

**AGREEMENT-IN-PRINCIPLE**

**WITH RESPECT TO THE RECOGNITION OF CERTAIN LAW-MAKING  
AUTHORITY IN THE AREA OF EDUCATION AND THE ESTABLISHMENT  
OF EDUCATION GOVERNANCE STRUCTURES**

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**BETWEEN**

**THE PARTICIPATING FIRST NATIONS OF  
NISHNAWBE ASKI NATION**

as represented by the Grand Chief of Nishnawbe Aski Nation  
(hereinafter referred to as the “Participating First Nations”)

**AND**

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

as represented by the Minister of Indian Affairs and Northern Development  
(hereinafter referred to as “Canada”)

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## ***Preamble***

**WHEREAS** the Parties agree that the inherent right of self-government is an aboriginal right recognized and affirmed by section 35 of the *Constitution Act, 1982*;

**WHEREAS** the existing aboriginal and treaty rights of the aboriginal peoples of Canada are recognized and affirmed by section 35 of the *Constitution Act, 1982*;

**WHEREAS** the Parties recognize and respect the solemn and enduring nature of Treaty #5 (1875) and its Adhesions in 1908-1910, and of Treaty #9 (1905-06) and the Adhesions thereto of 1929 and 1930;

**WHEREAS** the Parties are committed to implementing self-government in accordance with the Final Agreement so as to enable the Participating First Nations to provide for the enhancement of the social, political, educational, economic, spiritual and cultural well-being of the members of the Participating First Nations;

**WHEREAS** Canada has committed to a renewed, nation-to-nation relationship with Indigenous peoples based on the recognition of rights, respect, co-operation and partnership;

**WHEREAS** Canada, in its Statement of Apology on June 11, 2008 to former students of Indian residential schools, acknowledged past failures in the field of First Nations education and committed to moving forward in partnership with First Nations in a spirit of reconciliation;

**WHEREAS** Canada has committed to support the work of reconciliation and continue the necessary process of truth telling and healing, in partnership with Indigenous communities, provinces and territories, and other key partners, to implement the Calls to Action of the Truth and Reconciliation Commission;

**WHEREAS** the Parties recognize the importance of improving the educational attainment of First Nation students;

**WHEREAS** the Parties agree education is a lifelong holistic learning process which includes early childhood education, vocational training, cultural and language education, as well as elementary, secondary, adult and post-secondary levels of education;

**WHEREAS** the Parties agree that it is of fundamental importance for the members of the Participating First Nations to have access to education in their First Nation languages;

**WHEREAS** the Parties agree that it is of fundamental importance for students to have access to an education which provides a solid foundation in cultural identity as well as knowledge and skills required in other societies and nations;

**WHEREAS** the Parties believe that education is fundamental to the transmission of Aboriginal culture, traditional values, and language; and

**WHEREAS** the Parties, based on their respective mandates, are committed to work toward a Final Agreement which will set out the education jurisdiction to be held by the Participating First Nations, and will include provisions for the resourcing of education governance, its programs and services pursuant to that jurisdiction;

**THEREFORE**, the Parties agree as follows:

## Chapter 1 Definitions and Interpretation

*Definitions*

1.1 The following definitions apply in this Agreement:

*Agreement*

“Agreement” means Agreement-in-Principle;

*Authority*

“Authority” means any authority, other than the power and authority to make a law;

*Conflict*

“Conflict” means:

- a) where compliance with one law would involve a breach of another law; or
- b) where the operation of one law frustrates the legislative purpose of another law,

as determined by the principles set out in the case law respecting conflicts between federal and provincial laws with any necessary modifications;

*Council*

“Council” means “council of the band” within the meaning of the *Indian Act* unless another meaning is attributed to it in the Final Agreement;

*Early Childhood Education*

“Early Childhood Education” means education programs and services provided to children, who have not yet reached the age when they are required to enter kindergarten;

*Effective Date*

“Effective Date” means the date the Final Agreement has legal effect;

*Elementary Education*

“Elementary Education” means education programs and services provided to students from junior kindergarten to the end of grade 8;



*Final Agreement*

“Final Agreement” means the final agreement with respect to Jurisdiction between the Participating First Nations and Canada, which will be based on this Agreement;

*First Nation*

“First Nation” means a band within the meaning of the *Indian Act* that has a Reserve, unless another meaning is attributed to it in the Final Agreement;

*Grand Chief*

“Grand Chief” means the Grand Chief of the Nishnawbe Aski Nation;

*Implementation Plan*

“Implementation Plan” means the Implementation Plan described in Chapter 19 of this Agreement;

*Jurisdiction*

“Jurisdiction” means both the power and authority to make a law and also includes Authority;

*Local Education Code*

“Local Education Code” means the law of a Participating First Nation described in Chapter 6 of this Agreement;

*Member*

“Member” means:

- a) a person whose name appears on the Band List of a Participating First Nation or who is entitled to have his name appear on a Band List of a Participating First Nation where membership is determined by the Department of Indian Affairs and Northern Development in accordance with the *Indian Act*;
- b) a person whose name appears on the Membership List of a Participating First Nation or who is entitled to have his name appear on the Membership List of a Participating First Nation where that First Nation determines its own membership in accordance with the *Indian Act*; or
- c) a person whose name appears on the Citizenship List of a Participating First Nation or who is entitled to have his name appear on the Citizenship List of a Participating First Nation where that Participating First Nation determines its own citizenship in accordance with a self-government agreement with Canada;

unless another meaning is attributed to it in the Final Agreement;

