

# WHITECAP DAKOTA FIRST NATION GOVERNANCE AGREEMENT-IN-PRINCIPLE



Canada

**WHITECAP DAKOTA FIRST NATION  
GOVERNANCE AGREEMENT-IN-PRINCIPLE**

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**WHITECAP DAKOTA FIRST NATION  
Governance Agreement-in-Principle (“GAIP”)**

**BETWEEN**

**WHITECAP DAKOTA FIRST NATION,**  
as represented by WHITECAP DAKOTA FIRST NATION Chief and Councillors

**AND**

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA,**  
as represented by the Minister of Indian Affairs and Northern Development

**PREAMBLE:**

**WHEREAS** on January 25, 2012, WDFN and Canada entered into a Framework Agreement to negotiate self-governance;

**WHEREAS** Canada recognizes the inherent right of self-government as an existing aboriginal right under Section 35 of the *Constitution Act, 1982*;

**WHEREAS** WDFN is a band within the meaning of the *Indian Act* and is a respected and distinctive member of Canada’s First Nations community;

**WHEREAS** WDFN is a Dakota First Nation, and WDFN asserts that it is descended from the Oceti Sakowin (Seven Council Fires) and that the Oceti Sakowin was comprised of several Dakota, Nakota and Lakota Nations;

**WHEREAS** WDFN asserts that Dakota language, values, knowledge, traditions and way of life have been passed down from the Creator and between generations since time immemorial by WDFN and WDFN Members;

**WHEREAS** WDFN asserts that they have an inherent right to self-government that has been provided by the Creator, manifesting since time immemorial as a right to political, legal, economic, and social structures, based on the history, language, culture, spiritual traditions, and philosophy of the Dakota, especially WDFN’s rights to their traditional lands, territories and resources;

**WHEREAS** the Parties acknowledge that control by WDFN over developments affecting WDFN, WDFN Members and WDFN Reserve Lands and resources will enable WDFN to maintain and strengthen its institutions, culture and traditions, and to promote their development in accordance with WDFN’s aspirations and needs;

**WHEREAS** WDFN asserts they have traditional territories outside WDFN Reserve Lands which they have historically used, occupied and governed; and they further assert their right to preserve, protect, promote and maintain their interests throughout such traditional territories;

**WHEREAS** Canada acknowledges the aspiration of WDFN to participate fully in the economic, political, cultural and social life of Canada in a way that preserves and enhances the collective identity of WDFN Members now, and into the future, as a self-sufficient and sustainable community;

**WHEREAS** WDFN asserts that its modern relationship with the Crown is built on the inherent right to self-government, its historic relationship with the Crown as a Dakota Nation through the Royal Proclamation of 1763, and military alliances and treaties with the British Crown;

**WHEREAS** the Parties recognize a distinctive historical relationship between the Crown and certain Dakota communities based on, at various times, alliance, peace, and friendship, including the agreement between the Dakota and the British Crown concluded in 1787 at Fort Michilimackinac;

**WHEREAS** the Parties are committed to an ongoing process of fair dealing and reconciliation, including the negotiation of a Governance Agreement and any related agreements, which will establish a new government to government relationship;

**WHEREAS** there are differing views as to the source of the Jurisdiction set out in a Governance Agreement, and neither the Governance Agreement nor any Implementing Legislation is intended to alter the Canadian Constitution, including the division of powers between Canada and Saskatchewan or any inherent right of self-government;

**AND WHEREAS** the Parties intend to negotiate and conclude a Governance Agreement and any related agreements;

**NOW THEREFORE** the Parties agree to the following:

# PART I – WHITECAP DAKOTA GOVERNMENT

## CHAPTER 1: DEFINITIONS AND INTERPRETATION

### Definitions

1.01 In this Agreement:

- “Agreement” means this Governance Agreement-in-Principle.
- “Authority” means any authority other than law making authority.
- “Canada” means Her Majesty the Queen in Right of Canada, and includes all departments of the Government of Canada.
- “Conflict” means:
  - (a) compliance with one law would be a breach of another; or
  - (b) 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 Law and provincial law with any necessary modifications.
- “Effective Date” means the date the Implementing Legislation comes into force.
- “Environment” means “environment” as defined in the *Canadian Environmental Protection Act, 1999*.
- “Federal Crown Lands” means any real property belonging to Canada, and includes any real property of which Canada has the power to dispose.
- “Federal Law”: a definition of Federal Law will be negotiated at Governance Agreement stage.
- “Governance Agreement” means a self-government agreement that achieves the objectives referred to in Section 2.02.
- “Implementation Committee” means the committee as described in Chapter 24.
- “Implementing Legislation” means an Act of Parliament which gives effect to the Governance Agreement.
- “Intellectual Property” means any intangible property right resulting from intellectual activity in the industrial, scientific, literary or artistic fields, including, but not limited to, any right relating to patents, copyrights, trademarks, industrial designs, or plant breeders’ rights.
- “Interest in WDFN Reserve Lands” means any legally recognized interest, right or estate of any nature in or to WDFN Reserve Lands, including for greater certainty any leasehold interest, but not including title to or fee simple interest in WDFN Reserve Lands.
- “Intergovernmental Relations and Implementation Support Plan” means the plan as described in Chapter 24.
- “Jurisdiction” means both the power and authority to make a law and also includes Authority.

- “Land Register” means the Whitecap Dakota First Nation Land Register as created by WDFN pursuant to Section 18.1 of the *Whitecap Dakota First Nation Land Code 2015* as amended from time to time.
- “National Emergency” means “National Emergency” within the meaning of Section 3 of the *Emergencies Act*, R.S.C. 1985. c. 22 (4th Supp.).
- “Parties” means WDFN and Canada.
- “Party” means WDFN or Canada.
- “Ratification Documents” means the Governance Agreement and WDFN Constitution.
- “Saskatchewan” means Her Majesty the Queen in Right of Saskatchewan, and includes all ministries of the Government of Saskatchewan.
- “Sub-Agreement” means additional law making authority that has been agreed upon relating to a specific subject matter under Chapter 28.
- “WDFN” means the body of Indians known as the Whitecap Dakota Indian Band under the *Indian Act*.
- “WDFN Constitution” means a constitution approved by WDFN.
- “Whitecap Dakota Council” means the governing council of the Whitecap Dakota Government as provided for in the WDFN Constitution.
- “Whitecap Dakota Government” means the government established by WDFN in accordance with the WDFN Constitution.
- “WDFN Institution” means an organization, body or entity controlled by WDFN that administers a specific government policy or program.
- “WDFN Land Code” means the *Whitecap Dakota First Nation Land Code 2015* as amended from time to time.
- “WDFN Law” means a law made by the Whitecap Dakota Government in accordance with the Governance Agreement and the WDFN Constitution.
- “WDFN Member” means a person whose name appears, or whose name is entitled to appear, on the membership list referenced in the *Whitecap Dakota First Nation Membership Code* as provided for in the WDFN Constitution.
- “WDFN Reserve Lands” are “lands reserved for the Indians” within the meaning of Subsection 91(24) of the *Constitution Act, 1867*, and will continue to be held in the name of Her Majesty the Queen in Right of Canada for the use and benefit of WDFN.

1.02 In this Agreement, words and phrases with specific meanings have been identified in the text by the capitalization of the word or phrase.

## Interpretation

- 1.03 The schedules will form part of this Agreement.
- 1.04 The Governance Agreement will be interpreted according to the federal *Interpretation Act*.
- 1.05 There will be no presumption that doubtful expressions, terms, or provisions in the Governance Agreement are to be resolved in favour of any particular Party.

## **CHAPTER 2: PURPOSE**

- 2.01 The purpose of this Agreement is to establish the basis for negotiating the Governance Agreement and any related agreements.
- 2.02 The purpose of the Governance Agreement is to set out WDFN Jurisdiction and aspects of the intergovernmental relationship between the Whitecap Dakota Government and Canada.

### **CHAPTER 3: LEGAL STATUS AND CAPACITY**

3.01 WDFN is a legal entity with the rights, powers, and privileges of a natural person at law, which includes the capacity to:

- (a) enter into agreements and contracts with any person, government, or organization;
- (b) acquire, hold, or dispose of property and any interests therein;
- (c) acquire, hold, or dispose of bequests and gifts;
- (d) sue or be sued and act on its 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, act as trustee of, or otherwise deal with trusts;
- (g) be appointed as and act as an executor, administrator, or trustee of an estate; and
- (h) do other things ancillary to the exercise of its rights, powers, and privileges;

but does not include the capacity to be appointed and to act as a guardian.

## CHAPTER 4: WDFN CONSTITUTION

- 4.01 WDFN will establish and maintain a written WDFN Constitution which is consistent with the customs and practices of WDFN and with the Governance Agreement.
- 4.02 A WDFN Constitution will address, among other things:
- (a) membership rules and a process of review for decisions about the determination of WDFN membership;
  - (b) election processes and terms of office for the Whitecap Dakota Council;
  - (c) the exercise of legislative powers and duties by the Whitecap Dakota Government;
  - (d) the publication of WDFN Laws;
  - (e) provisions for systems of reporting to WDFN Members, through which the Whitecap Dakota Government will be accountable to an extent comparable to standards generally accepted for governments in Canada;
  - (f) provisions for conflict of interest requirements for elected officials of the Whitecap Dakota Government to an extent comparable to standards generally accepted for governments in Canada;
  - (g) procedures for amending the WDFN Constitution;
  - (h) rights of appeal and redress mechanisms for WDFN Members affected by decisions of the Whitecap Dakota Government;
  - (i) criteria for delegation of Authority; and
  - (j) processes for the establishment of WDFN Institutions, including provisions for accountable governance.
- 4.03 WDFN will exercise Jurisdiction through the Whitecap Dakota Government in accordance with the Governance Agreement and the WDFN Constitution.
- 4.04 Prior to Effective Date, WDFN will establish a WDFN Law which sets out criteria and mechanisms to allow those persons who are not WDFN Members and who may be adversely affected to:
- (a) make submissions, for consideration by Whitecap Dakota Government, respecting any proposed WDFN Laws; and
  - (b) have rights of appeal and access to redress mechanisms in relation to any WDFN Laws, amendments, and administrative decisions.

## **PART II – WDFN LAWS**

### **CHAPTER 5: GENERAL PROVISIONS IN RELATION TO WDFN JURISDICTION**

#### Scope of WDFN Jurisdiction

- 5.01 WDFN has the Jurisdiction provided for in Part II of this Agreement.
- 5.02 Unless otherwise provided in the Governance Agreement, WDFN Laws will apply on WDFN Reserve Lands and to all persons on WDFN Reserve Lands and to the Whitecap Dakota Government and WDFN Institutions.
- 5.03 Subject to Federal Laws, nothing in the Governance Agreement limits the ability of WDFN to make programs or services available to, and to operate facilities and institutions for, WDFN Members off WDFN Reserve Lands.
- 5.04 WDFN Jurisdiction includes the power and authority to make WDFN Laws concerning the personal immunity from civil liability of:
- (a) the Whitecap Dakota Council; and
  - (b) persons acting under the authority of a WDFN Law while carrying out government functions on behalf of the Whitecap Dakota Government or a WDFN Institution.
- 5.05 Notwithstanding Section 5.04, the Whitecap Dakota Government and WDFN Institutions, as employers, retain vicarious liability for the acts or omissions of persons identified in Section 5.04.
- 5.06 Nothing in the Governance Agreement or any related agreements affects any existing or future administrative arrangements specific to WDFN concerning the delivery of services to WDFN Members not resident on WDFN Reserve Lands.

#### Effective Date of WDFN Laws

- 5.07 A WDFN Law will not be effective prior to Effective Date.
- 5.08 Notwithstanding Section 5.07, any action taken or determination or decision made prior to Effective Date is deemed to be valid to the extent that the action, determination, or decision is a requirement of the Governance Agreement.

#### Fiduciary Relationship

- 5.09 The Parties agree that:
- (a) notwithstanding the Governance Agreement, the overall fiduciary relationship between the Parties will continue;

- (b) any fiduciary obligations owed by Canada to WDFN will change and diminish as WDFN exercises Jurisdiction under the Governance Agreement; and
- (c) those fiduciary obligations will be as determined by the law in relation to fiduciary relationships.

#### Delegation

- 5.10 WDFN may delegate its Authority to:
- (a) a WDFN Institution;
  - (b) an official of the Whitecap Dakota Government;
  - (c) other governments, including a department, agency or office of government;
  - (d) a board or other administrative body established by provincial or federal legislation; or
  - (e) a person or any non-government organization, including an agency or private contractor.
- 5.11 A delegation under Section 5.10(c), (d) or (e) must be agreed to in writing by the delegate.

#### Registry and Notification of WDFN Laws

- 5.12 WDFN will maintain a public registry by electronic means of all WDFN Laws, including the WDFN Constitution:
- (a) in the English language; and
  - (b) in the Dakota language at the discretion of WDFN.
- 5.13 Upon request the Whitecap Dakota Government will provide a copy of a WDFN Law.

#### Judicial Notice of WDFN Laws

- 5.14 Judicial notice may be taken of a WDFN Law once that law is registered in the public registry referred to in Section 5.12.

#### Application of the *Constitution Act, 1982*

- 5.15 The *Constitution Act, 1982*, including the *Canadian Charter of Rights and Freedoms*, will apply to Whitecap Dakota Government and WDFN Institutions.

- 5.16 The *Canadian Human Rights Act* applies to the Whitecap Dakota Government and any WDFN Institutions in respect of all matters within WDFN's Jurisdiction or Authority.

#### Application of Federal Laws

- 5.17 Except as otherwise provided for in the Governance Agreement, Federal Laws apply to WDFN, WDFN Reserve Lands, and all persons on WDFN Reserve Lands.

#### No Direct or Indirect Law-Making Authority

- 5.18 Notwithstanding any provision of the Governance Agreement, WDFN Jurisdiction does not include the power to make laws in relation to:
- (a) criminal law or procedure in criminal matters;
  - (b) labour relations and working conditions;
  - (c) shipping, navigation, and aeronautics;
  - (d) protection of health and safety and matters of national importance to all Canadians;
  - (e) Intellectual Property;
  - (f) banking, insurance, bankruptcy, insolvency, incorporation of companies and competition;
  - (g) international and interprovincial trade and commerce; and
  - (h) national defence and national security.

#### Laws of Overriding National Importance

- 5.19 Notwithstanding any provision of the Governance Agreement, Federal Laws in relation to matters of overriding national importance, including:

- (a) the preservation of peace, order, and good government in Canada; and
- (b) human rights;

will prevail over WDFN Law to the extent of any Conflict.

#### Activities Related to National Defence or National Security

- 5.20 Nothing in this Agreement limits the ability of Canada to carry out lawful activities related to the national defence or national security of Canada under applicable Federal Law.

### Incidental Impacts

5.21 Notwithstanding any provision of the Governance Agreement, where a WDFN Law has an incidental impact on a subject matter for which:

(a) no WDFN Jurisdiction is provided in the Governance Agreement;

or

(b) WDFN has Jurisdiction but the Governance Agreement does not provide for the priority of WDFN Laws;

and there is a Conflict between that WDFN Law and a Federal Law, the Federal Law will prevail to the extent of the Conflict.

### Double Aspects

5.22 Notwithstanding any provision of the Governance Agreement, where a WDFN Law has a double aspect in relation to a subject matter for which:

(a) no WDFN Jurisdiction is provided in the Governance Agreement;

or

(b) WDFN has Jurisdiction but the Governance Agreement does not provide for the priority of WDFN Laws;

and there is a Conflict between that WDFN Law and a Federal Law, the Federal Law will prevail to the extent of the Conflict.

### Application of Provincial Laws Which Apply of Their Own Force

5.23 Those provincial laws which apply of their own force continue to apply in the same manner and to the same extent as they did prior to the Effective Date of the Governance Agreement.

5.24 For greater certainty, in the event of a Conflict between a provincial law of Saskatchewan and the federal Implementing Legislation or a WDFN Law, the federal Implementing Legislation or the WDFN Law will prevail to the extent of the Conflict, unless otherwise provided in the Governance Agreement.

### Application of Provincial Laws Incorporated by Reference

5.25 Except as otherwise provided for in the Governance Agreement, and subject to any other act of Parliament, all provincial laws apply to and in respect of WDFN Members, except to the extent that those laws are in conflict with this Agreement, the Implementing Legislation or any WDFN Law, and except to the extent that those laws make provision for any matter for which provision is made by or under this Agreement or the Implementing Legislation or WDFN Law.

- 5.26 For greater certainty, Section 5.25 is intended to have the same effect on provincial laws of general application as Section 88 of the *Indian Act* has on provincial laws of general application.

#### WDFN Law Not a Federal Law or a Bylaw

- 5.27 WDFN Laws are not Federal Laws or “bylaws” within the meaning of the *Indian Act*.
- 5.28 The Minister of Indian Affairs and Northern Development has no authority to approve or disallow WDFN Laws.

#### Limitations

- 5.29 Nothing in the Governance Agreement will affect or limit the application of the federal *Emergencies Act* or the federal *Emergency Management Act*.
- 5.30 Special temporary measures required under the *Emergencies Act* to deal with a National Emergency must be expressly authorized by order or regulation of the Governor in Council.
- 5.31 Canada's existing emergency management plans developed pursuant to the *Emergency Management Act* will continue to apply and updated or new emergency management plans, when relevant, shall include any programs, arrangements or other measures to assist Saskatchewan, and through Saskatchewan, WDFN when dealing with an emergency.
- 5.32 Nothing in the Governance Agreement limits the capacity of Saskatchewan to identify WDFN as a “local authority” pursuant to the *Emergency Planning Act*, SS 1989-90, c E-8.1 and give WDFN authority under this Act to exercise the powers of a “local authority”.
- 5.33 Subject to Section 5.34, nothing in the Governance Agreement limits the application of the *Nuclear Safety and Control Act* and the *Nuclear Energy Act* to WDFN Reserve Lands.
- 5.34 In the event of a Conflict between the provisions of the Governance Agreement relating to expropriation and the *Nuclear Energy Act*, the Governance Agreement will prevail to the extent of the Conflict.

#### Application of the *Indian Act*

- 5.35 Except as provided for in the Governance Agreement, the *Indian Act* will no longer apply to WDFN, the Whitecap Dakota Government, WDFN Members, or WDFN Reserve Lands.
- 5.36 On Effective Date, WDFN bylaws enacted under the *Indian Act* will be deemed to be in force as a WDFN Law where the subject matter of such bylaws is a subject

matter in relation to which WDFN has Jurisdiction under the Governance Agreement.

- 5.37 On Effective Date, the following provisions of the *Indian Act*, and any related regulations or orders made pursuant to those provisions, will continue to apply to WDFN, the Whitecap Dakota Government, WDFN Members, and WDFN Reserve Lands:
- (a) Section 2(1);
  - (b) Section 3;
  - (c) Sections 5 – 7;
  - (d) Sections 42 – 52.5;
  - (e) Section 87;
  - (f) Section 89; and
  - (g) Section 90.
- 5.38 During Governance Agreement negotiations the Parties will discuss how Section 89 of the *Indian Act* continues to apply, while enabling the Whitecap Dakota Government, WDFN Members, and any status Indian resident on WDFN Reserve Lands to waive any protections afforded by Section 89.
- 5.39 Where pursuant to the Governance Agreement the *Indian Act* continues to apply:
- (a) a reference to “band” in the *Indian Act* will mean WDFN;
  - (b) a reference to “council of the band” in the *Indian Act* will mean Whitecap Dakota Council;
  - (c) a reference to “reserve” in the *Indian Act* will mean WDFN Reserve Lands; and
  - (d) a reference to “member of a band” in the *Indian Act* will mean a WDFN Member.

Application of the *First Nations Land Management Act*

- 5.40 On Effective Date, the WDFN Land Code enacted under the *First Nations Land Management Act* will be deemed to be in force as a WDFN Law, with such modifications as may be required, provided that the subject matter of the WDFN Land Code is a subject matter in relation to which WDFN has Jurisdiction under the Governance Agreement.

- 5.41 On Effective Date, the Framework Agreement on First Nation Land Management and the *First Nations Land Management Act* will no longer apply to WDFN, the Whitecap Dakota Government, WDFN Members and WDFN Reserve Lands.

#### WDFN Eligibility for Federal Programs and Services

- 5.42 WDFN will be eligible to participate in and benefit from federal programs or federally-sponsored government programs in accordance with general criteria established from time to time, to the extent that WDFN has not assumed responsibility for the programs under a fiscal relationship agreement or other fiscal arrangement pursuant to the Governance Agreement.

#### International Legal Obligations

- 5.43 The Governance Agreement will provide for the exercise of WDFN Jurisdiction to be consistent with Canada's international legal obligations.
- 5.44 The Governance Agreement will provide that, prior to expressing consent to be bound by an international treaty that would give rise to a new international legal obligation, Canada will consult the Whitecap Dakota Government, separately or through a forum that Canada determines is appropriate, if compliance with the new international legal obligation may adversely affect a right of WDFN under the Governance Agreement.

#### Aboriginal and Treaty Rights

- 5.45 The Governance Agreement is not a treaty.
- 5.46 Nothing in the Governance Agreement or any related agreements will be construed so as to abrogate or derogate from, recognize, deny or otherwise affect any existing or future aboriginal or treaty rights of WDFN, including any right recognized and affirmed by Section 35 of the *Constitution Act, 1982*.
- 5.47 Nothing in this Agreement constitutes an expression by the Parties of any definitive legal views with respect to how an inherent right of self-government may be defined at law.
- 5.48 This Agreement reflects a political commitment by the Parties to move forward to conclude a Governance Agreement but does not create any legal rights or obligations.
- 5.49 Nothing in the Governance Agreement will be construed as prejudicing, limiting, or restricting either Party's position with respect to aboriginal or treaty rights.

