

**[Name of First Nation] FIRST NATION EDUCATION LAW-MAKING PROTOCOL**

Dated for Reference [Date]

*Whereas the X First Nation will be entering a Canada-First Nation Education Jurisdiction Agreement (the “Jurisdiction Agreement”) with Canada;*

*Whereas the Jurisdiction Agreement recognizes the X First Nation’s jurisdiction over education as set out in that agreement;*

*Whereas the Council of the X First Nation will have the power to make laws with respect to education once the Jurisdiction Agreement comes into effect;*

*Whereas paragraph 2.11 of the Jurisdiction Agreement requires the First Nation to adopt, prior to exercising its jurisdiction, a First Nation Education Law-Making Protocol that provides for the following matters:*

- (a) procedures for the passage and amendment of First Nation Education Laws;*
- (b) challenging the validity of First Nation Education Laws;*
- (c) the amendment of the First Nation Education Law-Making Protocol;*
- (d) conflict of interest rules; and*
- (e) other matters, as determined by the Participating First Nation.*

The X First Nation hereby adopts the following education law-making protocol to set out the process for enacting and amending its laws with respect to education and related matters.

**INTERPRETATION**

1. For the purposes of this Protocol,

- (a) “Appeal Board” means the body established by the First Nation to address appeals under this Protocol;
- (b) “Chief” means the chief of the X First Nation;
- (c) “Council” means the Chief and Councillors of the X First Nation;
- (d) “Councillor” means a councillor of the X First Nation;
- (e) “Education” means education programs and services of a nature generally provided to students enrolled in kindergarten to grade 12;
- (f) “Education Law” means a law proposed or passed by the X First Nation in relation to Education and in accordance with the Jurisdiction Agreement and this Protocol;

- (g) “Eligible Voter” means a Member who is [X] years of age or older on Voting Day;
  - (h) “Jurisdiction Agreement” means the Canada-First Nation Education Jurisdiction Agreement entered into between the X First Nation and Canada;
  - (i) “Member” means a member whose name appears on the band list of the X First Nation;
  - (j) *[Sub-option if section 7 option is used: “Referendum Officer” means the person appointed by Council under section 7];*
  - (k) “Regulation” means a regulation passed pursuant to an Education Law; and
  - (l) “Voting Day” means the date set for the binding referendum.
2. A meeting of the Council is considered to be “duly convened” if the requirements of the *Indian Act* and any other rules established by the X First Nation are followed.
  3. Unless otherwise provided, words defined in the Jurisdiction Agreement have the same meaning in this Protocol.
  4. When calculating time, where anything is to be done within a time after, from, of, or before a specified day, or where a time is expressed to begin after or to be from a specified day, the time includes that day.

## **PROCESS FOR PASSING EDUCATION LAWS**

5. The Council may introduce and pass an Education Law in accordance with the following process:
  - (a) The Chief or a Councillor may introduce a draft of a proposed Education Law at a duly convened meeting of the Council.
  - (b) Following its introduction, the Council must post notices in public areas of the X First Nation community(/ies) accessible to Members and on the X First Nation’s website:
    - i. advising Members of its intention to pass an Education Law,
    - ii. providing information on how the Members may obtain a copy of the proposed Education Law, and
    - iii. giving at least 30 days’ notice of when a community meeting will be held to discuss the proposed Education Law.
  - (c) The Council must hold at least one community meeting at which:
    - i. the proposed Education Law is presented,

