

DRAFT ANISHINABEK NATION GOVERNANCE AGREEMENT

Plain Language Version ¹

The Anishinabek Nation Governance Agreement (referred to in the rest of this document as the “Agreement”) is a proposed self-government agreement between Canada, the Union of Ontario Indians (Anishinabek Nation), and the First Nations that approve the Agreement by vote. It includes Canada recognizing First Nation jurisdiction over elections, citizenship (E'Dbendaagzjig), culture and language. It also includes recognizing constitutions in regards to these areas and the Anishinabek Nation Government. Canada is represented by the Minister of Indigenous and Northern Development.

This document describes the Governance Agreement in plain language.

PREAMBLE

The preamble contains statements by each Party concerning their intent in negotiating the Agreement. The preamble in the Agreement consists of the Ngo Dwe Waangizid Anishinaabe (One Anishinaabe Family) statement and eleven (11) other statements that describe the background for negotiating the Agreement.

The Preamble is not legally enforceable. Everything that is included after the Preamble is legally enforceable for the First Nations who approve it and for Canada, once federal legislation is passed to approve it.

CHAPTER 2 - PURPOSE

This Agreement:

- Establishes an Anishinabek Nation Government;
- Establishes a new government-to-government relationship with Canada;
- Recognizes certain First Nation and Anishinabek Nation law-making powers;
- Recognizes First Nation and Anishinabek Nation Government governance systems;
- Provides new funding arrangements to support the governance systems that are established and the delivery of governance programs and services; and
- Describes implementation of the Agreement and a framework for future negotiations between the Parties and other related matters.

¹ DISCLAIMER: This summary of the Anishinabek Nation Governance Agreement is provided by the Union of Ontario Indians to support the ratification process. It is an interpretative tool and does not form part of the legal arrangements proposed between the Anishinabek First Nations and Canada. This is not a legal document or serves as a legal interpretation of the Governance Agreement. If you have specific questions or wish to receive a copy of the actual agreement, contact the Anishinabek Nation by calling Toll-Free 1-833-297-9850.

The Agreement does not prevent First Nations from entering into agreements or treaties with others on any topic, including governance.

CHAPTER 3 - GENERAL PROVISIONS

The Agreement recognizes and is based on the inherent right of self-government as an existing Aboriginal right, it is not considered a Treaty, and it will not take away anything regarding Aboriginal and Treaty rights.

The fiduciary relationship between Canada and the First Nations will continue; however, it may change as the First Nation exercises its law-making powers and authorities. The *Canadian Charter of Rights and Freedoms* applies to each First Nation and the Anishinabek Nation as each exercises its authority under the Agreement.

The First Nations, its members (E'Dbendaagzijig) and the Anishinabek Nation will be eligible to participate in and benefit from any federal programs or services that do not duplicate the programs or services under the Agreement.

CHAPTER 4 - ANISHINABEK NATION GOVERNMENT

The Agreement recognizes the Anishinabek Nation as a legal entity with the rights, powers and privileges of a natural person. The Anishinabek Nation will have a written Constitution known as the Anishinaabe Chi-Naaknigewin that is approved by the First Nations.

The Anishinabek Nation will have law making powers including:

- Selection of Anishinabek Nation Government representatives;
- Citizenship (E'Dbendaagzijig), if a person is a member of a First Nation that approves the agreement they are a citizen of the Anishinabek Nation;
- Promotion and development of its culture and language,
- Management and operations of its government including financial management, access to information and privacy;

Generally, where there is conflict between a First Nation law and an Anishinabek Nation law the First Nation law will prevail. Also, where there is a conflict between a federal law and a law under the agreement, the law under the agreement will prevail.

The Anishinabek Nation may delegate its authorities under the Agreement (except law-making) to its departments, officials, institutions, or other legal entity. The Anishinabek Nation will remain accountable to the First Nations and their citizens.

The Anishinabek Nation will provide opportunity to its citizens and anyone who resides on a reserve of a First Nation who may be affected by the proposed law or decision to provide feedback about that law or decision.

The Anishinabek Nation may create Anishinaabe Institutions including institutions to appeals and reviews its decisions.

