

SUPPLEMENTAL AGREEMENT

BETWEEN

The Federation of Newfoundland Indians, a body corporate under the laws of Newfoundland and Labrador, with its head office at 3 Church Street, Corner Brook, Newfoundland and Labrador, A2H 2Z4.
(hereinafter FNI)

AND

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

WHEREAS the Preamble to the Agreement for the Recognition of the Qalipu Mi'kmaq Band (the "Agreement") expressed the intent to establish a landless band for the Mi'kmaq Group of Indians of Newfoundland;

AND WHEREAS the eligibility criteria to be enrolled as a Founding Member of the Qalipu Mi'kmaq First Nation Band (section 4.1 of the Agreement) required among other things that an individual:

- (i) self-identify as a Member of the Mi'kmaq Group of Indians of Newfoundland, and
- (ii) be accepted as a Member of the Mi'kmaq Group of Indians of Newfoundland,

on 22 September 2011, the date that the Governor-in-Council adopted the Recognition Order establishing the Mi'kmaq Group of Indians of Newfoundland as a band for the purposes of the *Indian Act*;

AND WHEREAS Member was defined within the Agreement to mean a person having a current and substantial connection with the Mi'kmaq Group of Indians of Newfoundland;

AND WHEREAS the Mi'kmaq Group of Indians of Newfoundland was defined within the Agreement to refer collectively to the Mi'kmaq Groups situate at the various locations on the island of Newfoundland listed in Annex 'B' to the Agreement;

AND WHEREAS the Agreement was signed by the respective Parties on 23 June 2008;

AND WHEREAS by the terms of the Agreement, every applicant has to establish that he or she had a current and substantial connection to the Mi'kmaq Group of Indians of Newfoundland leading up to and on the date of the Recognition Order, and that applicants residing outside of the locations listed in Annex 'B' to the Agreement had to

provide objective evidence in support of a strong and continuing connection to that Group;

AND WHEREAS the foundation for the creation of a landless *Indian Act* band was based on the membership of the following Mi'kmaq Groups of Indians who advocated for many years prior to the signing of the Agreement to have their members recognized as members of a band created pursuant to the terms of the *Indian Act*: Federation of Newfoundland Indians; Ktaqamkuk Mi'kmaq Alliance; Benoit First Nation; Kitpu Band; and Sip'kop Mi'kmaq Band;

AND WHEREAS applying section 24 of the Enrolment Committee Guidelines (Annex 'A' to the Agreement) to applications signed after 22 September 2011 would result in the acceptance of evidence that would not be sufficient to meet the criterion that the applicant self-identified as a Member of the Mi'kmaq Group of Indians of Newfoundland prior to and on the date of the Recognition Order, as required by paragraph 4.1(d)(i) of the Agreement;

AND WHEREAS, therefore, reliance solely on the evidence authorized by section 24 of the Enrolment Committee Guidelines would be inconsistent with the requirements of paragraph 4.1(d)(i) of the Agreement if applied to applications signed after 22 September 2011, thereby requiring the correction of a defective provision within the Agreement;

AND WHEREAS the Parties desire to give greater precision on the nature of the evidence that Applicants shall provide to establish that they have been accepted by the Mi'kmaq Group of Indians of Newfoundland in accordance with the criterion established pursuant to paragraph 4.1(d)(ii) of the Agreement;

AND WHEREAS the Parties desire to issue the directive appended herein to the Enrolment Committee that has been established pursuant to the Agreement to address the nature of the evidence that Applicants shall provide in order to meet the paragraph 4.1(d)(ii) criterion contained in the Agreement and the manner in which the evidence is to be assessed;

AND WHEREAS the volume of applications submitted by individuals seeking membership in the band far exceeded the reasonable expectations of the Parties so as to overtake the capacity of the enrolment process established pursuant to the Agreement to assess the applications received within the timeframes set out in the Agreement;

AND WHEREAS the Parties' original intention was, and continues to be, that all applicants be treated in a fair and equal manner;

