

CONSULTATION AGREEMENT

Between

THE MÉTIS NATION OF ALBERTA

which has incorporated the Métis Nation of Alberta Association
as its legal and administrative arm
as represented by its President
(**"MNA"**)

-and-

THE GOVERNMENT OF CANADA

as represented by the Minister of Indian Affairs and Northern Development
(**"Canada"**)

(hereinafter referred to collectively as the "Parties" and individually as a "Party")

WHEREAS section 35 of the *Constitution Act, 1982*, states that "the existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed" and "the 'aboriginal peoples of Canada' includes the Indian, Inuit and Métis peoples";

WHEREAS Canada recognizes the Métis Nation as a distinct Aboriginal people that emerged with its own collective identity, language, culture, way of life, and self-government in the historic Northwest prior to Canada's westward expansion following Confederation and that the Métis Nation continues to exist as a distinct Aboriginal people today;

WHEREAS the citizens of the Métis Nation who reside in what is now the province of Alberta comprise and are collectively referred to as the Métis Nation within Alberta (the "Métis Nation within Alberta");

WHEREAS the MNA is mandated to represent its citizens through a centralized registration system by which MNA citizens voluntarily authorize the MNA to promote, pursue, and defend Aboriginal, legal, constitutional, and other rights of Métis in Alberta and Canada;

WHEREAS the MNA's citizens are represented through the MNA's Provincial Council, Regional Councils, and Local Councils, which work—together—to provide democratic, effective, and accountable representation of MNA citizens across Alberta;

WHEREAS the MNA, through its registry and democratically elected governance structures at the local, regional, and provincial levels, is mandated and authorized to represent the citizens who comprise the Métis Nation within Alberta, including dealing with collectively held Métis rights, interests, and outstanding claims against the Crown;

WHEREAS Canada is committed to working on a nation-to-nation basis with the Métis Nation through bilateral, government-to-government negotiations with the MNA to advance reconciliation and renew the Parties' relationship through cooperation, respect for Métis rights, and ending the *status quo*;

WHEREAS the Crown has a legal and constitutional duty to consult and, if appropriate, accommodate Aboriginal peoples when the Crown has actual or constructive knowledge of an asserted or established Aboriginal right, interest, or claim that might be adversely affected by contemplated Crown conduct;

WHEREAS, as expressed in the *Principles Respecting the Government of Canada's Relationship with Indigenous Peoples*, Canada recognizes that meaningful engagement with Indigenous peoples aims to secure their free, prior, and informed consent when Canada proposes to take actions which impact them and their rights, including their lands, territories, and resources;

WHEREAS, as expressed in the *Principles Respecting the Government of Canada's Relationship with Indigenous Peoples*, Canada recognizes the right of Indigenous peoples to participate in decision-making in matters that affect their rights through their own representative institutions and the need to consult and cooperate in good faith with the aim of securing their free, prior, and informed consent;

WHEREAS the Parties wish to establish a process that will guide consultations when Canada has a legal obligation to consult.

The Parties agree as follows:

1. PURPOSE

- 1.1 The consultation process described in this Consultation Agreement (the "Agreement") is available whenever Canada wishes to conduct consultation on the record and with prejudice with the MNA respecting potential adverse effects of contemplated federal Crown conduct on the established or asserted Aboriginal rights, claims, or interests of the Métis Nation within Alberta.
- 1.2 The Parties intend that the consultation process described in this Agreement be the preferred choice for consultation by Canada with the MNA.
- 1.3 This Agreement does not constitute a commitment by any Party to reach agreement or to undertake consultation with respect to any particular decision, activity, or subject matter.
- 1.4 This Agreement does not prevent the Parties from engaging in consultations independent of this process or from concluding other consultation agreements.

- 1.5 The Parties agree that Canada may also engage with the MNA through this Agreement for decisions and/or activities for good governance or policy reasons and not specific to section 35 rights.

2. THE MNA'S APPROACH TO CROWN CONSULTATIONS

- 2.1 The MNA's citizens have authorized the MNA to deal with their collectively-held Métis rights, claims, and interests. The MNA's Provincial Council, Regional Councils, and Local Councils work together to ensure that the Crown's duty to consult with the Métis Nation within Alberta is meaningfully discharged.
- 2.2 The MNA has developed and adopted Regional Consultation Protocol Agreements that facilitate effective Crown consultation through the MNA's governance structures at the local, regional, and provincial levels regarding contemplated Crown conduct that may impact the rights, claims, or interests of the Métis Nation within Alberta.
- 2.3 Each MNA Regional Consultation Protocol Agreement sets out the roles and responsibilities of the MNA Provincial Council and signatory MNA Regional Council and Local Council(s) in the Crown consultation process and establishes a Regional Consultation Committee as the sole authority for making decisions regarding the conduct of Crown consultation on behalf of the MNA citizens residing in a specified region.
- 2.4 The establishment of Regional Consultation Committees is undertaken at the sole discretion of the MNA pursuant to its internal processes. Existing MNA Regional Consultation Committees are set out in Annex A. Where the MNA establishes additional MNA Regional Consultation Committees that it intends to be subject to this Agreement, it will provide Canada with reasonable notice thereof. Canada will work with the MNA to ensure the application of this Agreement to any such additional MNA Regional Consultation Committees, including by amending Annex A as necessary.
- 2.5 Each MNA Regional Consultation Committee is comprised of the president or the designated representative of the president of the MNA's Provincial Council and the signatory MNA Regional Council and Local Council(s).
- 2.6 The Regional Consultation Protocol Agreements provide for the establishment of Regional Consultation Offices to support the MNA Regional Consultation Committees.
- 2.7 The Regional Consultation Offices are the points of contact for the purpose of Crown consultation, and they work with the MNA Regional Consultation Committees to ensure meaningful and effective Crown consultation.
- 2.8 The MNA provides administrative and technical support in consultation processes with the Crown to the MNA Regional Consultation Committees through the Regional Consultation Offices.

2.9 The MNA's five steps for consultation and accommodation include:

- 2.9.1 Notice;
- 2.9.2 Provision of necessary capacity (if required);
- 2.9.3 Information exchange;
- 2.9.4 Assessing effects on Métis rights, claims, and interests; and,
- 2.9.5 Accommodation (if appropriate).

3. CANADA'S APPROACH TO CROWN CONSULTATIONS

- 3.1 Canada participates in consultations through the federal departments or other Crown agencies responsible for the contemplated conduct in respect of which consultation is sought.
- 3.2 Federal departments and agencies follow Canada's *Updated Guidelines for Federal Officials to Fulfill the Duty to Consult* in addition to other policies and guidelines that may exist for each department or agency.
- 3.3 Federal departments and agencies endeavour to take a coordinated approach to consultation and accommodation to ensure an effective and efficient process for proposed activities or actions.
- 3.4 Where applicable, Canada uses and relies to the extent possible on the processes of other parties (e.g. boards, industry, province) to assist it in fulfilling its duty to consult and, where appropriate, accommodate.
- 3.5 Where, as provided for in art. 3.4, Canada intends to rely on the process of another party to assist it in fulfilling its duty to consult and, where appropriate, accommodate, Canada shall provide timely notification as provided for in art. 5.4 of Canada's intention to rely on the said process in fulfilling its duty to consult and the extent to which it intends to do so.
- 3.6 Notwithstanding art. 3.4, the Crown always holds ultimate responsibility for ensuring that consultation is adequate.

4. MNA-CANADA CONSULTATION AGREEMENT ADVISORY COMMITTEE

- 4.1 The Parties shall establish a Consultation Agreement Advisory Committee consisting of representatives of each Party and shall meet regularly. The Consultation Agreement Advisory Committee will:
 - 4.1.1 Exchange information regarding the progress of existing and upcoming consultation activities to facilitate improved consultation processes and community preparedness;

- 4.1.2 Where appropriate, conduct early engagement on upcoming projects and/or follow-up on accommodation measures;
- 4.1.3 Conduct an informal annual review of the application of this Agreement to determine whether the Parties are using this process regularly; if not, assess why not and, if required, consider whether amendments to the Agreement are necessary or if there are potential funding needs associated with the Agreement's implementation; and,
- 4.1.4 Meet annually to discuss the adequacy of this Agreement and, three (3) years after the date of signing, report to senior officials responsible for the consultation, engagement, and accommodation activities of the respective Parties on the Agreement's effectiveness and usage of it.

5. THE CONSULTATION PROCESS

- 5.1 The Parties agree to conduct meaningful consultations in good faith when the federal Crown contemplates conduct that might adversely affect the established or asserted Aboriginal rights, claims, or interests of the Métis Nation within Alberta by following the process set out below.
- 5.2 The Parties agree that the Métis Nation within Alberta, in keeping with the process set out below, has the right to participate in decision-making in matters that affect their rights and agree to the need to consult and cooperate in good faith with the aim of securing their free, prior, and informed consent.
- 5.3 The Parties agree that meaningful engagement with the Métis Nation within Alberta, in keeping with the process set out below, aims to secure their free, prior, and informed consent when Canada proposes to take actions which impact them and their rights, including their lands, territories and resources.
- 5.4 Where Canada wishes to initiate consultation under this Agreement, Canada shall provide notification in writing to the Regional Consultation Office(s) for the MNA Region(s) in which the rights, claims, and interests of the Métis Nation within Alberta have the potential to be impacted by contemplated Crown conduct. Notification shall indicate that Canada is initiating consultation with prejudice and on the record respecting the Federal Crown action.
- 5.5 Where Canada wishes to initiate consultation or engagement regarding legislative, policy, or other strategic, higher level decisions that have the potential to impact the Métis Nation within Alberta as a whole, Canada will send notification as contemplated in art. 5.4 to the MNA Provincial Office.
- 5.6 As soon as possible after the provision of notification in art. 5.4, representatives of Canada and the relevant Regional Consultation Office(s) shall meet to develop a mechanism appropriate to the circumstances to facilitate and co-ordinate meaningful

consultation and engagement with respect to the contemplated Crown conduct and to decide upon timelines acceptable to both Parties for carrying such consultations out.

- 5.7 Subject to art. 9.2, the mechanism referred to in art. 5.6 may include funding to allow the MNA, through the relevant MNA Regional Consultation Committee(s) and Regional Consultation Offices, to participate meaningfully in the consultation process.
- 5.8 In any consultation pursuant to art. 5.6, Canada will, to the extent appropriate:
- 5.8.1 Ensure that the MNA, through the appropriate Regional Consultation Office(s) and the process established by the applicable MNA Regional Consultation Protocol Agreement(s), is provided with relevant and sufficient information that is reasonably required to assess potential adverse impacts of the contemplated Crown conduct on the rights, claims, and interests of the Métis Nation within Alberta;
 - 5.8.2 Engage with the MNA, through the appropriate Regional Consultation Office(s) and the process established by the applicable MNA Regional Consultation Protocol Agreement(s), so that it has an opportunity to articulate any of its concerns regarding the potential adverse impacts of the contemplated Crown conduct on the rights, claims, and interests of the Métis Nation within Alberta;
 - 5.8.3 Seriously consider the concerns and representations of the MNA, as conveyed by the Regional Consultation Office(s) in keeping with the process established by the applicable MNA Regional Consultation Protocol Agreement(s), in relation to the potential adverse impacts of the contemplated Crown conduct on the rights, claims, and interests of the Métis Nation within Alberta by, wherever possible, demonstrably responding to the MNA's concerns and integrating the MNA's representations into the proposed plan of action;
- and, if appropriate,
- 5.8.4 Seriously consider ways in which to mitigate any potential adverse impacts that the contemplated Crown conduct might have on the rights, claims, and interests of the Métis Nation within Alberta;
 - 5.8.5 Accommodate the MNA's concerns.
- 5.9 Canada shall notify the MNA Regional Consultation Committee(s) 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.
- 5.10 The amount of time to be provided for each step set out above may differ depending on the contemplated Crown conduct in question. Where a Regional Consultation Office advises Canada that a timeline for the consultation established pursuant to art.

5.6 is insufficient to ensure the meaningfulness of the process, Canada and the relevant Regional Consultation Office shall endeavour to agree on a revised, mutually acceptable timeline.

5.11 Where consultations or engagements are conducted following a notice provided to the MNA's Provincial Office as contemplated in art. 5.5, the consultation process set out above will apply, with the MNA's Provincial Council fulfilling the role of the MNA Regional Consultation Committee(s) and the MNA's Métis Rights and Accommodation Department fulfilling the role of the Regional Consultation Office(s).

5.12 Notwithstanding anything in this Agreement, any of the Parties may terminate by seven (7) days written notice any consultation conducted pursuant to this Agreement.

6. GENERAL MATTERS

6.1 This Agreement does not constitute a commitment by any Party to reach agreement within a consultation process in respect of any particular contemplated Crown conduct.

6.2 Nothing in this Agreement is intended to alter any statutory or regulatory requirements to which Canada is subject or to replace any consultation processes established pursuant to such requirements.

6.3 This Agreement is not subject to negotiation privilege and may be tendered as evidence in a court of law or other legal proceedings.

6.4 This Agreement is without prejudice to Canada's obligations to other s. 35 rights-bearing Aboriginal groups.

6.5 Nothing in this Agreement is intended to:

6.5.1 Alter or define any Crown duty to consult and, if appropriate, accommodate;

6.5.2 Prevent the MNA from relying on any constitutional, common law, or statutory right it may have respecting the Crown's duty to consult;

6.5.3 Represent the views of or be interpreted as admissions by either of the Parties with respect to the nature and scope of any duty to consult and, if appropriate, accommodate;

6.5.4 Prevent the MNA from seeking judicial review of any Crown conduct on the basis of a failure of the duty to consult and, if appropriate, accommodate; or,

6.5.5 Recognize, deny, create, extinguish, abrogate, derogate from, or define any Aboriginal rights, claims, or interests of the Métis Nation within Alberta.

7. CONFIDENTIALITY

- 7.1 The terms and conditions of this Agreement are not confidential and may be made public and tendered as evidence in a court of law or other legal proceedings.
- 7.2 In respect of any consultation conducted pursuant to this Agreement, records and information may be provided and received 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. Both Parties 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, the record shall be so marked and any other record containing the information will also 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, unless such disclosure is required by law.
- 7.3 Unless otherwise agreed to, and notwithstanding art. 7.2, any records or information provided in confidence to any federal department or agency consulting under this Agreement shall be deemed to have been provided as confidential to the Government of Canada and may be shared freely amongst federal departments and agencies for the purposes of the consultation activity, and, unless otherwise specified by the Party providing the confidential information, for the purposes of other consultations between the Parties.
- 7.4 When records and information provided and received for a consultation between the Parties is used by Canada for the purposes of a different consultation with the MNA, Canada shall verify with the appropriate Regional Consultation Office(s) or the MNA's Métis Rights and Accommodation Department, as the case may be, that the records or information are relevant and complete.
- 7.5 Nothing in art. 7.2 is intended to prevent any Party from tendering as evidence in a court of law, or other legal proceedings, records and information provided, received, and held in confidence by the Parties to the consultation if the record or information is relevant to whether a duty to consult was or was not met or fulfilled.

8. PARTIES MAY PROCEED WITHOUT PREJUDICE

- 8.1 Notwithstanding any other provision of this Agreement, the Parties to a consultation under this Agreement have the option of determining on mutual consent 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.

9. FUNDING FOR CONSULTATIONS

- 9.1 Contribution funding as determined by the Department of Indian and Northern Affairs may be provided to the MNA to assist in the operations of the MNA's Métis Rights and Accommodation Department and its Regional Consultation Offices in order to support capacity to participate in Crown consultation under this Agreement and to participate in the Consultation Agreement Advisory Committee. Such funding will be provided based on consideration of an annual budget submitted by the MNA and subject to annual appropriations by Canada.
- 9.2 Taking into consideration art. 5.7, each of the federal departments and other Crown agencies who are engaged in a consultation with the MNA conducted pursuant to this Agreement will, if requested, consider whether or not, and, if so, how to provide support, including funding, to assist the MNA with respect to such consultation.
- 9.3 For greater certainty, nothing in this Agreement shall be interpreted as denying or limiting the MNA's access to additional funding for project-specific Aboriginal consultation provided through federal departments or other Crown agencies.

10. TERM OF THE AGREEMENT

- 10.1 This Agreement will come into force and effect on its execution and will continue in force and effect unless terminated by one or more of the Parties upon ninety (90) days written notice to the other Party.

11. AMENDMENT

- 11.1 This Agreement may be amended with the written consent of the Parties.

IN WITNESS WHEREOF the Parties hereto have signed this Agreement:
EN FOI DE QUOI, les parties ont signé la présente entente:

MÉTIS NATION OF ALBERTA by:
Pour la **NATION MÉTISSE DE L'ALBERTA**:



Audrey Poitras
President, Métis Nation of Alberta
Présidente, Nation métisse de l'Alberta

Date: July 19 2018



Witness
Témoïn

Date: July 19 2018



Co-Minister for Métis Rights and
Accommodation
Co-ministre des droits Métis et de
l'accommodement

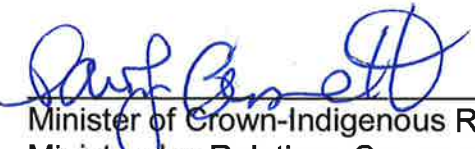
Date: July 19 2018



Witness
Témoïn

Date: July 19 2018

HER MAJESTY THE QUEEN
IN RIGHT OF CANADA by:
Pour **SA MAJESTÉ LA REINE**
DU CHEF DU CANADA:



Minister of Crown-Indigenous Relations
Ministre des Relations Couronne-Autochtones

Date: July 19 2018



Witness
Témoïn

Date: 19-7-2018

MNA Region 1 Consultation Office	Cheryl Gordon - Consultation Coordinator P.O. Box 1350 10104 – 102 Avenue Lac La Biche, AB T0A2C0 (780) 623-3039 Office (780) 623-2733 Fax CGordon@metis.org Consultation Notifications Email: MNAR1notifications@metis.org
MNA Region 2 Consultation Office	Ashley Shaw - Consultation Coordinator 5102 – 51 Street Bonnyville, AB T9N 2H1 (780) 826-7483 Office AShaw@metis.org Consultation Notifications Email: MNAR2notifications@metis.org
MNA Region 3 Consultation Office	Nicole Shepherd - Consultation Coordinator 1530 – 27 Ave NE Calgary, AB T2E 7S6 (403) 569-8800 Office NShepherd@metis.org Consultation Notifications Email: MNAR3notifications@metis.org
MNA Region 4 Consultation Office	TBD Consultation Notifications Email: MNAR4notifications@metis.org
MNA Region 5 Consultation Office	Walter Andreeff, BSc - Consultation Coordinator 353 Main Street NW Slave Lake, AB T0G 2A3 (780) 849-4654 Office WAndreeff@metis.org Consultation Notifications Email: MNAR5notifications@metis.org
MNA Region 6 Consultation Office	Garrett Tomlinson, LLM (cand.) - Consultation Coordinator 9621 90 Ave. Peace River, AB T8S 1G8 (780) 624-4219 Office (780) 624-3477 Fax GTomlinson@metis.org Consultation Notifications Email: MNAR6notifications@metis.org
MNA Provincial Head Office	Métis Nation of Alberta - Consultation #100-11738 Kingsway NW Edmonton AB, T5G 0X5 780-455-2200 Office 780-732-3385 Fax 1-800-252-7553 Toll Free Consultation Notifications Email: MNAnotifications@metis.org