<i>Minister</i>	“Minister” means the Minister of Indian Affairs and Northern Development, or her successor, on behalf of Her Majesty the Queen in Right of Canada;
<i>Nishnawbe Aski Nation</i>	“Nishnawbe Aski Nation” means the collectivity of the member communities identified in Schedules A, B, and C of the Agreement and located across Northern Ontario from the Manitoba/Ontario border on the west side to James Bay on the east side. For greater certainty, Nishnawbe Aski Nation does not mean the currently incorporated political body operating as a provincial organization;
<i>Ordinarily Resident</i>	“Ordinarily Resident” means the place where a person regularly, normally or customarily lives;
<i>Participating First Nation</i>	“Participating First Nation” means a First Nation set out in Schedule A of this Agreement that has approved this Agreement pursuant to Chapter 17 of this Agreement;
<i>Parties</i>	“Parties” means the Participating First Nations and Canada;
<i>Post-Secondary Education</i>	“Post-Secondary Education” means education that is offered at a college, university, or other institution;
<i>Post-Secondary Education Program</i>	“Post-Secondary Education Program” means any program of the Department of Indian Affairs and Northern Development, or a successor department, which is subject to descriptions, terms, and conditions equivalent, or similar to those listed in the Post-Secondary Education National Program Guidelines as they exist from time to time;
<i>Reserve</i>	<p>“Reserve” means:</p> <ul style="list-style-type: none"> <li>a) a reserve, as defined under the <i>Indian Act</i>, of a Participating First Nation; and</li> <li>b) lands set apart by Canada in the future as a reserve within the meaning of the <i>Indian Act</i>, for any one of the Participating First Nations;</li> </ul>
<i>Secondary Education</i>	“Secondary Education” means education programs and services provided to students from grade 9 to the end of secondary school;

*Territory-Wide  
Education Body*

“Territory-Wide Education Body” means the umbrella organization described in Chapter 5 of this Agreement; and

*Territory-Wide  
Education Law*

“Territory-Wide Education Law” means the law of the Participating First Nations described in Chapter 7 of this Agreement.

*Interpretation*

1.2 In this Agreement and the Final Agreement:

- a) unless it is otherwise clear from the context, the use of the word "including" means "including, but not limited to", and the use of the word "includes" means "includes, but is not limited to";
- b) headings or sub-headings and marginal notes are for convenience only and do not form a part of the Agreement, and in no way define, limit, alter or enlarge the scope or meaning of any provision;
- c) a reference to a statute includes every amendment to it, every regulation made under it and any law enacted in substitution for, or in replacement of it; and
- d) unless otherwise clear from the context, wherever the singular is used, it will include the plural, and the use of the plural includes the singular, and wherever the masculine is used, it will include the feminine, and the use of the feminine includes the masculine.

## **Chapter 2 Purpose**

*Purpose of Agreement-in-Principle*

- 2.1 The purpose of this Agreement is to provide a framework for:
- a) the exercise of education Jurisdiction by the Participating First Nations; and
  - b) the negotiation of a Final Agreement.

*Nature of Agreement-in-Principle*

- 2.2 This Agreement does not create legal obligations that are binding on the Parties and there will be no legally binding obligations until the Final Agreement is ratified by the Parties.

*Purpose of Final Agreement*

- 2.3 The purpose of the Final Agreement is to:
- a) set out the education Jurisdiction of the Participating First Nations; and
  - b) provide for the establishment of education governing structures, procedures and processes through which the Participating First Nations may provide effective governance over education.

*Entire Agreement*

- 2.4 The Final Agreement will constitute the entire agreement between the Parties and there will be no representation, indemnity, condition, agreement or collateral representation, applicable to, binding upon, or enforceable against one Party by the other, save for those expressed in the Final Agreement.

### Chapter 3 General Provisions

#### *Aboriginal & Treaty Rights*

- 3.1 Nothing in this Agreement or the Final Agreement will be construed so as to abrogate or derogate from existing aboriginal or treaty rights recognized and affirmed by section 35 of the *Constitution Act, 1982*.
- 3.2 This Agreement and the Final Agreement are without prejudice to the positions of the Participating First Nations and Canada about the scope of aboriginal and treaty rights.
- 3.3 The Final Agreement will not constitute a treaty within the meaning of section 35 of the *Constitution Act, 1982*.

#### *Fiduciary Relationship*

- 3.4 The fiduciary relationship between Canada and the Participating First Nations will continue after the Effective Date.

#### *Fiduciary Obligations*

- 3.5 As the Participating First Nations exercise Jurisdiction under the Final Agreement, the matter of fiduciary obligations of Canada to the Participating First Nations will be as determined by jurisprudence respecting fiduciary relationships and fiduciary obligations.

#### *Canadian Charter of Rights & Freedoms*

- 3.6 The *Canadian Charter of Rights and Freedoms* applies to each Participating First Nation in respect of all matters within its Jurisdiction under the Final Agreement.

#### *Jurisdiction of Participating First Nations*

- 3.7 The Final Agreement will set out the Jurisdiction to be exercised by the Participating First Nations.

#### *Role of the Province of Ontario*

- 3.8 The Parties affirm that they are prepared to enter into discussions with the Government of Ontario with respect to matters arising from this Agreement, with a view to ensuring effective implementation of the Final Agreement.

#### *Liability and Indemnification*

- 3.9 The Parties agree that the Final Agreement will include provisions on liability and indemnification.

