

**MI'KMAQ - NOVA SCOTIA - CANADA
TRIPARTITE FORUM
TERMS OF REFERENCE**

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

-and-

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NOVA SCOTIA, as
represented by the Minister of L'nu Affairs ("Nova Scotia")

-and-

HER MAJESTY THE QUEEN IN RIGHT OF CANADA, as represented by the Minister of
Indigenous Services Canada ("Canada")

Collectively referred to as "the Parties"

WHEREAS the Parties entered into a Mi'kmaq-Nova Scotia-Canada Tripartite Forum Memorandum of Understanding ("MOU") on July 2, 1997, which was amended on June 19, 1998. The MOU provides that the Parties affirm a Terms of Reference for the Tripartite Forum, which is attached as Appendix "A" to the MOU dated July 2, 1997. The Parties also agreed that the Terms of Reference may be amended from time to time by agreement by the Parties;

AND WHEREAS the Parties entered into an Umbrella Agreement on June 7, 2002, in which they recognized there are outstanding issues among the Parties including the inherent right to self-government, Aboriginal rights, including assertions of title, and treaty issues;

AND WHEREAS the Parties agreed in the Umbrella Agreement to work together in good faith to resolve mutual issues drawing upon three distinct elements of their relationship being the Tripartite Forum, a broad negotiation process to consider constitutionally protected rights of the Mi'kmaq of Nova Scotia, and a consultation process as a vehicle to achieve this commitment;

AND WHEREAS in conjunction with the restructuring of the Tripartite Forum in 2019 through to 2021, the Parties agree to amend the Terms of Reference for the Tripartite Forum;

NOW THEREFORE the Parties agree as follows:

1.0 DEFINITIONS

- 1.1 "*Code of Conduct and Code of Ethics*" refers to the guideline documents that outline principles of conduct for all participants in the Tripartite Forum attached as *Appendix A*.
- 1.2 "*Ex officio*" means a non-voting representative of the Executive Committee who will not be counted for the purpose of determining a quorum of the Executive Committee.
- 1.3 "*Mi'kmaq*" is inclusive of all members who are represented by the Thirteen Mi'kmaq Saqmaq of Nova Scotia, as documented within their respective Band lists.
- 1.4 "*Resource Person*" means a person who provides knowledge or expertise to any Working Committee and does not have a vote for any purposes of a Working Committee and does not constitute a representative for the purpose of determining a quorum of a Working Committee.
- 1.5 "*Tripartite Forum*" means the Mi'kmaq-Nova Scotia-Canada Tripartite Forum.

2.0 OBJECTIVES

- 2.1 The Tripartite Forum is intended to strengthen relationships among the Parties and to resolve issues of mutual concern affecting Mi'kmaq communities in a manner that respects the needs of the Mi'kmaq of Nova Scotia.

- 2.2 The focus of the Tripartite Forum will be on building a foundation for prosperous and vibrant Mi'kmaq communities, which will be accomplished by having the Parties work together. The Parties will jointly discuss, investigate, design, and implement solutions that will assist in the resolution of such matters.
- 2.3 The Tripartite Forum exists as one of three distinct elements of the "Made-in-Nova Scotia" process as described in the 2002 Umbrella Agreement between the Mi'kmaq government and the Federal and Provincial governments. As such, the Tripartite Forum is not intended to initiate or discuss constitutional section 35(1) aboriginal or treaty rights or the issues arising thereunder. Nor is the Tripartite Forum a substitute for "consultations" of those issues. Rather, the Tripartite Forum exists to discuss, and repair service delivery gaps and other issues found to exist within the current "status quo" paradigm within the identified spheres of the Tripartite Forum working committees.

