

EDUCATION CO-MANAGEMENT AGREEMENT

Made the __ day of _____, 202__.

BETWEEN:

THE _____ FIRST NATION
as represented by its Chief and Council (the “First Nation”)

AND:

THE FIRST NATIONS EDUCATION AUTHORITY
as represented by its Board of Directors (“FNEA”)

(Collectively referred to as the “Parties”)

BACKGROUND:

- A. First Nations in British Columbia have been working for decades to exercise jurisdiction over their education systems and to build the BC First Nations Education System which is premised fundamentally on quality education for First Nation Students and First Nations control of First Nations education.
- B. Indigenous peoples have the right to establish and control their educational systems and institutions as affirmed in Article 14 of the United Nations Declaration on the Rights of Indigenous Peoples (“UN Declaration”), and as a fundamental aspect of their inherent right of self-government recognized by Canada and British Columbia pursuant to section 35 of the Constitution Act, 1982.
- C. In June 2021, the federal *United Nations Declaration on the Rights of Indigenous Peoples Act* received Royal Assent and came into force. This legislation provides a framework to advance implementation of the UN Declaration at the federal level.
- D. In November 2019, the provincial government passed the *Declaration on the Rights of Indigenous Peoples Act* into law. The Act establishes the UN Declaration as the Province’s framework for reconciliation, as called for by the TRC’s Calls to Action.

- E. Canada, British Columbia and the First Nations Education Steering Committee (FNESC) signed the Education Jurisdiction Framework Agreement (EJFA) dated July 5, 2006, which was extended in 2013, 2018 and 2021, setting out their respective responsibilities in supporting the exercise of Jurisdiction over Education by First Nations.
- F. In 2006, Canada enacted the *First Nations Jurisdiction over Education in British Columbia Act* (the “Federal Act”), which among other things, established FNEA as a legal entity;
- G. In 2007, British Columbia enacted the *First Nations Education Act*;
- H. The First Nation has signed a Canada-First Nation Education Jurisdiction Agreement with Canada (“Education Jurisdiction Agreement”);
- I. The First Nation has been added to the list of “Participating First Nations” in the Schedule to the Federal Act;
- J. Section 4.4 of the Education Jurisdiction Agreement states that the power of the First Nation to make laws in relation to teacher certification, school certification and standards for curriculum and exams for courses required to graduate may only be exercised following the signing of an Education Co-Management Agreement with FNEA;
- K. On July 1, 2022 FNEA came into full operation in accordance with the Federal Act;
- L. FNEA will support the collaboration and cooperation amongst Participating First Nations to implement their jurisdiction over education and to build the BC First Nations Education System; and
- M. The parties wish to enter into this Agreement and to work together in accordance with the First Nation’s traditional teachings of respect and *naut’sa mawt* (working together as one) [*Note – this phrase is specific to Cowichan; other PFNs to customize or stop at “in accordance with the First Nation’s traditions”*].

THE PARTIES AGREE AS FOLLOWS:

Structure of FNEA Board of Directors

1. The First Nation will appoint two Directors to sit on the FNEA Board of Directors (the “Board”), one or both of whom will be a member of the First Nation. The First Nation will advise FNEA of the names of the two individuals it has appointed to the Board in writing.

2. The appointment of the First Nation's first two Directors will be accompanied by a written description of the procedure by which the First Nation will notify FNEA of the names of any individuals who are appointed to replace one or more of its Directors. The First Nation may, from time to time, advise FNEA in writing of any changes to its notification procedure.
3. The initial term of office for the first Directors appointed by the First Nation will be two years as set out in section 13(1) of the Federal Act. The term of office for subsequent appointments will be four years, unless the Board determines by resolution that the length of the term of office should be changed. A Director may be re-appointed to one or more subsequent terms of office.
4. The First Nation may replace a Director it has appointed at any time in accordance with the written procedure referred to in section 2 for a new term of office.

FNEA Terms of Reference

5. The First Nation agrees to the terms of reference for FNEA (attached as Schedule 1). The terms of reference for FNEA may be amended in accordance with its provisions.

