

## NUNAVIK INUIT BUSINESS POLICY

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## 1. **Purpose**

1.1 The purposes of the Nunavik Inuit Business Policy (“Policy”) are:

(a) to establish and maintain, through the Nunavik Inuit Business Registry, a unified and standardized list of Nunavik Inuit Businesses (NIBs) for the purpose of contract procurement in Nunavik, including with respect to contracts for goods, services, and construction;

(b) to promote economic development that benefits Inuit beneficiaries including by developing a permanent business base in Nunavik and a self-sufficient Nunavik economy;

(c) to help give effect to the provisions of any agreements, including land claim agreements, that provide certain preferences to Inuit businesses;

(d) to ensure that Businesses registered in the NIB Registry have genuine participation from Nunavik Inuit; and

(e) to provide guidance on the application process to be registered as a NIB and the ongoing administration and monitoring of the NIB Registry to be overseen by Makivik Corporation.

1.2 This Policy applies to all applicants for registration in the NIB Registry, to all Businesses registered in the NIB Registry, and to their shareholder(s), member(s), owner(s), and partner(s), whether they be Nunavik Inuit or not.

1.3 The public directory of Businesses registered in the NIB Registry may be consulted by any entity, including Nunavik Inuit organizations, Nunavik organizations, the federal, territorial and provincial governments and governmental bodies, corporations in application of impact and benefit agreements, as well as Businesses interested in partnering with the NIBs.

## 2. **Definitions**

2.1. In this Policy:

“*Business*” means a share-capital corporation, not-for-profit corporation, partnership or joint venture, cooperative, or sole proprietorship;

“*James Bay and Northern Quebec Agreement*” or “*JBNQA*” means the agreement signed on November 11, 1975, between the Cree and Inuit representatives, the Governments of Quebec and Canada, the “Société de développement de la Baie James”, the “Société d’énergie de la Baie James” and “Hydro-Québec”;

*“Majority”* means more than fifty percent (50%);

*“Makivik”* means Makivik Corporation, the corporation established by the *Act to establish the Makivik Corporation* (R.S.Q., ch. S-18.1);

*“Nunavik Inuk”* or *“Nunavik Inuit”* means a beneficiary or beneficiaries within the meaning of Section 3A of the JBNQA;

*“Nunavik Inuit Business (NIB)”* means a business that meets the eligibility requirements of this Policy and is duly registered in the NIB Registry;

*“Nunavik Inuit Business Registry”* or *“NIB Registry”* means the registry of Nunavik Inuit Businesses established and maintained pursuant to this Policy;

*“Nunavik Inuit Interest Holder”* means a Nunavik Inuk who is:

- (a) a shareholder of a share-capital corporation;
- (b) a member of a not-for-profit corporation;
- (c) a partner of a partnership (including a general or limited partnership) or joint venture;
- (d) a member of a cooperative; or
- (e) operating a sole proprietorship business.

### **3. Nunavik Inuit Business Registry and Coordinator**

3.1. A Nunavik Inuit Business Registry is hereby established, which shall contain a list of Nunavik Inuit Businesses and relevant information and documents pertaining to each registered NIB.

3.2. For each validly registered NIB, Makivik shall make the following information contained in the NIB Registry available to the public:

- (a) business name, address, telephone and fax numbers, email address and website;
- (b) recognized and currently held qualifications;
- (c) types of goods, services, or construction offered;

- (d) name(s) of owner(s) or controlling parties, and that of its current management; and
- (e) summary description of its facilities, equipment, and personnel in Nunavik.