<i>No Restrictions</i>	3.10 Each Participating First Nation and its Members will be eligible to participate in and benefit from any federal program or service in accordance with general criteria established from time to time, to the extent that the Participating First Nation has not assumed responsibility for the provision of that program or service under the fiscal relationship agreement or other funding agreements.
<i>Validity of Final Agreement</i>	3.11 If a court of competent jurisdiction determines that any provision of the Final Agreement is invalid or unenforceable, that provision will be severed from the Final Agreement to the extent of the invalidity or unenforceability, and the remainder of the Final Agreement will remain valid and enforceable or will be construed, to the extent possible, to give effect to the intention of the Parties.
<i>Best Efforts to Remedy Invalid Provision</i>	3.12 The Parties will make best efforts to agree on an amendment to remedy or replace an invalid or unenforceable provision.
<i>No Claim or Cause of Action</i>	3.13 The Participating First Nations or Canada will not have a claim or a cause of action in the event any provision of the Final Agreement is found by a court of competent jurisdiction to be invalid.
<i>No Challenge by a Party</i>	3.14 The Participating First Nations or Canada will not challenge the validity of any provision of the Final Agreement or the legislation that gives legal effect to the Final Agreement.
<i>Statutory Instruments Act</i>	3.15 The <i>Statutory Instruments Act</i> will not apply to the laws of the Participating First Nations.

## **Chapter 4 Education Jurisdiction**

*Elementary &  
Secondary  
Education*

4.1 On behalf of its members, each Participating First Nation has Jurisdiction on its Reserve with respect to Elementary Education and Secondary Education.

*Programs and  
Services*

4.2 Each Participating First Nation has the Authority to administer education programs and services for its Members Ordinarily Resident or not Ordinarily Resident on its Reserve.

*Post-Secondary  
Education  
Program*

4.3 Each Participating First Nation has the Authority to administer the Post-Secondary Education Program for its Members Ordinarily Resident or not Ordinarily Resident on its Reserve.

*Manner of  
Exercise*

4.4 Each Participating First Nation will exercise its Jurisdiction in a manner consistent with the Final Agreement.

*Legal Status  
and Capacity*

- 4.5 Upon the Effective Date, each Participating First Nation will have the capacity, rights, powers, and privileges of a natural person including the capacity, rights, powers, and privileges to:
- a) enter into contracts or agreements;
  - b) acquire, hold, or dispose of property and any interests therein;
  - c) acquire, hold, or dispose of bequests and gifts which are given to the Participating First Nation;
  - d) sue or be sued and to act on its own behalf in legal proceedings;
  - e) hold, spend, invest, or borrow money, and secure or guarantee the repayment of money borrowed;
  - f) create, operate, contribute to, or otherwise deal with trusts and act as trustee; and
  - g) do such other things as are ancillary to the exercise of its capacity, rights, powers, and privileges under the Final Agreement.
- 4.6 For greater certainty, the capacity, rights, powers, and privileges referred to in section 4.5, do not have the effect of incorporating a Participating First Nation.

- 4.7 For greater certainty, nothing in section 4.5 affects the interest in Reserve lands or “Indian moneys” held by the Members of a Participating First Nation in common under the Indian Act, or the application of that Act in respect of those lands or “Indian moneys.”



## **Chapter 5 Territory-Wide Education System**

*Negotiations*

5.1 During negotiations leading to a Final Agreement, Canada and the Participating First Nations will discuss how the Participating First Nations will establish a territory-wide education system.

*Three-Tier System*

5.2 The territory-wide education system will be a three-tier system consisting of:

- a) the local education system of each Participating First Nation;
- b) the regional support aggregates as identified by the Participating First Nations; and
- c) the Territory-Wide Education Body,

to be described in the Final Agreement.

*Territory-Wide Education Body*

5.3 The Territory-Wide Education Body will be described under the provisions of the Final Agreement and its proposed legal status will be set out in the Final Agreement.

*Purpose*

5.4 The purpose of the Territory-Wide Education Body is to oversee and support the education programs and services of the Participating First Nations.

*Powers and Structures*

- 5.5 The powers and structures of the Territory-Wide Education Body will be determined by the Participating First Nations by taking into account the following:
- a) adherence to and advocacy of the philosophy of education as defined by the Participating First Nations;
  - b) the exercise of powers pursuant to the Territory-Wide Education Law;
  - c) the exercise of powers delegated to it in writing by the Participating First Nations;
  - d) the exercise of other powers set out in the Final Agreement;
  - e) Jurisdiction will vest with each of the Participating First Nations;
  - f) not all Jurisdiction may be practically exercised, in whole or in part, at the Participating Nation level;
  - g) the Territory-Wide Education Body's role as an agent of the Participating First Nations;
  - h) the Territory-Wide Education Body's role in facilitating matters in relation to access to information and privacy;
  - i) processes to address intergovernmental relations and standards with respect to education; and
  - j) the Territory-Wide Education Body will conduct its business and operations in a manner consistent with other legal entities with similar powers, duties and functions.

*Relationship*

- 5.6 The relationship between the Participating First Nations, the Territory-Wide Education Body and Canada, with respect to the administration and distribution of funding pursuant to the fiscal relationship agreement or any other arrangements contemplated by the Final Agreement, will be set out in the Final Agreement.

*Efficiency & Effectiveness*

- 5.7 Efficiency and effectiveness in the governance and provision of education programs and services is a shared objective of the Parties.

