

INDEMNITY AGREEMENT

THIS AGREEMENT (this "Agreement") is made effective as of the ~~30~~ day of JUNE, 2013.

BETWEEN: Her Majesty the Queen in Right of Canada, as represented by the Minister of Indian Affairs and Northern Development ("Canada")

AND:

Qalipu Mi'kmaq First Nation, established pursuant to the Qalipu Mi'kmaq First Nation Band Order, SOR/2011-180 ("Qalipu")

AND:

The Federation of Newfoundland Indians, a body corporate duly incorporated and existing under the laws of the Province of Newfoundland and Labrador ("FNI")

WHEREAS Canada and FNI executed an Agreement for the Recognition of the Qalipu Mi'kmaq Band on the 23rd day of June, 2008 (the "Agreement");

AND WHEREAS Qalipu was formed pursuant to the Agreement through the Qalipu Mi'kmaq First Nation Band Order, SOR/2011-180 that came into force on 22 September 2011 (the "Order");

AND WHEREAS the initial Founding Members of Qalipu (the term 'Founding Members' has the meaning prescribed in the Agreement) were listed in the Schedule to the Order;

AND WHEREAS the Order has been amended three times to add the names of further Founding Members to the Schedule in accordance with an accelerated process announced on 1 February 2010 by the Honourable Chuck Strahl, then Minister of Indian Affairs and Northern Development and Federal Interlocutor for Métis and Non-Status Indians, and Brendan Sheppard, President of the FNI;

AND WHEREAS the Enrolment Committee established pursuant to the Agreement has notified other Applicants seeking membership in Qalipu that it has recognized their eligibility to become members of Qalipu pursuant to the criteria established by the Agreement;

AND WHEREAS the Enrolment Committee was not able to review the applications of all Applicants seeking membership in Qalipu prior to the 30th day of December, 2012 as set out in the Agreement;

AND WHEREAS the Appeal Master appointed pursuant to the Agreement was not able to review, prior to the cessation of his jurisdiction on the 28th day of February, 2013, all the appeals of Applicants that had been ruled ineligible for membership by the Enrolment Committee;

AND WHEREAS section 24 of Annex 'A' to the Agreement was amended by the Supplemental Agreement made between Canada and the FNI on the 30 day of JUNE, 2013 (the "Supplemental Agreement") to ensure consistency between the requirement of paragraph 4.1(d)(i) of the Agreement and the evidence to be presented by an Applicant who submitted an application after the date of the Order sufficient to meet that criterion;

AND WHEREAS Canada and the FNI have agreed to the joint issuance of a directive to the Enrolment Committee directing its members on the manner in which sections 25, 28, 29, and 30 of Annex 'A' of the Agreement are to be applied in determining that the criterion in paragraph 4.1(d)(ii) of the Agreement has been met (the "Directive");

AND WHEREAS the Supplemental Agreement and the Directive are to be applied to assess and reassess the applications of all Applicants who:

- (i) have been accepted into the membership of Qalipu,
- (ii) have been notified by the Enrolment Committee of their eligibility to become a member of Qalipu,
- (iii) have been ruled ineligible by the Enrolment Committee to become members of Qalipu but had appeals pending before the Appeal Master before his jurisdiction expired, and,
- (iv) applied for membership in Qalipu but did not have their applications assessed by the Enrolment Committee prior to the 30th day of December, 2012,

to determine whether the subsection 4.1(d) criteria contained in the Agreement have been met.

AND WHEREAS the application of the Supplemental Agreement and the Directive to the assessment and reassessment of applications filed by Applicants may result in Court actions being commenced against Qalipu, the FNI, and/or their respective councilors, directors, officers, managers, employees, agents, representatives and legal counsel, and the successors and assigns of each of them, arising out of Applicants having their membership in Qalipu revoked or applications for membership rejected;

AND WHEREAS the applications of all Applicants are to be physically transferred to Winnipeg to be managed and/or administered by managers, employees, agents, and/or representatives of Canada;

AND WHEREAS the FNI has requested this indemnity agreement in consideration of its agreement to the Supplemental Agreement and the Directive and the transfer of the applications of all Applicants to Winnipeg;

AND WHEREAS Qalipu has requested that this indemnity agreement include and be applicable to it and each of its councillors (including each Qalipu councillor in his or her capacity as a FNI member and/or director), officers, managers, employees, agents and representatives (such term to include legal counsel) and the successors and assigns of each of them;

NOW THEREFORE in consideration of the respective covenants and agreements of the parties contained herein and the sum of Ten (\$10.00) Dollars paid by each of Qalipu and the FNI to Canada and other good and valuable consideration, including the FNI's execution of the Supplemental Agreement, agreement to the issuance of the Directive, and agreement to the transfer of the applications of all Applicants to Winnipeg (the receipt and sufficiency of which is hereby acknowledged by Canada) and the sum of Ten (\$10.00) Dollars paid by each of Qalipu and the FNI to each other and other good and valuable consideration provided by each to each other (the receipt and sufficiency of which is hereby acknowledged by each), it is agreed as follows:

1. Notwithstanding any other agreement made between the parties in relation to the creation and operation of Qalipu, Canada, Qalipu and the FNI agree that:
 - a. Canada shall indemnify, reimburse, release and save harmless each of Qalipu, the FNI and each of their respective councillors (including each Qalipu councillor in his or her capacity as a FNI member and/or director), directors, officers, managers, employees, agents, and representatives (such term to include legal counsel), and the successors and assigns of each of them, (collectively, the "Indemnitees") from and against all claims, causes of action, costs (such term to include reasonable legal costs incurred by any of the Indemnitees and an award of costs made against any of the Indemnitees), actions (such term to include any action certified as a class action), and demands whatsoever, including all claims seeking declarations and/or declaratory relief, aggravated, exemplary and/or punitive damages, compensation for financial, economic, and/or consequential losses, and for emotional, psychological and/or psychiatric injury, that may be brought against any one, any combination, or all of the Indemnitees arising from the revocation of membership of any Qalipu member or the rejection of an application seeking membership in Qalipu or arising from, as a result of or in relation to the assent to, the execution of, and/or the implementation of the Supplemental Agreement, the issuance of the Directive, and/or any decisions or determinations made or taken pursuant thereto.
 - b. Canada shall indemnify, reimburse, release and save harmless each of the Indemnitees from and against all claims, causes of action, actions (such term to include any action certified as a class action), costs (such term

to include reasonable legal costs incurred by any of the Indemnitees and an award of costs made against any of the Indemnitees), and demands whatsoever, including all claims seeking declarations and/or declaratory relief, aggravated, exemplary and/or punitive damages, compensation for financial, economic, and/or consequential losses, and for emotional, psychological and/or psychiatric injury, that may be brought against any one, any combination, or all of the Indemnitees by or in favour of any person who has applied to become a member of Qalipu arising from the negligence of Canada's managers, employees, agents, or representatives in relation to the transfer of the applications of all Applicants to Winnipeg and while providing ancillary services in support of the assessment or reassessment of the applications submitted by all Applicants seeking membership in Qalipu.

2. The parties hereto agree that no amendments or alterations shall be made to this agreement without the prior written consent of all of the parties hereto.
3. In the event that an Indemnatee becomes aware of any claim by a third party which may give rise to indemnification, it shall within fifteen (15) days of receipt of notice of such claim give written notice thereof to Canada, such written notice to include, where available, a copy of that claim. Such notice shall specify with reasonable particularity (to the extent that such information is available) the factual basis for the claim and the amount of such claim, if known.
4. Canada shall have the right to participate in or, by giving Notice to the Indemnitees named in a claim by a third party, elect to assume the defence of that claim at its own expense and by its own counsel and the Indemnitees named in that claim shall co-operate in good faith in such defence.
5. If Canada desires to assume the defence of a claim by a third party, it shall deliver to the Indemnitees named in that claim a Notice of its election within 30 days following its receipt of the Notice of such claim. Until such time as the Indemnitees named in such claim shall have received such Notice of election, he/she/it and/or they shall vigorously defend such claim in any reasonable manner he/she/it and/or they shall see fit and in any event shall take all actions necessary to preserve the right to object to or defend against such claim and shall not make any admission of liability regarding or settle or compromise such claim. If Canada elects to assume such defence, it shall promptly reimburse the Indemnitees named in the claim by a third party for all reasonable costs incurred by him/her/it and/or them in connection with and to defend such claim in accordance with Section 1(a) or 1(b) herein, subject to the right of the Indemnitees named in such claim to separate counsel at the expense of Canada as provided in Section 8 herein. If Canada elects not to assume such defence, it shall promptly indemnify and reimburse the Indemnitees named in the claim by a third party for all reasonable costs

incurred by him/her/it and/or them in connection with and to defend such claim in accordance with Section 1(a) or 1(b) herein.

6. Without the prior consent of Qalipu, the FNI, and the Indemnitees named in the claim by a third party, Canada shall not make any admission of liability regarding or enter into any settlement or compromise of such claim that would lead to liability or create any financial or other obligation on the part of any one, any combination, or all of the Indemnitees for which the Indemnitees are not entitled to full indemnification hereunder or for which the Indemnitees have not been fully released and discharged from all liability or obligations. Similarly, Qalipu, the FNI and an Indemnitee shall not make any admission of liability regarding or settle or compromise any claim by a third party without the prior consent of Canada. If a firm offer is made to settle a claim by a third party without leading to liability or the creation of a financial or other obligation on the part of the Indemnitees for which the Indemnitees are not entitled to full indemnification hereunder or for which the Indemnitees have not been fully released and discharged from further liability or obligations, and Canada desires to accept and agree to such offer, Canada shall be entitled to accept such offer and shall give Notice to the Indemnitees named in the claim by a third party that it has accepted the offer.
7. The Indemnitees shall use all reasonable efforts to make available to Canada or its legal representatives all books, records, documents and other materials and shall use all reasonable efforts to provide access to its respective employees and make its employees available as witnesses as reasonably required by Canada for its use in defending any claim by a third party and shall otherwise co-operate to the fullest extent reasonable with Canada in the defence of such claim, including the preparation of the defence and appearance in Court. Canada shall be responsible for all reasonable expenses associated with making such books, records, documents, materials, employees and witnesses available to Canada or its legal representatives.
8. If Canada has undertaken the defence of a claim by a third party where the named parties to any action or proceeding arising from such claim include both Canada and any one, any combination, or all of the Indemnitees, and representation of both Canada and any Indemnitee by the same counsel would be inappropriate due to the actual or potential differing interests between them (such as the availability of different defences), then that Indemnitee shall have the right to engage separate counsel to defend such claim on behalf of that Indemnitee and Canada shall promptly reimburse the Indemnitees named in the claim by a third party for all reasonable costs incurred by him/her/it and/or them in connection with and to defend such claim in accordance with Section 1(a) or 1(b) herein. All other provisions of this Agreement shall continue to apply to the defence of such claim, including the Indemnitee's obligation to vigorously defend and not to make any

admission of liability regarding, or settle or compromise such claim without Canada's prior consent.

9. Each of the Indemnitees shall vigorously defend the validity of the Agreement, as amended, if it is challenged in a claim, action, or demand referred to in section 1 herein.
10. Notices required hereunder shall be delivered by mail or facsimile to:

Canada:

Assistant Deputy Minister
Aboriginal Affairs and Northern Development Canada
RESOLUTION AND INDIVIDUAL AFFAIRS SECTOR
Room: 328
90 Sparks Street
Ottawa, Ontario
K1A 0H4

Fax : (613) 996-2811

FNI and/or Qalipu:

3 Church Street
Corner Brook, Newfoundland & Labrador
A2H 2Z4

Fax: (709) 639-3997
11. In the event that Canada disputes the reasonableness of any legal fee submitted to it by an Indemnatee for indemnification and/or reimbursement under this agreement, the Indemnatee shall submit the account to be taxed in accordance with the procedure allowed within the jurisdiction of the court in which the action is commenced and Canada shall indemnify and/or reimburse the Indemnatee for the taxed amount of the fee. Canada shall indemnify, reimburse, release and save harmless the Indemnatee from any costs incurred by the Indemnatee in submitting the account to be taxed, including any fee charged to or costs awarded against the Indemnatee by the person conducting the taxation.
12. This agreement is governed by the laws in force in the Province of Newfoundland and Labrador.

IN WITNESS WHEREOF the parties hereto have executed and delivered this Agreement as of the date first written above.

Qalipu Mi'kmaq First Nation

Minister of Indian Affairs and Northern Development

Per: _____

Per: _____

Name:

Name:

Title:

Title:

Date:

Date:

The Federation of Newfoundland Indians

Per: _____

Name:

Title:

Date:
