

## **INTERIM MÉTIS HARVESTING AGREEMENT**

This Agreement made this 28th day of September, 2004

### **BETWEEN:**

**HER MAJESTY THE QUEEN** in right of the Province of Alberta, as represented by the **Minister of Sustainable Resource Development, the Minister of Aboriginal Affairs and Northern Development and the Minister of Community Development** ("Alberta")

- and -

**THE MÉTIS NATION OF ALBERTA ASSOCIATION**, being an incorporated body registered under the laws of Alberta (the "Métis Nation of Alberta")

### **BACKGROUND:**

The parties acknowledge that there is uncertainty in the law relating to Métis Harvesting in Alberta. The parties wish to work toward a negotiated long term Métis Harvesting agreement in a mutually respectful manner (the "Long Term Agreement"). In the interim, the parties have arrived at this Interim Métis Harvesting Agreement ("Interim Agreement"). The parties acknowledge that the Long Term Agreement may be different in form and substance from this Interim Agreement.

### **THE PARTIES HAVE AGREED AS FOLLOWS:**

#### **Purpose:**

1. The purpose of this Interim Agreement will be to provide certainty with respect to hunting, trapping and fishing by Métis in Alberta ("Métis Harvesting") until such time as the parties may sign the Long Term Agreement, or otherwise terminate this Interim Agreement.

**Application and Scope of Interim Agreement:**

2. This Interim Agreement applies to all members of the Métis Nation of Alberta, and persons entitled to membership in the Métis Nation of Alberta (the "Members").
3. The Métis Nation of Alberta will use its best efforts to advise Members of the terms of and obligations created by this Interim Agreement, and take reasonable steps to ensure that Members comply with this Interim Agreement.
4. This Interim Agreement does not affect, abrogate or derogate from, or recognize or affirm any constitutional or aboriginal rights of the Métis Nation of Alberta or its Members. Nothing in this Interim Agreement shall affect, abrogate or derogate from the authority of Alberta Justice to prosecute.
5. Subject to any closures or restrictions for conservation or safety purposes, a Member may hunt, trap or fish at all seasons of the year, for the purposes specified in paragraph 6, on lands known as the "Harvesting Lands", meaning:
  - a) all unoccupied provincial Crown lands in Alberta;
  - b) provincial protected areas and other occupied provincial Crown lands in Alberta that have a designation or area designated for hunting, trapping or fishing (as the case may be);
  - c) any privately owned lands in Alberta on which that Member has been given permission by the owner or occupant to hunt, trap or fish (as the case may be).
6. Members may hunt, trap or fish on Harvesting Lands for subsistence purposes. The parties agree that the occasional sharing of wildlife or fish between Members will be considered to be for subsistence purposes.
7. This Interim Agreement does not negate requirements to obtain applicable licences under Alberta legislation or regulations governing domestic fishing (specifically, the use of nets), commercial trapping and commercial fishing.

**Charges:**

8. Alberta will review any information provided to it by the Métis Nation of Alberta concerning charges or potential charges that involve Métis Harvesting. Alberta commits to hearing submissions or recommendations of the Métis Nation of Alberta and to applying the purpose and intent of this Interim Agreement.
9. Alberta will, within a reasonable time after signing the Interim Agreement, examine all its existing harvesting investigations prior to charges being laid where Métis rights have been raised and apply the purpose and intent of this Agreement.

