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MI'KMAQ — NOVA SCOTIA — CANADA

UMBRELLA AGREEMENT

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BETWEEN:

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

— and —

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

— and —

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

Collectively referred to as "the Parties"

WHEREAS the Parties recognize the value of formal tripartite discussions,

WHEREAS the Parties believe it is desirable to jointly discuss, investigate and negotiate  
measures that will assist in the resolution of issues of mutual concern between the  
Mi'kmaq of Nova Scotia, Nova Scotia and Canada;

WHEREAS there are outstanding issues among the Parties including the inherent right  
to self-government, Aboriginal rights, including assertions of title, and treaty issues;

WHEREAS the Royal Commission on the Donald Marshall Jr. Prosecution recommended  
the establishment of a Tripartite Forum to mediate and resolve outstanding issues  
between the Parties;

WHEREAS recent court decisions such as *Delyamuukw* and *Marshall* have highlighted the  
importance of resolving issues of Aboriginal and treaty rights through negotiations;

WHEREAS the Supreme Court of Canada in *R. v. Marshall* has recognized the existence  
of Mi'kmaq rights pursuant to the Treaties of 1760-1761; and

WHEREAS the Parties wish to develop a process for consultation with respect to  
Aboriginal and treaty rights.

**THE PARTIES MAKE THE FOLLOWING COMMITMENTS:**

**GENERAL**

1. The Parties hereby agree to work together in good faith to resolve mutual issues. As a vehicle to achieve this commitment, the Parties will draw upon three distinct elements of their relationship:
  - a. the Tripartite Forum;
  - b. a broad negotiation process to consider constitutionally protected rights of the Mi'kmaq of Nova Scotia, and,
  - c. a consultation process.

**TRIPARTITE FORUM**

2. The Terms of Reference for the Tripartite Forum are currently under review through a joint effort of the Parties.
3. The Parties agree to reaffirm the Terms of Reference for the Tripartite Forum which may be amended from time to time as agreed to by all of the Parties.
4. The Parties agree that the mandate of the Tripartite Forum shall continue to be issues of community-based programs and projects and the Parties shall:
  - a. jointly discuss, investigate and negotiate measures that will assist in the resolution of issues, matters and topics of mutual concerns, and
  - b. establish work plans including time frames and resources on such issues, matters and topics.

**TREATY AND ABORIGINAL RIGHTS NEGOTIATIONS**

5. The Parties shall enter into good faith negotiations directed to achieving a Framework Agreement on Treaty and Aboriginal Rights Negotiations.
6. The Parties agree that the mandate of the Treaty and Aboriginal Rights Negotiations table shall include issues of definition, recognition and implementation of the constitutionally protected rights of the Mi'kmaq of Nova Scotia.
7. The Parties agree that the negotiation process and approaches adopted will be governed by the Framework Agreement. For greater certainty, the Parties agree that they will take into account the unique circumstances of the Mi'kmaq of Nova Scotia when developing their mandates and that their positions may differ from Canada's Comprehensive Land Claims Policy.

#### CONSULTATION

8. The Parties shall enter into good faith negotiations directed to achieving Terms of Reference for a Consultation Process.
9. The Terms of Reference for the Consultation Process shall address the nature of and the process regarding the requirement of governments to consult with the Mi'kmaq of Nova Scotia.

#### INTERPRETATION

10. Following ratification of the revised Terms of Reference for the Tripartite Forum and the Terms of Reference for the Consultation Process and the Framework Agreement for the Treaty and Aboriginal Rights Negotiations, these documents shall be appended to this Umbrella Agreement. These documents shall stand as independent arrangements according to the terms set out in each.
11. This Umbrella Agreement and related discussions and documents shall not be construed as admissions of fact or liability, and shall not preclude and shall be without prejudice to:
  - a. any other discussion, either tripartite or bilateral, between the Mi'kmaq of Nova Scotia, or individual Mi'kmaq First Nation Bands and Nova Scotia or Canada on matters of mutual concern, or between any organization and Nova Scotia or Canada on matters of mutual concern; and
  - b. the positions of the Parties before any other forum or court.
12. Except for Articles 11 through 16, the Parties agree that this Umbrella Agreement is not legally binding and is intended as an expression of goodwill and as a political commitment to enter into discussions. It is not intended to either create, define or affect legal rights or to be construed as an interpretive aid in the determination of any legal right.
13. The Parties agree, for greater certainty, to the following:
  - a. Except for the purpose of bringing this Article to the attention of a court, tribunal or board, the Parties undertake not to tender or seek admission of the Umbrella Agreement or of the specific content of meetings, discussions, negotiations and positions taken during the operation of the Umbrella Agreement, as evidence in a court of law or in any administrative or regulatory tribunal or board.

Umbrella Agreement up to the ratification of the Terms of Reference for the Tripartite Forum and the Consultation Process and the Framework Agreement for the Treaty and Aboriginal Rights Negotiations:

- i. shall be on a "without prejudice" basis,
  - ii. shall be deemed not to create, define, alter or affect the legal rights or positions of any of the Parties, and
  - iii. are not intended to examine specific Aboriginal or treaty rights, and are not intended to be consultation for the purpose of justification by Her Majesty for the infringement of any such rights of the Mi'kmaq of Nova Scotia or any member of a Mi'kmaq Band under s.35 of the *Constitution Act, 1982* or otherwise.
- c. Notwithstanding any other provision of the Umbrella Agreement, any Party may refer to publicly and may lead evidence regarding the Parties, date of operation, existence and purpose of this Umbrella Agreement and the frequency of and participants in meetings held pursuant to its operation before a court, regulatory tribunal, board or similar body.
- d. The benefit of Article 13 shall accrue to, and the undertakings of the Parties shall apply in respect of all thirteen Mi'kmaq Indian Bands and their governing Chiefs and Councils and membership, the Union of Nova Scotia Indians, the Confederacy of Mainland Mi'kmaq, Nova Scotia and Canada.

#### COMING INTO FORCE / TERMINATION

14. This Umbrella Agreement 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 six months written notice to the other Parties hereto.
15. Notwithstanding Article 14.0 of this Umbrella Agreement, provision may be made within the Tripartite Forum Terms of Reference, the Treaty and Aboriginal Rights Negotiations Framework Agreement and the Consultation Process Terms of Reference for termination of those specific processes.
16. Notwithstanding Article 14, the agreements, understandings, undertakings and commitments set out in Articles 11 to 13 shall continue in effect unless the Parties otherwise agree in writing.

Signed at Halifax, Nova Scotia, the 7<sup>th</sup> Day of June 2002.

Chief Digna Deborah Robinson [Signature]  
Chief Digna Deborah Robinson  
ACADIA BAND  
Witness

Chief Michael Gerard Julian [Signature]  
Chief Michael Gerard Julian  
AFTON BAND  
Witness

Chief Brian Toney [Signature]  
Chief Brian Toney  
Annapolis Valley Band  
Witness

Chief Sherry Mae Pictou [Signature]  
Chief Sherry Mae Pictou  
BEAR RIVER BAND  
Witness

Chief Lindsay Robert Marshall [Signature]  
Chief Lindsay Robert Marshall  
CHAPEL ISLAND BAND  
Witness

Chief Blair Francis [Signature]  
Chief Blair Francis  
ESKASONI BAND  
Witness

Chief Shirley Marie Clarke [Signature]  
Chief Shirley Marie Clarke  
GLOOSCAP FIRST NATION  
Witness

Chief Ann Francis [Signature]  
Chief Ann Francis  
PICTOU LANDING BAND  
Witness

Chief Terrance J. Paul [Signature]  
Chief Terrance J. Paul  
MEMBERTOU BAND  
Witness

Chief Lawrence A. Paul [Signature]  
Chief Lawrence A. Paul  
MILLBROOK BAND  
Witness

Chief Reginald Maloney [Signature]  
Chief Reginald Maloney  
SHUBENACADIE BAND  
Witness

Chief Mary Louise Bernhard [Signature]  
Chief Mary Louise Bernhard  
WAGMATCOOK BAND  
Witness

Chief Moley Googoo [Signature]  
Chief Moley Googoo  
WHYCONOACH BAND  
Witness

The Honourable Michael G. Baker [Signature]  
The Honourable Michael G. Baker  
MINISTER OF ABORIGINAL AFFAIRS  
Witness

The Honourable Robert D. Nault [Signature]  
The Honourable Robert D. Nault  
MINISTER OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT  
Witness