Implementation of FNEA Authority for Teacher Certification, School Certification, and Standards for Graduation Requirements and Course Evaluation

6. The First Nation agrees to incorporate by reference into its own education law the process, standards and requirements of the FNEA rules, in respect of the following:
 - a. the certification and regulation of teachers;
 - b. the certification of schools operated by, or on behalf of, the First Nation;
 - c. graduation requirements and the granting of graduation certificates; and
 - d. approving courses that are required for graduation from the First Nation's school.
7. The FNEA rules referred to in section 6 may be amended by FNEA from time to time in accordance with their amendment provisions, provided FNEA has provided the First Nation with:
 - a. the proposed amendments, along with an explanation or rationale for the amendments, including an explanation demonstrating how the proposed amendments are consistent with the principle of Indigenous self-

determination and the United Nations Declaration on the Rights of Indigenous Peoples;

- b. time to review the amendments and identify any questions or concerns, including the opportunity to provide questions or concerns in writing;
 - c. an opportunity to meet to discuss the amendments, which FNEA may undertake by:
 - i. telephone or video conference, and/or
 - ii. inviting other Participating First Nations, and
 - d. good faith consideration of, and response to, any questions or concerns raised by the First Nation;
 - e. meaningful engagement by FNEA with the First Nation, including further opportunities to meet and good faith efforts to achieve consensus on the amendments; and
 - f. a written explanation of the decision to show how the concerns of the First Nation were considered.
8. In exercising its authority under section 6(a), FNEA confirms that individuals who have:
- a. a teaching certificate in good standing issued by a provincial education ministry or a recognized Canadian teacher certification authority; or
 - b. a FNEA Teaching Certificate
- will be authorized to teach in the First Nation's school(s).
9. In exercising its authority under section 6(b), FNEA confirms that it will treat a Participating First Nation ("PFN") school as certified by FNEA, if the PFN school has been certified through the First Nations Schools Assessment and Certification Process within the previous 5 years.
10. In exercising its authority under section 6(c), FNEA agrees that, where students meet the requirements established for each certificate, the First Nation will have the option of:
- a. providing its own First Nation Graduation Certificate to:
 - i. students who attend the First Nation's school(s); and
 - ii. members of the First Nation and non-members with a close affiliation with the First Nation who attend a public school or an independent school;

- b. requesting that FNEA issue a FNEA Graduation Certificate to:
 - i. students who attend the First Nation's school(s); and
 - ii. members of the First Nation and non-members with a close affiliation with the First Nation who attend a public school or an independent school; and
- c. requesting that British Columbia issue a BC Certificate of Graduation (Dogwood) or BC Adult Graduation Certificate (Adult Dogwood) for students who attend the First Nation's school(s).

11. In issuing a First Nation Graduation Certificate under section 10(a)(ii) or requesting that FNEA issue a FNEA Graduation Certificate under section 10(b)(ii), the First Nation has the discretion to determine who is a "non-member with a close affiliation with the First Nation".

Delegation of Additional Law-making Authority to FNEA

12. The First Nation agrees that FNEA may develop and pass laws in areas, other than those set out in section 6, through a process agreed to in writing by FNEA and the First Nation, which addresses:
- a. How the consent of the First Nation will be demonstrated;
 - b. Consistency with the First Nation's law-making protocol and the Education Jurisdiction Agreement; and
 - c. How the consent of the First Nation may be rescinded.

Delegation of Additional Powers and Responsibilities to FNEA

13. FNEA and First Nation may enter into additional agreements with one another that delegate additional powers and responsibilities to FNEA.
14. FNEA may negotiate and enter into agreements with third parties that provide opportunities to or, subject to section 15, bind the First Nation. Such agreements could include, but are not limited to, opportunities for:
- a. bulk purchasing;
 - b. professional development and training;
 - c. sharing services to maximize cost effectiveness; and
 - d. confirming working partnerships with the Ministry of Education, FNEA and the FNSA.
15. FNEA may only enter into an agreement that binds the First Nation under section 14 if the First Nation has provided its consent to be bound by that agreement in writing.

16. The First Nation may delegate powers or responsibilities to FNEA in accordance with the following process:

- a. the First Nation will submit a letter to FNEA requesting specific services accompanied by a Band Council Resolution;
- b. FNEA will respond to the First Nation within 30 calendar days; and
- c. FNEA will make reasonable efforts to accommodate requests from the First Nation taking into account the mandate of FNEA and its capacity to provide the requested services.