**Screening:**

10. The Métis Nation of Alberta will use its best efforts to advise Members that, when a Member is the subject of an investigation by Alberta officials of a potential harvesting offence, the Member should identify himself or herself as Métis.
11. Where a person has identified themselves to Alberta as Métis, Alberta will examine whether the harvesting has been done in accordance with this Interim Agreement. If Alberta determines:
  - a) the Métis Harvesting has been done in accordance with this Interim Agreement and applicable legislation and regulations, then Alberta will take no further action; or
  - b) the Métis Harvesting has not been done in accordance with this Interim Agreement and applicable legislation or regulations, Alberta may serve the Member with a violation ticket or summons. Upon doing so, Alberta will provide the Member with the Métis Nation of Alberta's contact information and any consent form necessary to allow Alberta to discuss the matter with the Métis Nation of Alberta ("the Consent Form").
12. If Alberta is uncertain whether the Métis Harvesting is in accordance with the Interim Agreement at the time of investigation of a potential harvesting offence, Alberta agrees that seizures will be limited to only those necessary for any potential prosecution in Court.
13. Alberta will not swear the charge in Court against the Member for at least 45 days after serving a violation ticket. If Alberta decides to lay a charge against the Member, Alberta will notify the Métis Nation of Alberta within a reasonable time of its intention to lay a charge, including the reasons why Alberta believes the Métis Harvesting was not done in accordance with this Interim Agreement or the applicable legislation or regulations. Any such notification shall be done in compliance with the *Freedom of Information and Protection of Privacy Act*.
14. The onus is on any Member to provide an executed Consent Form to the Métis Nation of Alberta to enable the parties to discuss the circumstances of the alleged violation.
15. Within 45 days of the issuance of a violation ticket, the Métis Nation of Alberta will notify Alberta if it asserts that the Métis Harvesting was done in accordance with this Interim Agreement, and provide Alberta with an executed Consent Form from the Member. The Métis Nation of Alberta will advise of the reasons why it asserts the Métis Harvesting is in accordance with this Interim Agreement.
16. Alberta and the Métis Nation of Alberta will use best efforts to resolve whether the Métis Harvesting was in accordance with this Interim Agreement. Where the parties do not agree, the charge will proceed in the ordinary course.

17. Métis Harvesting must be carried out in compliance with conservation and safety laws and regulations. For greater certainty, and without limiting the generality of the above, the following activities constitute offences under the *Wildlife Act* and other statutes or regulations and may result in charges being laid without the application of the screening provisions of this Interim Agreement:

- a) discharging a firearm or causing a projectile from a firearm to pass, along or across a primary highway;
- b) discharging a weapon or causing a projectile from a weapon to pass within 200 yards of an occupied building;
- c) having a loaded firearm in a vehicle, aircraft or boat;
- d) discharging of a firearm from a vehicle, aircraft or boat;
- e) hunting while impaired by alcohol or a drug;
- f) hunting in a manner that endangers other persons or without due regard for the safety of other persons;
- g) hunting in a manner that causes or is likely to cause danger to livestock or damage to property.
- h) hunting or discharging a firearm in a provincial park or protected area without a firearms carry and discharge permit where one is required.

**Issues of Concern and Managing Harvesting:**

18. The parties will communicate and dialogue with one another in a mutually respectful manner relating to issues of concern, including conservation and the regulation of fish or game in Alberta. When communicating to other Albertans on these issues, Alberta will also communicate and dialogue with the Métis Nation of Alberta.

**Term and Termination:**

19. This Interim Agreement will come into effect on the date of signing of this Interim Agreement, and will remain in effect until:

- a) it is replaced by the Long Term Agreement,
- b) until either party provides written notice that they no longer wish to engage in negotiations toward the Long Term Agreement, unless this Interim Agreement is extended by mutual consent of both parties, or
- c) it is terminated by either party providing 90 days written notice and reasons for the termination to the other party.

20. If a party provides written notice under clause 19(c) above, the parties shall, as soon as possible, attempt in good faith to resolve any concerns leading to the notice of termination. If the parties are unable to resolve such concerns within the period set out in the notice of termination, this Interim Agreement shall terminate pursuant to the terms of such notice.

## **Dispute Resolution**

21. The parties agree to use their best efforts to resolve any disputes arising between them as efficiently and effectively as possible. Only a party to this Interim Agreement may initiate the Dispute Resolution process.
22. In the event of a dispute between the parties arising out of this Agreement, the parties agree to explore resolution in accordance with the procedure set out below and without initially resorting to litigation. Nothing in this Agreement shall be interpreted as affecting a party's right to use the courts or litigation after all other dispute resolution processes have been exhausted.
23. If a dispute or failure to agree arises out of, or in connection with this Agreement or its interpretation, the parties will initially attempt to resolve the issues through discussions but if the parties do not resolve some or all of the issues through discussions then either party may provide to the other written notice to commence negotiations.
24. If the parties do not resolve some or all of the outstanding issues within 30 days from the notice to commence negotiations, either party may provide to the other written notice containing a request to resolve the dispute through mediation. The request to mediate shall indicate the nature of the dispute, a summary of any argument, and the initial discussions, if any, that have been held to attempt to resolve the dispute.
25. Upon receipt of a notice to mediate, the parties shall agree on a mutually acceptable mediator within 14 days. If they are unable to agree, then upon application by either party the Alberta Arbitration and Mediation Society will choose a mediator.
26. All information exchanged during the negotiation and mediation processes shall be regarded as "without prejudice" communications and shall be treated as confidential by the parties and their representatives unless otherwise required by law. However, evidence that is independently admissible or discoverable shall not be rendered inadmissible or non-discoverable by virtue of its use during negotiation or mediation.
27. The parties agree that they will each be responsible for the costs of their own legal counsel and personal travel associated with dispute resolution. Fees and expenses of the mediator and all administrative costs of the mediation, such as the cost of a meeting room, if any, shall be borne by Alberta. The parties agree that Alberta will not permit the goals of Dispute Resolution to be frustrated by a lack of resources on the part of the Métis Nation of Alberta to attend and participate in Dispute Resolution under this Interim Agreement.

## **Confidentiality of Information**

28. All information, documents and records exchanged during the negotiation of the Interim Agreement shall be regarded as "without prejudice" communications and shall be treated as confidential by the parties and their representatives unless

otherwise required by law. However, information that is independently admissible or discoverable shall not be rendered inadmissible or non-discoverable by virtue of its use during the negotiation of this Interim Agreement.

**Notices:**

29. Any notice or written communication required or permitted to be given pursuant to this Interim Agreement may be given in person by fax or by Registered Mail as follows:

**To Alberta:**

Director, Enforcement Field Services Branch  
Sustainable Resource Development  
3rd Floor, Great West Life Building  
9920 - 108 Street  
Edmonton T5K 2M4  
Fax: 780-422-9560  
Phone: 780-427-6727

**And To:**

Executive Director, Aboriginal Affairs and Northern Development  
Land and Legal Issues  
19<sup>th</sup> Floor, Commerce Place  
10155 – 102 Street  
Edmonton T5J 4G8  
Fax: 780-427-0401  
Phone: 780-427-6091

**To the Métis Nation of Alberta:**

President, Métis Nation of Alberta,  
C/O Métis Nation of Alberta Association  
#100, 11738 Kingsway Avenue,  
Edmonton, Alberta  
T5G-0X5  
Fax: 780-452-8946  
Phone: 780-455-2200

**And To**

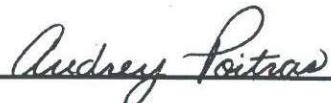
Justice Sector Advisor,  
C/O Métis Nation of Alberta Association,  
(same address and fax number)

30. Notice is deemed to be effected immediately if personally served, at the time of transmission if sent by fax, or on the fifth (5th) day following posting if sent by registered mail.

**General:**

31. This Interim Agreement represents the entire agreement between the parties, and there are no other terms, conditions or agreements between the parties respecting the subject matter of this Interim Agreement.
32. If any provision of this Interim Agreement is found to be invalid or unenforceable, such provision shall be severed from this Interim Agreement and all remaining provisions shall continue in full force and effect.
33. There are no third party beneficiaries to this Agreement and nothing in this Agreement shall be construed to give any person or entity other than the parties to this Agreement any legal or equitable right, remedy or claim under or with respect to this Agreement. This Interim Agreement may only be amended upon the written consent of the parties. Neither party may assign its rights or obligations under this Interim Agreement without first obtaining the written consent of the other party. This Interim Agreement will be construed, governed and enforced in accordance with the laws of Alberta.
34. This Interim Agreement may be executed and delivered by fax and in counterparts, and the counterparts, when executed and delivered, will be deemed to constitute an original and all the counterparts together will constitute one agreement.

Signed this 28<sup>th</sup> day of September 2004.



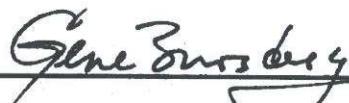
Audrey Poitras, President, Métis Nation of Alberta Association



Minister of Sustainable Resource Development



Cecil Bellrose, Minister for Métis Rights, Métis Nation of Alberta Association



Minister of Community Development



Minister of Aboriginal Affairs and Northern Development