

**Agreement for the
Recognition of Canadian Armed Forces Members and Royal
Canadian Mounted Police Members to become Founding
Members of the Qalipu Mi'kmaq First Nation**

Draft – For internal discussion purposes only

Table of Contents

Parties and Preamble..... 3

Chapter 1 Definitions 4

Chapter 2 General Provisions 6

Chapter 3 Founding Member Recognition and Registration..... 9

Chapter 4 Eligibility and Enrolment Process 9

Chapter 5 Federal Programs..... 13

Chapter 6 Release 14

Chapter 7 Ratification..... 15

Chapter 8 Implementation 15

Signatures 17, 18

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**AGREEMENT FOR
THE RECOGNITION of CANADIAN ARMED FORCES MEMBERS and ROYAL CANADIAN MOUNTED
POLICE MEMBERS to become FOUNDING MEMBERS of the QALIPU MI'KMAQ FIRST NATION
("the" or "this Agreement")**

BETWEEN:

The Federation of Newfoundland Indians, a body corporate under the laws of Newfoundland
and Labrador, with its head office at P.O. Box 956, Corner Brook, Newfoundland and
Labrador, Canada, A2H 6J3
(hereinafter FNI)

AND

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

AND

His Majesty the King in Right of Canada as represented by the Minister of Indigenous Services
(hereinafter Canada)

WHEREAS:

The FNI and Canada entered in to the 23 June 2008 Agreement for the Recognition of
the Qalipu Band to establish a process leading to the recognition by the Governor-in-
Council of Qalipu (the "2008 Agreement");

AND WHEREAS:

Qalipu was established by the Governor-in-Council for Canada on 22 September 2011
pursuant to the Qalipu Mi'kmaq First Nation Band Order, SOR/2011-180;

AND WHEREAS:

The Qalipu Band Council, pursuant to resolution dated July 2, 2019 (the "Band Council
Resolution") believe that applicants under the 2008 Agreement who were serving or
former members of the Canadian Armed Forces or The Royal Canadian Mounted Police
as of the date of creation of the Qalipu Mi'kmaq First Nation on September 22, 2011
should be found to meet the Group Acceptance criteria for Founding Membership
under the 2008 Agreement based on the place of honour which they hold in Mi'kmaq
society due to their service as protectors of Canada and their communities;

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AND WHEREAS:

The FNI Board of Directors, pursuant to a resolution dated July 2, 2019, supported the Band Council Resolution.

AND WHEREAS:

The FNI, Qalipu and Canada now agree that the applications of Service Members who were denied enrolment as Founding Members under the Enrolment Process should be given the opportunity to have their applications reassessed in accordance with this Agreement;

NOW THE PARTIES AGREE AS FOLLOWS:

Chapter 1 Definitions

- 1.1 'Appeal Master' refers to an individual selected by the Parties in accordance with section 4.11.
- 1.2 'Appeal Notice' means a notice in writing to the Appeal Master, setting out the grounds of appeal and all arguments in support of the appeal of the decision of the Enrolment Committee.
- 1.3 'Applicant' means an individual who applied under the 2008 Agreement between 1 December 2008 and 30 November 2012 to be enrolled as a member of the Qalipu Mi'kmaq First Nation and includes a legal representative under authority recognized by law to stand in the place of that individual or his or her estate.
- 1.4 'Application' means the compilation of documentation submitted by the Applicant in accordance with the 2008 Agreement, the Supplemental Agreement, and this Agreement, including the application form referenced in section 6.1 herein, in order to have the Applicant's eligibility to become a Founding Member determined.
- 1.5 'Applicant Record' means the record that the Enrolment Committee retained pursuant to the requirements of the 2008 Agreement.

