Lessee and subject to sub-clause (3) of this clause, enter into, execute and deliver that document of title as an intervenor to the extent only of approving the terms of the document of title for the purposes of sub-clauses (4) and (5) of this clause and in order to give to Twinco a covenant enforceable at law which would enable Twinco to obtain an amended document of title under the circumstances and with the effect prescribed in sub-clauses (4) and (5) of this clause.

(3) Upon entering into, executing and delivering a document of title pursuant to sub-clause (2) of this clause, the Government shall not be required to make any warranty as to the title of Twinco or to establish any privity of contract with the Lessee or Twinco or to undertake any other obligations to any or all of them, except the approval and the covenant referred to in sub-clause (2) of this clause, nor shall the Government by entering into, executing and delivering such document of title pursuant to that sub-clause be deemed to have made any such warranty, to have established any such privity of contract, or to have undertaken any such obligations, other than such approval and covenant.

(4) If after the granting by the Lessee of any document of title to Twin Falls Power Corporation Limited which the Government has entered into, executed and delivered as an intervenor pursuant to and in accordance with sub-clause (2) of this clause, this Lease is cancelled and determined at any time by reason of the default of the Lessee, then notwithstanding such cancellation and determination, the rights of Twinco under that document of title shall in no way be impaired or affected thereby but shall subject to sub-clause (5) of this clause continue in full force and with the same effect as though such cancellation and determination had not taken place.

(5) If this Lease is cancelled and determined at any time by reason of the default of the Lessee then every document of title which the Government has entered into, executed and delivered pursuant to and in accordance with sub-clause (2) of this clause shall be amended, without impairing or affecting the rights of Twinco thereunder, so as to provide that

- (a) the Government shall be substituted for the Lessee; and
- (b) all of the benefits of the Lessee theretofore accruing under that document of title shall thereafter accrue to the Government instead of to the Lessee,

and such document of title shall be altered accordingly both in substance and in form.

1961 No51 Sch Part IV s7; 1963 No2 s3

Investigations and surveys

8. The Lessee may enter upon, investigate and survey any unoccupied Crown lands for any purpose incidental to the development of a supply of electricity from the Upper Hamilton, but the Lessee shall be liable for all damages occasioned in the exercise of its rights pursuant to this clause by itself, its employees, agents and invitees.

1961 No51 Sch Part IV s8

Arbitration

9. (1) If any dispute arises under this Lease, the matter shall in default of agreement between the parties, be settled by arbitration at the request of either of such parties.

(2) For any arbitration under this Lease, the Lessee and the Government or other party to any dispute shall each appoint one arbitrator, and if either party fails to appoint an arbitrator after seven (7) clear days' notice in writing has been given to it by the other requiring it so to do, then the party who has given such notice may apply to the Supreme Court of Newfoundland or a judge thereof, and such Court or judge, after due notice to the party in default shall appoint such arbitrator and the two arbitrators so appointed shall appoint a third arbitrator or umpire, and if they shall fail to appoint such third arbitrator or umpire after seven (7) clear days' notice in writing from either party so to do, the Supreme Court of Newfoundland or a judge thereof, shall on the application either of the Lessee or the Government or other party to the dispute, appoint such third arbitrator or umpire, and the three so appointed shall proceed to hear the parties on the matter in dispute and make their decision and award.

(3) The award in any arbitration held under this Lease shall be made in writing and delivered promptly to the parties, and the decision and award of the arbitrators or any two of them shall be final and binding on the parties, except that either party may appeal therefrom to the Supreme Court of Newfoundland on questions of law only, by giving due notice of such appeal to the other party within one month following the receipt of the award.

(4) Costs of the arbitration including reasonable compensation for the arbitrators shall be borne and paid equally by the parties or as the arbitrators may otherwise direct.

(5) Notwithstanding anything to the contrary contained in Section 212 of *The Judicature Act*, chapter 114 of The Revised Statutes of Newfoundland, 1952, Part VI of that Act, except Section 212, shall subject to this Lease apply to any arbitration held under this clause to which the Government is a party.

1961 No51 Sch Part IV s9

Exchange of information

10. The Government will make available to the Lessee all information and particulars in its possession relating to the whereabouts of and previous investigations of the hydro power of Labrador (exclusive of information obtained by the Government from third parties on the terms that such information should be treated as confidential) and in particular the Government will make available all appropriate maps and surveys, and the Lessee will make available to the Government all surveys, data and information obtained and collected by it in relation to water power in Labrador which surveys, data and information shall be treated by the Government as confidential.

1961 No51 Sch Part IV s10

Certain delays not construed as non-performance

11. If the performance of any of the obligations of the Lessee set forth herein shall to any extent be prevented, restricted, delayed or interfered with by reason of

- (a) war, revolution, civil commotion, riot, acts of public enemies, blockade or embargo;
- (b) any law, order, proclamation, regulation, ordinance, demand or requirement of any government or any subdivision, authority, agency or representative of any government; or
- (c) any other cause whatsoever, whether similar or dissimilar to those above enumerated, beyond the reasonable control of the Lessee,

the Lessee shall, on prompt notice to the Government, be excused from the performance of such obligations to the extent of such prevention, restriction, delay or interference.