## Reconciliation

- 5.50 During Governance Agreement negotiations, the Parties agree to discuss WDFN's objectives in relation to reconciliation pursuant to the subject matters provided under the Governance Agreement.

## Continued Access for Lawful Purpose

- 5.51 Nothing in the Governance Agreement or any related agreements will:
- (a) affect the ability of persons acting in an official capacity under Federal Law or provincial law to have access to WDFN Reserve Lands; or
  - (b) limit the ability of Canada to carry out lawful activities related to the national defence or national security of Canada under Federal Law.

Such access will be without charge except as provided under Federal Law or provincial law.

- 5.52 Persons accessing WDFN Reserve Lands while acting in an official capacity under Federal Law or provincial law will comply with WDFN Laws where such compliance does not interfere with the carrying out of their lawful duties. Persons acting in an official capacity under Federal Law or provincial law will give prior notice of such access to the Whitecap Dakota Government, when it is reasonable to do so.
- 5.53 Canada will not be required to notify WDFN under Section 5.52 with respect to access to WDFN Reserve Lands by first responders, peace officers, federal investigators and law enforcement officers carrying out lawful duties under Federal Law or provincial law.
- 5.54 WDFN and Canada may enter into agreements relating to the procedure that will be followed for access to WDFN Reserve Lands by persons acting in an official capacity under Federal Law or provincial law to carry out their lawful duties.
- 5.55 Nothing in the Governance Agreement limits the public right to navigation.

## **CHAPTER 6: STRUCTURES AND PROCEDURES OF GOVERNMENT**

### Laws About the Whitecap Dakota Government

- 6.01 WDFN has Jurisdiction in relation to the structure, management, operations and procedures of the Whitecap Dakota Government.
- 6.02 WDFN Laws made under this Chapter may include laws about:
- (a) referenda by WDFN Members in relation to decision-making of the Whitecap Dakota Government;
  - (b) establishing entities, structures, or mechanisms, including bodies, boards, commissions or tribunals, for public purposes; and
  - (c) establishing WDFN Institutions.
- 6.03 The Whitecap Dakota Council is the law making body and representative of the Whitecap Dakota Government according to the WDFN Constitution.

### Elections and Appointments

- 6.04 WDFN has Jurisdiction in relation to the method of selection by WDFN Members of representatives of the Whitecap Dakota Government.

### Financial Management

- 6.05 WDFN has Jurisdiction in relation to its internal financial management, including:
- (a) establishing policies, regulations, and procedures in relation to the financial affairs of the Whitecap Dakota Government;
  - (b) authorizing and enabling the Whitecap Dakota Government to make decisions pertaining to WDFN public funds; and
  - (c) providing for fiscal planning, financial management, and accountability to WDFN Members.
- 6.06 WDFN Laws made under Section 6.05 will reflect the principles of accountability, flexibility, and transparency in the relationship between the Whitecap Dakota Government and WDFN Members.
- 6.07 Notwithstanding anything in the Governance Agreement, WDFN may:
- (a) receive monies, including monies from the federal or provincial governments and from other entities;
  - (b) acquire, hold, expend, invest and borrow money and securities, or guarantee the repayment of money or securities; and

- (c) perform such other functions regarding financial management and administration as may be required from time to time.

6.08 In the event of a Conflict between a WDFN Law made under this Chapter and a Federal Law, the WDFN Law will prevail to the extent of the Conflict.

## CHAPTER 7: MEMBERSHIP

### Scope of WDFN Jurisdiction

- 7.01 WDFN has Jurisdiction in relation to the determination of WDFN membership.
- 7.02 Notwithstanding Section 5.02, WDFN Laws in relation to the determination of WDFN membership will apply on and off WDFN Reserve Lands.
- 7.03 Prior to Effective Date, WDFN will establish a process by which a person who has been denied WDFN membership may have that decision reviewed by an independent arbiter.
- 7.04 A person who, immediately prior to the coming into force of a WDFN Law in relation to the determination of WDFN membership, has, or is entitled to have, his or her name entered on WDFN's band list, as defined in the *Indian Act*, is deemed to be a WDFN Member.
- 7.05 For greater certainty, a WDFN Law in relation to the determination of WDFN membership may not provide for the revocation of membership of persons described in Section 7.04 on any grounds other than the grounds on which membership may be revoked in respect of any other WDFN Member.

### Register of WDFN Members

- 7.06 Upon a WDFN Law made under this Chapter coming into effect, WDFN will establish and maintain a register of WDFN Members.
- 7.07 WDFN will enter on that register:
  - (a) the names of all WDFN Members and the date those persons became WDFN Members; and
  - (b) the names of all persons who have ceased to be WDFN Members since Effective Date and the date those persons ceased to be WDFN Members.

### Relationship to Canadian Citizenship and Indian Status

- 7.08 Membership in WDFN does not grant Canadian citizenship, nor does it confer or deny any rights of entry into Canada or the right to be registered as an Indian under the *Indian Act*.
- 7.09 WDFN Members who are Canadian citizens or permanent residents of Canada as defined in the *Citizenship Act* and the *Immigration and Refugee Protection Act*, will continue to be entitled to all the rights and benefits of all other Canadian citizens or permanent residents of Canada.

## Conflict of Laws

- 7.10 In the event of a Conflict between a WDFN Law made under this Chapter and a Federal Law, the WDFN Law will prevail to the extent of the Conflict.

## CHAPTER 8: LANGUAGE AND CULTURE

- 8.01 WDFN has Jurisdiction in relation to the preservation, promotion and enhancement of Dakota language and Dakota culture and cultural resources.
- 8.02 WDFN Jurisdiction under Section 8.01 includes management and protection of physical places, land uses, and heritage sites, and public access to WDFN places and heritage sites.
- 8.03 The traditional language of WDFN is Dakota. WDFN business may be conducted in Dakota and, at the discretion of WDFN, WDFN Laws may be translated into Dakota.
- 8.04 During Governance Agreement negotiations, the Parties agree to discuss the impact of the residential school system on Dakota culture and language and consider mechanisms consistent with Canada's national policies with respect to indigenous peoples which may enable WDFN to restore and preserve the Dakota language and culture in the WDFN community.

### The Official Languages Act

- 8.05 Services provided by a federal institution, as defined in the *Official Languages Act*, will be provided in accordance with that Act and that Act will prevail over WDFN Law to the extent of any Conflict.
- 8.06 For greater certainty, a federal institution, as defined in the *Official Languages Act*, does not include the Whitecap Dakota Government or any other body established to perform a governmental function in relation to WDFN.

### Protection of Cultural Artifacts

- 8.07 Section 91 of the *Indian Act* will continue to apply until the coming into force of the first WDFN Law made under this Chapter.

### Conflict of Laws

- 8.08 In the event of a Conflict between a WDFN Law made under this Chapter and a Federal Law, the WDFN Law will prevail to the extent of the Conflict.

## CHAPTER 9: RESERVE LANDS AND LANDS MANAGEMENT

### General

- 9.01 Title to all WDFN Reserve Lands will continue to be held by Canada for the use and benefit of WDFN.
- 9.02 WDFN Reserve Land may not be alienated except where it is exchanged for other land in accordance with the Governance Agreement.
- 9.03 WDFN Reserve Land may not be expropriated except in accordance with the Governance Agreement.

### Additions to WDFN Reserve Lands

- 9.04 If WDFN has acquired, or intends to acquire, a parcel of land and proposes that the parcel be identified as WDFN Reserve Lands, the Parties will proceed under Canada's additions to reserve policy, as amended from time to time.

### Transition

- 9.05 WDFN presently is an adherent to the *First Nations Land Management Act* and on Effective Date the WDFN Land Code will be continued as a WDFN Law in accordance with Section 5.40 of this Agreement.

### Management of WDFN Reserve Lands

- 9.06 WDFN has Jurisdiction in relation to the management of WDFN Reserve Lands.
- 9.07 WDFN Laws made under Section 9.06 may include laws about:
  - (a) the creation, and regulation, of Interests in WDFN Reserve Lands, including:
    - i. rights of possession;
    - ii. rights of use;
    - iii. registration systems for Interests in WDFN Reserve Lands;
    - iv. transfers of Interests in WDFN Reserve Lands;
    - v. taking of Interests in WDFN Reserve Lands by WDFN for community purposes; and
    - vi. encumbrances of Interests in WDFN Reserve Lands;
  - (b) land use planning and zoning;

- (c) access to, and trespass upon, WDFN Reserve Lands;
- (d) nuisances;
- (e) use, construction, maintenance, repair and demolition of buildings and other structures; and
- (f) residency on WDFN Reserve Lands.

#### Laws About Surveys

- 9.08 WDFN has Jurisdiction in relation to surveys of the boundaries of Interests in WDFN Reserve Lands.
- 9.09 A WDFN Law made under Section 9.08 will:
- (a) ensure the compatibility of surveys carried out under that WDFN Law and surveys carried out under any applicable Federal Laws and provincial laws;
  - (b) establish or identify a public registry for surveys of WDFN Reserve Lands;
  - (c) ensure the ongoing integrity of the survey fabric as it relates to WDFN Reserve Land; and
  - (d) provide for standards relating to surveys that are at least equal to any comparable standards provided for under the *Canada Lands Surveys Act*.

#### WDFN Land Register

- 9.10 On Effective Date, WDFN will continue to administer WDFN's Land Register.

#### Existing Interests in WDFN Reserve Lands

- 9.11 An Interest in WDFN Reserve Lands which exists on Effective Date continues in accordance with its terms.
- 9.12 Subject to Section 9.11, an Interest in WDFN Reserve Lands which exists as of Effective Date will be subject to WDFN Laws.

#### Exchange of Lands

- 9.13 Subject to Sections 9.20-9.37, WDFN Reserve Lands will not be alienated except for exchange of land in circumstances where:
- (a) WDFN will receive lands of greater or equivalent size or value in consideration for the exchange taking into account all of WDFN's interests;
  - (b) Canada is willing to set apart the lands received in exchange as a reserve within the meaning of Subsection 91(24) of the *Constitution Act, 1867*;

- (c) the Whitecap Dakota Government has made full disclosure to WDFN Members of all the circumstances surrounding the exchange; and
  - (d) WDFN Members have approved the exchange in accordance with an approval process established in WDFN Laws for this purpose.
- 9.14 Where the criteria in Section 9.13 have been satisfied, the Whitecap Dakota Government can execute an authorization and issue a request to Canada to exchange title to the land.
- 9.15 Subject to Section 9.04, upon Canada receiving an authorization and a request to exchange WDFN Reserve Land, Canada will consider WDFN's request to set the lands apart in accordance with:
- (a) the authorization;
  - (b) the terms and conditions of the exchange; and
  - (c) procedural requirements applicable to acquisitions and dispositions of Federal Crown Lands.
- 9.16 WDFN will be responsible for determining whether the criteria referred to in Section 9.13 have been fulfilled. WDFN's determination will be definitive and can be relied upon as such by Canada.
- 9.17 For greater certainty, the land alienated in accordance with Sections 9.13 and 9.14 will no longer be WDFN Reserve Lands.