CHAPTER 5 - FIRST NATION GOVERNMENTS

Each First Nation that approves this Agreement will be legally recognized as a natural person, will maintain a written constitution that will be approved before the date it ratifies this Agreement.

The constitution of a First Nation will include items such as: law-making processes; accountability to its citizens; appeal and redress mechanisms, conflict of interest rules; and amendment procedures.

The Agreement recognizes that each First Nation has the power to make the following laws:

- a leadership selection law;
- citizenship or E'Dbendaagzijig laws, current members will automatically have citizenship of that First Nation;
- preserve and promote its culture and language;
- management and operations of its government including financial management, conduct of meetings, access to information and privacy;

Generally, where there is a conflict between a federal law and a First Nation law under the Agreement, the law under the Agreement will overrule the federal law.

A First Nation may delegate its law making power and other authorities under the Agreement to its departments, officials, institutions, Anishinabek Nation or other legal entity. The First Nation will be accountable to its citizens.

The First Nation will provide opportunity to its citizens and anyone who resides on its reserve who may be affected by the proposed law or decision to provide feedback about the law or decision.

There must be appeal and review systems for First Nation laws and decisions. The First Nation may create Anishinaabe Institutions including institutions to appeal and review its decisions.

CHAPTER 6 - ENFORCEMENT AND ADJUDICATION OF LAWS

Each First Nation and the Anishinabek Nation may develop procedures for the enforcement of its laws created under this Agreement including appointing enforcement officers. Each First Nation and the Anishinabek Nation is responsible for the prosecution of violations of its laws and may appoint individuals to conduct such prosecutions.

Each First Nation and the Anishinabek Nation may provide services for the voluntary settlement of disputes under its laws including traditional Anishinaabe processes and sanctions to address alleged offences, provided that such sanctions are proportionate to the seriousness of the offence and are not imposed upon the offender without his/her consent.

Where the law of a First Nation or the Anishinabek Nation law provides for a fine or imprisonment, the penalty will not be greater than the general penalty provisions of the *Criminal Code* that apply to offences punishable on summary convictions or \$10,000.00. Any fine arising from a First Nation law will be paid to the First Nation.

The Agreement sets out which courts would hear charges under the laws that are created under the Agreement and which courts would hear other disagreements related to the Agreement. Internal dispute resolution processes must be used first.

CHAPTER 7 - INTERGOVERNMENTAL FORUM

The Parties are committed to a new government-to-government relationship and will create an Anishinabek-Canada Intergovernmental forum for the parties to meet and discuss issues of common concern and to maintain its government-to-government relationship.

CHAPTER 8 - FINANCIAL RELATIONSHIP AND FUNDING ARRANGEMENTS

The Parties agree to a new government to government financial relationship that includes a shared responsibility of the Anishinabek Nation government and Canada. The Parties acknowledge that an Anishinabek Nation Fiscal Agreement is part of this new financial relationship and sets out the funding obligations for the Parties.

The Parties will enter into a funding agreement which will set out the funding to support law-making and other authorities under the Agreement. It will include governance related federal programs and services and one-time implementation funding for the Agreement. It will also include details like the length of time the funding agreement will exist, procedures for calculation and timing of transfer payments, how adjustments to the transfer payments are made, how funding increases will happen, accountability, the process for completing future funding agreements, dispute resolution, amendments and how the funding agreements for the Anishinabek Nation Education Agreement and the Agreement will be coordinated and any other matters agreed to by the Parties.

Any unspent funding will not be returned to Canada. The transfer payments will not be subject to the Indian Affairs third party management policy.

Each First Nation and the Anishinabek Nation will prepare financial statements and reports in accordance with the funding agreement and the agreed to accounting principles.

Canada will provided notice to the Anishinabek Nation if in the future Canada approves a revised funding model for general use in self-government negotiations. Within the agreed upon timeframes, the Anishinabek Nation may propose amendments to the financial chapter and the parties may negotiate for such amendments. If the Parties agree on amendments to this financial chapter, the Parties may then follow the amendment process for this Agreement.

First Nation Contribution

The formula for the First Nation contribution to the costs of governance will be set out in the funding agreement. The following types of revenues will be excluded from the First Nations' contribution formula: gifts or donations; crown payments regarding a settlement, court order, or a decision of an adjudication body, compensation for past, ongoing or potential infringements constitutional rights, sale or expropriation of First Nation lands and any other revenues as agreed.

Once the funding agreement is in place, any funding provided by Canada to each First Nation in funding agreements for similar activities, that were in place before the funding agreement under this Agreement will be replaced by the transfer payment.

CHAPTER 9 - ACCESS TO INFORMATION AND PRIVACY

Each First Nation and the Anishinabek Nation will develop and maintain a system to provide First Nation citizens with reasonable access to non-confidential information held by a First Nation, the Anishinabek Nation Government or an Anishinaabe Institution.

Canada will recommend to Parliament amendments to provincial and federal privacy laws to protect information provided by a First Nation or the Anishinabek Nation and to allow a First Nation or the Anishinabek Nation access to information needed to exercise its law-making powers or authorities under the Agreement.

Canada may provide information to a First Nation or the Anishinabek Nation in confidence if the First Nation or the Anishinabek Nation has enacted a law for the protection of privacy or has entered into an agreement with Canada about these matters.

CHAPTER 10 - TRANSITIONAL PROVISIONS

First Nation chiefs and councillors will continue to hold office until they hold an election either under their new leadership selection law or if that law is not completed, under the existing election process.

Until the First Nation enacts a citizenship (E'Dbendaagzijig) law under the Agreement, the membership or citizenship process that is in place will continue to apply.

The Grand Council Ogiimah, the Deputy Grand Council Ogiimak and the Ogiimak of the First Nations will be the Grand Council until such time as the Anishinabek Nation selects its representation under its leadership selection law.

Indian Act Transition

The Indian Act will continue to apply except for the parts related to elections, membership when the First Nation develops laws related to these matters. The part of the Indian Act related to council meetings section 80 will no longer apply once the Agreement is in place.

Initial Laws

As soon as possible after the Agreement is in effect, each First Nation and the Anishinabek Nation will enact its own leadership selection law, citizenship (E'Dbendaagzijig) law and financial administration law.

Application of First Nations Lands Management Act

First Nation Land Codes and the *First Nation Lands Management Act (FNLMA)* will continue to apply. If a conflict arises between the *FNLMA* and this Agreement, this Agreement will over ride the *FNLMA*.

Application of *First Nations Elections Act*

Once a First Nation enacts a leadership selection law, the *First Nations Elections Act* will no longer apply to that First Nation.

CHAPTER 11 - RELATIONSHIP BETWEEN LAWS

The First Nation's and Anishinabek Nation's laws will exist along with federal and provincial laws. Federal and provincial laws will continue to apply as they did prior to this Agreement except as we set out in this Agreement.

The Agreement will not affect the following Federal laws: criminal matters, labour, intellectual property, aeronautics, navigation, shipping and the official languages of Canada. In the event of a conflict between a federal law regarding peace, order and good government, criminal matters, protection of health and safety of all Canadians, protection of human rights or other matters of national importance, and First Nation and Anishinabek Nation laws the federal law will prevail.

Canada must consult with First Nations and the Anishinabek Nation prior to agreeing to be part of any International Treaty which could negatively impact the rights of a First Nation or the Anishinabek Nation. Canada will consult with First Nations and the Anishinabek Nation in regards to any international legal obligations which relate to the First Nations, the Anishinabek Nation and the laws of each.

CHAPTER 12 - RELATIONSHIP BETWEEN THIS GOVERNANCE AND ANISHINABEK NATION EDUCATION AGREEMENT

This Agreement and the Anishinabek Nation Education Agreement are intended to operate at the same time. A First Nation that is party to both agreements will exercise law-making powers under the ANEA through its First Nation government.

As soon as possible after the First Nation ratifies this Agreement, if the First Nation has also ratified the Anishinabek Nation Education Agreement, it and the Anishinabek Nation will work to address educational and operational matters and take steps to avoid duplication of activities, functions, and processes. The First Nations who are party to both agreements will also develop a funding transfer that includes both education and governance funding.

In the event of a conflict between this Agreement and the Anishinabek Nation Education Agreement, this Agreement will prevail.

CHAPTER 13 - FUTURE NEGOTIATIONS

First Nations may propose to negotiate Canada's recognition of other jurisdictional areas not included in this Agreement. The Agreement outlines some general principles that will guide such potential future negotiations.

CHAPTER 14 - AMENDMENTS

Minor amendments may be made as agreed in writing by the Parties after ratification and before the Agreement takes effect. Major amendments may only be made according to the process outlined in the Agreement (i.e. First Nations and Anishinabek Nation approval through Grand Council Resolution and Canada's approval through order of the Governor-in-Council and, if

required, the enactment of federal legislation). Any amendments take effect on the date agreed to in writing by the Parties.

An amendment to add a First Nation as Party after the Agreement is in effect will be required to hold a ratification vote. Before the ratification of the Agreement by a First Nation who will join the Agreement, the Parties may negotiate any necessary amendments to the funding agreement or other steps needed to add the First Nation to the Agreement.

CHAPTER 15 - RATIFICATION

The First Nation ratification process is set out in a ratification document created by the parties. Before the ratification vote, each First Nation will take reasonable steps to inform its voters about the vote, how they can vote, about the Agreement, the associated funding agreement and the implementation plan. A voter is at least eighteen (18) years of age, and whose name appears on the band list of the First Nation.

The threshold for ratification of this Agreement is 25% plus one (1) of voters of each First Nation to vote "YES" and those who vote "YES" must be a majority of votes cast. Where the above threshold is not achieved there may be a second vote and where there are more "YES" votes than "NO" votes it will be deemed ratified.

15.1 Notwithstanding section 15.5, where the minimum of 25% plus 1 is not achieved but a majority of those who voted, voted "YES", the First Nation may call a second vote within a timeframe agreed to by the Parties:

- (a) where there are more "YES" votes than "NO" votes in the second vote, the First Nation is deemed to have ratified this Agreement pursuant to this Chapter; and**
- (b) the ratification protocol will apply to the second vote with necessary modifications as agreed to by the Parties.**

Canada will ratify the Agreement by signing the Agreement and the Anishinabek Nation Fiscal Agreement and by passing a federal law that approves the Agreement.

Costs of ratification will be paid by Canada.

CHAPTER 16 - IMPLEMENTATION

The parties are committed to implementing the Agreement in a timely manner through an implementation plan that says the roles, activities, and responsibilities of each party in implementing the Agreement.

An implementation Committee will be created consisting of three representatives (one from the First Nations, one from the Anishinabek Nation and one from Canada). The committee will oversee implementation of the Agreement (ex. monitor and assess the implementation of the funding agreement, identify and attempt to address any implementation issues, develop and maintain a roster of qualified mediators and arbitrators for potential disputes, etc.).

CHAPTER 17 - DISPUTE RESOLUTION

The Agreement contains a process for addressing any disagreement that may arise in regards to the Agreement. Prior to a disagreement going to court, the parties to the Agreement must first attempt to address the dispute through negotiations, mediation and arbitration as outlined in the Agreement.

CHAPTER 18 - PROVINCE OF ONTARIO

The Parties acknowledge that they will work with Ontario in regards to matters where Ontario may be involved with aspects of implementation of the Agreement.

CHAPTER 19 - OTHER PROVISIONS

This section includes standard provisions such as the addresses for the Parties, services of notices, assignments, etc.

CHAPTER 20 - SCHEDULES

This section includes a list of the attachments to the Agreement.

- Schedule A – First Nation list is attached and forms part of this Agreement.
- Schedule B – Anishinabek Nation – Canada Intergovernmental Forum: Terms of Reference is attached, but does not form part of this Agreement.

SIGNATURES

The agreement is signed as approved by the Grand Council Chief of the Anishinabek Nation/ President of the Union of Ontario Indians on behalf of First Nations and by the Minister of Indian Affairs and Northern Development on behalf of Canada.