1961 No51 Sch Part IV s11

Governing law

12. This Lease shall be construed and interpreted in accordance with the laws of Newfoundland .

1961 No51 Sch Part IV s12

Notices

13. (1) Any notice requirement to be given under this Lease shall be sufficiently served on the Government if the notice is addressed to the Minister of Mines, Agriculture and Resources, Department of Mines, Agriculture and Resources, St. John's, Newfoundland, and delivered to that Minister personally or sent to him by registered mail, and on the Lessee if the notice is addressed to Churchill Falls (Labrador) Corporation Limited at its Head Office in the City of St. John's, in the Province of Newfoundland and delivered personally at or sent by registered post to such office and on Twin Falls Power Corporation Limited if the notice is addressed to it at its Head Office in the City of St. John's, in the Province of Newfoundland and delivered personally at or sent by registered post to such office.

(2) Either of the parties to this Lease or Twin Falls Power Corporation Limited may at any time change its address for service, by notice in writing given to the others.

1961 No51 Sch Part IV s13; 1966-67 No84 s2

IN WITNESS WHEREOF His Honour the Lieutenant-Governor in Council has caused the Great Seal of the Province of Newfoundland to be affixed hereto and has signed this Lease and Churchill Falls (Labrador) Corporation Limited has caused this Lease to be duly executed on the _____ day of _____ 1961.

BY HIS HONOUR'S COMMAND

Minister of Provincial Affairs

CHURCHILL FALLS (LABRADOR)
CORPORATION LIMITED

By _____
President

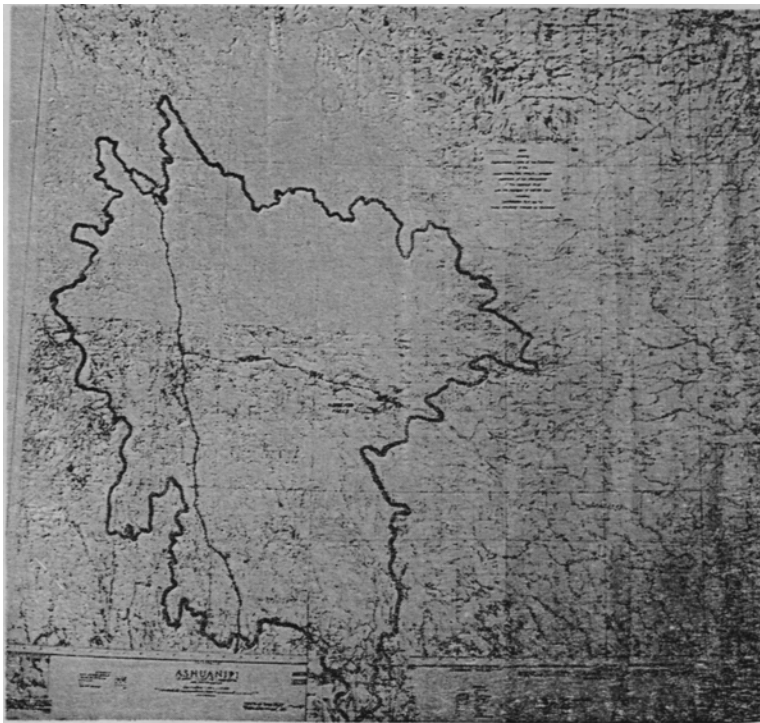
And _____
Secretary

1961 No51 Sch Ending; 1966-67 No84 s2

Appendix A

Description

All that part of Newfoundland Labrador bounded and described as follows: Beginning at a point situate upon the height of land between Highland Lake in the Province of Quebec and Alta Lake in the Province of Newfoundland and being located south of Mile Post 150 of the Quebec North Shore and Labrador Railway, the said point being described as station seven, nine zero, six plus zero, nine point two of the chainage of the said Railway measured from tide water at Seven Islands in the Province of Quebec; thence running along the height of land between the Province of Quebec and the Province of Newfoundland in general westerly and northerly directions to a point on the said height of land near Lake Emerillon; thence continuing along the said height of land in general southerly, westerly and northerly directions to a point near the headwaters of Howells River; thence continuing along the said height of land in general southeasterly and northerly directions to a point near Northern Lake; thence continuing along the said height of land in a general southeasterly direction to a point on the said height of land near the headwaters of a river emptying into Juliett Lake in the Province of Quebec and the headwaters of a river emptying into Frazer Lake in the Province of Newfoundland; thence running along the crest of the watershed between the drainage of Frazer Lake and the river flowing out of Wilbrow Lake in a general southeasterly direction to a point near the outlet of the said Frazer Lake; thence running in a southerly direction along the crest of the watershed between the drainage of Kasheshibaw Lake, Vollant Lake and the drainage of Canairiktok River and the Naskaupi River to a point on the south shore of Orma Lake; thence running in a southeasterly direction along the crest of the watershed between Lake Fremont, Windbound Lake, Pike Lake and the waters flowing into Marie Lake and Mary Lake; thence continuing in a southwesterly direction along the crest of the watershed between rivers flowing into the southeast angle of Michikamau Lake and rivers flowing into Metchin River to a point on Hamilton River where the meridian $63^{\circ} 40'$ west of Greenwich intersects the said Hamilton River, which point is approximately fourteen point eight (14.8) miles upstream from the confluence of Metchin River and Hamilton River; thence running in general westerly, southerly and southeasterly directions along the crest of the watershed between rivers flowing into Winokapau Lake and rivers flowing into Hamilton River, Unknown River, Ossokmanuan Lake, Atikonak River and Atikonak Lake to a point on the height of land between the Province of Quebec and the Province of Newfoundland north of Lac Long; thence continuing in a general southerly direction along the height of land between the Province of Quebec and the Province of Newfoundland to a point near Lac Bellanca; thence continuing in a general northwesterly direction along the said height of land to the point of beginning, the said area being delineated on the map shown in this Appendix; excepting from the above described area all the area below the 425 foot contour line or all the area that lies below elevation 425 in the Valleys of the Churchill River and its tributaries upstream of the intersection of the Churchill River with the Meridian of Longitude of $63^{\circ} 40'$ West.



