

## ANNEX C

### THE CUSTOM OF THE QALIPU MI'KMAQ FIRST NATION BAND

#### AS TO THE ELECTION OF CHIEF AND COUNCIL

#### CUSTOM RULES GOVERNING QALIPU MI'KMAQ FIRST NATION BAND ELECTIONS

WHEREAS the Qalipu Mi'kmaq First Nation Band is a constituent Band of the Mi'kmaq Nation and has the inherent authority to adopt, by way of Custom, a method for choosing its Chief and Council, as recognized by subsection 2(1) of the Indian Act, R.S.C. 1985, c. 1-5, and as was recognized by the same subsection of the Indian Act, R.S.C. 1970, c. 1-6;

AND WHEREAS the Qalipu Mi'kmaq First Nation Band is desirous of having its Customary Election Rules codified so as to avoid conflicts, uncertainty and to provide written confirmation of the Qalipu Mi'kmaq First Nation Band's Customary Election Rules;

AND WHEREAS these Custom Rules for the Election of the Band Council of the Qalipu Mi'kmaq First Nation Band are those referenced in section 6.2 of the Agreement on the Recognition of an Indian Band on the island of Newfoundland, which Agreement annexed these Custom Rules as Annex 'C' thereof and was ratified by a majority of the votes cast in a ratification vote conducted in accordance with section 9.2 of that Agreement and amended in accordance with a referendum vote conducted on the 23<sup>rd</sup> day of October, 2018.

#### EFFECTIVE DATE

1. These Custom Election Rules came into full force and effect on the date of the establishment of the Qalipu Mi'kmaq First Nation Band.

#### DECLARATION AS TO INAPPLICABILITY OF SECTIONS OF THE INDIAN ACT

2. Provisions found in the Indian Act, R.S.C. 1985, c. 1-5, respecting the Band Elections of Chiefs and Band Councils, being sections 74, 75, 76, 77, 78, 79 and 80 inclusive, do not and shall not apply to the Qalipu Mi'kmaq First Nation Band.

## INTERPRETATION

### 3. In these Rules,

“Agent” means an individual appointed by a Candidate to be present and observe the activities at a location designated by the Electoral Officer to the generation of a zero-vote count report before the start of the Voting Window and the generation of the results from the Electronic Voting System following the close of the Voting Window.

“Amendment Vote” means a vote held in accordance with these Custom Election Rules to add, amend or repeal a provision or provisions of these Custom Election Rules.

“Ballot” means either:

(i) an image on a computer screen, or any web enabled device, of a ballot face depicting all choices available to the Electors and containing spaces in which the Electors mark their votes;

(ii) when voting using a telephone or wireless phone, an audio set of instructions which describe all choices available to the Elector and instructions to mark the Elector’s selection by depressing the numbered touchtone keypad; or

(iii) for the purpose of Rule 24.8, a printed paper depicting all choices available to the Electors and containing spaces in which the Electors mark their votes.

“Band” means the Qalipu Mi’kmaq First Nation Band.

“Band Election” means an election held according to the Custom of the Band as codified by these Custom Election Rules.

“Band By-Election” means a Band Election held for the purpose of filling a vacant Council position prior to the end of the term of office for that Council position.

“Band Web Page” means the internet web page related to the Band and maintained by the Council on behalf of the Band.

“Candidate” means an Eligible Nominee who was nominated for a Council position at a Nomination Meeting and who has filed Nomination Papers with the Electoral Officer.

“Chief” means Chief of the Band elected pursuant to these Custom Election Rules.

“Council” means the Council of the Band elected pursuant to these Custom Election Rules.

“Councilor” means a person elected to serve on the Council representing Electors within an Electoral Ward identified under Rule 5.2 pursuant to these Custom Election Rules.

“Custom Election Rules” means the provisions of the Qalipu Mi’kmaq First Nation Band Custom Election Rules.

“Deputy Electoral Officer” means any person appointed by the Electoral Officer for the purpose of a Band Election.

“Election Poll” means the Poll conducted for the Band Election during the Voting Window ending on the date and time determined by the Council.

“Electoral Ward” means an area named in Rule 5.2 and shown on Schedule ‘A’ to these Custom Election Rules.

“Elector” means a person who:

- (a) is registered on the Membership List of the Band; and
- (b) is the full age of eighteen years.

“Electors’ List” means the list of electors eligible to vote in a Band Election, as prepared by the Electoral Officer in accordance with these Custom Election Rules.

“Electoral Officer” means a person appointed by the Council of the Band for the purposes of administering a Band Election or Elections in accordance with these Custom Election Rules.

“Electronic Voting” means the method by which an Elector may cast a vote through the use of an “Internet Enabled Connection Service” and/or an “Interactive Voice Response” service.

“Eligible Nominee” means an Elector of the Band nominated for the position on the Council of the Band in accordance with these Custom Election Rules.

“Interactive Voice Response Service” means the capability for an Elector to listen to voting options and to vote through a telephone system including wireless phones.

“Internet Enabled Connection Service” means the capability for an Elector to connect through the internet to a website and to read voting options and to vote through the internet connection.

“Nomination Papers” means the document filed in accordance with these Custom Election Rules and which represents the written acceptance of an Eligible Nominee to be a Candidate in the Band Election.

“Notice of Amendment Vote” means the Notice of an Amendment Vote provided in accordance with these Custom Election Rules.

“Notice of Band Election” means the Notice of a Band Election provided in accordance with these Custom Election Rules.

“Notice of Call for Nominations” means the Notice of a Nomination provided in accordance with these Custom Election Rules.

“Personal Identification Number” means a unique personal identification number assigned to each Elector.

“Poll” means the casting and recording of votes in accordance with these Custom Election Rules.

“Vice-Chiefs” mean the Western region Vice-Chief and the Central region Vice-Chief elected pursuant to these Custom Election Rules.

“Voting System Supplier” means the supplier of Electronic Voting services.

“Voting Window” means a minimum period determined by the Council of no less than 168 consecutive hours immediately preceding the end of the Election Poll during which Electors are entitled to vote in the Band Election.

#### THE COUNCIL

4. The Council of the Band shall consist of one (1) Chief, two (2) Vice-Chiefs and nine (9) Councilors.

#### ELIGIBILITY TO VOTE

- 5.1 All Electors of the Band are eligible to vote in Band Elections held in accordance with these Custom Election Rules.

- 5.2 There shall be nine (9) Electoral Wards named as follows, the boundaries of which are shown on Schedule ‘A’ attached hereto:

Flat Bay Electoral Ward	Benoits Cove Electoral Ward
Gander Bay Electoral Ward	Port Au Port Electoral Ward
Exploits Electoral Ward	St. George’s Electoral Ward
Corner Brook Electoral Ward	Stephenville Electoral Ward
Glenwood Electoral Ward	

- 5.3 Election of Vice-Chiefs shall involve
  - (a) the election of a Western region Vice-Chief for whom Electors in the Flat Bay Electoral Ward, Corner Brook Electoral Ward, Benoits Cove Electoral Ward, Port au Port Electoral Ward, St. George’s Electoral Ward, and Stephenville Electoral Ward, shall be eligible to vote; and
  - (b) the election of a Central region Vice-Chief for whom Electors in the Gander Bay Electoral Ward, the Glenwood Electoral Ward and the Exploits Electoral Ward shall be eligible to vote.

- 5.4 Electors ordinarily resident within an Electoral Ward are eligible to vote for the position of Chief, the Vice-Chief for the region into which his/her Electoral Ward falls pursuant to Rule 5.3, and for the position of Councilor in his/her Electoral Ward. Electors not ordinarily resident within an Electoral Ward at the time of Band Elections are eligible to vote for the position of Chief, Councilor in the Electoral Ward in which he or she was last ordinarily resident or to which he or she was assigned upon becoming a member of the Band, and the Vice-Chief for the region into which that Electoral Ward falls pursuant to Rule 5.3.

## ELECTION OF COUNCIL

- 6.1 The Chief of the Band shall be elected by the highest number of votes cast for the position of Chief in a Band Election held in accordance with these Custom Election Rules.
- 6.2 The Vice-Chiefs of the Band shall be elected by the highest number of votes cast for the position of Western region Vice-Chief and the position of Central region Vice-Chief by the Electors eligible to vote for each of those respective positions.
- 6.3 The Councilors of the Band shall be elected by the highest number of votes cast for the position of Councilor for each Electoral Ward listed in Rule 5.2 above in a Band Election held in accordance with these Custom Election Rules.

## DISQUALIFICATION OF A CANDIDATE

7. Where a Candidate for Council receives the highest votes in a Band Election and said Candidate has been disqualified for a reason set out in these Custom Election Rules the Candidate receiving the next highest number of votes shall be declared as elected.

## ELIGIBILITY TO BE NOMINATED

- 8.1 Only an Elector who has been ordinarily resident on the island portion of Newfoundland and Labrador for a full six months prior to the date set for the close of Nominations as specified in a Notice of Call for Nominations is eligible to be nominated for the office of Chief
- 8.2 Only an Elector who has been ordinarily resident on the island portion of Newfoundland and Labrador for a full six months prior to the date set for the close of Nominations as specified in a Notice of Call for Nominations is eligible to be nominated for the office of Vice-Chief
- 8.3 Only an Elector who has been ordinarily resident on the island portion of Newfoundland and Labrador for a full six months prior to the date set for the close of Nominations as specified in a Notice of Call for Nominations is eligible to be nominated for the office of Councilor.
- 8.4 In order for a member of Council to be eligible for nomination in a By-Election for a different position on the Council, he or she must resign, in writing, from his or her current Council position at least 7 clear days prior to the date set for the close of Nominations as specified in a Notice of Call for Nominations.

## INTERPRETATION OF ORDINARILY RESIDENT

- 9.1 The following principles apply to the interpretation of the words “ordinarily resident” in respect of all matters pertaining to the right of an Elector to be

nominated in a Band Election:

- a) subject to the other provisions of this section the question of whether an Elector is ordinarily resident on the Island portion of Newfoundland and Labrador shall be determined by reference to all the facts of the case;
- b) the place of ordinary residence of an Elector is, generally, that place which has always been, or which the Elector has adopted as his or her home;
- c) an Elector can have one place of ordinary residence only;
- d) temporary absence from a place of ordinary residence does not constitute a change in residency.

9.2 Subject to the principles of interpretation found in section 9.1, any person seeking to apply an interpretation to the words "ordinarily resident" may be guided by Schedule "B" attached hereto.

#### NOTICE OF CALL FOR NOMINATIONS

10.1 When a Band Election is to be held, the Electoral Officer shall publish a Notice of Call for Nominations in the form prescribed by the Council at least 7 clear days prior to the date set for the close of Nominations:

- a) in the Band Administration Office;
- b) on the Band Web Page;
- c) in any other location or by other means that the Electoral Officer deems appropriate.

10.2 The Notice of Call for Nominations shall contain, at a minimum, the following information:

- a) the date and time by which Nomination Papers for the Chief, Vice-Chief and Councilor positions are to be received by the Electoral Officer to mark the close of nominations;
- b) the Voting Window set for the Band Election;
- c) the location to which Nomination Papers may be delivered;
- d) instructions as to how to receive a copy or view a copy of the Electors List;
- e) the name and contact information for the Electoral Officer;
- f) the Internet address of the Band Web Page.

## ELECTOR'S LIST

- 11.1 Prior to the posting of the Notice of Call for Nominations the Electoral Officer shall prepare an Elector's List containing the names, in alphabetical order, of:
1. All eligible Electors for the position of Chief,
  2. All eligible Electors for the position of Western region Vice-Chief,
  3. All eligible Electors for the position of Central region Vice-Chief
  4. All eligible Electors for each of the positions of councilor.
- 11.2 Prior to the posting of the Notice of Calls for Nominations, the Electoral Officer shall post one or more copies of the Elector's List in relation to the positions of Chief, each position of Vice-Chief and for each position of Councilor in a conspicuous place at the administration offices of the Band and on the Band Web Page and any other locations deemed appropriate by the Electoral Officer.
- 11.3 Any Elector may apply to the Electoral Officer to have the Elector's List revised on the grounds that the name of an Elector is incorrectly set out therein or absent therefrom.
- 11.4 If the Electoral Officer is satisfied that the Elector's List should be corrected, the Electoral Officer shall make the necessary correction therein.

## NOMINATIONS

- 12.1 No person may be nominated for Band Election as Chief unless he or she is an Elector ordinarily resident on the Island of Newfoundland and his or her nomination is moved and seconded by separate Electors, neither of whom is the person seeking nomination.
- 12.2 No person may be nominated for Band Election as Western region Vice-Chief unless he or she is an Elector ordinarily resident in either of the Electoral Wards identified in Rule 5.3(a) and his or her nomination is moved and seconded by separate Electors, neither of whom is the person seeking the nomination and each of whom is an Elector eligible to vote in an Electoral Ward identified in Rule 5.3(a).
- 12.3 No person may be nominated for Band Election as Central region Vice-Chief unless he or she is an Elector ordinarily resident in either of the Electoral Wards identified in Rule 5.3(b) and his or her nomination is moved and seconded by separate Electors, neither of whom is the person seeking the nomination and each of whom is an Elector eligible to vote in an Electoral Ward identified in Rule 5.3(b).

- 12.4 No person may be nominated for Band Election as Councilor unless he or she is an Elector ordinarily resident in the Electoral Ward in which he or she seeks to be a candidate and his or her nomination is moved and seconded by separate Electors, each of whom is an Elector eligible to vote in the same Electoral Ward as the person seeking nomination but is not the person seeking nomination.
- 12.5 No person may be nominated for Band Election as Chief, Vice-Chief or Councilor unless Nomination Papers, in a form approved by the Electoral Officer, identifying and executed by the nominee and the Electors who move and second the nomination, are received by the Electoral Officer at the date and time specified in the Notice of Call for Nominations.
- 12.6 No person may be nominated for more than one position on the Council in a Band Election. Where the Electoral Officer receives Nomination Papers nominating one person for more than one Council position, all such Nomination Papers shall be void and of no effect so that the nominee named therein shall not be a candidate in the Band Election for either position notwithstanding that, in all other respects, the Nomination Papers are completed in accordance with the form approved by him or her and these Rules.
- 12.7 Nomination Papers are considered filed with the Electoral Officer when they are received at the administration offices of the Band.
- 12.8 Nomination Papers that have not been completed in accordance with the form approved by the Electoral Officer or are completed contrary to these Rules shall be void and of no effect so that the nominee named therein shall not be a candidate in the Band Election for the position sought.
- 12.9 Once an Eligible Nominee, who was nominated in accordance with these Custom Election Rules, files duly executed Nomination Papers with the Electoral Officer said Eligible Nominee becomes a Candidate in the Band Election.
- 12.10 At the request of any Elector, an oath or affirmation in a form prescribed by the Council as to an Elector's eligibility to be nominated for a particular Council position shall be administered to any Elector wishing to file Nomination Papers.
- 12.11 No person who has refused to take the oath or affirmation referred to in Rule 12.10 when requested so to do shall be permitted to be a Candidate in a Band Election and shall be disqualified from the Band Election.



## CLOSE OF NOMINATIONS

- 13.1 Following the expiration of the time for filing Nomination Papers, the Electoral Officer will revise the Notice of Band Election to include the list of Candidates for each Council position.
- 13.2 The death of a candidate for any position shall not cause the conduct of an Election under the Custom Election Rules to be deemed or declared invalid. Where there are more than two candidates for a position and the death of a candidate occurs following the filing of Nomination Papers but before the conclusion of voting at an Election Poll:
  - (a) the name of the candidate shall not appear on the ballot if the death occurred prior to the ballots being generated;
  - (b) any electronic ballots cast during the Voting Window for the deceased candidate shall be rejected by the Electoral Officer, and the Electoral Officer will direct the Voting System Supplier to remove the candidate from the Ballot. The remaining votes shall be counted to determine the successful candidate.
- 13.3 Where there are two candidates for a position and the death of a candidate occurs following the filing of Nomination Papers but before the conclusion of Electronic Voting, the other candidate shall be declared by the Electoral Officer to have been acclaimed.

## ACCLAMATION

- 14.1 When the Electoral Officer, following the date set for the close of nomination, determines that there only is one Eligible Nominee nominated to serve as Chief, the Electoral Officer shall declare the nominated person to be duly elected.
- 14.2 When the Electoral Officer, following the date set for the close of nomination, determines that there only is one Eligible Nominee nominated to serve as Vice-Chief for the Western Region, the Electoral Officer shall declare the nominated person to be duly elected.
- 14.3 When the Electoral Officer, following the date set for the close of nomination, determines that there only is one Eligible Nominee nominated to serve as Vice-Chief for the Central Region, the Electoral Officer shall declare the nominated person to be duly elected.

- 14.4 When the Electoral Officer, following the date set for the close of nomination, determines that there only is one Eligible Nominee nominated to serve as Councilor for an Electoral Ward, the Electoral Officer shall declare the nominated person to be duly elected.

#### Chief and Vice-Chiefs

15. In the event of more than the required number of persons being nominated to serve as Chief, Western region Vice-Chief, or Central region Vice-Chief, the Electoral Officer shall declare that an election will be held:
- a)(i) in the event of an election for Chief, in the Electoral Wards listed in Rule 5.2.
  - (ii) in the event of an election for Western region Vice-Chief, in the Electoral Wards listed in Rule 5.3(a);
  - (iii) in the event of an election for Central region Vice-Chief, in the Electoral Wards listed in Rule 5.3(b).

#### COUNCILOR

16. In the event of more than the required number of persons being nominated to serve as Councilor in either of the Electoral Wards listed in Rule 5.2 above, the Electoral Officer shall declare that an election will be held in that Electoral Ward.

#### POLLING TIMING

17. The Electoral Officer shall cause Electronic Voting to be established during the Voting Window in an Electoral Ward for the positions of Chief, the Vice-Chief for the region in which that Electoral Ward is situate and the Councilor for that Electoral Ward. The Voting Window in an Electoral Ward shall be the same for positions of Chief, Vice-Chief Councilor.

#### NOTICE OF ELECTION

- 18.1 Whenever an Election Poll is to be taken, the Electoral Officer shall, without any unreasonable delay, and at least 21 clear days prior to the date of the Election Poll, post a Notice of Band Election, in the form prescribed by the Council:
- a) in one or more conspicuous places at the Band Administrative Offices; and
  - b) on the Band Web Page; and
  - c) in any other location or by other means that the Electoral Officer deems appropriate.

18.2 The Notice of Election shall contain, at a minimum, the following information:

- a) the Voting Window;
- b) instructions as to how to receive a copy or view a copy of the Electors List;
- c) the name and contact information for the Electoral Officer;
- d) the Internet address of the Band Web Page.

#### CANDIDATE FEE

19.1 A non-refundable Candidate Fee of twenty-five dollars (\$25.00) shall be deposited with the Electoral Officer at the time a Candidate files his or her Nomination Papers. Payment of the Candidate Fee must be in cash, money order, bank draft or certified cheque. The Electoral Officer may extend the time required for payment of the Candidate Fee if, taking into consideration the circumstances of the Candidate, the Electoral Officer deems the requirement to pay the Candidate Fee at the time a Candidate files his or her Nomination Papers to be unreasonable. In such a case, the Candidate must deposit the Candidate Fee within the extended time limit prescribed by the Electoral Officer.

19.2 A Candidate who does not pay the Candidate Fee within the time prescribed by Rule 21.1 or within an extended time prescribed by the Electoral Officer pursuant to Rule 21.1 shall be disqualified from the Band Election.

#### CALCULATION OF TIME

20. For the purpose of these Custom Election Rules the following rules shall apply to the calculation of time and matters of interpretation with respect to the calculation of time shall be the responsibility of the Electoral Officer:

- a) When calculating clear days, the first and last day shall be excluded. For example, the day of the posting of a notice of a meeting and the day of the meeting are excluded from the calculation.
- b) When calculating time, federal and provincial statutory holidays will be excluded from the calculation.
- c) When calculating time and an event falls on a Sunday or federal or provincial statutory holiday, the event will be extended to the next day.
- d) When calculating time referred to as weeks, months or years the time period shall expire on the week, month or year anniversary of the first event. For example, if a notice of an event must be posted for at least three months and it is posted on January 1st the earliest the event can take place is April 1st or if a term of office is two years from the date of an election and the election is held on June 1, 2000, the term of office expires on June 1, 2002.

## BALLOT PREPARATION

- 21.1 Ballots for Electronic Voting shall be prepared by the Voting System Supplier on the direction of the Electoral Officer in the form prescribed by the Council. A separate ballot face containing the names of the Candidates for Chief, a separate Ballot face containing the names of Candidates for Western region Vice-Chief, a separate Ballot face containing the names of Candidates for Central region Vice-Chief, and a separate ballot face containing the names of Candidates for position of Councilor for each Electoral Ward listed in Rule 5.2, which names shall be listed on the Ballot in alphabetical order by surname. The names of the candidates provided on the Interactive Voice Response shall be recorded and provided in alphabetical order by surname.
- 21.2 Ballots made available pursuant to Rule 24.8 in the form prescribed by Council and shall be prepared by or at the direction of the Electoral Officer. A separate ballot face containing the names of the Candidates for Chief, a separate Ballot face containing the names of Candidates for Western region Vice-Chief, a separate Ballot face containing the names of Candidates for Central region Vice-Chief, and a separate ballot face containing the names of Candidates for position of Councilor for each Electoral Ward listed in Rule 5.2, which names shall be listed on the Ballot in alphabetical order by surname.

## CANDIDATE WITHDRAWAL

22. Any Candidate may withdraw at any time after the filing of his or her Nomination Papers with the Electoral Officer, but not later than forty-eight (48) hours before the time of the opening of the Voting Window, by filing with the Electoral Officer a written withdrawal of his or her nomination, signed by the Candidate in the presence of the Electoral Officer, a justice of the peace, a notary public or a commissioner of oaths, and any votes cast for any such Candidate shall be null and void.

## THE POLL

- 23.1 Subject to Rule 24.8, the Poll shall be held conducted by Electronic Voting during the Voting Window determined by the Electoral Officer in accordance with these Custom Election Rules.
- 23.2 A Candidate may authorize a maximum of two persons to serve as his or her Agents. An Agent must present, upon request to the Electoral Officer, written verification signed by the Candidate that the he or she has been authorized to serve as the Candidate's Agent.
- 23.3 An Elector shall vote at all Band Elections in the manner set forth in these Custom Election Rules.
- 23.4 The Electoral Officer or a Deputy Electoral Officer shall, immediately before the commencement of the Voting Window, notify each Agent of the date and time that

a zero-vote count report will be generated and will permit each Agent who responds to the notification to witness that the vote count for each candidate is zero (0) from the report that is generated.

## VOTING

- 24.1 Where the Electoral Officer or Deputy Electoral Officer is satisfied that an Elector is named on the Elector's List, the Elector will be provided with a Personal Identification Number by the Electoral Officer or Deputy Electoral Officer for the purpose of allowing the Elector to authenticate himself or herself for the purpose of Electronic Voting.
- 24.2 It shall be within the discretion of the Electoral Officer or Deputy Electoral Officer to request identification from the Elector for the purpose of confirming the identity of the Elector prior to providing him or her with a Personal Identification Number.
- 24.3 In order to participate in Electronic Voting, an Elector must submit his or her Personal Identification Number before being able to cast votes in the Band Election.
- 24.4 The Interactive Voice Response Service shall enable an Elector to telephone a telephone number approved by the Electoral Officer and provided to the Elector and, upon entering the Elector's Personal Identification Number, to vote by that method of Electronic Voting.
- 24.5 The Internet Enabled Connection Service shall enable an Elector to connect to a website address approved by the Electoral Officer and provided to the Elector and, upon entering the Elector's Personal Identification Number, to vote by that method of Electronic Voting.
- 24.6 The Electoral Officer or Deputy Electoral Officer shall issue to each Elector by way of mail or electronic mail, whichever he or she determines to be appropriate in the circumstances, a Personal Identification Number and instructions on the manner in which Electors can participate in Electronic Voting. The Electoral Officer or Deputy Electoral Officer also may, when requested to do so, explain the Electronic Voting verbally to an Elector.
- 24.7 The Electoral Officer is vested with the authority to make decisions, policies, or procedures that in his or her sole discretion are necessary to permit an Elector to vote in the Band Election during the Voting Window by way of Electronic Voting.
- 24.8 If in the opinion of the Electoral Officer there is no practical means whereby an Elector is able to vote in the Band Election by way of Electronic Voting, the Electoral Officer is vested with the authority to make decisions, policies, or procedures that in his or her sole discretion are necessary to permit an Elector to vote in the Band Election during the Voting Window by way of a printed paper ballot.
- 24.9 Any policies, or procedures may be made or adopted by the Electoral Officer relating to the conduct of an Election Poll that are not contrary to these Rules shall have such force and effect as if they have been contained in these Rules and shall

be recorded in a manual for the purpose of being applied as the circumstances may warrant in future Election Polls.

#### COUNTING OF VOTES

- 25.1 Immediately after the close of the Election Poll, the Electoral Officer or Deputy Electoral Officer shall, in the presence of such of the Candidates or their Agents as may be present, generate the election results from Electronic Voting and print them out for review and present for review all votes made under Rule 24.8. Upon review the Electoral Officer or Deputy Electoral Officer will:
- a) determine which Ballots are to be rejected;
  - b) read from the report and determine from the votes cast by Electronic Voting and pursuant to Rule 24.8 the number of votes received by each Candidate that were not rejected; and
  - c) prepare and sign a report that contains the number of votes received by each Candidate and the number of Ballots rejected and not counted. Additionally the report shall be then signed by each Candidate or Agent who is present.
- 25.2 Immediately after the completion of the counting of all Ballots not rejected, the Electoral Officer shall publicly declare to be elected the Candidate or Candidates having the highest number of votes in accordance with these Custom Election Rules, and the Electoral Officer shall also post in the same places that the Notice of Band Election was posted under Rule 18.1, a statement signed by him or her showing the number or votes cast for each Candidate.
- 25.3 Where it appears that two or more Candidates have equal number of votes, the Electoral Officer shall carry out a recount of the ballots. If after the recount there is still an equal number of votes for each candidate, the relevant position of council shall be deemed vacant and a by-election shall be held within 30 days.

#### DESTRUCTION OF BALLOTS

- 26.1 The Voting System Supplier shall secure and maintain all Ballots and associated voting records created during the Band Election and retain them in a secure data centre environment until they can be destroyed in accordance with Rule 26.2.
- 26.2 Where no appeal has been commenced pursuant to Rule 27, the Electoral Officer shall direct the Voting System Supplier to destroy the Ballots and any associated voting records 60 days following the conclusion of the Voting Window in the presence of two witnesses who shall make a written declaration that they witnessed the destruction of these records and provide the written declaration to the Electoral Officer.

#### BAND ELECTION APPEALS

- 27.1 Within 30 days after a Band Election, any candidate of the Band Election or any Elector who gave or tendered his vote at the Band Election may lodge an appeal by forwarding by registered mail to the Electoral Officer particulars duly verified by affidavit supporting one or more of the following grounds for appeal:
- a) there was corrupt practice in connection with the Band Election; or
  - b) there was a violation of these Custom Election Rules that might have affected the result of the Band Election; or
  - c) an Elector nominated to be a candidate in the Band Election was ineligible to be nominated.
- 27.2 Where an appeal is received by the Electoral Officer pursuant to Rule 27.1, that officer shall, within 7 days of the receipt of the appeal, forward a copy of said appeal, together with all supporting documents, by registered mail to each Candidate.
- 27.3 Any Candidate may, within 14 days of the receipt of the copy of the appeal forward to the Electoral Officer by registered mail a written answer to the particulars set out in the appeal together with all supporting documents relating thereto duly verified by affidavit.
- 27.4 The Electoral Officer may, if the material that has been filed is not adequate for deciding the validity of the Band Election complained of, conduct such further investigation into the matter as the Electoral Officer deems necessary, in such manner as he or she deems expedient.
- 27.5 Such investigation may be held by the Electoral Officer or by any person designated by the Electoral Officer for the purpose.
- 27.6 Where the Electoral Officer designates a person to hold such an investigation that person shall submit a detailed report of the investigation to the Electoral Officer for his or her consideration.
- 27.7 The Electoral Officer may set aside the Band Election of a Chief, Vice-Chief or Councilor if the Electoral Officer is satisfied that:
- d) there was corrupt practice in connection with the Band Election;
  - e) there was a violation of these Rules that might have affected the result of the Band Election; or
  - f) an Elector nominated to be a candidate in the Band Election was ineligible to be nominated in accordance with these Rules.

#### SECURITY OF VOTING

- 28.1 Every person involved in or has access to the administrative processes of Electronic Voting or in attendance at the reviewing of results shall maintain and

aid in maintaining the secrecy of the voting.

28.2 No person shall interfere or attempt to interfere with an Elector when participating in Electronic Voting or obtain or attempt to obtain information as to how an Elector is about to vote or has voted.

28.3 No person shall interfere or attempt to interfere with an Elector when voting pursuant to Rule 24.8 or obtain or attempt to obtain information as to how an Elector is about to vote or has voted.

#### Tenure of Office

29.1 Subject to this section, the Council of the Band, i.e. Chief, Vice-Chiefs and Councilors, shall hold office for three years from the date of the Band Election. If the Chief, a Vice-Chief or Councilor is elected pursuant to a Band By-Election, the Chief, Vice-Chief or Councilor shall hold office for the remainder of the term associated with the Council position being filled.

29.2 The Council shall appoint an Electoral Officer prior to the end of the term of office for the Council, at the latest three weeks prior to the end of the Council's term of office, and shall instruct the Electoral Officer to issue a Notice of Call for Nominations in accordance with these Custom Election Rules.

#### Rules

30.1 (a) Where no appeal has been commenced under Rule 27.1 in respect of the election of Chief, a Vice-Chief or a Councilor, the newly elected Chief, Vice-Chiefs and Councilors shall take office at 12:01 a.m. on the thirty-first day following the Band Election.

(b) Where an appeal has been commenced under Rule 27.1 in respect of the election of Chief, a Vice-Chief or a Councilor, the position shall be filled by the successful candidate as of 12:01 a.m. on the thirty-first day following the Band Election but the tenure shall be subject to a determination made by the Electoral Officer pursuant to Rule 30.2(b).

30.2 The office of the Chief, Vice-Chief or Councilor becomes vacant when the person who holds office:

a) is convicted of an indictable offense under the Criminal Code of Canada for activity that was not condoned by the Qalipu Mi'kmaq First Nation Band as part of its political activism in relation to collective rights;

b) is determined by the Electoral Officer on a Rule 27 appeal to have been:

(i) engaged in a corrupt practice in connection with the Band Election;

(ii) engaged in a violation of these Custom Election Rules that might have affected the result of the Band Election; or



- (iii) ineligible to be nominated.
  - c) dies or resigns his or her office; or
  - d) is or becomes ineligible to hold office by virtue of any provision of these Custom Election Rules.
- 30.3 The office of the Chief, Vice-Chief or Councilor becomes vacant when the person who holds office becomes ordinarily resident off the Island portion of Newfoundland and Labrador.
- 30.4 Where the office of the Chief, Vice-Chief, or Councilor becomes vacant more than twelve months before the date when another Band Election would ordinarily be held, a special Band By-Election shall be held in accordance with these Custom Election Rules to fill the vacancy.
- 30.5 Any person elected in a By-Election for the office of Chief, a Vice-Chief or a Councilor shall only be entitled to complete the term of his or her predecessor.

#### PENALTY

31. Every person who violates any of the provisions of these Rules is subject to such penalty as may be set out in a Band Council by-law for this purpose pursuant to Section 81 of the Indian Act, R.S.C. 1985, c. I-5.

#### AMENDMENTS

- 32.1 The provisions found in these Custom Election Rules may be added to, repealed or amended by way of a referendum of the Band held in accordance with the Qalipu Mi'kmaq First Nation Band referendum regulations attached hereto as Schedule C.
- 32.2 The Notice of Amendment Vote shall, at a minimum, contain the following information:
- a) the date, time and location of the vote to amend or repeal a provision or provisions of these Custom Election Rules; and
  - b) instructions as to how to receive or view a copy of the Elector's List; and
  - c) the internet address of the Band Web Page; and
  - d) either a copy of the proposed amendment(s) or a summary of the proposed amendment(s) along with instructions as to how a complete copy of the proposed amendment(s) can be obtained or viewed
- 32.3 The Notice of Amendment Vote shall be posted as follows:

- a) in one or more conspicuous places in the administrative offices of the Band;
- b) on the Band Web Page; and
- c) in any other location or by other means that the Council deems appropriate.

#### CITATION

33. These Custom Election Rules may be cited as the Qalipu Mi'kmaq First Nation Band Custom Election Rules.

#### POSTPONEMENT OF NOMINATION MEETING, BAND ELECTION OR AMENDMENT VOTE

- 34.1 If a death of a member of the Band occurs from the date of the posting of the date of the Election Poll, it shall be within the discretion of the Electoral Officer to extend the Voting Window to a date and time following the funeral or memorial service.
- 34.2 It shall be within the discretion of the Electoral Officer to extend the Voting Window to a date and time he or she deems appropriate should any event or climatic condition occur that, in his or her opinion, inhibits the ability of Electors to vote in the Band Election.
- 34.3 Where an Electoral Officer extends the Voting Window for any of the reasons permitted in accordance with these Custom Election Rules, the Electoral Officer shall ensure that sufficient notice is provided of the extended Voting Window.
- 34.4 Where a death of a member of the Band occurs within one (1) week of an Amendment Vote, the Council may extend the Voting Window to a date and time deemed appropriate by the Council.
- 34.5 It shall be within the discretion of the Council to extend the Voting Window of an Amendment Vote to a date and time it deems appropriate should any event or climatic condition occur that, in its opinion, inhibit the ability of Electors to vote within the Voting Window.
- 34.6 Where the Council extends the Voting Window for an Amendment Vote for any of the reasons permitted in accordance with these Custom Election Rules, it shall ensure that sufficient notice is provided of the extended Voting Window.
- 34.7 Where the Voting Window for an Election Poll or an Amendment Vote is extended in accordance with these Custom Election Rules, notice provided in the manner outlined in Rule 18.1 shall be deemed to be sufficient.

## SCHEDULE "B"

### GUIDELINES FOR DETERMINING RESIDENCY ON THE ISLAND PORTION OF NEWFOUNDLAND AND LABRADOR FOR THE PURPOSES OF BAND ELECTIONS

These guidelines are to assist you in your task as Electoral Officer should the questions of residency arise during the Band Election.

- A. An Elector who is away from the Island portion of Newfoundland and Labrador for educational or training reasons and who intends to return to the Island portion of Newfoundland and Labrador (especially where family is on the Island) is considered ordinarily resident on the island for Band Election purposes.
- B. An Elector who has a house on the Island portion of Newfoundland and Labrador and moves either alone or with his or her family to a seasonal type job off the island but who intends to return to the island at the end of his or her seasonal employment is considered ordinarily resident on the island. The same guideline applies to the members of the Elector's family.
- C. An Elector with a full time job off the Island portion of Newfoundland and Labrador, who maintains his or her primary residence off the Island portion of Newfoundland and Labrador, is considered to be ordinarily resident off the Island portion of Newfoundland and Labrador for Band Election purposes, no matter how frequently he or she visits the Island portion of Newfoundland and Labrador. This shall apply to the situation of R.C.M.P. officers and military personnel working off the island portion of Newfoundland and Labrador notwithstanding the fact that their employer as a matter of policy may consider their residence to be situated on the island portion of Newfoundland and Labrador.
- D. An Elector who is separated from his or her family, which is on the Island portion of Newfoundland and Labrador, and who maintains his or her primary residence off the Island portion of Newfoundland and Labrador, is considered to be ordinarily resident off the Island portion of Newfoundland and Labrador for Band Election purposes.
- E. An Elector who maintains his or her primary residence off the Island portion of Newfoundland and Labrador and who returns to the Island portion of Newfoundland and Labrador for short visits with friends or relatives are considered to be ordinarily resident off the Island portion of Newfoundland and Labrador for Band Election purposes.

## SCHEDULE 'C'

### QALIPU MI'KMAQ FIRST NATION BAND REFERENDUM REGULATIONS

#### 1.0 DEFINITIONS

1.1 **"Ballot"** means either:

- (i) an image on a computer screen, or any web enabled device, of a ballot face depicting a Question and containing spaces in which a Voter may cast his or her vote on the Question in the affirmative or negative;
- (ii) when voting using a telephone or wireless phone, an audio set of instructions which describe all choices available to the Voter and instructions to mark the Voter's selection of an affirmative or negative response to the Question by depressing the numbered touchtone keypad; or
- (iii) for the purpose of section 3.8, a printed paper depicting all choices available to the Electors and containing spaces in which the Electors mark their votes.

1.2 **"Band"** means the Qalipu Mi'kmaq First Nation Band.

1.3 **"Council"** means the Council of the Band.

1.4 **"Deputy Electoral Officer"** means a person appointed by the Council to assist the Electoral Officer in administering a referendum.

1.5 **"Electoral Officer"** is a person appointed by the Council for the purposes of administering a referendum.

1.6 **"Electoral Ward"** means an area named in Rule 5.2 and shown on Schedule 'A' of the Code.

1.7 **"Electronic Voting"** means the method by which a Voter may cast his or her vote on a Question in the affirmative or negative through the use of an "Internet Enabled Connection Service" and/or an "Interactive Voice Response Service".

1.8 **"Interactive Voice Response Service"** means the capability for a Voter to listen to voting options and to vote through a telephone system including wireless phones.

- 1.9 “**Internet Enabled Connection Service**” means the capability for a Voter to connect through the internet to a website and to read voting options and to vote through the internet connection.
- 1.8 “**List of Voters**” means the List of all Band members eighteen years of age or over on Voting Day.
- 1.9 “**Personal Identification Number**” means a unique personal identification number assigned to each Voter.
- 1.10 “**Question**” means the question posed on the referendum ballot to which a Voter can answer in the affirmative or the negative.
- 1.11 “**Regulations**” means the Qalipu Mi’kmaq First Nation Band Referendum Regulations.
- 1.12 “**Rules**” means the Qalipu Mi’kmaq First Nation Band Custom Election Rules.
- 1.13 “**Voter**” means a person on the List of Voters.
- 1.14 “**Voting Window**” means a minimum period determined by the Council of no less than 168 consecutive hours immediately preceding a date and time set by the Council for the holding of a referendum vote or addition, amendment, or repeal to the Code.

## 2.0 **REFERENDUM CALL**

- 2.1 Where it appears to the Council that an expression of opinion of the Voters is desirable on a matter of concern to the Band or that the Rules should be added to, amended, or repealed, the Council may direct that a referendum be held to obtain the expression of opinion or determine support amongst the Band members for the addition, amendment or repeal sought to the Rules.
- 2.2 Except where specifically modified by the Regulations, the provisions of Rules 23, 24, 25, 26, 28, 31, and 34 of the Rules relating to the holding of elections and Rule 32 relating to a referendum held to add to, amend, or repeal the Rules shall be read with such changes in wording as may be necessary to make them applicable to a referendum held under section 2.1 of these Regulations.
- 2.3 Except where Rule 32 of the Rules applies, when the Council directs that a referendum be held, the Electoral Officer shall publish a Notice of Referendum in the form prescribed by the Council at least 7 clear days prior to the Voting Window:

- a) in the Band Administration Office;
- b) on the Band Web Page;
- c) in any other location or by other means that the Electoral Officer deems appropriate.

2.4 The Notice of Referendum referenced in section 2.3 shall contain, at a minimum, the following information:

- a) the Voting Window for the referendum;
- b) the Question to be submitted to the Voters;
- c) instructions as to how to receive a copy or view a copy of the List of Voters;
- d) the name and contact information for the Electoral Officer;
- e) the Internet address of the Band Web Page;

2.5 At least 7 clear days before the commencement of the Voting Window, the Electoral Officer will ensure that the List of Voters is prepared from the membership list of the Band.

2.6 On request, the Electoral Officer will confirm whether the name of a person is on the List of Voters.

2.7 The Electoral Officer will revise the List of Voters where it is demonstrated that:

2.7.1 the name of a Voter has been omitted from the List of Voters;

2.7.2 the name of a Voter is incorrectly set out in the List of Voters; or

2.7.3 the name of a person not qualified to vote is included in the List of Voters.

### **3.0 VOTING**

- 3.1 Where the Electoral Officer or Deputy Electoral Officer is satisfied that a Voter is named on the Voter's List, the Voter will be provided with a Personal Identification Number by the Electoral Officer or Deputy Electoral Officer for the purpose of allowing the Voter to authenticate himself or herself for the purpose of Electronic Voting.
- 3.2 It shall be within the discretion of the Electoral Officer or Deputy Electoral Officer to request identification from the Voter for the purpose of confirming the identity of the Voter prior to providing him or her with a Personal Identification Number.
- 3.3 In order to participate in Electronic Voting, a Voter must submit his or her Personal Identification Number before being able to cast a vote on a Question.
- 3.4 The Interactive Voice Response Service shall enable a Voter to telephone a telephone number approved by the Electoral Officer and provided to the Voter and, upon entering the Voter's Personal Identification Number, to vote by that method of Electronic Voting on a Question.
- 3.5 The Internet Enabled Connection Service shall enable a Voter to connect to a website address approved by the Electoral Officer and provided to the Voter and, upon entering the Voter's Personal Identification Number, to vote by that method of Electronic Voting on a Question.
- 3.6 The Electoral Officer or Deputy Electoral Officer shall issue to each Voter though mail or electronic mail, whichever he or she determines to be appropriate in the circumstances, a Personal Identification Number and instructions on the manner in which Voters can participate in Electronic Voting on a Question. The Electoral Officer or Deputy Electoral Officer also may, when requested to do so, explain the Electronic Voting verbally to a Voter.
- 3.7 The Electoral Officer is vested with the authority to make decisions, policies, or procedures that in his or her sole discretion are necessary to permit a Voter to vote on a Question during the Voting Window by way of Electronic Voting.
- 3.8 If in the opinion of the Electoral Officer there is no practical means whereby a Voter is able to vote on a Question by way of Electronic Voting, the Electoral Officer is vested with the authority to make decisions, policies, or procedures that in his or her sole discretion are necessary to permit a Voter to vote on a Question during the Voting Window by way of a printed paper ballot that provides the Voter with the option to vote in the affirmative or the negative on the Question.

3.9 Any policies, or procedures may be made or adopted by the Electoral Officer relating to the conduct of a referendum that are not contrary to these regulations shall have such force and effect as if they have been contained in these regulations and shall be recorded in a manual for the purpose of being applied as the circumstances may warrant in future referenda.

#### **4.0 BALLOTS**

- 4.1 Ballots shall be prepared by the Voting System Supplier on the direction of the Electoral Officer, with the Question contained thereon with a mechanism whereby the Voter, at his or her option, can indicate his or her vote on the Question in the affirmative or the negative through Interactive Voice Response or Internet Enabled Connection Service.
- 4.2 Ballots made available pursuant to section 3.8 in the form prescribed shall be prepared by or at the direction of the Electoral Officer with the Question contained thereon with spaces whereby the Voter, at his or her option, can indicate his or her vote on the Question in the affirmative or the negative.

#### **5.0 COUNTING OF RESULTS**

- 5.1 Immediately after the close of the Election Poll the Electoral Officer or Deputy Electoral Officer shall, in the presence of at least two persons, generate the results from Electronic Voting on the Question and print them out for review.
- 5.2 Record all Ballots marked in the affirmative or the negative to the Question, record all Ballots that were rejected, and record all votes made under subsection 3.8 marked in the affirmative or the negative or were rejected. A rejected Ballot is void and will not be counted as a vote cast either in the affirmative or the negative to the Question.
- 5.3 As soon as is practicable after the results of the voting on the Question are known, the Electoral Officer will, in a form approved by the Council, post in the same places in which the Notice of Referendum was posted a statement which shall indicate:
  - 5.3.1 The number of Voters who were entitled to vote;
  - 5.3.2 The number of Voters who voted;
  - 5.3.3 The number of votes cast in favor of and against the Question; and



5.3.4 The number of rejected ballots.

5.4 Where the number of votes in the affirmative and the negative to the Question is equal, the Question shall be deemed to have been answered in the negative.

## **6.0 REVIEW PROCEDURE**

6.1 A Voter may, in the manner set out in subsection 6.2 below, request a review of the referendum by the Electoral Officer where the Voter believes that:

6.1.1. there was a contravention of these Regulations that may affect the result of the Referendum; or

6.1.2 there was corrupt practice in connection with the referendum.

6.2 Within 30 days after a referendum, any Voter who gave or tendered his vote at the referendum may request a review of the conduct of the referendum by forwarding by registered mail to the Electoral Officer particulars duly verified by Affidavit supporting one or more of the following grounds for the review:

6.2.1 there was a contravention of these Regulations that may affect the result of the Referendum; or

6.2.2 there was corrupt practice in connection with the referendum.

6.3 Where a request for a review is received by the Electoral Officer pursuant to subsection 6.2 that officer shall, within 7 days of the receipt of the request for the review, forward a copy of said request, together with all supporting documents to the Council.

6.4 The Electoral Officer may, if the material that has been filed is not adequate for deciding the validity of the referendum complained of, conduct such further investigation into the matter as the Electoral Officer deems necessary, in such manner as he or she deems expedient.

6.5 Such investigation may be held by the Electoral Officer or by any person designated by the Electoral Officer for the purpose.

6.6 Where the Electoral Officer designates a person to hold such an investigation, that person shall submit a detailed report of the investigation to the Electoral Officer

for his or her consideration.

6.7 The Electoral Officer may set aside the Referendum if the Electoral Officer is satisfied that:

6.7.1 there was a contravention of these Regulations that may affect the result of the Referendum; or

6.7.2 there was corrupt practice in connection with the referendum.

## **7. EFFECTIVE DATE**

These regulations came into full force and effect on the 24th day of October, 2018, following the conduct of a Band referendum on the 23<sup>rd</sup> day of October, 2018.