- ii. copies of the proposed Education Law, a summary of the proposed Education Law in plain English and an annotated guide to the proposed Education Law are made available, and
  - iii. Members are invited to provide comments.
- (d) Following the community meeting referred to in subsection (c), Members must be provided with a further 30 days during which they may provide comments.
- (e) Following the 30-day period referred to in subsection (d), the Council will review any comments received during the consultation process and determine whether to amend the proposed Education Law.
- (f) If the Council decides not to amend the proposed Education Law, they must hold a binding referendum on the proposed Education Law.
- (g) If the Council decides to amend the proposed Education Law, the Council will re-introduce the proposed Education Law as amended and carry out the activities set out in subsections (b), (c) and (d) in relation to the amended proposed Education Law.
- (h) At least 30 days after the Council has completed the steps set out in subsection (g), they will review any comments received during the second round of the consultation process and determine whether to further amend the proposed Education Law.
- (i) Once the Council is satisfied with the wording, they must hold a binding referendum on the proposed Education Law.
- (j) The Council will ensure that a list of Eligible Voters is prepared containing the full names, current addresses, and band numbers of the Eligible Voters. *[Sub-option, if section 7 option is used: The list of Eligible Voters must be sent to the Referendum Officer before Voting Day.]*
- (k) The Council will determine the Voting Day and *[Sub-option if section 7 option is used: the Referendum Officer will]* provide, at least 30 days prior to Voting Day, the following to each Eligible Voter at his or her last known address:
  - i. confirmation regarding their right to vote,
  - ii. notice including the date, time and location, and any other required details regarding Voting Day,
  - iii. copy of the proposed Education Law,
  - iv. a summary of the proposed Education Law in plain English, and
  - v. an annotated guide to the proposed Education Law.

6. *Sub-option A:* A majority of the Council (50% plus one) must vote in support of amending a proposed Education Law in order for it to be amended.

*Sub-option B:* At least 66% (or 75%) of the Council must vote in support of amending a proposed Education Law in order for it to be amended.

7. [*OPTION:* The Council will appoint a Referendum Officer to assist in oversight of the binding referendum and develop his or her terms of reference. The Referendum Officer will be responsible for overseeing the conduct of the binding referendum and will have all the powers necessary to carry out this responsibility, including appointment of assistants. If the Referendum Officer is unable to perform his or her duties, the Council may appoint an acting Referendum Officer.]
8. The Council may, at its discretion, include additional steps other than those set out in section 3 prior to holding a binding referendum on an Education Law. These additional steps include holding additional community meetings or information sessions with respect to the proposed Education Law.
9. *Sub-option A:* A majority of participating Eligible Voters (50% plus one) must vote in support of a proposed Education Law in order for it to be approved. If a proposed Education Law is approved, the Council must pass it at their next duly convened meeting.  
  
*Sub-option B:* At least 66% (or 75% or some other %) of participating Eligible Voters must vote in support of a proposed Education Law in order for it to be approved. If a proposed Education Law is approved, the Council must pass it at their next duly convened meeting.
10. The Council may establish by resolution, at least 30 days prior to Voting Day, a percentage of eligible voters who must participate in the referendum in order for the result to be binding.
11. The Council may determine to use electronic or mail-in voting for the binding referendum.
12. The Council will establish by resolution, at least 30 days prior to Voting day, voting procedures for Voting Day, including, if applicable, rules regarding electronic or mail-in voting, as the case may be, and the opening and counting of ballots.

## COMING INTO FORCE

13. An Education Law comes into force:

- (a) on the date it is passed;
- (b) on a date specified in the Education Law; or

- (c) on a date specified in accordance with a process that is set out in the Education Law.

## **AMENDMENTS**

14. The Council may amend an Education Law through the process described in sections 5 to 12 of this Protocol.

## **MAKING REGULATIONS**

15. If an Education Law includes a provision enabling the Council or the Community Education Authority to make Regulations, the Education Law must:

- (a) identify the body (i.e. the Council or the Community Education Authority) with the power to make Regulations;
- (b) set out the scope of matters that may be addressed in Regulations; and
- (c) stipulate that any Regulations must be consistent with the Education Law and the Jurisdiction Agreement.

## **REGISTRATION OF LAWS AND REGULATIONS**

16. The Council must establish a registry at the X First Nation's administrative office where official copies of any Education Laws and Regulations that have been passed are to be kept. The registry may also keep copies of proposed Education Laws and Regulations, and proposed amendments to Education Laws and Regulations.
17. Within ten days of passing an Education Law or amending an Education Law, the Council must deposit an official copy of the Education Law at the registry.
18. Within ten days of a Regulation being passed or amended, the Council or the Community Education Authority, as the case may be, that passed or made the amendment must register the Regulation at the registry.