3.3. There shall be a Nunavik Inuit Business Registry Coordinator (the “NIB Coordinator”) whose mandate shall be:

- (a) to maintain the NIB Registry and keep it updated;
- (b) to approve or reject applications for registration in the NIB Registry and to revoke the registration of Businesses that cease to meet the eligibility criteria for registration as a NIB;
- (c) to issue written notices to the applicant(s) on decisions made with respect to each application, with written reasons in the case of a rejection or revocation of NIB status;
- (d) to conduct periodic reviews to ensure that Businesses in the NIB Registry continue to meet eligibility requirements for registration;
- (e) to respond to general enquiries related to this Policy; and
- (f) to coordinate, monitor, and report on this Policy and to publicize it among Nunavik Inuit.

#### **4. Eligibility Criteria for Registration**

4.1. To be eligible for registration in the NIB Registry under this Policy, and as described in the Annex, a Business must be:

- (a) a sole proprietorship owned by a Nunavik Inuk;
- (b) a partnership, including a joint venture, at least fifty percent (50%) owned by Nunavik Inuit or by one or more Businesses that are themselves registered as NIBs; in the case of a limited partnership, the general partner(s) must also be registered as a NIB;
- (c) a cooperative with a majority of the voting members being Nunavik Inuit;
- (d) a not-for-profit corporation with a Majority of the voting members being Nunavik Inuit or Businesses that are themselves registered as NIBs;

- (e) a share-capital corporation with a Majority of the company's voting shares beneficially owned by one or more Nunavik Inuit; or
- (f) a share-capital corporation with a Majority of the company's voting shares beneficially owned by one or more of the foregoing entities that are themselves registered as NIBs.

4.2. To determine whether a Business is eligible for registration in the NIB Registry, the NIB Coordinator may consider the purposes of this Policy. In order to determine whether a Business is "beneficially owned" by Nunavik Inuit, the NIB Coordinator shall consider which individuals are the true owners or effectively control the Business. To this end, the NIB Coordinator shall examine the documents provided during the application process, including any agreement governing the association between Inuit and non-Inuit business partners. A Business shall be ineligible for registration in the NIB Registry if the participation in the Business by Nunavik Inuit is not genuine, for example but not limited to, if:

- (a) the business structure serves as a flow-through for the transfer of funds or contracts to individuals who are not Nunavik Inuit or to Businesses that are not eligible for registration in the NIB Registry;
- (b) the control or influence of the Nunavik Inuit Interest Holders is significantly limited, for example, where they are excluded from all financial or day-to-day management decisions; or
- (c) the Nunavik Inuit Interest Holders do not benefit from the economic returns of the business in a proportional and equitable manner.

4.3. All NIBs must comply with the legal requirements to carry on business in Quebec and Canada.

## 5. **Application Process**

5.1. To be considered for registration as a NIB, a NIB application form must be completed and submitted to the NIB Coordinator.

5.2. The following information must be disclosed to the NIB Coordinator as part of the Application:

- (a) the information to be made available to the public under section 3.2;
- (b) the information listed in the Annex to this Policy;
- (c) the roles, rights and responsibilities of Nunavik Inuit Interest Holder(s);

- (d) the roles, rights and responsibilities of the other interest holder(s);
  - (e) whether and to what extent Nunavik Inuit Interest Holder(s) control the management and operation of the Business;
  - (f) whether and to what extent Nunavik Inuit Interest Holder(s) benefit from the economic returns of the Business in a proportional and equitable manner;
  - (g) the communities in Nunavik in which the Business offers or intends to offer its goods or services; and
  - (h) the number and proportion of employees who are Nunavik Inuit, as well as any training programs that the Business makes available to Nunavik Inuit.
- 5.3. The NIB Coordinator may require that an applicant provide other additional information before making a decision regarding the applicant's eligibility for registration.
- 5.4. The NIB Coordinator will review the application and, in doing so, may consult with designated legal counsel, including members of the Makivik legal department.
- 5.5. Applications and documents submitted by a Business in support of its application for registration in the NIB Registry shall remain confidential within the Office of the NIB Coordinator. The Office of the NIB Coordinator shall be composed of the NIB Coordinator, designated legal counsel and any support staff.
- 5.6. The NIB Coordinator shall render a decision on the eligibility of an applicant to be registered in the NIB Registry within thirty (30) days once all required information and documentation is provided by the applicant to the NIB Coordinator. Exceptionally, during the first 6 months after the entry into force of this Policy, the NIB Coordinator shall have ninety (90) days to render a decision once all required information has been provided. The NIB Coordinator shall notify the applicant if additional time is required in order to render a decision on the applicant's application.
- 5.7. Any Business approved for registration will be added to the NIB Registry. The registration shall remain valid until the registration is revoked or the Business requests to be removed from the NIB Registry.

