EDUCATION JURISDICTION INITIATIVE
TERMS OF REFERENCE

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BACKGROUND

1. The education jurisdiction initiative provides formal recognition by the federal and provincial governments of a First Nation's right to make decisions about the education of its children through signed agreements. BC First Nations have been seeking recognition of their jurisdiction over education for decades.

2. On July 5, 2006, First Nations, Canada, and BC signed an Education Jurisdiction Framework Agreement. This agreement sets the overall context and road map for implementing First Nations' jurisdiction over education in BC. Appended to this agreement is the BC First Nation Education Agreement, the Individual Jurisdiction Agreement and the Funding Agreement to be entered into by Canada and a First Nation that chooses to participate in the education jurisdiction initiative, and an Implementation Plan.

3. Federal and provincial legislation to enable the education jurisdiction initiative was passed in 2006 and 2007, respectively.

PURPOSE

4. The purpose of these Terms of Reference is to describe how Negotiating First Nations and Interested First Nations will work together in advancing the education jurisdiction initiative.

STRUCTURE

5. The education jurisdiction initiative is comprised of the following participants:

   (a) Negotiating First Nations that are engaged in negotiating Individual Jurisdiction Agreements and Funding Agreements;

   (b) Interested First Nations that have indicated an interest in the education jurisdiction initiative and may become Negotiating First Nations at a later date;

   (c) Education Jurisdiction Negotiating Team;

   (d) FNESC; and

   (e) FNSA.

6. The Education Jurisdiction Negotiating Team is made up of the following individuals:

   (a) up to three Education Jurisdiction Negotiators appointed in accordance with these Terms of Reference;

   (b) a legal advisor appointed in accordance with these Terms of Reference;

   (c) the Executive Director of FNESC;

   (d) the President of FNESC;

   (e) the President of FNSA; and

   (f) one of the NFN negotiators, appointed by the NFN negotiators.

7. The FNESC Conflict of Interest Policy will apply to all members of the Education Jurisdiction Negotiating Team.

8. All members of the Education Jurisdiction Negotiating Team must be provided with notice of all meetings of the team, but such meetings may proceed even if all members of the team are not in attendance.

ROLES AND RESPONSIBILITIES

9. **Negotiating First Nations** are responsible for:

   (a) final decision-making with respect to matters concerning their Individual Jurisdiction Agreements and their Funding Agreements;

   (b) providing direction and feedback to their NFN negotiators;

   (c) gathering data to support negotiations, as required.

10. **NFN negotiators** are responsible for:

   (a) appointing up to three Education Jurisdiction Negotiators, at least one of whom must be an NFN negotiator, and a legal advisor to the Education Jurisdiction Negotiating Team;

   (b) instructing the Education Jurisdiction Negotiating Team;

   (c) reviewing and approving the FNESC workplan and budget for the education jurisdiction initiative;

   (d) providing regular updates to their Negotiating First Nation;

   (e) seeking direction and feedback from their Negotiating First Nation;

   (f) participating in NFN Meetings; and

   (g) negotiating the elements of their Individual Jurisdiction Agreements and Funding Agreements that are unique to their Negotiating First Nation.

11. **Interested First Nations** are responsible for:

   (a) providing recommendations with respect to matters concerning the education jurisdiction initiative;

(b) providing direction and feedback to their representatives;

(c) gathering data to support negotiations, as required.

12. **IFN representatives** are responsible for:

    (a) providing recommendations and advice to the Education Jurisdiction Negotiating Team;

    (b) providing regular updates to their Interested First Nation;

    (c) seeking direction and feedback from their Interested First Nation; and

    (d) participating in IFN Meetings.

13. The **Education Jurisdiction Negotiating Team** is responsible for:

    (a) developing and carrying out a negotiating strategy to support the implementation of First Nations' jurisdiction over education, as directed by the Negotiating First Nations and in a manner consistent with the FNESC workplan;

    (b) carrying out negotiations with Canada and British Columbia on the common elements of the Individual Jurisdiction Agreements and the Funding Agreements, as directed by the Negotiating First Nations;

    (c) providing updates to NFN negotiators; and

    (d) providing updates to and receiving recommendations from IFN representatives.

14. The Education Jurisdiction Negotiating Team shall operate by consensus. If the members of the team are unable to reach a consensus the matter shall be referred to the Negotiating First Nations for resolution.

15. The **Education Jurisdiction Negotiators** are responsible for:

    (a) acting as spokespersons for the education jurisdiction initiative, as directed by Negotiating First Nations;

    (b) presenting reports on the education jurisdiction initiative at quarterly FNESC and FNSA Board meetings;

    (c) attending NFN Meetings and IFN Meetings; and

(d) other duties as directed by the Negotiating First Nations or the Interested First Nations.