## **PROCESS FOR CHALLENGING EDUCATION LAWS AND REGULATIONS**

*TWO OPTIONS: OPTION 1 - Appeal to Council or OPTION 2 - Appeal to First Nation Appeal Board*

*OPTION 1 – Appeal to Council*

19. Any Member may challenge the validity of an Education Law or Regulation by filing a petition in writing to the Council outlining the nature of their concerns with the Education Law or Regulation. [Sub-option: The petition must include the signatures of at least X

Members who support the challenge.] The Council must respond in writing to the petition within 30 days of receiving it. The Council's response must either:

- (a) confirm that the Council will take steps to rescind or amend the Education Law or Regulation to address the concern that has been raised; or
- (b) set out the reasons the Council has determined that there is no basis for the challenge.

20. If the Member who launched the challenge is not satisfied with the response received from the Council, the Member may apply to bring the matter before the British Columbia Supreme Court.

*[OPTION 2 – Appeal to First Nation Appeal Board]*

19. Any Member may challenge the validity of an Education Law or Regulation by filing a petition in writing to the Appeal Board outlining the nature of their concerns with the Education Law or Regulation. *[Sub-option: The petition must include the signatures of at least X Members who support the challenge.]* The Appeal Board must respond in writing to the petition within 30 days of receiving it. The Appeal Board's response must either:

- (a) confirm that the Appeal Board will *[Sub-option A: **recommend**]* *[Sub-option B: **direct**]* the Council to take steps to rescind or amend the Education Law or Regulation to address the concern that has been raised; or
- (b) set out the reasons the Appeal Board has determined that there is no basis for the challenge.

20. *(Sub-option A)* If the Appeal Board makes a recommendation that the Council rescind or amend the Education Law or Regulation under subsection 19(a), the Council will review that recommendation and respond in writing within 30 days of receiving it. The Council's response must either:

- (a) confirm that the Council will take steps to rescind or amend the Education Law or Regulation to address the concern that has been raised; or
- (b) set out the reasons the Council has determined that there is no basis for the challenge and for not agreeing with the Appeal Board's recommendation.

OR

*(Sub-option B)* If the Appeal Board directs the Council to rescind or amend the Education Law under subsection 20(a), the Council will rescind or amend the Education Law as directed by the Appeal Board within 12 months of receiving the direction.

21. If the Member who launched the challenge is not satisfied with the response received from the Appeal Board or from the Council, the Member may apply to bring the matter before the British Columbia Supreme Court.

## **CONFLICT OF INTEREST RULES**

21. Any member of the Council or the Community Education Authority must avoid real and perceived conflicts of interest.

22. As soon as a member of the Council or the Community Education Authority becomes aware that they have any direct or indirect interest, financial or otherwise, in a matter that is related to their responsibility for the provision of Education, they must:

- (a) disclose fully and promptly the nature and extent of the interest to each of the other members of the Council or Community Education Authority, as the case may be;
- (b) remove themselves from any discussions that pertain to the issue in question by absenting themselves from the discussions or decision-making on the issue, except if they are asked to provide information or context by another member (following which they must remove themselves); and
- (c) refrain from attempting to influence the outcome whether inside or outside of the meeting.

23. The Council or the Community Education Authority, as the case may be, must keep a written record (e.g. meeting minutes or a letter) of all disclosures of interest made under subsection 22(a).

24. The Council must establish a written policy setting out:

- (a) circumstances that would deem a member of the Council or the Community Education Authority to be, or appear to be, in a conflict of interest; and
- (b) the consequences for a member of the Council or the Community Education Authority being in or appearing to be in a conflict of interest or for failure to follow the requirements of section 22.

## **AMENDMENTS TO THIS PROTOCOL**

25. This Protocol may be amended in accordance with the following process:

- (a) Prior to the vote being taken in accordance with subsection (b), the Council will take reasonable steps to inform the Members of:

- i. their right to participate in the process for approving amendments to this Protocol and the manner in which that right can be exercised, and
  - ii. The content of the proposed amendment to this Protocol.
- (b) A vote will be conducted by way of secret ballot on a day or days to be determined by resolution of the Council, indicating that at least fifty percent (50%) plus one (1) of Members, of an age determined by the Council, who cast a ballot have voted in favour of adopting the amendment to this Protocol. *[The threshold should generally be the same as the one originally adopted in the vote on the initial Protocol.]*

## OPTIONS/VARIATIONS

- May allow Members to introduce a proposed Education Law (a single Member or a minimum number of Members).
- May increase the number of readings or required rounds of community consultation.
- Protocol may be amended through a different process than was used to pass it in the first place.