## **6. Requirements to Maintain Registration and Periodic Reviews**

- 6.1. To remain registered in the NIB Registry, a Business must remain eligible under the criteria set out in this Policy.

- 6.2. A NIB must file a NIB annual renewal application each year pursuant to the timelines established by the NIB Coordinator to maintain its registration in the NIB Registry for the subsequent year. Unless otherwise specified, the deadline for filing an annual renewal in a given year shall be the anniversary date on which the NIB was granted registration.
- 6.3. A NIB shall notify the NIB Coordinator within thirty (30) days of any changes in ownership or control or to the information or documents contained in the application forms provided as part of the application review process.
- 6.4. The NIB Coordinator shall, within thirty (30) days of receiving a notification of any changes, review the NIB's qualifications to determine whether it still qualifies to be registered as a NIB.
- 6.5. The NIB Coordinator may also conduct periodic file reviews of some or all NIBs to ensure compliance with this Policy and may demand selected NIBs to provide additional information and documentation to demonstrate their continued compliance.

## **7. Non-Compliance and Penalties**

- 7.1. If at any point the NIB Coordinator has reason to believe that a Business has not complied with its obligations under this Policy or no longer qualifies as a NIB, the NIB Coordinator shall notify the NIB in question. The NIB shall have 30 days to demonstrate its compliance with this Policy. If the NIB requires more than 30 days to demonstrate compliance with this Policy, it shall notify the NIB Coordinator within 10 days of having received the notice from the NIB Coordinator. The NIB Coordinator must respond to the request within three (3) business days of having received the notice.
- 7.2. If the NIB fails to respond within the delay provided by the NIB Coordinator or if the NIB Coordinator determines that the Business has not complied with its obligations under this Policy or no longer qualifies as a NIB, the NIB Coordinator shall remove the Business from the NIB Registry. The NIB Coordinator shall promptly notify the Business of the revocation of its registration in the NIB Registry.
- 7.3. In addition to the reasons at 7.2, the registration of a NIB may also be revoked for other reasons including, but not limited to:
  - (a) the NIB failing to comply with the annual renewal obligations process before the deadline;
  - (b) the NIB failing to notify the NIB Coordinator of any change that could affect a Business's eligibility to be registered as a NIB; or

(c) the NIB failing to cooperate with a NIB Coordinator's file review.

7.4. If a Business or its shareholder(s), member(s), owner(s) or partner(s), misrepresents or withholds information that may affect the Business's eligibility to be registered in the NIB Registry, or to maintain its NIB status, then the Business will be denied NIB status or have its NIB status revoked and may be prohibited from applying for NIB status for a term to be determined by the NIB Coordinator. In determining what penalty is appropriate, the NIB Coordinator may consider whether there is reason to believe that the failure to comply with this Policy was intentional and whether it is the Business or individual's first offence. Any Business in which the individual responsible for the misrepresentation is a Nunavik Inuk or non-Nunavik Inuk member, owner, partner or shareholder may also be subject to the same penalty. All other NIBs that the offending Business controls will be subject to a file review.