16. The **legal advisor** is responsible for:

    (a) providing legal advice to the other members of the Education Jurisdiction Negotiating Team;

    (b) attending NFN Meetings and IFN Meetings; and

    (c) other duties as directed by the Negotiating First Nations or the Interested First Nations.

17. The Education Jurisdiction Negotiators and the legal advisor will be engaged by FNESC as contractors in accordance with FNESC's contracting policies.

18. **FNESC** is responsible for:

    (a) providing technical and general secretariat support for the Education Jurisdiction Negotiating Team;

    (b) carrying out research and policy development in connection with the implementation of the education jurisdiction initiative;

    (c) organizing and supporting NFN Meetings and IFN Meetings and follow-up;

    (d) developing and implementing the FNESC workplan and budget for the education jurisdiction initiative;

    (e) administering the contracts for the Education Jurisdiction Negotiators and legal advisor; and

    (f) coordinating communications for the education jurisdiction initiative, including reporting and providing updates.

19. **FNSA** is responsible for:

    (a) gathering information and providing input to support the successful implementation of the education jurisdiction initiative in First Nations schools; and

    (b) supporting the development of:

        i. the FNEA teacher certification process,

ii. the FNEA school certification process, and

iii. the FNEA standards for curriculum and exams for courses required to graduate.

NFN MEETINGS

20. The purpose of NFN Meetings is to give the Negotiating First Nations an opportunity to receive updates from and provide direction to the Education Jurisdiction Negotiating Team.

21. NFN Meetings may be held in person, by phone or by other electronic means.

22. NFN negotiators must be provided with at least 14 days' notice of a NFN Meeting, except in cases where a meeting is required to address an issue on an urgent basis.

23. Quorum for a NFN Meeting is 50% of the Negotiating First Nations.

24. NFN Meetings will be chaired by one or more of the Education Jurisdiction Negotiators.

25. Decisions of the NFN negotiators will be made by resolution approved by:

    (a) a majority (i.e. 50% plus one) of the NFN negotiators in attendance either in person or electronically at a NFN Meeting voting in support of the resolution; or

    (b) a majority of the NFN negotiators confirming their support for the resolution in writing and transmitting it by email.

26. Each Negotiating First Nation may cast a single vote at a NFN Meeting.

27. Only NFN negotiators, or their alternates who have provided FNESC with a written authorization from a NFN negotiator or from an authorized representative on the letterhead of a Negotiating First Nation, may cast a vote at a NFN Meeting.

28. Education Jurisdiction Team Members will be provided notice of all NFN Meetings.

IFN MEETINGS

29. The purposes of IFN Meetings are to:

    (a) update Interested First Nations on the education jurisdiction initiative;

(b) allow Interested First Nations and Negotiating First Nations to share their perspectives on the education jurisdiction initiative; and

(c) provide Interested First Nations with an opportunity to make recommendations to the Education Jurisdiction Negotiating Team, taking into account that they may become Negotiating First Nations.

30. IFN Meetings will be held in person.

31. IFN representatives and NFN negotiators must be provided with at least 30 days' notice of an IFN Meeting.

32. Quorum for an IFN Meeting is 25% of the Interested First Nations.

33. IFN Meetings will be chaired by one or more of the Education Jurisdiction Negotiators.

34. Decisions of the IFN representatives will be made by resolutions that are recorded in writing. A resolution at an IFN Meeting is approved if a majority (i.e. 50% plus one) of the IFN representatives in attendance vote in favour of the resolution.

35. Each Interested First Nation may cast a single vote at an IFN Meeting.

36. Only IFN representatives, or their alternates who have provided FNESC with a written authorization from an IFN representative or from an authorized representative on the letterhead of the Interested First Nation, may cast a vote at an IFN Meeting.

37. Education Jurisdiction Negotiating Team members will be provided notice of all IFN Meetings.

APPOINTMENT AND REPLACEMENT OF NFN NEGOTIATORS AND IFN REPRESENTATIVES

38. Negotiating First Nations may replace their NFN negotiator by providing FNESC with a copy of the band council resolution appointing their new NFN negotiator.

39. Interested First Nations may replace their IFN representative by providing FNESC with a copy of the band council resolution appointing their new IFN representative or a letter that identifies the new IFN representative.

BECOMING AN INTERESTED FIRST NATION

40. If a First Nation wishes to become an Interested First Nation, it must pass a band council resolution, in the form set out in Annex C, indicating its interest in exercising jurisdiction over education, and forward it to FNESC. Upon receiving the band council resolution, FNESC will add the name of that First Nation to the list of Interested First Nations that it maintains.

WITHDRAWAL FROM BEING AN INTERESTED FIRST NATION

41. If a First Nation no longer wishes to be an Interested First Nation, it must provide written notice to FNESC, which may be in the form set out in Annex E, by letter or email stating that it wishes to withdraw from the education jurisdiction initiative. Following receipt of the notice, FNESC will revise the list of Interested First Nations to remove the name of that First Nation.