17. In the event that the First Nation wishes to rescind the delegation of any of the powers or responsibilities delegated in accordance with section 13 or 14, it may do so in accordance with the following process:

- a. the First Nation will submit a letter rescinding the delegation accompanied by a Band Council Resolution; and
- b. upon receipt, FNEA will respond to the First Nation acknowledging the rescission of the powers or responsibilities and, if appropriate, conduct follow-up to determine the reasons for the requested rescission.

FNEA's Authority to Sub-Delegate

18. FNEA may sub-delegate any of its responsibilities and authorities, including the authority in respect of the certification and regulation of teachers and the certification of the First Nation's school(s), to other bodies, including FNESC and the BC Ministry of Education, provided that:

- a. For any sub-delegation not already anticipated in the FNEA rules, FNEA has consulted the First Nation in regards to such sub-delegation in accordance with the consultation process set out in section 7; and
- b. Such-sub-delegation is set out in writing and approved by resolution of the Directors.

First Nation's Authority to Delegate

19. FNEA acknowledges and agrees that the First Nation may delegate any of its responsibilities and authorities under this Agreement, other than its law-making authority, to a school governing authority that has responsibility for operating the First Nation's school(s). Any delegation of responsibilities or authorities must be set out in writing, approved by a Band Council Resolution, and provided to FNEA.

20. Where the First Nation has delegated certain responsibilities or authorities to a school governing authority in accordance with section 19, the First Nation and FNEA will develop a written protocol to outline the impact of this delegation on the Parties' relationship, including reporting and accountability obligations and the dispute resolution process.

Accountability to PFNs

21. FNEA is accountable to the First Nation and other Participating First Nations. It will fulfill this responsibility by:
- a. developing annual and long term work plans, budgets and an evaluation process for the approval of FNEA Board of Directors;
 - b. hosting quarterly meetings to attend to FNEA business and reporting out to FNEA Board of Directors; and
 - c. producing and distributing an annual report, including audited financial statements, available online and, if requested, in hard copy.

Data Collection and Analysis

22. FNEA may develop and implement an effective information management system for collecting, analyzing, and sharing data, including data from schools operated by, or on behalf of, the First Nation and other Participating First Nations.
23. FNEA and the First Nation will develop a written information sharing agreement in respect of the collection, ownership, control, access, retention, possession, use, disclosure and confidentiality of any information shared between FNEA and the First Nation consistent with applicable laws and cultural requirements, including those in relation to confidentiality, privacy and the protection of personal or sensitive cultural information, and any intellectual property rights over traditional and cultural information collected by or on behalf of the First Nation.

DISPUTE RESOLUTION

Informal Discussion

24. In the event of a dispute between the Parties arising out of or relating to this Agreement, the Parties agree to meet, negotiate in good faith and attempt to resolve the dispute amicably.

Invoking the Dispute Resolution Procedure

25. If a dispute arises under this Agreement which cannot be resolved by the Parties within 45 calendar days, either Party may invoke this dispute resolution procedure by giving written notice to the other Party.

26. Within 14 calendar days of receiving notice, senior officials for both Parties will enter into direct, good faith negotiations concerning the dispute.
27. If within 45 calendar days after the first meeting between the senior officials, the Parties have failed to resolve the dispute and have not agreed to extend the time for senior officials to resolve the dispute, then the Parties agree to use a mediator, in accordance with section 28, to assist in resolving the dispute.

Mediation

28. Where a mediator is required to assist in resolving the dispute, the following rules will apply:
 - a. the Parties will jointly select a single mediator. If the Parties are unable to agree upon the choice of a mediator, then a mediator will be chosen, upon application by the Parties, by the ADR Institute of British Columbia;
 - b. the Parties agree to participate in good faith in the mediation process and to meet with the mediator as soon as possible; and
 - c. each Party will bear the costs of its own participation and representation in the mediation and will pay equally all other costs of mediating the dispute, including the remuneration of the mediator.