3.0 STRUCTURE

- 3.1 The organizational structure of the Tripartite Forum shall be as follows:

- Executive Committee
- Officials Committee
- Working Committees
- Tripartite Forum Secretariat
- Tripartite Forum Fund for Social and Economic Change Committee

4.0 EXECUTIVE COMMITTEE

- 4.1 The Executive Committee shall consist of the following representatives:

- (a) The Mi'kmaq of Nova Scotia, represented by:
- (i) the Thirteen Mi'kmaq Saqmaq (Chiefs) of Nova Scotia; and,
 - (ii) the *ex officio* representatives are the Kji-saqmaw (Grand Chief) of the Mi'kmaq Grand Council; the Executive Directors and District Chiefs of the Confederacy of Mainland Mi'kmaq and the Union of Nova Scotia Mi'kmaq; and the President of the Nova Scotia Native Women's Association.
- (b) Canada, represented by a senior official at the Regional Director General level from the relevant department responsible for the issues of mutual concern being discussed, investigated, or assessed;
- (c) Nova Scotia, represented by a senior official at the Deputy Minister level from the relevant department responsible for the issues of mutual concern being discussed, investigated, or assessed.

- 4.2 The Executive Committee shall mandate the agenda, issues, parameters, and direction of the Tripartite Forum.
- 4.3 The Executive Committee shall have the final decision-making authority for the Tripartite Forum.
- 4.4 The Executive Committee has sole and exclusive authority to recommend the amendment of the Memorandum of Understanding dated July 2, 1997, including any subsequent amendments to the Memorandum of Understanding or the Terms of Reference.
- 4.5 The Executive Committee shall make all decisions based upon the consensus of the Parties.
- 4.6 The Executive Committee shall address all issues referred to it by the Officials Committee.

- 4.7 The Executive Committee has the authority to authorize participation at the Officials Committee and has sole discretion to amend the list of organizations that are eligible to become permanent members of the Officials Committee as contained in Article 5.1.
- 4.8 A Mi'kmaw First Nation Band that has withdrawn its participation from the Tripartite Forum may request to re-enter the Tripartite Forum by submitting a letter in writing signed by the Saqmaw/Saqma'skw (Chief) to the Executive Committee for consideration.
- 4.9 After receiving the letter referred to in Article 4.8, the Executive Committee may consider the application by the Saqmaw/Saqma'skw to participate in the Tripartite Forum and may establish the terms and conditions on which the Saqmaw/Saqma'skw (Chief) will participate and which must include:
- (a) a resolution duly passed and signed by the band council of the Saqmaw/Saqma'skw (Chief) which accepts all terms and conditions established by the Executive Committee on which the Saqmaw/Saqma'skw (Chief) will participate; and,
 - (b) a term and condition which specifies the date or event on which the participation of the Saqmaw/Saqma'skw (Chief) may commence.
- 4.10 After the Executive Committee receives the band council resolution referred to in paragraph 4.9(a) it may approve the participation of the Saqmaw/Saqma'skw (Chief) subject to compliance with and fulfillment of all of the terms and conditions established by the Executive Committee.
- 4.11 The Executive Committee shall meet no less than once per calendar year or by the request of the Officials Committee.

5.0 OFFICIALS COMMITTEE

- 5.1 The Officials Committee shall consist of the following representatives:
- i. Two Nova Scotia Mi'kmaw Saqmaq (Chiefs or their proxies), one from each respective Tribal Council.
 - ii. Mi'kmaw organizations which currently include:
 - (i) The Union of Nova Scotia Mi'kmaq, Executive Director;
 - (ii) The Confederacy of Mainland Mi'kmaq, Executive Director; and
 - (iii) The Nova Scotia Native Women's Association, Executive Director.
 - iii. A representative of Indigenous Services Canada (Federal)
 - iv. A representative of the Office of L'nu Affairs (Provincial).
 - v. Other Mi'kmaw organizations approved by the Executive Committee, if any. Other Mi'kmaw organizations wishing to join the Officials Committee shall submit a written request to the Executive Committee for consideration. Participation of a Mi'kmaw organization as a representative on the Officials Committee is separate and distinct from participation on the Executive Committee.
- 5.2 The Officials Committee shall establish Working Committees based upon specific issues identified at the Executive Committee for further discussion and resolution.
- 5.3 The Officials Committee shall coordinate and provide strategic direction to the Working Committees by identifying specific items from the strategic plan of each Working Committee as priorities for the upcoming fiscal year, setting out the specific work plan, timeframes, manner of discussion, investigation, and resourcing for each Working Committee.

- 5.4 The Officials Committee shall review the work from all of the Working Committees and make recommendations based on these reports to the Executive Committee for ratification, resolution, or clarification.
- 5.5 The Officials Committee shall make all decisions based upon majority vote, so long as the majority conforms to the following:
- (a) either Canada or Nova Scotia votes yes; and
 - (b) a majority, composed of the Saqmaq (Chiefs), Mi'kmaw organizations referred to in paragraph 5.1(ii) and other Mi'kmaw organizations approved in accordance with paragraph 5.1(v), if any, who participate by attending at the time that the decision is made, and who vote yes.
- 5.6 All representatives of the Officials Committee who have voted against a decision made by the Officials Committee may prepare and present a dissenting argument to the Executive Committee by tabling the dissenting opinion within thirty (30) days to the Executive Chair identified in Article 9.1.
- 5.7 The Officials Committee shall meet no less than four times per calendar year.

6.0 WORKING COMMITTEES

- 6.1 Each Working Committee shall have three of co-chairs, with one representative designated by the Mi'kmaq of Nova Scotia, Canada, and Nova Scotia. The co-chairs shall be responsible for the operation of the Working Committee and shall report to the Officials Committee and, if so, instructed by the Officials Committee, shall report to the Executive Committee.
- 6.2 In addition to the three of co-chairs referred to in Article 6.8 each Working Committee shall be comprised of an organization liaison (listed in 5.1 (ii)) who will be non-voting, and at least one representative from each of:
- (i) the Mi'kmaw organizations referred to in paragraph 5.1(ii);
 - (ii) the Mi'kmaw organizations approved in accordance with paragraph 5.1(v) if any;
 - (iii) Nova Scotia; and
 - (iv) Canada.
- 6.3 Each Working Committee shall provide the Officials Committee with reports and recommendations to fulfill the directions given by the Officials Committee within the mandate adopted by the Executive Committee.
- 6.4 Each Working Committee shall prepare an annual work plan and, a submission for the Tripartite Forum annual report, all to be ratified by the Officials Committee.
- 6.5 Each Working Committee shall follow the voting and dissent procedure consistent with procedure outlined in Articles 5.5 and 5.6 except that the dissenting argument must first be presented to the Officials Committee.
- 6.6 The co-chairs of each Working Committee shall adopt procedures to ensure compliance with these Terms of Reference and The Tripartite Forum Code of Conduct Guidelines..
- 6.7 Within an existing budget allocation a Working Committee may create one or more sub-committees or to seek the assistance of a Resource Person to assist in carrying out its work and the sub-committee or Resource Person shall report directly on all matters to that Working Committee.
- 6.8 The quorum requirements for a Working Committee to conduct a meeting are as follows:

Committee Co-Chair at least one (1) committee co-chair must be present

Provincial Committee Representative (any department) if the Province chairs the meeting 1

Federal Committee Representative (any department) if Canada chairs the meeting 1

Mi'kmaw Committee Representatives at least 50% of the voting Committee Representatives which can include the Co-Chair as long as the Co-Chair is not chairing the meeting must be Mi'kmaq

6.9 In the event that a quorum as specified in Article 6.8 is not present then a meeting may proceed but only for information purposes.

7.0 **TRIPARTITE FORUM SECRETARIAT**

7.1 The Tripartite Forum Secretariat shall provide administrative and operational support to all committees of the Tripartite Forum, as directed through their respective organizations according to the collective organization's job descriptions, under the direction of the officials committee. The staff of the Tripartite Forum Secretariat shall include, but not be limited to two administrators and two communications' personnel. These positions are distributed between both tribal councils The CMM and UNSM and a project fund coordinator (to be housed at the organization closest to the successful candidate).

7.2 Staff of the Tripartite Forum Secretariat will report to and be paid by their respective tribal council. Funds to support the Tripartite Forum Secretariat shall be shared equally between Nova Scotia and Canada.

Each Tribal council will share the cost and reporting measures in regard to the Project Fund coordinator.

7.3 The Tripartite Forum Secretariat shall be responsible for taking and distributing minutes of the Executive Committee, the Officials Committee, and Working Committees.

8.0 **TRIPARTITE FORUM FUND FOR SOCIAL AND ECONOMIC CHANGE COMMITTEE**

8.1 The Tripartite Forum Fund for Social and Economic Change Committee shall consist of the following voting members:

- A representative from the Office of L'nu Affairs.
- A representative from Indigenous Services Canada,
- The Three Tripartite Forum Liaisons (The CMM, UNSM, NSNWA).

The Tripartite Forum Project Fund for Social and Economic Change Committee shall also consist of the following non-voting members: the Project Fund Coordinator and the Communications personnel hosted by The Confederacy of Mainland Mi'kmaq and The Union of Nova Scotia Mi'kmaq.

8.3 The Project Fund Coordinator will provide the Tripartite Forum Fund for Social and Economic Change Committee with project proposal summaries and preliminary assessments to assist the Tripartite Forum Fund for Social and Economic Change Committee in determining its recommendations based on the Guidelines for Tripartite Forum Fund for Social and Economic Change.

- 8.4 The Tripartite Forum Fund for Social and Economic Change Committee shall discuss, review, and provide recommendations on project proposals submitted by the Working Committees, as well as monitor progress and the guidance of projects.
- 8.5 The Tripartite Forum Fund for Social and Economic Change Committee will use a consensus-based decision to fund successful project proposals. The Committee has the option to utilize a majority vote in cases where consensus cannot be reached. In the event of a tie, rescore sections of an evaluation rubric after another round of deliberation.
- 8.6 The Tripartite Forum Fund for Social and Economic Change Committee shall meet quarterly, or as needed.

9.0 EXECUTIVE CHAIR

- 9.1 The Executive Chair will rotate among the three Parties on an annual basis.
- 9.2 The role of the Executive Chair, is to chair Executive meetings on an annual basis.
- 9.3 The Mi'kmaq shall exercise discretion on appointing an Executive Chair on their behalf when required.
- 9.4 The Executive Chair shall be chosen from the list of representatives as set out under Section 4.1.

10.0 FINANCES

- 10.1 The Parties agree to pursue the establishment of a multi-year funding arrangement for the Tripartite Forum.
- 10.2 In the interim, the operating costs of the Tripartite Forum shall be shared equally between Canada and Nova Scotia as set out herein. Expenditures under this funding may be subject to possible review.
- 10.3 Nova Scotia and Canada shall provide funding to the Mi'kmaq of Nova Scotia in support of the operation and administration of the Tripartite Forum:
- (a) This funding shall support the:
- Executive Committee;
 - Officials Committee;
 - Working Committees;
 - Aboriginal organizational capacity to participate and coordinate Tripartite Forum activity;
 - Tripartite Secretariat;
 - Tripartite Forum Fund for Social and Economic Change;
 - Executive Chair; and
 - Other aspects of the Tripartite Forum as determined by the Executive Committee.
- (b) Funding may be delivered through the following organizations:
- The Confederacy of Mainland Mi'kmaq;
 - The Union of Nova Scotia Mi'kmaq;
 - Nova Scotia Native Women's Association; and
 - Other organizations as authorized by the Executive Committee.
- 10.4 Canada's share of the costs of the Tripartite Forum funding, including costs arising from Articles 10.5 and 10.6 herein, shall be subject to annual appropriations by Parliament and approval of the Federal Treasury Board, and that of Nova Scotia shall be subject to annual appropriations by the Legislature.

- 10.5 Funding may be provided for research and demonstration projects designed to assess the provision of additional programs and services or to modify existing policies or procedures concerning the Mi'kmaw community in Nova Scotia. Unless otherwise specified, financial resources to support this element shall be shared equally between Nova Scotia and Canada.
- 10.6 Programs or services resulting from tripartite discussions or initiatives shall be funded by the appropriate agencies pursuant to whatever agreements the Parties may agree to.
- 10.7 Existing terms and conditions of funding shall apply with regard to accountability and become part of the arrangement with the Party or Parties to which funds are disbursed.
- 10.8 Specific arrangements with organizations, agencies, and individuals for project research funding shall also contain terms and conditions for funding accountability.
- 10.9 The fiscal year of the Tripartite Forum shall be from the period beginning April 1st of the current year to March 31st of the following year.
- 10.10 Financial arrangements within these Terms of Reference do not prejudice alternative financial arrangements which may result from initiatives mandated by the Tripartite Forum.

11.0 INTERPRETATION

- 11.1 In accordance with Article 10 of the Umbrella Agreement, the Terms of Reference for the Tripartite Forum stands as an independent arrangement that governs the Tripartite Forum and for greater certainty, sets out all of the provisions which will apply with respect to issues relating to without prejudice communications, confidentiality, and public information.
- 11.2 The Tripartite Forum and committees created pursuant to the Tripartite Forum, the Terms of Reference for the Tripartite Forum, 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'kmaw 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.
- 11.3 Except for Articles 11.1 through 11.4, the Parties agree that the Terms of Reference 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 create, define or affect legal rights or to be construed as an interpretive aid in the determination of any legal rights.
- 11.4 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 Tripartite Forum and committees created pursuant to the Tripartite Forum, the Terms of Reference for the Tripartite Forum or the specific content of meetings, discussions, initiatives and positions taken during the operation of the Tripartite Forum, the Terms of Reference for the Tripartite Forum and any committees formed pursuant to the Tripartite Forum, as evidence in a court of law or in any administrative or regulatory tribunal or board.
 - (b) Unless the Parties agree otherwise in writing, all meetings, discussions, minutes, audiotapes and videotapes created, documents generated, and positions taken during the operation of the Terms of Reference for the Tripartite Forum, the Tripartite Forum, and any of the committees formed pursuant to the Tripartite

Forum leading up to its ratification of the Terms of Reference for the Tripartite Forum:

- (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;
 - (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 under s. 35 of the *Constitution Act, 1982* or otherwise of the Mi’kmaq of Nova Scotia or any member of a Mi’kmaw First Nation Band; and
- (c) Notwithstanding any other provision of the Terms of Reference for the Tripartite Forum, any Party may refer to publicly and may lead evidence regarding the Parties, date of operation, existence, and purpose of this Terms of Reference for the Tripartite Forum and the frequency of any participation of meetings held pursuant to its operation before a court, regulatory tribunal, board or similar body.
- (d) The benefit of Article 11 shall accrue to, and the undertakings of the Parties shall apply in respect of all thirteen Mi’kmaw First Nation Bands and their governing Chiefs and Councils and membership, the Grand Council of the Mi’kmaq, the Mi’kmaw organizations referred to in paragraph 5.1(ii), as well as other Mi’kmaw organizations approved in accordance with paragraph 5.1(v) if any.

12.0 EFFECTIVE DATE

12.1 Effective as of the date of signing of these revised Terms of Reference for the Tripartite Forum:

- (a) the revised Terms of Reference for the Tripartite Forum shall replace and supersede any existing Terms of Reference among the Parties concerning the Tripartite Forum; and
- (b) the revised Terms of Reference for the Tripartite Forum will be appended to the Umbrella Agreement dated June 7, 2002, in accordance with Article 10 of the Umbrella Agreement.
- (c) Amendments to these Terms of Reference shall be approved at a duly convened Executive Committee Meeting by a majority vote.

SIGNED on behalf of the Parties this 12 day of MARCH, 2021.

SIGNED, SEALED, AND DELIVERED) **THE MI’KMAQ OF NOVA SCOTIA**
in the presence of:)
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) Per:
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Forum leading up to its ratification of the Terms of Reference for the Tripartite Forum:

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SIGNED on behalf of the Parties this day of _____, 2021.

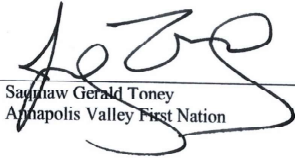
SIGNED, SEALED, AND DELIVERED) THE MI'KMAQ OF NOVA SCOTIA
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Witness: Kji-saqmaw of the Mi'kmaw
Grand Council


Saqma'skw Diana Deborah Robinson
Acadia First Nation

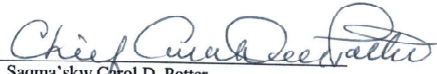
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Witness:


Saqmaq Gerald Toney
Annapolis Valley First Nation


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Witness:


Saqma'skw Carol D. Potter
Bear River First Nation

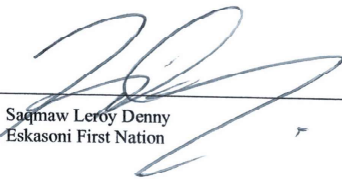
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Saqmaq Wilbert Marshall
Pottotek First Nation


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Saqmaq Leroy Denny
Eskasoni First Nation

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Saqmaq Sidney Peters
Glooscap First Nation


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Membertou First Nation


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Saqmaw Robert Gfoade
Millbrook First Nation

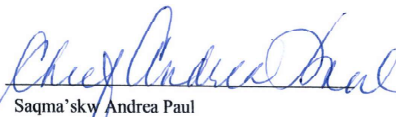
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Saqmaw Tma Francis
Paq'mkek Mi'kmaw Community

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Saqma'sky Andrea Paul
Pictou Landing First Nation

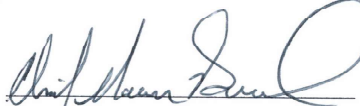
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Saqmaw Micheal Sack
Sipekne'katik First Nation

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Saqmaw Norman Bernard
Wagmatcook First Nation

Witness: _____

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Saqma'skw Annie Bernard
We'koqma'q First Nation

) **HER MAJESTY THE QUEEN IN**
) **RIGHT OF THE PROVINCE OF NOVA**
) **SCOTIA**

) Per: _____

Witness: _____

Chief Executive Officer
Office of L'nu Affairs Nova Scotia

) **HER MAJESTY THE QUEEN IN**
) **RIGHT OF CANADA**

) Per: _____

Witness: _____

Regional Director General
Indigenous Services Canada

Witness:

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Terrance J. Paul

Saqmaw Terrance J. Paul
Membertou First Nation

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Saqmaw Robert Gloade
Millbrook First Nation

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Paq'tnkek Mi'kmaw Community

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Saqma'skw Andrea Paul
Pictou Landing First Nation

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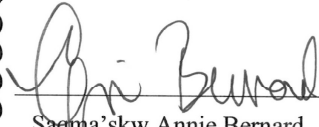
Saqmaw Micheal Sack
Sipekne'katik First Nation

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Saqmaw Norman Bernard
Wagmatcook First Nation

Witness:

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) Saqma'skw Annie Bernard
) We'koqma'q First Nation

Witness:

) **HER MAJESTY THE QUEEN IN**
) **RIGHT OF THE PROVINCE OF NOVA**
) **SCOTIA**
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) Per:
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) _____
) Chief Executive Officer
) Office of L'nu Affairs Nova Scotia

Witness:

) **HER MAJESTY THE QUEEN IN**
) **RIGHT OF CANADA**
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) Per:
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) _____
) Regional Director General
) Indigenous Services Canada
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