42. If a First Nation that is listed as an Interested First Nation does not attend three consecutive IFN Meetings, FNESC will send a letter to that First Nation asking that First Nation if it wishes to remain an Interested First Nation. After sending the letter, FNESC will follow up with a call to the First Nation. If the Interested First Nation misses the following IFN Meeting, FNESC will remove that First Nation from the list of Interested First Nations following that meeting.

BECOMING A NEGOTIATING FIRST NATION

43. If an Interested First Nation wishes to become a Negotiating First Nation, it must provide a notice to FNESC and provide documentation to show that it meets the criteria set out in Annex A.

44. Upon receipt of a notice under section 43, FNESC will forward the notification, and accompanying documentation, to the NFN negotiators.

45. The NFN negotiators will review the documentation provided by the Interested First Nation. If the Interested First Nation meets the criteria attached as Annex A, the NFN negotiators will, by resolution, confirm that First Nation as a Negotiating First Nation and revise the list of confirmed Negotiating First Nations attached as Annex B.

46. A First Nation that has been confirmed as a Negotiating First Nation under section 45 may not be eligible for funding from FNESC that is designated for Negotiating First Nations until the following fiscal year.

WITHDRAWAL FROM BEING A NEGOTIATING FIRST NATION

47. If a First Nation no longer wishes to be a Negotiating First Nation, it must provide a band council resolution to FNESC stating that it wishes to change its status to Interested First Nation or to withdraw from the education jurisdiction initiative. Following receipt of the resolution, the NFN negotiators will revise the list of confirmed Negotiating First Nations attached as Annex B to remove the name of that First Nation. If the First Nation wishes to change its status to Interested First Nation, FNESC will add its name to the list of Interested First Nations that it maintains.

48. If a First Nation that is listed as a confirmed Negotiation First Nation in Annex B does not attend three consecutive NFN Meetings, FNESC will send a letter to that First Nation asking that First Nation if it wishes to remain a Negotiating First Nation. After sending the letter, FNESC will follow up with a call to the First Nation. If the Negotiating First Nation misses the following NFN Meeting, the Negotiating First Nations may remove that First Nation from the list of confirmed Negotiating First Nations at that meeting.

COMMITTEES AND WORKING GROUPS

49. The Negotiating First Nations may establish committees or working groups by resolution of the NFN negotiators passed at a NFN Meeting to assist in carrying out the work necessary to implement the education jurisdiction initiative.

50. The Negotiating First Nations and Interested First Nations may establish committees or working groups by resolution of the NFN negotiators and IFN representatives passed at an IFN Meeting to assist in carrying out the work necessary to implement the education jurisdiction initiative.

51. A committee or working group established under section 49 or 50 must provide regular reports at NFN Meetings or IFN Meetings, as applicable.

REIMBURSEMENT OF EXPENSES

52. Expenses shall be reimbursed in accordance with FNESC Finance Policies.

APPROVAL AND AMENDMENT

53. These Terms of Reference come into effect once they have been approved by resolution of the NFN negotiators.

54. These Terms of Reference may be amended by resolution of the of the NFN negotiators. Amendments will be effective from the date of their approval by resolution, unless otherwise stated in the amendment.

55. Interested First Nations and members of the Education Jurisdiction Negotiating Team shall be provided a copy of these Terms of Reference and of any amendments to these Terms of Reference.

DEFINITIONS

56. For the purposes of these Terms of Reference:

    (a) "Education Jurisdiction Negotiating Team" means the team of individuals whose composition is set out in section 6;

    (b) "Education Jurisdiction Negotiators" means the individuals appointed as negotiators for the education jurisdiction initiative under section 10(a);

    (c) "FNESC" means the First Nations Education Steering Committee, a society whose members are First Nations;

    (d) "FNSA" means the First Nations Schools Association, a society whose members are First Nations schools;

    (e) "Funding Agreement" (aka the "Canada-First Nation Education Jurisdiction Funding Agreement") means a funding agreement to be entered into between a Negotiating First Nation and Canada to support the implementation of an Individual Jurisdiction Agreement;

    (f) "IFN meeting" means a meeting of the Interested First Nations;

    (g) "IFN representative" means the individual representing an Interested First Nation who has been identified in a band council resolution or a letter from that First Nation;

    (h) "Individual Jurisdiction Agreement" (aka the "Canada-First Nation Education Jurisdiction Agreement") means the education jurisdiction agreement to be concluded between a Negotiating First Nation and Canada;

    (i) "Interested First Nation" means a First Nation whose Band Council has passed a band council resolution or provided a letter indicating their interest in exercising jurisdiction over education;

(j) “Negotiating First Nation” means a First Nation that has been confirmed as a Negotiating First Nation in accordance with section 45;

(k) “NFN Meeting” means a meeting of the Negotiating First Nations; and

(l) “NFN negotiator” means the negotiator for a Negotiating First Nation who has been appointed by a band council resolution of that First Nation.