- 1.6 'Band' or 'Qalipu Band' means the Qalipu Mi'kmaq First Nation.
- 1.7 'Enrolment Committee' refers to the committee established in accordance with section 4.2 herein.
- 1.8 'Founding Member' refers to an individual who, in the assessment of the Enrolment Committee, meets the criteria set out in section 4.2 herein.
- 1.9 'Founding Members List' refers to the list of Founding Members established by the Enrolment Committee pursuant to this Agreement.
- 1.10 '*Indian Act*' means the *Indian Act*, R.S.C, 1985, c. I-5 as amended.
- 1.11 'Indian Register' refers to the register maintained by the Registrar of the Department of Indian Affairs and Northern Development pursuant to section 5 of the *Indian Act*.
- 1.12 'Member of the Canadian Armed Forces' is an officer or non-commissioned member of the Canadian Armed Forces serving in the Regular Force or the Primary Reserve after completing basic training or serving in the Canadian Rangers, pursuant to the *National Defence Act* and regulations as they read on the coming into force of this Agreement.

NOTE: The *National Defence Act* defines "non-commissioned member and officer as follows:

"non-commissioned member" means a member, other than an officer, who is enrolled in, or who pursuant to law is attached or seconded otherwise than as an officer to, the Canadian Armed Forces.

"officer" means

- (a) a person who holds Her Majesty's commission in the Canadian Armed Forces,
- (b) a person who holds the rank of officer cadet in the Canadian Armed Forces, and
- (c) any person who pursuant to law is attached or seconded as an officer to the Canadian Armed Forces.

- 1.13 'Member of the RCMP' means a police officer of the Royal Canadian Mounted Police, including a special constable and a reservist appointed pursuant to the *Royal Canadian Mounted Police Act* as it read on the coming into force of this Agreement.
- 1.14 'Minister' means the Minister of Indigenous Services
- 1.15 'Parties' refer to the FNI, Qalipu and Canada and 'Party' refers to the FNI, Qalipu, or Canada.
- 1.16 'Recognition Order' refers to the Qalipu Mi'kmaq First Nation Band Order, SOR/2011-180 as it read on the coming into force of this Agreement.
- 1.17 'Registrar' refers to the Registrar of the Department of Indigenous Services, responsible for the Indian Register pursuant to section 5 of the *Indian Act*.
- 1.18 'Service Member' means an Applicant who:
- a) on September 22, 2011, was a Member of the Canadian Armed Forces;
 - b) on September 22, 2011, was a Member of the RCMP;
 - c) was a Member of the Canadian Armed Forces and had received a honorable release from his or her service in the Canadian Armed Forces prior to September 22, 2011;
 - d) was a Member of the RCMP prior to September 22, 2011 and had been released from his or her service in the RCMP prior to September 22, 2011 for a reason other than with cause.
- 1.19 'Supplemental Agreement' is the 2013 agreement signed by Canada and the FNI.
- 1.20 '2008 Agreement' is the 23 June 2008 Agreement for the Recognition of the Qalipu Mi'kmaq Band signed by Canada and the FNI.

Chapter 2 General Provisions

- 2.1 This Agreement is not a treaty within the meaning of section 35 of the *Constitution Act, 1982*.

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- 2.2 Nothing in this Agreement shall be construed so as to abrogate or derogate from any existing treaty right or aboriginal right of aboriginal peoples of Canada under section 35 of the *Constitution Act, 1982*.
- 2.3 This Agreement is an Agreement-in-Principle. It becomes a final agreement and comes into effect upon ratification by the Parties in accordance with Chapter 7.
- 2.4 Rights, privileges and obligations under this Agreement accrue to the Parties only.
- 2.5 This Agreement is the entire agreement and there is no representation, warranty, collateral agreement, or condition affecting this Agreement unless otherwise provided herein.
- 2.6 The insertion of headings and recitals, and the provision of a table of contents, are solely for convenience and shall not be interpreted as modifying or explaining the scope or meaning of any part of this Agreement.
- 2.7 Words in the singular include the plural and words in the plural include the singular. Words importing male persons include female persons and corporations.
- 2.8 There shall be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of any Party.
- 2.9 The Parties agree that the rights and obligations of the Parties may not be assigned or otherwise transferred without the prior written consent of the other Parties, such consent is not to be unreasonably withheld.
- 2.10 This Agreement may only be varied, changed, amended, added to, or replaced by written agreement between the Parties, ratified through the same procedures as this Agreement was ratified, save and except that the Parties may agree in writing from time to time to amend this Agreement, without further ratification or approval, for any of the following purposes:
- (a) to remove any conflicts or inconsistencies which may exist between any of the terms of this Agreement and any provision of any applicable law or regulation, so long as the Parties agree that such amendments will not be prejudicial to their respective interests;
 - (b) to correct any typographical error in this Agreement, or to make corrections or changes required for the purpose of curing or correcting clerical omission, mistake, manifest error, or ambiguity arising from