## **Chapter 6 Local Education Codes**

### *Ratification*

- 6.1 Each Participating First Nation will ratify a Local Education Code which will not be inconsistent with the Final Agreement.
- 6.2 Each Participating First Nation will ratify its Local Education Code required to implement the Final Agreement no later than the date it ratifies the Final Agreement.

### *Local Education Codes*

- 6.3 The Local Education Code of each Participating First Nation will, among other things:
- a) provide for the establishment of structures, including such bodies as may be required to support the operation of that Participating First Nation's education system;
  - b) set out procedures for making, amending, publishing and providing access to that Participating First Nation's laws;
  - c) provide that the Participating First Nation will be accountable to its Members;
  - d) provide for political and financial accountability mechanisms which are fair, open and transparent, and that are similar to those in place for other governments in Canada;
  - e) set out an amendment procedure;
  - f) set out criteria and a process for delegation of Jurisdiction by the Participating First Nation;
  - g) provide for the promotion of its language and culture;
  - h) provide for mechanisms to appeal decisions of that Participating First Nation; and
  - i) provide for rules governing the internal conflict between the laws of that Participating First Nation, including the Territory-Wide Education Law.
- 6.4 For greater certainty, the Local Education Code of a Participating First Nation is a law of that Participating First Nation.

**Chapter 7 Territory-Wide Education Law**

*Enactment as a  
Collectivity*

7.1 The Participating First Nations will enact a Territory-Wide Education Law as a collectivity in relation to the Territory-Wide Education Body.

*Description*

7.2 The Territory-Wide Education Law will be described under the provisions of the Final Agreement.

*Participating  
First Nation  
Law*

7.3 For greater certainty, the Territory-Wide Education Law is a law of a Participating First Nation.

## **Chapter 8 Education Standards**

*Territory-Wide  
Education  
Standards*

8.1 The Participating First Nations through the Territory-Wide Education Body will develop, implement, and monitor education standards for Elementary and Secondary Education under the Final Agreement.

*Student  
Achievement*

8.2 Education standards will be designed to attain student achievement equivalency or comparability with other public education systems in Ontario so as to permit the transfer of students without academic penalty to the same extent as student transfers are affected between other education jurisdictions in Canada.

*Language and  
Culture  
Standards*

8.3 The responsibility for developing education standards for the following culturally specific curriculum areas will be determined by the Participating First Nations, including:

- a) Cree, Ojibway, Oji-Cree, or Algonquin as the language of instruction;
- b) Cree, Ojibway, Oji-Cree, or Algonquin language immersion programming;
- c) Cree, Ojibway, Oji-Cree, or Algonquin as a second language; and
- d) Cree, Ojibway, Oji-Cree, or Algonquin cultural programs.

**Chapter 9 Access to Education Programs and Services**

*Access to  
Elementary and  
Secondary  
Education*

- 9.1 Members of a Participating First Nation Ordinarily Resident on the Reserve of that Participating First Nation will be eligible to participate in and benefit from education programs and services provided by that Participating First Nation.
  
- 9.2 A Participating First Nation will provide access to education programs and services to all students not included in section 9.1, subject to the consent by written agreement of the parents or guardians of the students whereby the students abide by the rules and policies of the school established by the Participating First Nation from time to time, if that Participating First Nation is funded for education programs and services for such students.

*Access to Post-  
Secondary  
Education*

- 9.3 Subject to funding being provided through a fiscal relationship agreement or other arrangements for the Post-Secondary Education Program, Members of a Participating First Nation may apply for assistance provided by the Post-Secondary Education Program in accordance with general criteria established from time to time by that Participating First Nation.

## Chapter 10 Management and Operation of Local Education

*Management and Operation of Local Education*

- 10.1 Each Participating First Nation has Jurisdiction with respect to the management and operation of its local education system, including:
- a) financial administration;
  - b) the powers, duties and responsibilities of its employees, officers, elected officials, and appointees;
  - c) the establishment of administrative bodies, including agencies, boards, commissions, tribunals, and dispute resolution bodies to perform functions set out in the laws of that Participating First Nation; and
  - d) the provision of access to information and the protection of privacy.

*Personal Immunity from Civil Liability*

- 10.2 Each Participating First Nation may make laws concerning the personal immunity from civil liability of its employees, officers, elected officials and appointees for:

- a) the actions of the Participating First Nation; and
- b) actions carried out in the course of their duties, in the absence of dishonesty, gross negligence or malicious or willful misconduct,

subject to such laws also providing that the Participating First Nation as employer, retains vicarious liability for the acts or omissions of its employees, officers, elected officials and appointees covered by the immunity.

*Conflict of Interest Rules*

- 10.3 Each Participating First Nation will adopt conflict of interest rules for elected and non-elected officials that are comparable to those in place for other governments in Canada.

*Effective Date of a Participating First Nation Law*

- 10.4 Unless otherwise set out in the Final Agreement, a law of a Participating First Nation will come into force at the beginning of the day following its enactment or such later date as set out in that law.

*Appeal or Review of Administrative Decisions*

- 10.5 Where an administrative body is established pursuant to a Participating First Nation law, the law establishing the body will address the issue of appeal or review of the decisions of that administrative body.

*Registry of  
Participating  
First Nation  
Laws*

10.6 The Final Agreement will address the establishment and maintenance of a registry of the laws of the Participating First Nations.