Approved by resolution of the NFN negotiators on December 12, 2018.

ANNEX A

NEGOTIATING FIRST NATION CRITERIA

In order to become a Negotiating First Nation, a First Nation must:

(a) have a First Nation school for students in K-4 to grade 12 (or some of these grades) on its reserve land;

(b) have passed a band council resolution indicating its interest in exercising jurisdiction over education and a second band council resolution, substantially in the form attached as Annex D, appointing a negotiator and providing the negotiator with instructions;

(c) if it had received a financial offer from Canada under the education jurisdiction initiative prior to 2010, provide confirmation in writing after January 2016 that it remains interested in negotiating under the education jurisdiction initiative; and

(d) if it had not received a financial offer from Canada under the education jurisdiction initiative prior to 2010, provide notice to FNESC that it wishes to become a Negotiating First Nation.

ANNEX B

LIST OF CONFIRMED NEGOTIATING FIRST NATIONS

1. Ahousaht First Nation
2. Canim Lake Band
3. Ditidaht First Nation
4. Heiltsuk Band
5. Kispiox Band
6. Lil'wat Nation (formerly Mount Currie Band)
7. Seabird Island Band
8. Snuneymuxw First Nation
9. Aqam (formerly St. Mary's Band)
10. Tse-Shaht First Nation
11. Lower Kootenay Indian Band
12. Cowichan Tribes

ANNEX C

TEMPLATE BAND COUNCIL RESOLUTION FOR INTERESTED FIRST NATIONS

WHEREAS:

1. The education jurisdiction initiative provides formal recognition by the federal and provincial governments of a First Nation's right to make decisions about the education of its children through signed agreements.

2. On July 5, 2006, First Nations, Canada, and BC signed an Education Jurisdiction Framework Agreement, which sets the overall context and road map for implementing First Nations' jurisdiction over education in BC and includes the following schedules:

    a. The BC First Nation Education Agreement,
    b. the Canada-First Nation Education Jurisdiction Agreement,
    c. the Canada-First Nation Education Jurisdiction Funding, and
    d. an Implementation Plan;

3. Federal and provincial legislation to enable the education jurisdiction initiative was passed in 2006 and 2007, respectively.

The Council of the _____ First Nation (the "First Nation") resolves as follows:

The First Nation is interested in and supports the education jurisdiction initiative.

ANNEX D

TEMPLATE BAND COUNCIL RESOLUTION FOR NEGOTIATING FIRST NATIONS

Mandate for Negotiations
Education Jurisdiction Coordinator/Negotiator

_____ [*name*] is appointed as education jurisdiction coordinator/negotiator and has the mandate and instructions to negotiate and finalize a draft Canada-First Nation Education Jurisdiction Agreement for consideration by Chief and Council.

OPTIONAL – the following matters can be addressed in the BCR at this time or at a later date. However, these matters must be addressed before the agreement can be finalized.

The _____ First Nation/Band Council directs the education jurisdiction coordinator/negotiator to incorporate the following instructions into the Agreement:

Issue #1 – Establishment of a Community Education Authority (CEA) (choose one of these):

____ Option 1: Leave the clauses in, but choose not to establish a CEA at this time (*Note: this leaves open the possibility of establishing a CEA at some point in the future, but would not require the First Nation to establish one at this time*)
____ Option 2: Leave the clauses in and choose to establish a CEA
____ Option 3: Choose not to have the option of establishing a CEA (*Note: this means the First Nation would never have the option of establishing a CEA*)

Issue #2 – Ratification (choose one of these):

____ Option 1: Leave threshold as described in template – 50% plus one of votes cast (*Note: this is the minimum threshold and the one already set out in the Agreement*)
____ Option 2: Change the threshold to a higher threshold – ____% of votes cast (*Note: the First Nation could, for example, raise to "60%" or "70%" of votes cast*)
____ Option 3: Change the threshold to a threshold that relates to the number of eligible voters (rather than votes cast) – 50% plus one [*or a higher %*] of eligible voters (*Note: the First Nation could, for example, state that the threshold will be "50% plus one" or "60%" of all members who are eligible to vote*)

ANNEX E

TEMPLATE LETTER FOR INTERESTED FIRST NATIONS TO WITHDRAW FROM THE JURISDICTION INITIATIVE

First Nations Education Steering Committee
100 Park Royal South, Suite 113
West Vancouver BC V7T 1 A2

To whom it may concern,

Please be advised that the _____ First Nation/Band Council is formally withdrawing from the education jurisdiction initiative and no longer wishes to participate as an Interested First Nation.

Printed Name:_____

Signature:_____

Title:_____

Date:_____