defective or inconsistent provisions contained in this Agreement; or

(c) to extend any time limit set out in this Agreement.

2.11 No waiver of any provision of this Agreement shall have any legal effect unless such waiver is expressed in writing and signed by the Party making the waiver.

2.12 This Agreement shall be governed by the applicable laws of Canada and the Province of Newfoundland and Labrador as replaced or amended from time to time.

2.13 Upon ratification by the Parties, it is intended that all provisions of this Agreement shall be fully binding and effective between the Parties. In the event that any particular provision or part thereof is found by a court of competent jurisdiction to be invalid or unenforceable, the particular provision or part thereof shall be severed from this Agreement to the extent of the invalidity or unenforceability, and the remainder of this Agreement shall remain in full force so long as it continues to give effect to the intent of the Parties. If either Party, acting reasonably, determines that the Parties' intention is not preserved as a result of the severance, this Agreement shall either be amended by the Parties or terminated.

2.14 Any notice or other communication required or permitted to be given under this Agreement shall be given in writing to the attention of:

(a) to the FNI:

President
Federation of Newfoundland Indians
3 Church Street
Corner Brook, Newfoundland and Labrador
A2H 2Z4
Phone: (709) 634-0996
Fax: (709) 639-3997

(b) to Qalipu:

Chief
Qalipu Mi'kmaq First Nation
3 Church Street
Corner Brook, Newfoundland and Labrador
A2H 2Z4
Phone: (709) 634-5111
Fax: (709) 639-3997

(c) to Canada:

Regional Director General, Atlantic Region
Department of Indian Affairs and Northern Development
Atlantic Regional Office
P.O. Box 16040, Havelock Street
Amherst, Nova Scotia
B4H 3Z3
Phone: (902) 661-6200
Fax: (902) 661-6237

Chapter 3 Founding Member Recognition and Registration

- 3.1 Upon receipt of the Founding Members List established by the Enrolment Committee under this Agreement, the Minister shall recommend to the Governor-in-Council to amend the Recognition Order in order to include the persons on the Founding Members List generated by the Enrolment Committee pursuant to this Agreement.

Chapter 4 Eligibility and Enrolment Process

- 4.1 The provisions of sections 4.1(a), (b), (c), and 4.1(d)(i), 4.2.9, 4.2.11, 4.2.12, 4.2.15, 4.2.16, 4.2.17 and, except for sections 25 through to 30, the Annex 'A' Guidelines to the 2008 Agreement, as amended by section 8 of the Supplemental Agreement and as further amended by the 20 December 2018 agreement to implement the Federal Court decision in *Wells v. Canada (Attorney-General)*, 2018 FC 483, apply with the necessary changes, to the Enrolment Committee's assessment of Applications to which this Agreement applies.
- 4.2 Applicants who on or before September 22, 2011 were Service Members and meet the criteria in sections 4.1(a), (b), (c), and 4.1(d)(i) of the 2008 Agreement, as amended by section 8 of the Supplemental Agreement and as further amended by the 20 December 2018 agreement to implement the Federal Court decision in *Wells v. Canada (Attorney-General)*, 2018 FC 483, and provide documentation specified in section 4.6 herein to the Enrolment Committee by the xx day of xxxx, 202x, shall be deemed to have fulfilled the sub-paragraph 4.1(d)(ii) criterion contained in the 2008 Agreement due to their service as protectors of Canada and their communities.