AND WHEREAS section 2.15 of the Agreement allows the Parties to amend its provisions without further ratification to remove conflicts or inconsistencies with the law, to cure manifest errors arising from defective or inconsistent provisions, and to extend time limits;

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. **Continuation of Existing Agreement.** The Agreement signed by the Parties on 23 June 2008 includes the amendments made by exchange of letters on 17 October 2008, 9 March 2010, and 4 April 2011, as well as this Supplemental Agreement, and continues to govern the Enrolment Process.
2. **All Applications Reviewed.** All applications received during the Enrolment Process (between 01 December 2008 and 30 November 2012) and not rejected by the Enrolment Committee or the Appeal Master will be assessed or reassessed by the Enrolment Committee by 31 August 2015. All appeals will be determined by the Appeal Master by 31 March 2016.

For greater certainty, section 4.2.18.3 of the Agreement is no longer applicable.

3. **Time Limits.** In accordance with subsection 2.15(c) of the Agreement, the time limit applicable to the Enrolment Committee's review of the applications is extended until 31 August 2015 and the time limit applicable to the Appeal Master's determination of appeals received during the Enrolment Process is extended until 31 March 2016. Therefore:
 - i. In section 4.2.19.2, the words "within thirty (30) days of the conclusion of the second stage of the Enrolment Process" are replaced with "on or before 31 August 2015" and the words "within ninety (90) days of the conclusion of the second stage of the Enrolment Process" are replaced with "on or before 31 March 2016";
 - ii. In section 4.2.19.3, the words "Within thirty (30) days of the conclusion of the second stage of the Enrolment Process" are replaced with "On or before 31 August 2015";
 - iii. In section 4.2.19.4, the words "within one hundred and eleven (111) days of the conclusion of the second stage of the Enrolment Process" are replaced with "on or before 30 April 2016";
 - iv. In section 4.2.20, the words "one hundred and eleven (111) days of the conclusion of the second stage of the Enrolment Process" are replaced with "on 30 April 2016";

- v. In section 4.3.9, the words “within ninety (90) days of the conclusion of the second stage of the Enrolment Process” are replaced with “on or before 31 March 2016”; and
- vi. In section 4.3.10, the words “until ninety (90) days of the conclusion of the second stage of the Enrolment Process” are replaced with “until 31 March 2016”.

4. Notification and Additional Documentation. All applicants whose applications will be assessed or reassessed will be sent written notification of the evidentiary requirements pertinent to the assessment or reassessment under the criteria of subsection 4.1(d) of the Agreement and will be provided an opportunity to send documentation not already submitted to the Enrolment Committee, to address these evidentiary requirements. The written notification shall be sent to the most recent address on the Applicant Record of an applicant. For the purposes of the assessment or reassessment, the Enrolment Committee will only review the evidence received at the Office of the Enrolment Committee, located in Winnipeg, Manitoba, or post-marked on or before 31 January 2014.

5. Determinations. The Enrolment Committee will determine whether each applicant is eligible to be enrolled under the Agreement. Every applicant will be advised of the Enrolment Committee’s determination of his or her eligibility only after the assessments or reassessments of all applications have been completed.

6. Appeals

(1) Subject to subsection 2, the function of Appeal Master will continue and, in the manner prescribed in section 4.3 of the Agreement, the Parties may select and engage such number of Appeal Masters as may prove necessary to determine appeals in accordance with the Agreement. The time limit for submitting an Appeal Notice shall continue to be that set out in section 4.3.3.

(2) An applicant shall not have any right to appeal from a decision of the Enrolment Committee denying an application on the grounds that:

(a) the application is invalid for one or more of the reasons set out in sections 1 to 7 of the Enrolment Committee Guidelines; or

(b) the name of the applicant or either of the applicant’s parents is not on one of the lists mentioned in paragraph 24(2)(i) of the Enrolment Guidelines and the applicant has not submitted any objective documentary evidence of self-identification under any of paragraphs 24(2) (ii) to (v).