Taking of Interests in WDFN Reserve Lands by WDFN for Community Purposes

- 9.18 If a WDFN Law makes provision for the taking of an Interest in WDFN Reserve Lands for community purposes, that law will provide for the payment of compensation by WDFN to the holder of the Interest in WDFN Reserve Lands that is taken without the consent of that holder based on:
- (a) the market value of the Interest in WDFN Reserve Lands being taken, as determined in accordance with the rules set out in the *Expropriation Act*, with such modifications as the circumstances require;
  - (b) the damages attributable to disturbance by WDFN to the holder of that Interest in WDFN Reserve Lands;
  - (c) damages for any reduction in the value of the remaining Interest in WDFN Reserve Lands to the holder of that Interest in WDFN Reserve Lands; and
  - (d) the value of any loss of any special economic advantage arising out of or incidental to the occupation or use of that parcel by the holder of that Interest in WDFN Reserve Lands, to the extent that this value is not

otherwise compensated in accordance with Sections 9.18(a) to (c).

- 9.19 An Interest in WDFN Reserve Lands obtained under Section 35 of the *Indian Act* or held by Canada prior to Effective Date is not subject to expropriation by WDFN.

#### Expropriation by Canada

- 9.20 A parcel of WDFN Reserve Lands, or an Interest in WDFN Reserve Lands, may be expropriated by Canada for the use of a federal department or agency with the consent of and by order of the Governor in Council.
- 9.21 Canada may expropriate a parcel of WDFN Reserve Lands, or an Interest in WDFN Reserve Lands, only if:
- (a) the expropriation is justifiable and necessary for a federal public purpose that serves the national interest or, under a Federal Law, the expropriation is deemed to be for a public purpose; and
  - (b) Canada is satisfied that, in addition to any other legal requirements that may apply, the following requirements have been met:
    - i. there is no other reasonably feasible alternative to the expropriation, such as the use of land that is not WDFN Reserve Land;
    - ii. reasonable efforts have been made to acquire the parcel, or the Interest in WDFN Reserve Lands, through agreement with WDFN;
    - iii. the least amount of land, or minimum Interest in WDFN Reserve Lands, necessary is expropriated for the shortest time possible to achieve the federal public purpose; and
    - iv. information relevant to the expropriation is provided to WDFN.
- 9.22 Before Canada expropriates a parcel of WDFN Reserve Lands, or an Interest in WDFN Reserve Lands, Canada will give notice to WDFN:
- (a) stating whether Canada considers the expropriation as:
    - i. justifiable and necessary for a federal public purpose that serves the national interest; or
    - ii. deemed to be for a public purpose under a Federal Law; and
  - (b) describing the steps taken to meet the requirements set out in Section 9.21(b).

- 9.23 Subject to Section 9.24, if WDFN objects to a proposed expropriation of a parcel of WDFN Reserve Lands, or an Interest in WDFN Reserve Lands, it may, within 60 days after it receives the notice from Canada, refer the matter to dispute resolution under Chapter 26.
- 9.24 If, in the notice under Section 9.22, Canada states that it considers the proposed expropriation of a parcel of WDFN Reserve Lands, or an Interest in WDFN Reserve Lands, is justifiable and necessary for a federal public purpose that serves the national interest and WDFN disagrees, WDFN may bring an application for judicial review of that decision by Canada under the *Federal Courts Act* to resolve the dispute.
- 9.25 Canada will not seek the consent of the Governor in Council to the expropriation of a parcel of WDFN Reserve Lands, or an Interest in WDFN Reserve Lands, until at least 60 days after it gives the notice under Section 9.22 or, if WDFN has referred the matter to dispute resolution under Section 9.23 or 9.24, until that dispute has been resolved.
- 9.26 If Canada expropriates an Interest in WDFN Reserve Lands:
- (a) the parcel on which the Interest in WDFN Reserve Lands is expropriated continues to be WDFN Reserve Lands and subject to WDFN Laws that are not inconsistent with the expropriation; and
  - (b) WDFN continues to have the right to use and occupy that parcel except to the extent that the use and occupation is inconsistent with the expropriation.

#### Compensation for Expropriation by Canada

- 9.27 If Canada expropriates a parcel of WDFN Reserve Lands, or an Interest in WDFN Reserve Lands, WDFN and Canada will negotiate and reach agreement on the compensation to be provided by Canada to WDFN in accordance with this Chapter.
- 9.28 If Canada expropriates a parcel of WDFN Reserve Lands, compensation will be provided to WDFN consisting of:
- (a) land acceptable to WDFN; and
  - (b) any additional compensation required to achieve the total compensation determined under Section 9.30.
- 9.29 If WDFN consents, land provided to WDFN as compensation may be of an area that is less than the area of the parcel of WDFN Reserve Land which has been expropriated.

- 9.30 If Canada expropriates a parcel of WDFN Reserve Lands, or an Interest in WDFN Reserve Lands, the total compensation will be determined taking into account the following factors as they applied on the effective date of the expropriation:
- (a) the market value of the expropriated parcel or Interest in WDFN Reserve Lands;
  - (b) the replacement value of any improvement to the parcel;
  - (c) any expenses or losses resulting from a disturbance attributable to the expropriation;
  - (d) any reduction in the value of any Interest in WDFN Reserve Lands that is not expropriated;
  - (e) any adverse effect on any cultural or other special value of the parcel or of the Interest in WDFN Reserve Lands;
  - (f) the value of any special economic advantage arising out of, or incidental to, the occupation or use of the parcel or of the Interest in WDFN Reserve Lands to the extent that the value is not otherwise compensated under Sections 9.30(a) to (e); and
  - (g) if land has been provided to WDFN as compensation for the expropriation of a parcel of WDFN Reserve Land, the fair market value of the land provided.
- 9.31 Canada will pay interest on compensation (other than land) from the effective date of an expropriation to the date of payment at the prejudgment interest rate that is payable in civil proceedings in Her Majesty's Court of Queen's Bench of Saskatchewan for the same period.
- 9.32 If WDFN and Canada do not reach an agreement on compensation, WDFN or Canada may refer the matter to dispute resolution under Chapter 26.
- 9.33 Any damages resulting from a claim in respect of the expropriation by Canada of a parcel of WDFN Reserve Lands, or Interest in WDFN Reserve Lands, will be offset against the compensation payable under this Chapter.
- 9.34 If land is provided to WDFN, in whole or in part, as compensation for the expropriation of a parcel of WDFN Reserve Lands and WDFN proposes that the land provided as compensation is identified as WDFN Reserve Lands, WDFN and Canada will proceed under a process to be set out in the Governance Agreement.

### Restitution

- 9.35 If a parcel of WDFN Reserve Lands expropriated by Canada is no longer required for the purpose for which it was expropriated, Canada will return that parcel to WDFN in accordance with the agreed upon terms and conditions for the return of that parcel and the disposition of any improvements on that parcel.
- 9.36 If WDFN and Canada cannot agree on the terms and conditions for the return of the parcel, or for the disposition of any improvements, WDFN or Canada may refer the matter to dispute resolution under Chapter 26.
- 9.37 If an Interest in WDFN Reserve Lands expropriated by Canada is no longer required by Canada for the purpose for which it was expropriated, that Interest in WDFN Reserve Lands will revert to WDFN.

### Conflict of Laws

- 9.38 In the event of a Conflict between a WDFN Law made under this Chapter and a Federal Law, the WDFN Law will prevail to the extent of the Conflict.

## **CHAPTER 10: PUBLIC ORDER AND PEACE**

- 10.01 WDFN has Jurisdiction in relation to the regulation, control, or prohibition of any actions, activities, or undertakings on WDFN Reserve Lands that constitute, or may constitute, a danger to public health or threat to public order, peace, or safety.
- 10.02 In the event of a Conflict between a WDFN Law made under this Chapter and Federal Law, the Federal Law will prevail to the extent of the Conflict.

## CHAPTER 11: TAXATION

### Definitions:

11.01 For this Chapter, the following definitions apply:

“Direct” has the same meaning, for the purposes of distinguishing between a direct tax and an indirect tax, as in Section 92(2) of the *Constitution Act, 1867*.

“Person” includes an individual, a partnership, a corporation, a trust, an unincorporated association, a government or any agency or political subdivision thereof and their heirs, executors, administrators and other legal representatives.

“Whitecap Dakota Government Capital” means all assets transferred to the Whitecap Dakota Government under the Governance Agreement, or recognized as owned by the Whitecap Dakota Government under the Governance Agreement.

### Direct Taxation Powers

11.02 WDFN through the Whitecap Dakota Government has Jurisdiction in relation to:

- (a) Direct taxation of WDFN Members, within WDFN Reserve Lands, in order to raise revenue for Whitecap Dakota Government purposes; and
- (b) the implementation of any taxation agreement entered into between WDFN and Canada.

11.03 Prior to concluding Governance Agreement negotiations, the Parties will discuss the scope of WDFN Jurisdiction in relation to Direct taxation of Persons other than WDFN Members within WDFN Reserve Lands, specifically with respect to:

- (a) the Whitecap Property Tax Law;
- (b) the Whitecap Liquor Consumption Fee;
- (c) the Whitecap Community Improvement Fee; and
- (d) any other taxes to which the Parties may agree.

11.04 A WDFN Law made under Section 11.02(a) applies notwithstanding Section 87 of the *Indian Act*.

11.05 WDFN Jurisdiction under Section 11.02 does not limit the taxation powers of Canada or Saskatchewan.

11.06 Notwithstanding any other provision of this Agreement, any WDFN Law made under this Chapter, or any exercise of Jurisdiction by WDFN, is subject to

Canada's international legal obligations in respect of taxation and the consultation requirement in Section 5.44 does not apply to Canada in respect of international legal obligations respecting taxation.

### Taxation Powers Agreements

- 11.07 From time to time, at the request of the Whitecap Dakota Government, Canada and Saskatchewan, together or separately, may negotiate an agreement with the Whitecap Dakota Government respecting:
- (a) the extent to which the Direct taxation Jurisdiction of the Whitecap Dakota Government under Section 11.02(a) may be extended to apply to Persons other than WDFN Members, within WDFN Reserve Lands;
  - (b) the coordination of Whitecap Dakota Government taxation of any Person with federal or provincial tax systems; and
  - (c) the manner in which, and extent to which, Sections 87 and 89 of the *Indian Act* will, only for the period of time set out in the agreement and subject to being given force of law by federal legislation, cease to apply to the property of a WDFN Member, the Whitecap Dakota Government or an Indian or band for the purposes of the administration, collection and enforcement of a Whitecap Dakota Government, federal or provincial tax contemplated by that agreement.
- 11.08 A WDFN Law in relation to Direct taxation made under an agreement referred to in Section 11.07 applies notwithstanding Section 87 of the *Indian Act*.
- 11.09 Notwithstanding the provisions of Chapter 22, a taxation powers agreement made under 11.07 may provide for, or enable a WDFN Law to provide for:
- (a) fines or terms of imprisonment under a WDFN Law in relation to taxation that are greater than the limits set out in Section 22.07; and
  - (b) other measures related to the administration, enforcement, adjudication and appeals of matters in relation to taxation.
- 11.10 A taxation agreement referred to in Section 11.07 will not form part of the Governance Agreement, is not intended to be a treaty or land claims agreement and is not intended to recognize or affirm aboriginal or treaty rights within the meaning of Sections 25 and 35 of the *Constitution Act, 1982*.

### Transfer of Whitecap Dakota Government Capital

- 11.11 A transfer under the Governance Agreement of Whitecap Dakota Government Capital is not taxable and a recognition of ownership of Whitecap Dakota Government Capital under the Governance Agreement is not taxable.

- 11.12 For federal purposes, Whitecap Dakota Government Capital is deemed to have been acquired by the Whitecap Dakota Government at a cost equal to its fair market value on the latest of:
- (a) the Effective Date; and
  - (b) the date of transfer of ownership or the date of recognition of ownership, as the case may be.

#### Tax Treatment Agreement

- 11.13 The Whitecap Dakota Government and Canada, or the Whitecap Dakota Government, Canada and Saskatchewan, may enter into a tax treatment agreement.
- 11.14 An agreement under Section 11.13 may provide that Sections 87 and 89 of the *Indian Act* will not apply, in whole or in part, to the property of the Whitecap Dakota Government for the period set out in that agreement.
- 11.15 If the Whitecap Dakota Government and Canada, or the Whitecap Dakota Government, Canada and Saskatchewan enter into a tax treatment agreement under Section 11.13, Canada will recommend to Parliament, and, if Saskatchewan is a party to the agreement, Saskatchewan will recommend to its Legislative Assembly that the tax treatment agreement be given effect and force of law through legislation.
- 11.16 An agreement under Section 11.13 will not form part of the Governance Agreement, is not intended to be a treaty or land claims agreement and is not intended to recognize or affirm aboriginal or treaty rights within the meaning of Sections 25 and 35 of the *Constitution Act, 1982*.

#### First Nations Fiscal Management Act

- 11.17 Canada will present in the Implementing Legislation, provisions to enable the Governor-in-Council to make regulations to enable the Whitecap Dakota Government to benefit from the provisions of the *First Nation Fiscal Management Act* or obtain the services of any body established under that Act.

## **CHAPTER 12: ENVIRONMENT**

12.01 Prior to concluding a Governance Agreement, the Parties will negotiate WDFN Jurisdiction in relation to environmental protection and assessment on WDFN Reserve Lands.

12.02 The Governance Agreement will ensure that:

- (a) WDFN standards in relation to environmental assessment under a WDFN Law will be at least equal to the standards under any comparable Federal Laws or provincial laws;
- (b) any environmental assessment processes should avoid unnecessary overlap and duplication; and
- (c) in the event of a Conflict between a WDFN Law in relation to environmental protection and assessment and a Federal Law or provincial law, the Federal Law or provincial law will prevail to the extent of the Conflict.

## CHAPTER 13: RESOURCE MANAGEMENT

### Natural Resource Laws: General

- 13.01 WDFN has Jurisdiction in relation to natural resources on, or forming part of, WDFN Reserve Lands.
- 13.02 WDFN Laws made under this Chapter may include laws about:
- (a) planning, managing, and conserving natural resources;
  - (b) granting and transferring of rights or interests in natural resources;
  - (c) harvesting, extracting, removing, and disposing of natural resources and access to WDFN Reserve Lands for these purposes;
  - (d) a system for registering and recording rights or interests in natural resources; and
  - (e) taking rights or interests in natural resources with or without the holder's consent.
- 13.03 WDFN Laws made under Section 13.02(e) will provide that the holders of the rights or interests taken receive fair compensation.
- 13.04 WDFN Laws made under this Chapter will not affect Canada's ability to fulfill any legal obligation to collect information for statistics and reports on natural resources.
- 13.05 In the event of a Conflict between a WDFN Law made under Section 13.01 and a Federal Law, the WDFN Law will prevail to the extent of the Conflict.

### Non-renewable Resources Laws

- 13.06 WDFN has Jurisdiction in relation to non-renewable resources, including mines, minerals, oil, gas, sand, and gravel on WDFN Reserve Lands.
- 13.07 In the event of a Conflict between a WDFN Law made under Section 13.06 and a Federal Law, the WDFN Law will prevail to the extent of the Conflict.
- 13.08 Upon a WDFN Law made under Section 13.06 coming into effect which deals with the same, or similar, matters as those matters dealt with in the *Indian Oil and Gas Act*, that Act no longer applies to WDFN, WDFN Reserve Lands, or the royalties on oil and gas obtained from WDFN Reserve Lands.

## Water Laws

- 13.09 WDFN has Jurisdiction in relation to:
- (a) bodies of water entirely within WDFN Reserve Lands; and
  - (b) groundwater.
- 13.10 In the event of a Conflict between a WDFN Law made under Section 13.09(a) and a Federal Law, the WDFN Law will prevail to the extent of the Conflict.
- 13.11 In the event of a Conflict between a WDFN Law made under Section 13.09(b) and a Federal Law, the Federal Law will prevail to the extent of the Conflict.
- 13.12 WDFN, Canada and Saskatchewan may enter into agreements with respect to the control, use, or management of bodies of water which are not entirely within WDFN Reserve Lands.

## Forest Resources Laws

- 13.13 WDFN has Jurisdiction in relation to forest resources.
- 13.14 Subject to Section 13.15, in the event of a Conflict between a WDFN Law made under Section 13.13 and a Federal Law, the WDFN Law will prevail to the extent of the Conflict.
- 13.15 In the event of a Conflict between a WDFN Law made under Section 13.13 and a Federal Law in relation to plant health, the Federal Law will prevail to the extent of the Conflict.

## Fish, Fish Habitat, and Aquatic Plants Laws

- 13.16 WDFN has Jurisdiction in relation to:
- (a) the protection, harvesting, and management of fish in bodies of water entirely within WDFN Reserve Lands;
  - (b) the conservation and protection of fish habitat within WDFN Reserve Lands; and
  - (c) the protection, harvesting, and management of aquatic plants in bodies of water entirely within WDFN Reserve Lands.
- 13.17 In the event of a Conflict between a WDFN Law made under Section 13.16 and a Federal Law, the Federal Law will prevail to the extent of the Conflict.
- 13.18 WDFN, Canada and Saskatchewan may enter into agreements with respect to the protection, harvesting and management of fish or aquatic plants in bodies of water which are not entirely within WDFN Reserve Lands.

## Wildlife Laws

- 13.19 WDFN has Jurisdiction in relation to wildlife.
- 13.20 Subject to Section 13.21, in the event of a Conflict between a WDFN Law made under Section 13.19 and a Federal Law, the WDFN Law will prevail to the extent of the Conflict.
- 13.21 In the event of a Conflict between a WDFN Law made under Section 13.19 and a Federal Law in relation to:
- (a) migratory birds or their habitat; or
  - (b) species at risk or their habitat;
- the Federal Law will prevail to the extent of the Conflict.

## **CHAPTER 14: AGRICULTURE**

14.01 WDFN has Jurisdiction in relation to agriculture.

14.02 In the event of a Conflict between a WDFN Law made under this Chapter and Federal Law, the Federal Law will prevail to the extent of the Conflict.

## **CHAPTER 15: PUBLIC WORKS, COMMUNITY INFRASTRUCTURE AND LOCAL SERVICES**

15.01 WDFN has Jurisdiction in relation to public works, private works, community infrastructure and local services.

15.02 WDFN Laws made under this Chapter may include laws about:

- (a) housing;
- (b) the construction, repair, and use of buildings;
- (c) water supply;
- (d) infrastructure, including:
  - i. the opening or closing of roads; and
  - ii. the construction and maintenance of roads, bridges, underpasses, and drains;
- (e) the supply and distribution of energy, including electricity;
- (f) waste and sewage disposal and recycling;
- (g) fire protection and fire protection services; and
- (h) the control of domestic animals.

15.03 For the purposes of Section 15.02(d):

- (a) “roads” includes road allowances, streets, lanes, and sidewalks; and
- (b) “drains” includes culverts, drainage ditches, drains, and dikes.

15.04 WDFN has Jurisdiction in relation to the levying and collection of development cost charges, user fees, and development permit fees to provide for public works, community infrastructure, and local services on WDFN Reserve Lands.

15.05 A WDFN Law made under this Chapter will provide for standards that are at least equal to any standards provided for under a comparable Federal Law or provincial law.

15.06 In the event of a Conflict between a WDFN Law made under this Chapter and Federal Law, the WDFN Law will prevail to the extent of the Conflict.

## **CHAPTER 16: LOCAL TRAFFIC AND TRANSPORTATION**

- 16.01 WDFN has Jurisdiction in relation to the regulation and control of local ground traffic, parking and transportation, and the design, construction, maintenance and management of the local ground transportation infrastructure.
- 16.02 WDFN Jurisdiction under this Chapter does not include the regulation of dangerous goods.
- 16.03 For greater certainty, a WDFN Law which provides for health and safety standards, regulations, and technical codes in relation to those matters set out in this Chapter will be at least equivalent to federal and provincial health and safety standards, regulations, and technical codes.
- 16.04 In the event of a Conflict between a WDFN Law made under this Chapter and a Federal Law, the Federal Law will prevail to the extent of the Conflict.

**CHAPTER 17: ECONOMIC DEVELOPMENT AND LICENSING, REGULATION AND OPERATION OF BUSINESSES**

- 17.01 WDFN has Jurisdiction in relation to the regulation, licensing, and prohibition of businesses on WDFN Reserve Lands.
- 17.02 WDFN Laws made under this Chapter may include laws about:
- (a) establishing forms of business organization to carry out business activities on WDFN Reserve Lands;
  - (b) regulating business activities on WDFN Reserve Lands, including providing for licenses, permits, approvals, and inspections;
  - (c) the terms and conditions of licenses, permits, or approvals; and
  - (d) the duration, suspension or cancellation of licenses, permits, or approvals.
- 17.03 In the event of a Conflict between a WDFN Law made under this Chapter and a Federal Law, the WDFN Law will prevail to the extent of the Conflict.

## **CHAPTER 18: LIQUOR AND GAMING**

### Prohibition of Intoxicants

- 18.01 WDFN has Jurisdiction in relation to the prohibition of the sale, barter, supply, manufacture, or possession of intoxicants.
- 18.02 In the event of a Conflict between a WDFN Law made under Section 18.01 and a Federal Law, the WDFN Law will prevail to the extent of the Conflict.
- 18.03 During Governance Agreement negotiations, and subject to the participation of Saskatchewan, the Parties may discuss WDFN Jurisdiction in relation to the control of liquor on WDFN Reserve Lands.

### Gaming

- 18.04 During Governance Agreement negotiations, and subject to the participation of Saskatchewan, the Parties may discuss WDFN Jurisdiction over gaming on WDFN Reserve Lands.

## **CHAPTER 19: LANDLORD, TENANT AND OCCUPANCY**

19.01 WDFN has Jurisdiction in relation to landlord and tenant matters on residential premises, commercial premises, and agricultural land.

19.02 WDFN Laws made under this Chapter may include laws about:

- (a) the rights and obligations of landlords and tenants;
- (b) remedies for the breach of a tenancy agreement;
- (c) procedures for rent increases;
- (d) required notice provisions;
- (e) the termination and regaining of possession;
- (f) compliance with health and safety codes;
- (g) dispute resolution and appeal mechanisms;
- (h) requirements for the creation of agreements; and
- (i) procedures for the amendment of agreements.

19.03 In the event of a Conflict between a WDFN Law made under this Chapter and a Federal Law, the WDFN Law will prevail to the extent of the Conflict.

## CHAPTER 20: EDUCATION

- 20.01 WDFN has Jurisdiction in relation to elementary and secondary education.
- 20.02 WDFN Laws made under this Chapter may include laws about:
- (a) education about Dakota culture and language;
  - (b) the development of curriculum in respect of educational programming;
  - (c) entities, structures, or mechanisms for delivering education services; and
  - (d) accrediting individuals to teach:
    - i.* Dakota culture and language; and
    - ii.* other subjects.
- 20.03 Notwithstanding Section 5.06, WDFN has the Authority to administer education support programs and services for WDFN Members living on or off WDFN Reserve Lands.
- 20.04 Notwithstanding Section 5.06, WDFN has the Authority to administer post-secondary student support funding for WDFN Members living on or off WDFN Reserve Lands.
- 20.05 A WDFN Law made under this Chapter, except as it relates to Dakota culture and language, that provides for standards of elementary or secondary education, including standards for the accreditation of teachers, will provide for standards that are at least equal to any comparable standards under provincial laws.
- 20.06 The WDFN education system will be designed to enable the transfer of students between WDFN and provincial school systems without academic penalty to the same extent as transfers are effected between other education jurisdictions in Canada and to enable admission of students to provincial post-secondary education systems.
- 20.07 In the event of a Conflict between a WDFN Law made under this Chapter and a Federal Law, the WDFN Law will prevail to the extent of the Conflict.

## **CHAPTER 21: HEALTH**

- 21.01 WDFN has Jurisdiction in relation to the practice, and the practitioners, of traditional Dakota medicine on WDFN Reserve Lands.
- 21.02 Notwithstanding Section 5.06, WDFN has the Authority to administer agreed-upon health programs and services.
- 21.03 In the event of a Conflict between a WDFN Law made under this Chapter and a Federal Law, the WDFN Law will prevail to the extent of the Conflict.

## **CHAPTER 22: ADMINISTRATION OF WDFN LAWS**

### General

- 22.01 Subject to this Chapter, WDFN has Jurisdiction in relation to administration of WDFN Laws.
- 22.02 WDFN Jurisdiction under this Chapter includes the ability to establish administrative bodies to administer WDFN Laws.

### Offences, Penalties, and Sanctions

- 22.03 Subject to Sections 22.06 and 22.07, a WDFN Law may provide for the creation of regulatory offences and the imposition of sanctions for the violation of WDFN Law.
- 22.04 WDFN Jurisdiction includes the ability to make laws that provide for sanctions, as an alternative to fines or imprisonment, that are consistent with WDFN culture and values. Use of processes setting out alternative measures will be subject to the regulatory offender's consent. Where the participation of the victim is required, use of processes setting out alternative sanctions will also be subject to the victim's consent.
- 22.05 Sanctions provided for under WDFN Law, including sanctions alternative to fines or imprisonment that are consistent with WDFN culture and values, will be proportionate to the seriousness of the offence and the responsibility of the regulatory offender.
- 22.06 Where there is a comparable regulatory offence under Federal Law or provincial law, sanctions imposed for a violation of WDFN Law will not exceed the sanctions provided for on summary conviction under Federal Law or provincial law, whichever is greater.
- 22.07 Where there is no comparable regulatory offence under Federal Law or provincial law, the maximum sanction will not exceed the general penalties set out in Section 787(1) of the *Criminal Code*, or *The Summary Offences Procedure Act, 1990*, whichever is greater.

### Civil and Administrative Remedies

- 22.08 If the Governance Agreement provides for WDFN Jurisdiction in relation to a subject area, that WDFN Jurisdiction includes the power and authority to make laws providing for civil remedies in relation to that subject area.
- 22.09 WDFN Jurisdiction includes the ability to establish alternative dispute resolution processes, including those relying on traditional methods and approaches, as an alternative to litigation in civil matters. Use of those alternative processes will be

subject to the consent of the disputants. Nothing in this Section restricts the right of any person to resolve a dispute through the courts.

- 22.10 If the Governance Agreement provides for WDFN Jurisdiction in relation to a subject area, that WDFN Jurisdiction includes the power and authority to make laws providing for administrative remedies in relation to that subject area. Administrative remedies may include:
- (a) compliance orders made by officers appointed under a WDFN Law;
  - (b) the right of the officers to take remedial action where the compliance orders are not followed; and
  - (c) provisions that the costs incurred in taking remedial action may be enforced as a debt.
- 22.11 WDFN Jurisdiction includes the ability to make laws that may include administrative or civil remedies that are based on the traditional methods, values and practices of WDFN. Use of administrative or civil remedies based on the traditional methods, values and practices of WDFN will be subject to the consent of all affected persons.

#### Enforcing WDFN Laws

- 22.12 WDFN is responsible for enforcement of WDFN Law.
- 22.13 WDFN may make laws for the enforcement of WDFN Law, including:
- (a) the appointment of officials to enforce WDFN Law; and
  - (b) powers of enforcement, provided such powers will not exceed those provided by Federal Law or provincial law for enforcing similar laws in Saskatchewan.
- 22.14 WDFN Laws may be enforced by:
- (a) enforcement officers appointed under a WDFN Law;
  - (b) enforcement officers of other governments or entities where provided for in an agreement made under Sections 22.16, 22.21, 22.26 and 22.27; and
  - (c) police officers, including officers of a WDFN police service if such police service is created under Section 22.17.

22.15 If WDFN appoints officials to enforce WDFN Law, WDFN will:

- (a) establish training standards similar to those established by Canada for its enforcement officials enforcing similar laws, including ensuring that any WDFN enforcement officials are adequately trained to carry out their duties having regard to recruitment, selection and training standards for other enforcement officers carrying out similar duties in Saskatchewan; and
- (b) establish accountability standards similar to those established by Canada for its enforcement officers enforcing similar laws, including establishing and implementing procedures for responding to complaints against WDFN officials.

22.16 At the request of the Whitecap Dakota Government, the Parties may negotiate and attempt to reach agreement for the enforcement of WDFN Law by appropriate departments or enforcement agencies.

### Policing

22.17 WDFN Jurisdiction does not include the ability to:

- (a) establish a police force or regulate police activities or appoint police officers;
- (b) authorize the acquisition, possession, transport, carrying or use of a firearm, ammunition, prohibited weapon or prohibited device as these terms are defined in Part II of the *Criminal Code*; or
- (c) establish or maintain a place of confinement except for police jails or lock-ups operated by a police service established under provincial law;

but nothing in this Agreement prevents WDFN from establishing a police force in accordance with applicable provincial law.

### Prosecution of Offences

22.18 The Provincial Court of Saskatchewan has jurisdiction to hear and determine proceedings in relation to:

- (a) violation of WDFN Law; and
- (b) matters arising under WDFN Law;

where the Provincial Court of Saskatchewan would hear such matters if they had arisen under Saskatchewan law.

- 22.19 Her Majesty's Court of Queen's Bench of Saskatchewan will have jurisdiction to hear and determine proceedings in relation to:
- (a) matters arising under WDFN Law where such matters would be heard by Her Majesty's Court of Queen's Bench of Saskatchewan if they had arisen under Saskatchewan law;
  - (b) appeal of decisions of the Provincial Court of Saskatchewan in relation to WDFN Law;
  - (c) challenges to WDFN Law; and
  - (d) judicial review of decisions of administrative bodies established under WDFN Law, provided that all review mechanisms provided under WDFN Law have been exhausted.
- 22.20 Notwithstanding anything in the Governance Agreement, matters determined by the Federal Court will continue to be determined by the Federal Court.
- 22.21 WDFN has Jurisdiction in relation to the prosecution of any violation of WDFN Law and may:
- (a) appoint individuals to conduct such prosecution in a manner consistent with the relevant principles of prosecutorial independence;
  - (b) enter into an agreement with Canada to arrange for prosecution of the offences; and
  - (c) enter into an agreement with Saskatchewan to arrange for the services of a provincial prosecutor.
- 22.22 All payments received from fines and monetary penalties arising from the adjudication or administration of WDFN Law will accrue to the Whitecap Dakota Government.
- 22.23 In any proceeding, a copy of a WDFN Law certified as a true copy by a duly authorized officer of WDFN is, without proof of the officer's signature or of his or her official character, evidence of its enactment on the date specified in WDFN Law.
- 22.24 WDFN Jurisdiction includes the ability to make laws that provide for procedures for the enforcement of WDFN Laws, including:
- (a) adopting the summary conviction procedures of Part XXVII of the *Criminal Code*; or

- (b) adopting the laws of Saskatchewan relating to proceedings in respect of offences that are created by a law of Saskatchewan, with such modifications as may be required.

22.25 WDFN Law may provide for orders to assist in the administration and enforcement of WDFN Law.

22.26 The Whitecap Dakota Government may enter into agreements with Canada and Saskatchewan relating to correctional and rehabilitation programs and services.

22.27 The Whitecap Dakota Government may enter into agreements with Canada and Saskatchewan relating to programs and services for victims of crime.

#### Decision Making Bodies

22.28 WDFN may seek further negotiations to set out Jurisdictional arrangements with respect to the establishment of a WDFN court, subject to Chapter 28.

22.29 If the Governance Agreement provides for WDFN Jurisdiction in relation to a subject area, that WDFN Jurisdiction includes the power and authority to make laws about administrative and quasi-judicial decision-making bodies relating to that subject area.

## **PART III FISCAL RELATIONS, IMPLEMENTATION, AND INTERGOVERNMENTAL RELATIONS**

### **CHAPTER 23: FISCAL RELATIONS**

- 23.01 The Parties acknowledge they each have a role in supporting WDFN as set out in a fiscal relationship agreement or provided through other arrangements.
- 23.02 During Governance Agreement negotiations, the Parties will address fiscal matters including:
- (a) Governance 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 WDFN, taking into account that funding for self-government is a shared responsibility among governments.
- 23.03 The Parties acknowledge that Canada has developed a new national fiscal policy setting out a transparent methodology for determining levels of federal funding that may be provided to self-governing aboriginal groups in Canada to support the delivery of agreed-upon programs and services, including the ability of each self-governing aboriginal group to generate revenues from its own sources.
- 23.04 WDFN will have an opportunity to provide Canada with its views, concerns, and proposals throughout the negotiation of the Governance Agreement.
- 23.05 Unless otherwise agreed by the Parties in a fiscal relationship agreement or other fiscal arrangement, the recognition of WDFN, the recognition of WDFN Jurisdiction under the Governance Agreement, or the exercise of WDFN Jurisdiction, does not create or imply any financial obligation or service responsibility on the part of any Party.
- 23.06 Any funding required for the purposes of the fiscal relationship agreement, or any other agreement that is contemplated by the Governance 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;
  - (b) in the case of WDFN, by WDFN.
- 23.07 The Parties acknowledge that WDFN will assess the impact of Canada's new national fiscal policy in relation to self-governing aboriginal groups against its interests and objectives in concluding a self-government agreement.

## **CHAPTER 24: IMPLEMENTATION AND INTERGOVERNMENTAL RELATIONS**

### General Principles of Implementation

- 24.01 The Parties will act in good faith in the implementation of the Governance Agreement and any related agreements.
- 24.02 Prior to initialing the Governance Agreement, the Parties will conclude an Intergovernmental Relations and Implementation Support Plan.
- 24.03 The Intergovernmental Relations and Implementation Support Plan will take effect on Effective Date and have an initial term of ten years, unless the Parties renew or extend it on the recommendation of the Implementation Committee.
- 24.04 The Implementation Committee will continue to carry out its duties, as set out in Sections 24.08, 24.09 and 24.10, whether or not the Intergovernmental Relations and Implementation Support Plan is renewed, until such time as the Parties agree to terminate the Implementation Committee.
- 24.05 The Intergovernmental Relations and Implementation Support Plan will:
- (a) identify the obligations set out in the Governance Agreement;
  - (b) identify the activities to be undertaken to fulfill those obligations, and the Party responsible for each activity;
  - (c) identify the time frame for the completion of implementation activities; and
  - (d) address other matters agreed to by the Parties.
- 24.06 The Intergovernmental Relations and Implementation Support Plan will not:
- (a) form part of the Governance Agreement;
  - (b) create legal obligations or constitute a contract;
  - (c) alter any rights or obligations set out in the Governance Agreement;
  - (d) be used to limit or interpret the provisions of the Governance Agreement;  
or
  - (e) preclude any Party from asserting that other obligations exist under the Governance Agreement, even if they are not set out in the Intergovernmental Relations and Implementation Support Plan.

## Implementation Committee

- 24.07 No later than sixty days prior to Effective Date, the Parties will establish an Implementation Committee comprised of one representative from each Party. Either Party may invite technical or support staff to Implementation Committee meetings.
- 24.08 The Implementation Committee will make decisions by unanimous agreement.
- 24.09 The Implementation Committee will address any implementation matters, and will, among its other tasks:
- (a) monitor and assess progress toward the implementation of the Governance Agreement, related agreements, and schedules attached to the Governance Agreement;
  - (b) identify issues or challenges arising from the implementation of the Governance Agreement and any related agreements;
  - (c) provide advice and recommendations to the Parties on ways to strengthen the implementation of the Governance Agreement and any related agreements;
  - (d) identify and make recommendations regarding whether any amendments to the Governance Agreement should be considered;
  - (e) identify the Parties' representatives in the resolution of disputes as referred to in Chapter 26;
  - (f) ensure that annual reports on the implementation of the Governance Agreement are prepared and submitted to the Parties;
  - (g) establish internal procedures and rules to govern the Implementation Committee;
  - (h) meet annually or more often as required; and
  - (i) address any other matters as directed by the Parties.
- 24.10 The Implementation Committee may:
- (a) amend the Intergovernmental Relations and Implementation Support Plan as deemed necessary;
  - (b) establish working groups as appropriate; and
  - (c) seek any advice or support as required.

24.11 Each Party is responsible for its own costs of participation in the Implementation Committee.

#### Annual Report

24.12 The annual report of the Implementation Committee, as referred to in Section 24.09(f), will:

- (a) list the activities that have been undertaken or completed by the Implementation Committee in the year covered by the report;
- (b) provide an overview of the successes achieved in the implementation of the Governance Agreement in the year covered by the report; and
- (c) identify any implementation issues, including any disputes that may have arisen.

24.13 Canada is responsible for publishing the annual report.

24.14 The Implementation Committee will provide the annual report to the Parties for their review within the first six months of the fiscal year or a time frame agreed to by the Implementation Committee.

#### Implementation Working Group

24.15 During the Governance Agreement negotiations, the Parties will establish an implementation working group to develop:

- (a) the Intergovernmental Relations and Implementation Support Plan referred to in Sections 24.05 and 24.06; and
- (b) a list of activities that the Parties must complete before Effective Date.

#### Pre-Effective Date Plan

24.16 The Parties will agree upon a pre-Effective Date plan after WDFN Members have approved the Governance Agreement and the WDFN Constitution.

24.17 The pre-Effective Date plan will identify the responsibilities of each Party prior to Effective Date and the time frame for carrying out those responsibilities, including:

- (a) the development of core WDFN Laws;
- (b) training and capacity building for WDFN;
- (c) a communications strategy to inform WDFN Members and others residing on WDFN Reserve Lands of the contents of the Governance Agreement; and

- (d) any other matters that the Governance Agreement requires or the Parties deem necessary.

## PART IV – GENERAL PROVISIONS

### CHAPTER 25: ACCESS TO INFORMATION AND PRIVACY

- 25.01 The Parties may enter into agreements to address the collection, protection, retention, use, disclosure, and confidentiality of personal, general, or other information.
- 25.02 For the purposes of the *Access to Information Act* and the *Privacy Act*, information that the Whitecap Dakota Government provides to Canada in confidence will be deemed to be information received or obtained by Canada in confidence from a provincial government.
- 25.03 Canada may provide information to the Whitecap Dakota Government in confidence if the Whitecap Dakota Government has enacted a WDFN Law or has entered into an agreement with Canada as contemplated in Section 25.01, in accordance with which the confidentiality of the information will be protected.
- 25.04 Canada is not required to disclose to the Whitecap Dakota Government information that is confidentially disclosed to another government.
- 25.05 Subject to Section 25.04, where the Whitecap Dakota Government requests disclosure of information from Canada, that request will be evaluated as if it were a request by a provincial government.
- 25.06 Subject to Section 25.05, Canada is not required to disclose any information to the Whitecap Dakota Government that Canada is required to withhold pursuant to any Federal Law or provincial law.
- 25.07 Notwithstanding any other provision of the Governance Agreement, where a Federal Law allows the disclosure of certain information only if specified conditions for disclosure are satisfied, Canada is not required to disclose that information to the Whitecap Dakota Government unless those conditions are satisfied.
- 25.08 Notwithstanding any other provision of the Governance Agreement, the Parties are not required by virtue of the Governance Agreement to disclose any information that may be withheld under a privilege at law or, in the case of Canada, in accordance with Sections 37 to 39 inclusive of the *Canada Evidence Act*.
- 25.09 Canada will recommend amendments to the *Access to Information Act* and the *Privacy Act* to Parliament to protect information provided in confidence to the Whitecap Dakota Government from disclosure as if it were information provided to Canada by another government in Canada.
- 25.10 Canada will recommend to Parliament amendments to the *Privacy Act* to allow the Whitecap Dakota Government access to information necessary to exercise its Jurisdiction under the Governance Agreement.

## CHAPTER 26: DISPUTE RESOLUTION

### Specific Disputes

- 26.01 Where there is a dispute between the Parties regarding the interpretation, application and implementation of the Governance Agreement and any related agreements, the Parties will refer the dispute to dispute resolution in accordance with this Chapter, except for the following matters:
- (a) the meaning or extent of aboriginal or treaty rights;
  - (b) the validity of WDFN Laws; and
  - (c) the scope of WDFN Jurisdiction.
- 26.02 Notwithstanding any other provision in this Agreement or the Governance Agreement and any related agreements, arbitration is not available for disputes relating to funding levels, public law or in relation to matters respecting taxation.

### Principles

- 26.03 In the interests of maintaining a harmonious relationship, the Parties agree to be guided by the following principles in approaching disputes that may arise between them:
- (a) *good faith*, which requires the Parties to cultivate an atmosphere of trust and encourage the resolution of disputes through cooperation and consultation;
  - (b) *cultural sensitivity*, which requires the Parties to provide for dispute resolution processes that are culturally inclusive and respectful of the participants;
  - (c) *open communication*, which requires the Parties to promote the prevention and early resolution of disputes; and
  - (d) *efficiency*, which requires the Parties to identify issues quickly and resolve them in the most expeditious manner, in order to minimize delays and costs of all kinds.
- 26.04 The Parties will make every effort to prevent disputes from arising and, where they do arise, to address them as early as possible. Accordingly, the Parties agree to address any dispute at the Implementation Committee referred to in Chapter 24 prior to pursuing any other avenue of recourse.

- 26.05 In the interest of maintaining a positive government-to-government relationship, the Parties will make best efforts to exhaust all alternative dispute resolution options available to them, in accordance with the staged approach described in Sections 26.08 to 26.10.
- 26.06 The Parties agree that disputes are best resolved between the Parties themselves. Where this is not possible, the Parties will undertake a staged approach to dispute resolution as set out in Sections 26.08 to 26.10. However, either Party may refer any dispute to a court vested with appropriate jurisdiction.
- 26.07 Subject to joint agreement, the Parties may proceed directly to a specific stage.

#### Stages of Alternate Dispute Resolution Process

- 26.08 In the event of a dispute, a Party will set out, in a written notice of dispute served on the other Party, the nature and details of the dispute.
- 26.09 Upon a receipt of a notice of dispute, the Parties will undertake the mandatory informal discussions referred to in Section 26.10(a).
- 26.10 These are the stages of the alternate dispute resolution process:
- (a) mandatory informal discussions: Collaborative, unassisted discussion/negotiation at the Implementation Committee to resolve the dispute by unanimous agreement of the Parties.
  - (b) assisted or facilitated negotiations, including mediation: A process where a third party neutral talks to the Parties separately, to defuse emotions, identify common ground and, where possible, get the Parties back to the table to find an agreeable solution. The third party neutral will also gather information from the Parties and usually present the information in a report along with recommendations he or she may have regarding a resolution. A third party neutral has no decision-making power and the recommendations are non-binding.
  - (c) arbitration: A third party neutral is selected by the Parties and is empowered to provide a decision after hearing presentations made by the Parties. The arbitration decision may be binding or non-binding, through agreement of the Parties at the outset of the arbitration process.

#### Conditions for Timely Resolution

- 26.11 In order to enhance the prospect of reaching agreement prior to referring the matter to arbitration, the Parties will:
- (a) provide timely disclosure of sufficient information and documents to enable a full examination of the subject matter in dispute, when requested;

- (b) make every reasonable effort to appoint representatives with sufficient authority to reach an agreement, or with ready access to such authority, and be clear about any limitations on the authority of those representatives where such limitations cannot be avoided;
- (c) negotiate in good faith; and
- (d) identify and respect underlying interests and explore alternative solutions.

### Confidentiality

- 26.12 All oral and written information disclosed in the course of the dispute resolution processes is and is to be kept confidential.
- 26.13 No Party will rely on or introduce into evidence in any proceeding, whether or not that proceeding relates to the subject matter of a dispute, any oral or written information disclosed in or arising from a dispute resolution process.
- 26.14 Sections 26.12 and 26.13 do not apply to any information that both of the Parties agree in writing may be disclosed.
- 26.15 No third party involved in any dispute resolution process is compellable in any proceeding to give evidence about any oral or written information acquired or opinion formed by that person as a result of the dispute resolution process.

### Costs

- 26.16 Unless otherwise agreed, each Party will bear the costs of its own participation and representation in all processes under this chapter.
- 26.17 The Parties will share equally in all costs of neutral participants in any of the processes provided for in this chapter, including fees, meeting room costs, translation costs and other reasonable expenses.
- 26.18 A Party who withdraws from a dispute resolution process is not responsible for the costs incurred after the date that the Party's withdrawal takes effect.

### Procedural Matters

- 26.19 Any settlement agreement reached in a process under this Chapter is to be recorded in writing and signed by the authorized representatives of the Parties.
- 26.20 The Parties may agree to vary a procedural requirement contained in this Chapter as it relates to a particular dispute or may agree in writing to submit the dispute to a process other than one that is set out in this Chapter.

## **CHAPTER 27: INDEMNIFICATION AND LIABILITY**

### No Release of Existing Legal Obligations

- 27.01 Except as otherwise provided for in the Governance Agreement, legal obligations that Canada owes to WDFN, which exist prior to Effective Date, will continue according to the terms of the legal obligation.
- 27.02 Except as otherwise provided for in the Governance Agreement, claims that WDFN may have against Canada in the future will not be affected by or prevented by the Governance Agreement.
- 27.03 Except as otherwise provided for in the Governance Agreement, legal obligations that WDFN owes to Canada, which exist prior to Effective Date, will continue according to the terms of the legal obligation.
- 27.04 Except as otherwise provided for in the Governance Agreement, claims that Canada may have against WDFN or the Whitecap Dakota Government in the future will not be affected by or prevented by the Governance Agreement.
- 27.05 Prior to concluding a Governance Agreement and agreeing upon the Sections in this Chapter, the Parties will clarify their intentions and if necessary amend this Section to provide greater clarity to the meaning of “existing legal obligations”.

### Liability

- 27.06 WDFN is not liable for the acts, omissions, or negligence of Canada or its agents.
- 27.07 Canada is not liable for the acts, omissions, or negligence of WDFN or its agents.

### Indemnification

- 27.08 WDFN promises to indemnify Canada, its employees, and agents from any and all claims, demands, actions, and costs that may arise directly or indirectly out of any act or omission of WDFN, its employees or agents except as may be caused by negligence on the part of Canada. Such indemnification will survive the Governance Agreement.
- 27.09 Canada promises to indemnify WDFN, its employees, and agents from any and all claims, demands, actions, and costs that may arise directly or indirectly out of any act or omission of Canada, its employees, or agents except as may be caused by negligence on the part of WDFN. Such indemnification will survive the Governance Agreement.

## **CHAPTER 28: FUTURE NEGOTIATIONS**

28.01 After the Effective Date, the Parties acknowledge that WDFN may seek to negotiate additional self-government arrangements as set out in Schedule A through Sub-Agreements.

28.02 The Governance Agreement will apply to any Sub-Agreement as if the Sub-Agreement was a Chapter of the Governance Agreement.

### Contents of Sub-Agreements

28.03 A Sub-Agreement concluded pursuant to Section 28.01 will set out:

- (a) a description of the law making authority to be exercised by WDFN, including any limitations on the law making authority and/or standards that WDFN must meet;
- (b) rules governing the relationship of laws, including any additional subject matter in Section 5.18;
- (c) the identification of any *Indian Act* provisions that will cease to apply and when they will cease to apply;
- (d) rules and procedures for approving Sub-Agreements;
- (e) any financial contribution that the Parties to the Sub-Agreement will provide to support its implementation; and
- (f) any other matters agreed to by the Parties to the Sub-Agreement.

### Coming into Effect of Sub-Agreements

28.04 After the coming into force of the Implementing Legislation :

- (a) WDFN may bring a Sub-Agreement into effect in accordance with processes set out in the WDFN Constitution; and
- (b) Canada may bring a Sub-Agreement into effect by Order-in-Council.

### Participation of Saskatchewan

28.05 The Parties may seek to negotiate self-government arrangements with respect to matters of provincial jurisdiction, subject to the participation of Saskatchewan, as set out in Schedule A.

28.06 If Saskatchewan is a party to a Sub-Agreement that establishes WDFN law making authority in relation to matters of provincial jurisdiction, Saskatchewan will bring

the Sub-Agreement into effect by enacting provincial legislation and taking any other measures necessary to give it effect.

#### Approval of Sub-Agreements

28.07 The form and content of the approvals of a Sub-Agreement, as required by Sections 28.04 and 28.06, will be addressed in the Sub-Agreement.

#### Publication of Sub-Agreements

28.08 WDFN will publish notice of the day on which a Sub-Agreement comes into effect.

28.09 Canada will publish in the Canada Gazette notice of the day on which a Sub-Agreement comes into effect.

#### Other Processes

28.10 Section 28.01 does not restrict WDFN's participation in other processes that may provide an opportunity to conclude additional self-government arrangements.

28.11 The validity of the Governance Agreement and the actions required to implement it are not dependent on the conclusion of Sub-Agreements as contemplated by Section 28.01.

## **CHAPTER 29: RATIFICATION AND APPROVAL OF THIS AGREEMENT**

### General

- 29.01 This Agreement will form the basis for concluding the Governance Agreement.
- 29.02 This Agreement does not create legal obligations binding on the Parties.
- 29.03 This Agreement will be submitted to the Parties for approval after initialling by the negotiators for the Parties.

### Approval of This Agreement by WDFN

- 29.04 This Agreement will be approved by WDFN by band council resolution of the Whitecap Dakota Council duly passed at a properly constituted meeting following an indication of support from WDFN Members.

### Approval of This Agreement by Canada

- 29.05 This Agreement will be approved by Canada when signed by the Minister of Indian Affairs and Northern Development authorized to do so on behalf of Canada.

## **CHAPTER 30: APPROVAL OF GOVERNANCE AGREEMENT**

### Approval of the Governance Agreement

- 30.01 The Governance Agreement will be submitted to the Parties for approval and ratification after initialling by the negotiators for the Parties.

### WDFN Approval

- 30.02 The Ratification Documents will be presented to WDFN Members for ratification.
- 30.03 The Governance Agreement will include a Schedule that sets out the WDFN ratification process.
- 30.04 The Ratification Documents will be considered approved where a minimum of 25% plus 1 of the eligible voters must vote in favour of the Ratification Documents; and they must constitute the majority of the votes cast.
- 30.05 After approval of the Ratification Documents by the WDFN Members, the Whitecap Dakota Council will sign the Ratification Documents.

### Approval by Canada

- 30.06 Approval of the Governance Agreement by Canada requires that the Governance Agreement be signed by the Minister of Indian Affairs and Northern Development.

### Approval by Saskatchewan

- 30.07 Parties will also give consideration to any requirements for Saskatchewan's approval of the Governance Agreement.

### Failure to Ratify

- 30.08 In the event that the Ratification Documents are not ratified by WDFN in accordance with the Governance Agreement, the Parties will meet to discuss the results of the vote.

### Costs of Ratification

- 30.09 Canada agrees to bear the costs incurred by WDFN in seeking WDFN approval of the Ratification Documents, in an amount to be agreed to by Canada and WDFN prior to the ratification process commencing.

## **CHAPTER 31: COMING INTO EFFECT OF GOVERNANCE AGREEMENT**

- 31.01 The Governance Agreement comes into force as provided for in the legislation to be passed by each Party giving effect to the Governance Agreement.
- 31.02 The Minister of Indian Affairs and Northern Development will recommend to Parliament the enactment of legislation that provides that:
- (a) the Governance Agreement is approved, given effect and declared valid;
  - (b) the Governance Agreement, other than Chapters 23, 24, 25, 26, 27, 29, 30 and 31 is binding on, and can be relied on by, all persons;
  - (c) for greater certainty, WDFN Laws made in accordance with the Governance Agreement are binding on, and can be relied on by, all persons, the Whitecap Dakota Government and WDFN Institutions.
- 31.03 For greater certainty, WDFN will bring the Governance Agreement into force in accordance with processes set out in the WDFN Constitution.

Signed at Whitecap Dakota First Nation this 27th day of April, 2017, signifying approval of this Governance Agreement-in-Principle.

**For Whitecap Dakota First Nation:**



Chief, Whitecap Dakota First Nation



Witness as to all of the signatures of the  
Whitecap Dakota Council

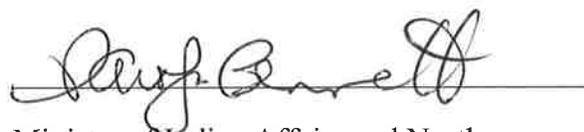


Councillor, Whitecap Dakota First Nation



Councillor, Whitecap Dakota First Nation

**For the Government of Canada:**



Minister of Indian Affairs and Northern  
Development



Witness

**SCHEDULE A: ADDITIONAL LAW MAKING AUTHORITY FOR FUTURE NEGOTIATIONS**

1. The Parties may seek to negotiate law making authority in relation to the following subject matters:
  - a) wills and estates; and
  - b) any other matters identified by the Parties.
  
2. The Parties may seek to negotiate law making authority in relation to the following subject matters in the areas of provincial jurisdiction, subject to the participation of Saskatchewan:
  - a) enforcement and police services;
  - b) establishment of WDFN Courts;
  - c) corrections and rehabilitation services;
  - d) programs and services for victims of crime;
  - e) health services;
  - f) childcare;
  - g) social services;
  - h) the application of WDFN Laws on fee simple lands held by WDFN; and
  - i) any other matters identified by the Parties.