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- 4.3 An Enrolment Committee shall be established by the Parties to make the assessment referred to in section 4.2 herein. The FNI and Qalipu jointly shall appoint the same number of representatives on the Enrolment Committee as Canada appoints. They also shall appoint one independent chair. Other than the independent chair, the total number of representatives shall be that which the Parties may determine from time to time to be necessary to complete the work of the Enrolment Committee.
- 4.4 The independent chair shall be an individual independent from each Party, who is legally trained and well respected in the Newfoundland legal community, and shall be selected or replaced on mutual consent by the Parties or, where there is no agreement on the selection of the independent chair, their joint application to the Supreme Court of Newfoundland and Labrador, General Division, from a list of no more than four nominees, with Canada submitting no more than two nominees and the FNI and Qalipu jointly submitting no more than two nominees. FNI shall be responsible for the actual engagement of the independent chair.
- 4.5 Applicants who had Applications rejected on the basis they did not meet the subparagraph 4.1(d)(ii) criterion under the 2008 Agreement will be sent written notification of the evidentiary requirements that will have to be met to establish that they were Service Members. The written notification shall be sent to the most recent address for an Applicant on the Applicant Record. For the purposes of the assessment, the Enrolment Committee will only review evidence received at the Office of the Enrolment Committee, located in Winnipeg, Manitoba, or post-marked on or before the xx day of xxxx, 202x.
- 4.6 An Applicant is required to provide one of the following written documents as evidence of service that started before September 22, 2011:
- a) Canadian Armed Forces Release certificate, Veteran's Service Card, identification card issued by the Canadian Armed Forces or other Military Personnel Document issued by the Department of National Defense or the Canadian Armed Forces, or one of its elements, indicating when the Applicant's service commenced and, if the Applicant's service ceased, the date it ceased, and, if prior to September 22, 2011, the reason of its cessation or the release category;
 - b) Statement of employment or Record of Service Card provided by the RCMP indicating when the Applicant's service commenced and, if the Applicant is no longer employed with the RCMP, the date that employment ceased, and, if prior to September 22, 2011, the reason of cessation of the employment;

- c) a document issued by the Department of Veterans Affairs identifying the Applicant and that contains the period of service, including the date the Applicant's service ceased, and if prior to September 22, 2011, the reason of cessation.

4.6.1 Where the Applicant cannot provide a document referred to in section 4.6 herein, the Applicant shall provide a sworn declaration stating the reason the document cannot be provided and that best efforts have been made to obtain the document or a replacement document and shall also provide other written document acceptable to the Enrolment Committee that establishes when the Applicant's service commenced and, if the Applicant is no longer a member of the Canadian Armed Forces or of the RCMP, when the Applicant's service ceased and, if prior to September 22, 2011, the reason for its cessation.

4.7 All documents provided by an Applicant pursuant to section 4.6 herein, all documents considered by the Enrolment Committee in its assessment, all correspondence sent and received by the Enrolment Committee in relation to the Applicant, and the written decision of the Enrolment Committee shall be added to and retained as part of the Applicant Record.

4.8 The Enrolment Committee will determine whether each Applicant who provides documentation pursuant to section 4.6 herein is eligible to be enrolled as a member of the Qalipu Mi'kmaq First Nation pursuant to paragraph 6(1)(b) of the *Indian Act*. Applicants will be advised of the Enrolment Committee's determination of his or her eligibility only after the assessments of all applications have been completed but the inclusion of the Applicant's name on the Founding Members list provided to the Parties shall be subject to the Applicant providing the acknowledgment and release contemplated in Chapter 6.

4.9 Where a Service Member is determined by the Enrolment Committee to be eligible to become a Founding Member pursuant to this Agreement, children of that Service Member who were minors in the province in which they resided on 22 September 2011 and who were Applicants under the 2008 Agreement, will, subject to the Applicant providing the signed acknowledgment and release contemplated in Chapter 6, be added to the Founding Members List. Where a Service Member does not provide documentation specified in section 4.6 herein, a child of that Service Member, who was minor in the province in which he or she resided on 22 September 2011, may provide that documentation so as to permit the Enrolment Committee to assess whether that child is eligible to be added to the Founding Members List.