1961 No51 AppA; 1966-67 No84 Sch s3

Appendix B

Description of Main Development Area

Those parts of the watershed of the Upper Churchill River contained within the area reserved under the provisions of *The Labrador Lands (Reservation) Act*, chapter 176 of The Revised Statutes of Newfoundland, 1952, as amended, that lie east of the Quebec North Shore and Labrador Railway, which are described as follows:

AREA 1

All the area below the 1580 foot contour line or all the area that lies below elevation 1580 along Gabbro Lake, Ossokmanuan Lake, and all other lakes, rivers and tributaries connected therewith.

AREA 2

All the area below the 1560 foot contour line or all the area that lies below elevation 1560 along Lake Michikamau, Lake Michikamats, Adelaide Lake, Lake Agnes, Lake Windbound, Lake MacKenzie, Lake Fremont, Lake Orma, Lake Vollant, Lake Kasheshibaw, Sail Lake, Sandgrit Lake, Lobstick Lake, Overflow Lake, Timmins Lake, Shaw Lake, Birch Lake, Mackenzie River, Ashuanipi River, and all other lakes, rivers and tributaries connected therewith.

AREA 3

All the area below the 1490 foot contour line or all the area that lies below elevation 1490 along Lake Jacopie, Lake Flour and all other lakes, rivers and tributaries connected therewith and all the area below the 1480 foot contour line or all the area that lies below elevation 1480 along Lake Lookout, Lake Humbug, Lake Sona, Lake White Fish, and all other lakes, rivers and tributaries connected therewith, and all the area below the 1460 foot contour or all the area that lies below elevation 1460 along Portage River, commonly known as North River, downstream from a point which is approximately five miles measured northerly along the said Portage River from the

intersection of the said river with the Churchill River, to a point which is approximately two miles upstream from the said intersection.

AREA 4

All the area below the 1505 foot contour line or all the area that lies below elevation 1505 along the Unknown River and all other rivers, tributaries and lakes connected therewith upstream of Scott Falls, and all the area along the Unknown River below elevation varying approximately uniformly along the hydraulic gradient of the said river from 1505 at the southernmost limit of the Unknown River to 1570 at the outlet of Ossokmanuan Lake.

AREA 5

All the area below the 1205 foot contour line or all the area that lies below elevation 1205 along the Unknown River and all other rivers, tributaries and lakes connected therewith upstream of the confluence of the Unknown River with the Churchill River.

AREA "A"

All that area bounded on the south by the Churchill River, and on the north by the southern boundary of Area 3, above mentioned and its extension easterly to the nearest point on the crest of the watershed described in Appendix "A" and on the east by the crest of the said watershed and on the west by Churchill River and Jacopie Lake, excepting therefrom all that area lying below the 425 foot contour line and being on the north side of the Churchill River.

All elevations in respect to Areas 1 and 2 are referred to a benchmark 63-C-14 established by the Department of Mines and Technical Surveys of the Federal Government in 1963 adjacent to the Churchill Falls Road near Atikonak River, which benchmark is 1613.497 feet above mean sea level; all elevations for Areas 3, 4 and 5 are referred to a benchmark 63-C-23 established by the Department of Mines and Technical Surveys of the Federal Government in 1963 on the foundations of a cableway adjacent to the bridge over the Churchill River at Churchill Falls, which benchmark is 1344.647 feet above sea level, the said Areas and Area "A" being delineated on the map shown in this Appendix. The said elevations are "best considered mean sea level values - December 1966" as reconciled by the Department of Energy, Mines and Resources of the Federal Government and reflect correction of the order of 15 feet, applied by the Department of Energy, Mines and Resources of the Federal Government to benchmarks established in 1947 by barometric observations by the Department of Mines and Resources of the Federal Government and to benchmarks established by the Shawinigan Engineering Company Limited in 1954-1955.



9/13/2018