*Input by non-  
Member  
Residents*

10.7 The Final Agreement will set out the manner in which persons who are Ordinarily Resident on the Reserve of a Participating First Nation and who are not Members of that Participating First Nation, may have input into laws and decisions of the Participating First Nation that directly and significantly affect them.



## Chapter 11 Delegation of Jurisdiction or Authority

*Delegation of Jurisdiction or Authority*

11.1 Each Participating First Nation may delegate its Jurisdiction or Authority or a part thereof to the Territory-Wide Education Body in a manner consistent with its Local Education Code and the Final Agreement.

*Accountability for Delegated Jurisdiction or Authority*

11.2 Where Jurisdiction or Authority or a part thereof is delegated by a Participating First Nation pursuant to section 11.1, the Territory-Wide Education Body will be accountable to that Participating First Nation for the Jurisdiction or Authority that has been delegated to it.

*Accountability to Members*

11.3 Each Participating First Nation will remain accountable to its Members for the exercise of any Jurisdiction or Authority it delegates.

*No Sub-Delegation of Law Making Authority*

11.4 The Territory-Wide Education Body will not sub-delegate any power and authority to make a law that is delegated to it pursuant to section 11.1;

*Sub-Delegation of Authority*

11.5 The Territory-Wide Education Body to which a delegation of Authority has been made, may sub-delegate that Authority with the written consent of the Participating First Nation.

*Terms and Conditions of Delegation*

11.6 The terms and conditions associated with a delegation under section 11.1 will be set out in a written agreement.

*Agreement to Receive a Delegation*

11.7 A Participating First Nation may enter into an agreement to receive a delegation of Jurisdiction or Authority.

**Chapter 12 Future Negotiations**

*Future Negotiations*

- 12.1 The Final Agreement will address the issue of future negotiations with respect to the following areas:
- a) Elementary Education or Secondary Education for Members not Ordinarily Resident on the Reserve of a Participating First Nation;
  - b) Early Childhood Education, on or off the Reserve of a Participating First Nation;
  - c) adult education, on or off the Reserve of a Participating First Nation;
  - d) Post-Secondary Education, on or off the Reserve of a Participating First Nation; and
  - e) schools for Elementary and Secondary Education off the Reserve for Members Ordinarily Resident on the Reserve of a Participating First Nation,
- and the requirement of Ontario being a party to such future negotiations.

**Chapter 13 Enforcement and Adjudication**

*Final Agreement to Include Provisions on Enforcement and Adjudication*

- 13.1 The Parties agree that the Final Agreement will include provisions on the enforcement and adjudication of education laws.

## Chapter 14 Relationship of Laws

### *Priority of Participating First Nation Laws*

14.1 Subject to the provisions of this Chapter, and subject to any additional provisions in the Final Agreement with respect to a Conflict between a federal law and a law of a Participating First Nation, the law of the Participating First Nation will prevail to the extent of the Conflict.

### *Application of Federal Laws*

14.2 Except as expressly provided for in the Final Agreement, federal laws will continue to apply to each Participating First Nation, its Council, its Reserve, and its Members.

### *Exclusions to Participating First Nation Jurisdiction*

14.3 The Jurisdiction to be exercised by each Participating First Nation as set out in the Final Agreement does not extend to matters for which no Jurisdiction is specifically set out in the Final Agreement, including:

- a) criminal law, including the procedure in criminal matters;
- b) Intellectual Property;
- c) labour relations and working conditions; and
- d) the official languages of Canada.

14.4 The Parties will discuss the inclusion of transportation in section 14.3 before the Final Agreement is concluded.

### *Application of Provincial Laws*

14.5 The Final Agreement will address the application of Ontario laws of general application.

### *Priority of Federal Laws*

14.6 Federal laws related to the:

- a) preservation of peace, order and good government in Canada;
- b) human rights of all Canadians;
- c) criminal law, including the procedure in criminal matters; and
- d) protection of the health and safety of all Canadians,

will prevail over a Participating First Nation law to the extent of any Conflict.

### *Incidental Impacts and Double Aspects*

14.7 The Final Agreement will address possible Conflicts between laws arising as a result of “incidental impacts” or “double aspects”.

*Priority of Legislation Giving Effect to the Final Agreement over other Federal Laws*

14.8 In the event of a Conflict between the federal legislation giving effect to the Final Agreement and any other federal law, the legislation giving effect to the Final Agreement will prevail to the extent of the Conflict.

*Priority of Final Agreement over Federal Laws*

14.9 In the event of a Conflict between a federal law, including the legislation that gives effect to the Final Agreement, and the Final Agreement, the Final Agreement will prevail to the extent of the inconsistency or Conflict.

*Canada's International Legal Obligations*

14.10 The Final Agreement will provide for the consistency of Participating First Nation laws and other exercises of power with Canada's international legal obligations.

*United Nations Declaration*

14.11 In light of Canada's support for the United Nations Declaration on the Rights of Indigenous Peoples and its commitment to implement the Declaration in the context of the *Constitution Act, 1982*, Canada and the Participating First Nations will work together in implementing the Final Agreement in a manner that reflects the recognition of the rights of the Participating First Nations and supports Participating First Nations' self-determination.

## Chapter 15 Transitional Provisions

*Sections of  
Indian Act that  
No Longer Apply*

15.1 When a Participating First Nation exercises Jurisdiction in accordance with the Final Agreement, the relevant provisions of sections 114 to 122 of the *Indian Act* and of related regulations or orders will no longer apply, and the issue of the application of other *Indian Act* provisions to the Participating First Nations will be addressed in the Final Agreement.