## **8. Review**

- 8.1. A Business that has been denied registration or has had its status as a NIB revoked by the NIB Coordinator may apply in writing for reconsideration of the decision. The application for review must state the grounds for which the Business believes that the NIB Coordinator's application of the Policy was unreasonable.
- 8.2. An application for review must be accompanied by the payment of a fee of \$250. The fee shall be reimbursed if the application for review is successful.
- 8.3. An application for review of a decision made by the NIB Coordinator must be submitted with payment within thirty (30) days of receiving the notice of decision.
- 8.4. Upon receiving an application for review, the Makivik legal department shall identify the person or persons to conduct the review (the "Reviewer"). In general, the Reviewer shall be an outside legal counsel.
- 8.5. The mandate of the Reviewer shall be to review the NIB Coordinator's decision in a timely manner and to determine whether the NIB's application of the Policy was reasonable. If the Reviewer maintains the Coordinator's decision to deny or revoke registration, then it shall provide the Business having filed the application for review with brief reasons in writing.

## **9. Entry into Force and Amendment**

- 9.1. This Policy shall enter into force as of October 22, 2020.



- 9.2. The Policy shall be reviewed within three (3) years of its entry into force to determine whether it is meeting its purposes and whether amendments are required.
- 9.3. If amended, the new version of the Policy shall apply to any new application or to evaluate compliance in the case of an annual renewal. Short-term exceptions can be made for a registered Business, if justification is provided, for example if finalization of an existing contract is necessary.

## **ANNEX - Application Information**

### **1. Sole Proprietorship**

1.1. In order to apply for registration in the NIB Registry as a sole proprietorship, the sole Inuit proprietor must provide:

- (a) the name, address, email address, and date of birth of the owner of the business;
- (b) a copy of a completed Declaration of Registration of a Sole Proprietorship (“Déclaration d’immatriculation d’une personne physique”) form approved by the Registraire des entreprises du Québec, if applicable;
- (c) a statement indicating whether the owner of the Business is enrolled on the Beneficiary Enrolment List and indicating his or her enrolment number;
- (d) a completed Sole Proprietorship Questionnaire describing, where applicable, if any person other than the sole proprietor:
  - has management authority with respect to the affairs of the Business,
  - shares in the profits or losses of the Business;
  - owns any real property or equipment used in the Business;
  - has authority to sign contracts on behalf of the Business;
  - shares ownership of the bank accounts of the Business;
  - performs the services offered by the Business; and/or
  - manufactures the goods offered by the Business.

In the event that the sole proprietor answers yes to any of these questions, additional information may be required; and

- (e) any other documents or information that may be requested by the NIB Coordinator in order to assess the Business’s eligibility for registration under this Policy.
- 1.2. The applicant shall also provide all information to be made available to the public as per article 3.2 of this Policy.

## 2. **Partnership or Joint Venture**

2.1. In order to apply for registration in the NIB Registry as a partnership or joint venture, a Business must provide:

- (a) the names, addresses and email addresses of each partner;
- (b) a copy of a completed Declaration of Registration of a Partnership (“Déclaration d’immatriculation d’une société de personnes”) filed with and approved by the Registraire des entreprises du Québec;
- (c) a copy of the partnership or joint venture agreement, as well as any management agreement, if applicable;
- (d) a statement describing the share of each partner in the assets, profits and losses of the partnerships;
- (e) for each partner that is a physical person, a statement indicating whether he or she is enrolled on the Beneficiary Enrolment List and indicating his or her enrolment number;
- (f) for each partner that is not a physical person, a statement indicating whether the partner is registered as a NIB. At the NIB Coordinator’s discretion, a partner that is not a physical person may also be required to submit any of the information and documents that would be required under this Policy if the partner was applying for registration directly; and
- (g) any other documents or information that may be requested by the NIB Coordinator in order to assess the Business’s eligibility for registration under this Policy.

2.2. The applicant shall also provide all information to be made available to the public as per article 3.2 of this Policy.

## 3. **Cooperative**

3.1. In order to apply for registration in the NIB Registry as a cooperative, a Business must provide:

- (a) a description of the membership criteria and the basis on which the interest of each member is determined;

- (b) an affidavit signed by an officer or director of the Business stating the number of (i) directors, (ii) executive officers, (iii) voting members and (iv) non-voting members who are Nunavik Inuit and the number who are not Nunavik Inuit;
  - (c) a copy of the completed Declaration of Registration of a Legal Person (“Déclaration d’immatriculation d’une personne morale”) filed with and approved by the Registraire des entreprises du Québec;
  - (d) a copy of the articles of the cooperative currently in force as filed with and approved by the jurisdiction in which the cooperative was constituted;
  - (e) a copy of the cooperative’s by-laws; and
  - (f) any other documents or information that may be requested by the NIB Coordinator in order to assess the Business’s eligibility for registration under this Policy.
- 3.2. The applicant shall also provide all information to be made available to the public as per article 3.2 of this Policy.

#### **4. Business Corporation**

- 4.1. In order to apply for registration in the NIB Registry as a business or share-capital corporation, a Business must provide:
- (a) an affidavit signed by a director or officer of the corporation stating:
    - i. the total number of shares of each class issued by the corporation, the total number of shares of each class held by each shareholder of the corporation and a description of the voting rights associated with each class of shares issued;
    - ii. the name, address and email address of each shareholder and director of the corporation as well as a statement indicating which shareholders and directors are Nunavik Inuit;
    - iii. if any shares are held in trust, the name and address of the trustees and the name and address of the beneficial owners of the shares as well as a statement indicating whether the beneficial owners are Nunavik Inuit; and

- iv. for any shareholder that is not a physical person, a statement indicating whether the shareholder is registered as a NIB. At the NIB Coordinator's discretion, such a shareholder may also be required to submit any of the information and documents that would be required under this Policy if the shareholder was applying for registration directly;
  - (b) a copy of any shareholder agreement;
  - (c) for corporations incorporated under the *Canada Business Corporations Act* (R.S.C., 1985, c. C-44), ("CBCA"), a copy of the register of individuals with significant control;
  - (d) for corporations not incorporated under the CBCA, a copy of the information that would be included in the register of individuals with significant control if the corporation were incorporated under the CBCA;
  - (e) a copy of the completed Declaration of Registration of a Legal Person ("Déclaration d'immatriculation d'une personne morale") filed with and approved by the Registraire des entreprises du Québec;
  - (f) a copy of the corporation's Articles of Incorporation currently in force as filed with and approved by the jurisdiction in which the corporation was incorporated;
  - (g) a copy of the corporation's by-laws; and
  - (h) any other documents or information that may be requested by the NIB Coordinator in order to assess the Business's eligibility for registration under this Policy.
- 4.2. The applicant shall also provide all information to be made available to the public as per article 3.2 of this Policy.

## 5. **Not-for-profit Corporation**

- 5.1. In order to apply for registration in the NIB Registry as a not-for-profit corporation or non-share capital corporation, a Business must provide:
- (a) a description of the membership categories, the criteria for membership in each category and a description of the voting rights for each category;
  - (b) an affidavit signed by an officer or director of the Business stating the number of (i) directors, (ii) officers, (iii) voting members and (iv) non-voting

members who are Nunavik Inuit and the number of members who are not Nunavik Inuit;

- (c) a copy of the completed Declaration of Registration of a Legal Person (“Déclaration d’immatriculation d’une personne morale”) filed with and approved by the Registraire des entreprises du Québec;
- (d) a copy of the corporation’s articles of incorporation or other constituting documents currently in force as filed with and approved by the jurisdiction in which the corporation was incorporated;
- (e) a copy of the corporation’s by-laws;
- (f) a copy of any unanimous member agreement; and
- (g) any other documents or information that may be requested by the NIB Coordinator in order to assess the Business’s eligibility for registration under this Policy.

5.2. The applicant shall also provide all information to be made available to the public as per article 3.2 of this Policy.