7. Founding Members List. Upon the completion of the assessments and reassessments of all applications by the Enrolment Committee and the determination of all appeals by the Appeal Master, the Enrolment Committee will provide to the Parties a single Founding Members List for the purposes of the Agreement, and the Minister will recommend to the Governor-in-Council that this Founding Members List be substituted for the current schedule to the Recognition Order.

8. Self-identification as a Member of the Mi'kmaq Group of Indians of Newfoundland.

In making the Agreement, the Parties were guided by the Supreme Court of Canada's decision in *R. v. Powley* where the Court recognized that belonging to an Aboriginal group requires at least three elements: Aboriginal ancestry, self-identification and acceptance by the group. The Supreme Court stressed that self-identification and acceptance could not be of recent vintage. This formed the basis for the criteria set out in paragraph 4.1(d)(i) of the Agreement. The Parties intended that the Enrolment Committee assess whether applicants had previously self-identified as Members of the Mi'kmaq Group of Indians of Newfoundland.

Section 24 of the Enrolment Committee Guidelines states that a signed application form is sufficient evidence of self-identification as a Member of the Mi'kmaq Group of Indians of Newfoundland. This provision is defective in that applications signed after 22 September 2011 cannot represent proof of self-identification prior to and on the date of the Recognition Order, as required by paragraph 4(d)(i) of the Agreement. For these reasons, the Parties agree that section 24 of the Enrolment Committee Guidelines can be amended within the ambit of section 2.15 of the Agreement.

Therefore, section 24 of the Enrolment Committee Guidelines is amended as follows:

- (1) Paragraph 4.1(d)(i) of the Agreement provides that, on the date of the Recognition Order, an applicant must, in the assessment of the Enrolment Committee, self-identify as a Member of the Mi'kmaq Group of Indians of Newfoundland. Under section 1.13 of the Agreement, "Member" means a person that has a current and substantial connection with the Mi'kmaq Group of Indians of Newfoundland. To establish this current and substantial connection

there must be on the Applicant Record, in accordance with subsection 24(2) or 24(3), objective documentary evidence that pre-dates or is contemporaneous with the signing of the Agreement for the Recognition of the Qalipu Mi'kmaq Band and clearly shows an applicant's self-identification as a member of the Mi'kmaq Group of Indians of Newfoundland. Where such evidence is present, it will be assumed that the Applicant self-identified as a Member of the Mi'kmaq Group of Indians of Newfoundland leading up to and on the date of the Recognition Order.

- (2) An application form signed on or before 22 September 2011 constitutes sufficient evidence that the applicant self-identified as a Member of the Mi'kmaq group of Indians of Newfoundland leading up to and on the date of the Recognition Order.
- (3) To conform with the requirements of subsection 24(1), an applicant who signed an application form after 22 September 2011 must be named on at least one of the lists mentioned in paragraph (i) or provide at least one of the documents referred to in paragraphs (ii) to (v):
 - i. Lists of the Federation of Newfoundland Indians, Ktaqamkuk Mi'kmaq Alliance, Benoit First Nation or Sip'kop Mi'kmaq Band held by the Parties and submitted to the Enrolment Committee. Original membership cards may be submitted to assist the Enrolment Committee in verifying whether an applicant is named on one of these lists;
 - ii. 2006 or earlier census return filed by a resident on the Island of Newfoundland, indicating that he or she identified as an Aboriginal person, a North American Indian or a member of an Indian Band/First Nation;
 - iii. Copy of a Newfoundland newspaper article pre-dating the 23 June 2008 signature of the Agreement reporting the participation of the applicant as a member of the Mi'kmaq Group of Indians of Newfoundland in ceremonial, traditional or cultural activities of the Mi'kmaq of Newfoundland;
 - iv. Subject to the written approval from both Parties that the document represents acceptable evidence of self-identification, certified true copy of an application form filled out by a resident on the island of Newfoundland prior to the signing of the 23 June 2008 Agreement for:
 - a job in a government, other public institution or an Aboriginal organization listed in (i) above; or
 - a program benefit sponsored by a government or government agencyindicating that the applicant self-identified as Mi'kmaq, Indian or Aboriginal for the purpose of being selected for the job or program benefit;