15.2 The Final Agreement will address the application of section 114(2) of the *Indian Act*.

*Timeframe to  
Enact Education  
Laws*

15.3 The Final Agreement will identify an appropriate timeframe within which the Participating First Nations will enact education laws.

*Deemed  
Definitions for  
Ongoing  
Application of  
Indian Act*

15.4 For the purposes of the ongoing application of the *Indian Act*, a Participating First Nation will be deemed to be a “band”, the Council of a Participating First Nation will be deemed to be the “council of the band”, and a Member will be deemed to be a “member of a band”, within the meaning of those terms as they are defined in the *Indian Act*, unless otherwise agreed to in the Final Agreement.

## **Chapter 16 Access to Information and Privacy**

*Access to Information and Privacy*

16.1 Canada will recommend to Parliament amendments to the *Access to Information Act* and the *Privacy Act* to protect from disclosure, information provided in confidence by a Participating First Nation as information provided to Canada by another government in Canada.

*Amendment to Privacy Act*

16.2 Canada will recommend to Parliament amendments to the *Privacy Act* to allow a Participating First Nation access to information necessary for a Participating First Nation to exercise its Jurisdiction under the Final Agreement.

*Agreements with Respect to Information*

16.3 Each Participating First Nation may enter into agreements with Canada or one another in respect of any one or more of the collection, protection, retention, use, disclosure, and confidentiality of personal, general, or other information.

*Protection of Confidential Information*

16.4 Canada may provide information to a Participating First Nation, in confidence, provided the Participating First Nation has enacted a law for the protection of confidential information or has entered into an agreement with Canada for the protection of confidential information.

*Disclosure Subject to Federal Law*

16.5 Notwithstanding any other provision in this Agreement:

- a) Canada is not required to disclose any information that is required to be withheld under any federal law; and
- b) the Parties are not required to disclose any information that may be withheld under a privilege at law or under sections 37 to 39 of the *Canada Evidence Act*.

*System for Citizen Access to Information*

16.6 Each Participating First Nation will develop and maintain a system to provide Members with access to information held by the Participating First Nation.

*Exemptions to be Guided by Canadian Law*

16.7 In developing any exemption to access to information, the Participating First Nations will take into account the exemptions contained in existing access to information and privacy legislation in Canada.

## **Chapter 17 Approval and Ratification**

### *Approval of Agreement-in-Principle*

- 17.1 The negotiators will initial this Agreement to signify their intention to present this Agreement to the Parties for their consideration for approval.
- 17.2 The Participating First Nations' Chiefs will consider the initialed Agreement for approval by a majority of the Participating First Nations at a meeting of the Nishnawbe Aski Nation Chiefs-in-Assembly.
- 17.3 The Grand Chief will send a letter to the Minister confirming the approval of this Agreement and will provide a copy of the Nishnawbe Aski Nation Chiefs-in-Assembly resolution by the Participating First Nations' Chiefs.
- 17.4 The Grand Chief will sign this Agreement on behalf of the Participating First Nations.
- 17.5 Canada will approve this Agreement by the Minister signing this Agreement.
- 17.6 Once this Agreement is approved by the Parties, they will jointly make it public and commence Final Agreement negotiations.

### *Ratification of the Final Agreement*

- 17.7 The negotiators will initial the Final Agreement to signify their intention to present the Final Agreement to the Parties for their consideration for ratification.

- 17.8 The Final Agreement will set out a process to be used by the Participating First Nations and Canada for ratifying the Final Agreement.
- 17.9 The ratification process will promote and provide for:
- a) openness and transparency;
  - b) participation of the eligible members of each Participating First Nation;
  - c) access to information; and
  - d) consensus building.
- 17.10 Canada acknowledges that the communities listed in Schedule “B” of this Agreement are “bands” within the meaning of the *Indian Act* and that Nishnawbe Aski Nation recognizes them as members of Nishnawbe Aski Nation, and that each of these communities may become a party to the Final Agreement if the community has lands set aside as a Reserve at the time the Final Agreement is initialled by the negotiators, as required under section 17.7.
- 17.11 If a community listed in Schedule “B” does not have a Reserve at the time the Final Agreement is initialled by the negotiators, as required under section 17.7, a community listed in Schedule “B” will become a party to the Final Agreement, at a later date, if:
- a) the community has lands set aside as a Reserve;
  - b) the community has indicated to the Parties that it wishes to become a party to the Final Agreement, and the Minister and the Participating First Nations, by passing a resolution of the Chiefs in Assembly approved by the majority of the Participating First Nations’ representatives, consent to the community participating in the ratification process referred to in section 20.5;
  - c) the community has participated in the ratification process referred to in section 20.5 and the community supports the Final Agreement; and
  - d) the Parties consent, in writing, to the amendment of the Final Agreement as required under section 20.3 which consent shall be effected by the Parties fulfilling the requirements of section 20.6 of this Agreement, and the Parties hereby agree they will seek consent to such an amendment through their respective approval mechanisms if the conditions in (a) through (c) are met.