APPEALS

- 4.10 A decision of the Enrolment Committee may be appealed by an Applicant or a Party within 45 days of the Enrolment Committee's decision to the Chief Appeal Master appointed pursuant to this Agreement.
- 4.11 In addition to the Chief Appeal Master, the Parties may appoint such number of Appeal Masters as they feel is warranted to determine appeals of Enrolment Committee decisions.
- 4.12 Appeal Masters, including the Chief Appeal Master, shall be individuals independent from each Party, who are legally trained and well respected in the Newfoundland legal community, and shall be selected or replaced on mutual consent by the Parties or, where there is no agreement on the selection of Appeal Masters or the Chief Appeal Master, their joint application to the Supreme Court of Newfoundland and Labrador, General Division, from a nominee submitted by Canada and a nominee submitted jointly by the FNI and Qalipu. Qalipu shall be responsible for the actual engagement of each Appeal Master.
- 4.13 Sections 4.3.4, 4.3.5, 4.3.6, 4.3.7, and 4.3.8 of the 2008 Agreement apply, with the necessary changes, to appeals of the Enrolment Committee's assessment of Applications to which this Agreement applies.
- 4.14 Upon the completion of the assessments of all applications by the Enrolment Committee and the determination of all appeals by the Appeal Master pursuant to this Agreement, the Enrolment Committee will provide to the Parties a single Founding Members List, containing the names of all Applicants determined to be eligible to become a Founding Member pursuant to this Agreement.
- 4.15 Individuals who are accepted as Founding Members under this Agreement will be entitled to registration on the Indian Register under paragraph 6(1)(b) of the *Indian Act* as members in the Band.

Chapter 5 Federal Programs

- 5.1 Founding Members determined in accordance with the implementation of this Agreement shall have available to them the programs specified in Chapter 5 of the 2008 Agreement subject to the programs established by Canada for band members and registered Indians, may be amended, replaced, or cancelled from time to time, and new programs may be created for which they may become eligible.
- 5.2 Nothing in this Agreement will preclude Founding Members determined in
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accordance with the implementation of this Agreement from accessing and benefiting from programs of general application that Canada may make available for aboriginal people from time to time, provided the applicable program eligibility criteria can be met.

Chapter 6 Release

- 6.1 The application for Founding Membership shall specify that should the Enrolment Committee find that the Applicant meets the criteria for Founding Membership, the Enrolment Committee will include the name of the Applicant on the Founding Members list provided to the Parties. The application shall include an acknowledgement and release, in a form agreed upon between the Parties, which the applicant must sign and submit to be eligible for Founding Membership.
- 6.2 Except as qualified in subsection 6.4, the signed acknowledgement and release shall apply to all causes of action, claims and demands relating to the Applicant seeking recognition as an Indian under the Indian Act, including through and/or in relation to the enrollment process for Founding Membership in Qalipu as outlined in the 2008 Agreement and the Supplemental Agreement, and any act, failure and/or omission by Canada, the FNI, Qalipu, and their respective officers, councillors, directors, servants, employees or agents (hereinafter jointly referred to as the “Releasees”) to, at any time, provide the Applicant benefits comparable to those available to other Indians.
- 6.3 For Applicants that are not members in the class proceeding certified before the Federal Court entitled *Collins v. The Attorney General of Canada* and the Federation of Newfoundland Indians and bearing Court File No. T-2044-19 (hereinafter referred to as the “Class Action”), the signed acknowledgement and release shall require these Applicants to release the Releasees, from all past, present, and future causes of action, claims, and demands whatsoever as described in subsection 6.2.
- 6.4 For Applicants that are members in the Class Action, the acknowledgment and release shall require that these Applicants acknowledge and agree that any damages, expenses, and/or losses, incurred or being incurred, that they can claim as members in the class proceeding, cease to accrue as of the date the Applicant becomes a Founding Member. Accordingly, the acknowledgment and release shall require that these Applicants release the Releasees from all causes of action, claims, and demands, asserting that the Applicant continues to incur such damages, expenses, and/or losses beyond the date the Applicant becomes a Founding Member. In addition and for greater certainty, the acknowledgement and release shall require these Applicants to release the Releasees from all past,

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present, and future causes of action, claims and demands as described in subsection 6.2 that fall outside the Class Action but allow those class members in the Class Action to continue to participate in that proceeding subject to the terms of the acknowledgement and release.