Arbitration

29. If the Parties are unable to resolve the dispute within 90 calendar days of the first meeting with the mediator or within such time as the Parties may agree in writing, the Parties may agree in writing to submit the dispute to arbitration, in accordance with section 30.
30. Where the Parties agree to submit the dispute to arbitration, the following rules will apply:
 - a. the dispute will be resolved by a single arbitrator if the Parties agree on one and, otherwise, by three arbitrators, one to be appointed by each Party and a third to be chosen by the two arbitrators appointed by the Parties;
 - b. the Parties may agree on the procedure to be followed in the arbitration. If they cannot agree on this procedure within 25 calendar days of the appointment of an arbitrator or arbitrators, the procedure will be determined by the arbitrator or arbitrators;
 - c. the arbitrator or arbitrators will issue a written decision within 45 calendar days of the completion of the arbitration process and will provide copies of the written decision to each Party; and

- d. unless otherwise agreed or otherwise ordered in the arbitration decision, each Party will bear the costs of its own participation and representation in the arbitration and will pay equally all other costs of the arbitration, including remuneration of the arbitrator or arbitrators.

Judicial Proceedings

- 31. The Parties agree not to commence litigation in respect of a dispute under this Agreement until the completion of the mediation process in accordance with section 28.
- 32. In the event that the Parties have agreed to arbitration, no Party may commence litigation in respect of a dispute under this Agreement until receipt of the arbitration decision.
- 33. Where litigation in respect of a dispute under this Agreement is to be commenced by a Party, the Party will give 30 calendar days written notice to the other Party of their intent to commence litigation, unless doing so would result in the loss of a right to commence litigation due to the expiration of a limitation period.

Amendment

- 34. This Agreement may be amended by written agreement of the Parties.

Notice and Communications

- 35. If to FNEA:

Suite 703, 100 Park Royal,
West Vancouver, BC, V7T 1A2
Attention : Executive Director

- 36. If to the First Nation:

[insert address]

- 37. Any notice to be given or communication made to a party pursuant to this Agreement will be in writing and will be effectively given or made if delivered by hand, email, facsimile transmission, or registered mail, to the appropriate address, email address, or facsimile number where so notified by that party.
- 38. A notice or communication will be considered to have been received:

- a) if delivered by hand during business hours on a business day, upon receipt by a responsible representative of the receiver, and if not delivered during business hours, upon the commencement of business on the next business day;
- b) if sent by facsimile transmission during business hours on a business day, upon the sender receiving confirmation of the transmission, and if not transmitted during business hours, upon the commencement of business on the next business day;
- c) if mailed by registered post in Canada, five (5) business days after posting, except that, in the case of a disruption or an impending or threatened disruption in postal services, every notice or communication will be delivered by hand or sent by facsimile transmission; or
- d) if sent by email during business hours on a business day, upon the sender confirming the email has been delivered, and if not sent during business hours, upon the commencement of business on the next business day.

Interpretation

39. In this Agreement:

- a. unless it is otherwise clear from the context, a reference to a “section” means a section of this Agreement;
- b. headings and sub-headings are for convenience only, do not form a part of this Agreement and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Agreement;
- c. unless otherwise provided, a reference to a statute includes every amendment to it, every regulation made under it and amendment made to such regulation, and any successor legislation;
- d. unless it is otherwise clear from the context, the use of the singular includes the plural and the use of plural includes the singular; and
- e. where one Party is mentioned in a provision of this Agreement, this will not be interpreted as implying or inferring any obligation on or acknowledgment by the other Party not mentioned in that provision.

40. Unless otherwise determined by a court of competent jurisdiction, if any provision contained in this Agreement is rendered invalid, illegal or unenforceable by a court of competent jurisdiction in any respect:

- a. the Parties will make best efforts to remedy or amend the provision; and

- b. the validity, legality or enforcement of the remaining provisions will not in any way be considered by the Parties to be affected or impaired.

General

- 41. The schedules to this Agreement form part of this Agreement.
- 42. This Agreement may be executed in any number of counterparts and transmitted by fax, email or other electronic means and if so executed and transmitted, this Agreement will be for all purposes as effective as if the parties had executed and delivered an original instrument.
- 43. This Agreement will enure to the benefit of and be binding upon the parties and their successors and assigns.
- 44. This Agreement shall take effect once it has been executed by FNEA and the First Nation.
- 45. This Agreement shall be governed by and construed in accordance with the laws of the First Nation, British Columbia and Canada, as applicable.