- 17.12 Canada acknowledges that Nishnawbe Aski Nation recognizes the communities listed in Schedule “C” of this Agreement as members of Nishnawbe-Aski Nation and that these communities will become parties to the Final Agreement if:
- a) the community is recognized as a “band” within the meaning of the *Indian Act*;
  - b) the community has lands set aside as a Reserve;
  - c) the community has indicated to the Parties that it wishes to become a party to the Final Agreement, and the Minister and the Participating First Nations, by passing a resolution of the Chiefs in Assembly approved by the majority of the Participating First Nations’ representatives, consent to the community participating in the ratification process referred to in section 20.5;
  - d) the community has participated in the ratification process referred to in section 20.5 and the community supports the Final Agreement; and
  - e) the Parties consent, in writing, to the amendment of the Final Agreement as required under section 20.3 which consent shall be effected by the Parties fulfilling the requirements of section 20.6 of this Agreement, and the Parties hereby agree they will seek consent to such an amendment through their respective approval mechanisms if the conditions in (a) through (d) are met.
- 17.13 The Parties acknowledge that a First Nation that is not a member of Nishnawbe Aski Nation and that becomes a member of Nishnawbe Aski Nation, will become a party to the Final Agreement if the requirements of sections 20.3, 20.4, 20.5, and 20.6 of this Agreement are fulfilled.
- 17.14 The Minister will seek the approval of the Governor in Council to:
- a) sign the Final Agreement; and
  - b) introduce legislation in Parliament to give effect to the Final Agreement.
- 17.15 Canada will have ratified the Final Agreement when the legislation giving effect to the Final Agreement is passed and comes into force.
- 17.16 Canada will pay the costs of ratifying the Final Agreement in an amount to be agreed upon by the Parties prior to the ratification process commencing.

*Consultation on  
Legislation*

- 17.17 Once the Final Agreement is ratified by the Parties, they will jointly make it public.
- 17.18 Subject to the consent of the Governor in Council, Canada will consult with the Participating First Nations in the preparation of the legislation which will give effect to the Final Agreement by providing:
- a) a copy of the draft legislation;
  - b) a reasonable period of time within which to permit the Participating First Nations to prepare and present their comments; and
  - c) a timely response to any comments received from the Participating First Nations.
- 17.19 For the purposes of section 17.18, the Participating First Nations will be represented by their negotiator for the Final Agreement or a designate appointed by the Participating First Nations.

## Chapter 18 Fiscal Relations

### *Final Agreement Negotiations*

- 18.1 During Final Agreement negotiations, the Parties will address fiscal matters including:
- a) Final Agreement provisions regarding the ongoing fiscal relationship among the Parties; and
  - b) Funding arrangements to take effect no later than Effective Date that will set out terms, conditions, and funding with respect to the responsibilities assumed by the Participating First Nations, taking into account that funding for self-government is a shared responsibility among governments.

### *Role of Parties*

- 18.2 The Parties acknowledge they each have a role in supporting the Participating First Nations as set out in a fiscal relationship agreement or provided through other arrangements.

### *New National Fiscal Policy*

- 18.3 The Parties acknowledge that Canada is developing a new national fiscal policy setting out a transparent methodology for determining levels of federal funding that may be provided to self-governing Indigenous governments in Canada to support the delivery of agreed-upon programs and services, including Indigenous governments that are party to education sectoral agreements.

- 18.4 The Parties acknowledge that the Participating First Nations will assess the impact of Canada's new national fiscal policy in relation to their interests and objectives in concluding an education jurisdiction agreement.

- 18.5 The Participating First Nations, as coordinated through Nishnawbe Aski Nation, will have an opportunity to provide Canada with their views, concerns, and proposals throughout the negotiation of the Final Agreement.

### *No Financial Obligation or Service Responsibility*

- 18.6 Unless otherwise agreed by the Parties in a fiscal relationship agreement or other fiscal arrangements, the recognition of the Participating First Nations, the recognition of Jurisdiction of the Participating First Nations under the Final Agreement, or the exercise of Jurisdiction of the Participating First Nations does not create or imply, any financial obligation or service responsibility on the part of any Party.

*Appropriation of  
Funds*

18.7 Any funding required for the purposes of the fiscal relationship agreement, or any other arrangements that is contemplated by the Final Agreement and that provides for financial obligations to be assumed by a Party, is subject to the appropriation of funds:

- a) in the case of Canada, by the Parliament of Canada; and
- b) in the case of the Participating First Nations, by the Participating First Nations.

## **Chapter 19 Implementation**

*Implementation Plan*

19.1 Prior to the initialing of the Final Agreement, the Parties will develop an Implementation Plan to guide the implementation of the Final Agreement.

*Implementation Plan Not Part of Final Agreement*

19.2 The Implementation Plan will not be part of the Final Agreement and will not alter any rights or obligations set out in the Final Agreement.

*Components of Implementation Plan*

19.3 The Implementation Plan will:

- a) identify the obligations and activities the Parties will undertake to implement the Final Agreement;
- b) identify who is responsible for the activities;
- c) identify how the activities will be carried out;
- d) identify time frames for the activities;
- e) identify areas where training would facilitate effective implementation of the Final Agreement;
- f) include an amendment procedure;
- g) include a communication strategy to inform interested parties about the Final Agreement; and
- h) address any other matters agreed to by the Parties.

*No Legal Obligations from Implementation Plan*

19.4 The Implementation Plan will not create legal obligations that are binding on the Parties unless otherwise agreed to by the Parties in the Implementation Plan.

*Implementation Committee*

19.5 As of the Effective Date, the Parties will establish an Implementation Committee pursuant to section 19.6.

*Terms of Reference*

19.6 The Final Agreement will set out terms of reference for the operation of the Implementation Committee.

## **Chapter 20 Amendment and Review**

*Pre-Effective Date Amendments*

20.1 Following the ratification of the Final Agreement by each Participating First Nation, but prior to the Effective Date, the Parties may agree to non-substantive amendments to the Final Agreement, without a requirement for re-ratification by the Participating First Nations.