- v. Subject to the written approval from both Parties, other relevant documents submitted to or issued by a government, a public institution, the Federation of Newfoundland Indians, Ktaqamkuk Mi'kmaq Alliance, Benoit First Nation, Kitpu Band, and Sip'kop Mi'kmaq Band, prior to the signing of the 23 June 2008 Agreement, showing that the applicant self-identified as a Member of the Mi'kmaq Group of Indians of Newfoundland.

(4)(i) An applicant under the age of 18 years as of the date of the application made on his or her behalf shall be considered to have self-identified as a Member of the Mi'kmaq Group of Indians of Newfoundland if at least one of his or her parents have been determined by the Enrolment Committee to conform with the requirements of subsection 24(1).

(ii) An applicant under the age of 18 years on the date of the Recognition Order but who has had an application submitted on his or her behalf after the date of the Recognition Order shall be considered to have self-identified as a Member of the Mi'kmaq Group of Indians of Newfoundland if at least one of his or her parents has been determined by the Enrolment Committee to conform with the requirements of subsection 24(1).

(iii) For the application of paragraphs 24(4)(i) and 24(4)(ii), where a parent is deceased and had not been previously determined by the Enrolment Committee to conform with the requirements of subsection 24(1), the Enrolment Committee shall determine, upon the submission of documentation identified in paragraphs 24(3)(i) to (v), whether the parent would have conformed with the requirements of subsection 24(1) if that parent had applied.

9. Supervision and Directives. The Parties confirm that section 10.4 of the Agreement encompasses the Parties' authority to supervise the work of the Enrolment Committee and Appeal Master, request reports in the manner and form established by the Implementation Committee, issue joint Directives to the Enrolment Committee and Appeal Master and require the Enrolment Committee and Appeal Master to seek directions from the Parties, through the Implementation Committee, where a novel, unforeseen, situation arises, or where the wording of the Agreement needs further clarification.

A Directive on the application of paragraph 4.1(d)(ii) of the Agreement and section 25 of the Enrolment Committee Guidelines is attached as Annex A.

10. Recognition Order. Notwithstanding section 3.1 of the Agreement, the outcome of the assessments and reassessments to be conducted in accordance with the Agreement shall not result in the termination of the Agreement or the dissolution of the Qalipu Mi'kmaq First Nation Band.

11. Communication, Notice, Consent and Approval. Notwithstanding section 2.20 of the Agreement, where communication, notice, consent or approval by or from the Parties is required under the Agreement, such communication, notice, consent or approval shall be provided by or to:

- i. For the FNI, the President as duly authorized by resolution of the Board of Directors;
- ii. For Canada, the Assistant Deputy Minister, Resolution and Individual Affairs, AANDC, or such other official designated in writing by the Minister for purposes of this section.

12. Headings. Section 2.11 of the Agreement shall apply to the insertion of headings herein.

13. Coming into Effect. This Supplemental Agreement is made effective on the date it is signed by the last Party signing it.

IN WITNESS THEREOF, the Minister of Indian Affairs and Northern Development has affixed his signature on behalf of Her Majesty the Queen in right of Canada, and the President of the Federation of Newfoundland Indians has affixed his signature on behalf of the Federation of Newfoundland Indians.

SIGNED at _____ this ____ day of _____ 2013

Brendan Sheppard
President of the Federation of Newfoundland Indians

WITNESSED BY:

Name:

Address:

Occupation:

SIGNED at _____ this ____ day of _____ 2013

Bernard Valcourt
Minister of Indian Affairs and Northern Development

WITNESSED BY:

Name:

Address:

Occupation: