

**TERMS OF REFERENCE FOR A
MI'KMAQ-NOVA SCOTIA-CANADA CONSULTATION PROCESS**

BETWEEN:

The **MI'KMAQ OF NOVA SCOTIA** as represented by the Thirteen Mi'kmaw Saqmaq
(the "Mi'kmaq of Nova Scotia")

– and –

HER MAJESTY THE QUEEN IN RIGHT OF NOVA SCOTIA as represented by the
Minister of Aboriginal Affairs
("Nova Scotia")

– and –

HER MAJESTY THE QUEEN IN RIGHT OF CANADA as represented by the Minister of
Indian Affairs and Northern Development
("Canada")

Collectively referred to as "the Parties"

THE PARTIES agree as follows:

PURPOSE

1. The consultation process under this Terms of Reference is available whenever Canada or Nova Scotia wishes to conduct consultation on the record and with prejudice with one or more Mi'kmaq Bands respecting established or asserted Mi'kmaq Aboriginal or treaty rights, including consultation in respect of a decision or activity concerning Crown land, water or a natural resource.
2. The Parties intend that the consultation process under this Terms of Reference be the preferred choice for consultation by Canada and Nova Scotia with the Mi'kmaq of Nova Scotia.
3. This Terms of Reference does not constitute a commitment by any Party to reach agreement or to undertake consultation in respect of any particular decision, activity or subject matter.

STRUCTURE

Mi'kmaq of Nova Scotia Consultation Committees

4. The Mi'kmaq of Nova Scotia intend to participate in the consultation process under this Terms of Reference through committees appointed by and reporting to the Assembly of Nova Scotia Mi'kmaq Chiefs (the "Assembly"). The composition of the committees may change from time-to-time and from consultation-to-consultation, at the discretion of the Assembly.
5. Subject to determination by a Chief and Council pursuant to articles 6 to 8, the Assembly and the committees appointed by it have authority to enter into consultations and to bind and make commitments on behalf of the Mi'kmaq of Nova Scotia and the Chief and Council of each of the thirteen (13) Mi'kmaq Bands that subscribe to this document.
6. A Chief and Council that receives notice under Article 12a may at any time before or after consultation has commenced pursuant to that notice determine to conduct its own consultation on behalf of its respective Band.
7. A Chief and Council that determines under Articles 6 or 12b to conduct a consultation itself will give notice to that effect to the Assembly, which will provide written notice to Canada or Nova Scotia of the decision.
8. A Chief and Council that gives notice under Article 7 is not further represented by the Assembly and is not governed by this Terms of Reference, unless Canada or Nova Scotia and the Band agree to follow this Terms of Reference.

Consultation Advisory Group

9. The Parties shall establish a Consultation Advisory Group.
10. Each Party shall appoint one or more persons to represent them at the Consultation Advisory Group.
11. The Consultation Advisory Group shall advise on administrative and process issues associated with this Terms of Reference.

PRINCIPLES OF CONSULTATION PROCESS

12. The consultation process shall operate in good faith on the basis of the following principles:
 - a. Where Canada or Nova Scotia wishes to initiate consultation under this Terms of Reference, they shall provide notification in writing to the Chief and Council of all thirteen (13) Mi'kmaq Bands and the Assembly that consultation with prejudice and on the record is intended, respecting a particular decision, activity or subject matter;

- b. Each Chief and Council that receives notice under Article 12a shall have a reasonable opportunity to consider if it wishes to itself conduct consultation pursuant to that notice, as contemplated by Article 6 of this Terms of Reference.
- c. Canada or Nova Scotia shall make good faith efforts to provide to the Mi'kmaq all relevant information with respect to the proposed decision, activity or subject matter, and sufficient time to assess whether or not and the extent to which the decision, activity or subject matter may impact on established or asserted Mi'kmaq Aboriginal or treaty rights;
- d. The Assembly shall, within a reasonable period of time, identify and communicate to Canada or Nova Scotia any concern they may have respecting any potential adverse impact on established or asserted Mi'kmaq Aboriginal or treaty rights;
- e. Canada or Nova Scotia shall consider the concerns identified pursuant to 12d, identifying potential accommodations, if any, including, if appropriate, providing financial consideration or other redress;
- f. Canada or Nova Scotia shall notify the Assembly of any decision or determination reached, including responses to the issues or concerns raised, and notification of specific accommodations, if any, as a result of the consultation; and
- g. The Parties concerned may terminate by written notice any consultation process conducted pursuant to this Terms of Reference.

PROCESS OPTIONAL

- 13. The Parties acknowledge that the consultation process established through this Terms of Reference:
 - a. is optional; and
 - b. does not limit the ability of the Parties to engage in consultation independent of the consultation process set out in this Terms of Reference.

CONFIDENTIALITY

- 14. This document is not confidential and may be made public and tendered as evidence in a court of law or other legal proceeding.
- 15. In respect of any consultation conducted pursuant to this Terms of Reference, records and information may be provided to the Parties to the consultation and received by them in confidence. In each case where information is intended to be provided, received and held in confidence, the Party providing the information shall so notify the other Party or Parties participating in respect of that consultation. The Parties at the consultation shall determine whether the records or information in question should be provided, received and held in

confidence. If the Parties determine the records or information should be provided and received in confidence, any such record or other record containing the information shall be marked to indicate it was provided and received in confidence. It is the intention of the Parties that any such record and information be held in confidence and not disclosed publicly, unless such disclosure is required by law.

16. Notwithstanding Article 15, any Party may tender as evidence in a court of law or other legal proceeding records and information provided, received and held in confidence by the Parties to the consultation if the record or information is relevant to an issue of whether a duty to consult was or was not met or fulfilled through the consultation process conducted pursuant to this Terms of Reference.

PARTIES MAY PROCEED WITHOUT PREJUDICE

17. Notwithstanding any other provision of this Terms of Reference, the Parties to the consultation have the option of determining that, at any time prior to or during the consultation, discussions may be held and information exchanged, until further notice, on a without prejudice basis, in order to permit frank, cooperative and solution-oriented interaction without concern for the legal significance of admissions, concessions, positions and discussions for the period of time specified or agreed upon.

FUNDING

18. Contribution funding as determined by Canada and Nova Scotia will be provided to the Assembly to allow them to create and operate the Consultation Committees and participate in the Consultation Advisory Group. Such funding will be provided based on consideration of an annual budget submitted by the Assembly and subject to annual appropriations by Canada and Nova Scotia.
19. Each of Canada and Nova Scotia will consider the funding requirements of consultation respecting each proposed decision or activity.

REVIEW OF TERMS OF REFERENCE

20. The Parties will jointly review this Terms of Reference every three years. The objectives of the three-year review include, but are not limited to:
 - a. determine whether the Parties are opting to use this process with regularity;
 - b. if they are not opting to use the process, assess why not; and
 - c. consider if amendments to this Terms of Reference are desirable.

TERMINATION OF AGREEMENT

21. The Terms of Reference of the Consultation Process shall come into force and effect on the date of its signature and shall continue in force and effect unless terminated by one or more of the Parties upon three (3) months written notice to the other Parties hereto.
22. A Chief and Council may at any time by written notice to Canada, Nova Scotia, and the Assembly terminate its subscription to this Terms of Reference and take responsibility for all consultations on behalf of the Band.

AMENDMENT

23. This Terms of Reference may be amended with the written consent of the Parties.