*Approval of Non-Substantive Amendments*

20.2 During the negotiation of the Final Agreement, the Parties will agree on a process for the approval of non-substantive amendments referred to in section 20.1 of this Agreement.

*Amendment of Final Agreement*

20.3 The Final Agreement may be amended at any time in writing with the consent of the Parties.

*Inclusion of Other First Nations*

20.4 Subject to section 20.5, the Final Agreement may be amended to include First Nations who are not parties to the Final Agreement.

*Ratification Process to Apply to Other First Nations*

20.5 Any First Nation seeking to join the Final Agreement will be required to follow the ratification process set out in the Final Agreement for a Participating First Nation.

*Consent for Other First Nations to Join Final Agreement*

20.6 The consent to any amendment made pursuant to section 20.3 or 20.4, will come into effect by:

- a) the Participating First Nations, by passing a resolution of the Chiefs in Assembly approved by the majority of Participating First Nations' representatives; and
- b) Canada, by the Minister signing an agreement as authorized by the Governor-in-Council and, if required, the enactment of federal legislation giving effect to the amendment.

**Chapter 21 Dispute Resolution**

*Dispute  
Resolution  
Process*

21.1 The Final Agreement will set out a dispute resolution process for the resolution of disputes that may arise respecting the interpretation, application, and implementation of the Final Agreement.

**Chapter 22 Harmonization of Governance and Education Agreements**

*Harmonization  
of Governance  
and Education  
Agreements*

22.1 The Parties agree to prioritize concluding the Final Agreement on education before concluding a proposed final agreement on governance.

22.2 The Final Agreement will address the relationship between the Final Agreement on education and a proposed final agreement on governance.

## **Chapter 23 Notice**

*Notice*

23.1 In sections 23.2 to 23.4, “communication” includes a notice, document, request, approval, authorization, or consent.

*Service of Notice*

23.2 Unless otherwise provided in the Final Agreement, a communication to or from Canada and a Participating First Nation, pursuant to the Final Agreement must be:

- a) delivered personally or by courier;
- b) transmitted by electronic means or fax;
- c) mailed by prepaid registered post in Canada; or
- d) communicated by any other means agreed to by the Parties.

*Confirmation of Service of Notice*

23.3 A communication will be considered to have been given, made or delivered, and received if:

- a) delivered personally or by courier, at the start of business on the next business day after the business day on which it was received by the addressee or a responsible representative of the addressee;
- b) transmitted by electronic means or fax and the sender receives confirmation of the transmission, at the start of business on the next business day after the day on which it was transmitted; or
- c) mailed by prepaid registered post in Canada, when the postal receipt is acknowledged by the addressee or a responsible representative of the addressee.

*Address for Delivery*

23.4 If no other address for delivery of a particular communication has been provided by a Party, a communication will be delivered pursuant to section 23.2, to the intended recipient to be set out in the Final Agreement.

23.5 Any Party who changes its address or fax number will provide a notice to the other Parties pursuant to section 23.2.



**Signatures**

*Signatures*

IN WITNESS WHEREOF this Agreement is hereby executed by the Grand Chief of the Nishnawbe Aski Nation on behalf of the Participating First Nations and the Minister of Indian Affairs and Northern Development on behalf of Canada on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
Grand Chief of the  
Nishnawbe Aski Nation

\_\_\_\_\_  
Minister of Indian Affairs and Northern Development

Witnesses:

**Schedule A Potential Participating First Nations of Nishnawbe Aski Nation**

The following First Nations of Nishnawbe Aski Nation are eligible to be Participating First Nations under this Agreement:

Attawapiskat  
Bearskin Lake  
Brunswick House  
Cat Lake  
Chapleau Cree  
Chapleau Ojibway  
Constance Lake  
Deer Lake  
Eabametoong  
Flying Post  
Fort Albany / Kashechewan  
Fort Severn  
Ginoogaming  
Kasabonika Lake  
Kee-Way-Win  
Kingfisher  
Marten Falls  
Matachewan  
Mattagami  
Mishkeegogamang  
Missanabie Cree  
Moose Cree  
Muskrat Dam  
Neskantaga  
North Caribou Lake  
North Spirit Lake  
Pikangikum  
Poplar Hill  
Sachigo Lake  
Sandy Lake  
Taykwa Tagamou  
Wahgoshig  
Wapekeka  
Wawakapewin  
Webequie  
Weenusk  
Wunnumin

***Schedule B Potential Participating First Nations of Nishnawbe Aski Nation***

Subject to having lands set aside on their behalf as a Reserve, the following communities of Nishnawbe Aski Nation are eligible to be Participating First Nations under the Final Agreement:

Aroland  
McDowell Lake  
Nibinamik  
Slate Falls

**Schedule C Potential Future Participating First Nations of Nishnawbe Aski Nation**

Subject to recognition as a “band” under the *Indian Act*, and subject to having lands set aside on their behalf as a Reserve, the following communities of Nishnawbe Aski Nation are eligible to be Participating First Nations under the Final Agreement:

Beaver House  
Hornepayne  
Koocheching  
Mocreebec  
Whitewater

Other First Nations that are not members of Nishnawbe Aski Nation, that become members of Nishnawbe Aski Nation, may become a Party to the Final Agreement subject to sections 20.3, 20.4, 20.5, and 20.6 of this Agreement.