- 6.5 Where the Applicant is a minor, the requirement for an acknowledgment and release referenced in this Chapter shall be met if the acknowledgment and release is signed by the Applicant's parent or legal guardian.

Chapter 7 Ratification

- 7.1 This Agreement must be ratified in accordance with this Chapter as a condition precedent to its validity. Unless so ratified by the Parties, this Agreement has no force or effect. When ratified by all Parties in accordance with this Chapter, this Agreement shall be binding on the Parties and constitute the final agreement.

- 7.2 The FNI shall have ratified this Agreement when the President of the FNI, duly authorized by a resolution of the board of directors, has signed this Agreement.

- 7.3 Canada shall have ratified this Agreement when the Minister, authorized by the Governor in Council, has signed this Agreement.

- 7.5 Qalipu shall have ratified this Agreement when:

- (a) It has been approved by its members; and
- (b) When the Chief, duly authorized by a resolution of the Qalipu Band Council, has signed this Agreement.

For the purpose of paragraph (a), this Agreement shall be deemed to be approved by Qalipu members if a majority of the votes cast by eligible voters at a ratification vote conducted in accordance with the process set out in Qalipu's election code support this Agreement.

Chapter 8 Implementation

- 8.1 The Parties shall establish an Implementation Committee to consist of six (6) representatives; three (3) chosen by the FNI and Qalipu jointly, and three (3) chosen by Canada, with the authority to supervise the work of the Enrolment Committee and Appeal Master. Other persons may, at the discretion of the

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Implementation Committee, attend meetings and participate in the work of the Implementation Committee but shall not be considered a representative of either Party.

8.2 The Implementation Committee shall oversee and coordinate the implementation of this Agreement and shall supervise the work of the Enrolment Committee and Appeal Masters. The Implementation Committee shall have no authority to bind the Parties. Without limiting the generality of the foregoing, the Implementation Committee shall:

- serve as a forum to negotiate the funding agreements referred to in this Chapter including any required amendments to such funding agreements,
- assist the Enrolment Committee as required,
- monitor the progress of the Enrolment Process, including through the request of reports in the manner and form it establishes,
- facilitate the resolution of any implementation issues, including through the issuance of joint directives to the Enrolment Committee and Appeal Master,
- 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 this Agreement needs clarification

8.3 The Parties shall negotiate a funding agreement acceptable to Canada to cover the reasonable direct costs of the participation of Qalipu and the FNI in the work required for the implementation of this Agreement.

8.4 The Parties shall negotiate a funding agreement acceptable to Canada to support the reasonable direct costs incurred by Qalipu and the FNI with respect to the following aspects of the Enrolment Process:

- the conduct of the ratification vote contemplated in Chapter 7 of this Agreement
- the engagement and remuneration of the members of the Enrolment Committee (excluding the representatives from Canada) and the Appeal Masters, and
- the administration and operations of the Enrolment Committee and Implementation Committee.

IN WITNESS THEREOF, the Minister of Indigenous Services has affixed his signature on behalf of His Majesty the King 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 and the Chief of the Qalipu Mi'kmaq First Nation has affixed his signature on behalf of its members.

SIGNED at _____ this ___ day of _____ 202__.

Brendan Mitchell
President of the Federation of Newfoundland Indians

WITNESSED BY:

Name:

Address:

Occupation:

SIGNED at _____ this ___ day of _____ 202__.

Brendan Mitchell
Chief, Qalipu Mi'kmaq First Nation

WITNESSED BY:

Name:

Address:

Occupation:

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SIGNED at _____ this __ day of _____ 202__.

XXXXXXXXXXXXXXXXXXXX
Minister of Indigenous Services

WITNESSED BY:

Name:

Address:

Occupation:

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