

"SCHEDULE"

DELEGATION AGREEMENT

BETWEEN:

ELSIPOGTOG FIRST NATION
As represented by its Chief and Council

OF THE FIRST PART

-and-

ELSIPOGTOG FIRST NATION-EDUCATION AUTHORITY
Operating as the Education Authority

OF THE SECOND PART

PREAMBLE

WHEREAS Canada has committed to a renewed, nation-to-nation relationship with Indigenous peoples based on the recognition of rights, respect, co-operation and partnerships;

AND WHEREAS Elsipogtog First Nation ("EFN") by way of Band Council Resolution dated _____, 2020 established, in full force and effect, the Elsipogtog First Nation-Education Authority ("EFN-EA");

AND WHEREAS EFN-EA has entered into the Elsipogtog First Nation Education Agreement with her Majesty the Queen in Right of Canada ("Canada") thereby formalizing an educational partnership between Canada and EFN-EA to provide the youth of the EFN Community a quality education comparable to all Canadian students.;

AND WHEREAS EFN-EA has committed to the operation of a new Education Authority in New Brunswick that will be responsible for the operation of elementary and secondary schools on EFN and the provision of education services for Eligible Students;

AND WHEREAS, EFN wishes to delegate to EFN-EA responsibility for the operation of all schools on its reserve and the instruction of all Eligible Students and EFN-EA wishes to implement mechanisms to ensure accountability to EFN;

NOW THEREFORE THE PARTIES AGREE AS FOLLOW:

1.0 DEFINITIONS

The following definitions apply for the purpose of this Delegation Agreement:

“Delegation Agreement” means this agreement, by which EFN delegates to EFN-EA responsibility for the Education Program, the operation of EFN Eligible Schools, and the provision of eligible education services to Eligible Students.

“Education Authority” means the entity authorized by EFN through the Delegation Agreement to manage EFN education interests.

“Education Program” means a course of instruction that incorporates kindergarten to grade 12 curricula accredited by the Government of New Brunswick that are taught by provincially certified teachers at an Eligible School, and that includes the learning objectives and the manner of assessing the students' achievement of those learning objectives, leading to a provincially recognized diploma or certificate of completion that enables a student to access post-secondary education or entry into the workforce.

“Eligible School” means a EFN school recognized by the Government of New Brunswick as an elementary or secondary institution, an e-learning institution, or an alternative or outreach school.

“Eligible Student” means any person who:

- (a) Is aged 4 to 21 years on December 31 in which funding support is required; and
- (b) Has not graduated from secondary school with a diploma; and
- (c) Is Ordinarily Resident on the Reserve of EFN; and
- (d) Is enrolled in and attending an Eligible School.

“Guardian” means a person who has legal custody of a child or primary responsibility for a child but is not necessarily the Parent of the child.

“Ordinarily Resident on Reserve” means a student that:

- (a) Usually lives on Reserve with her or his Parent; or
- (b) Is in the care of a Guardian who lives on Reserve; or
- (c) Is part of a joint custody arrangement and lives on Reserve 50% or more of the time with a Parent; or
- (d) Is staying on Reserve and is living independently.

“Parent” means the father or mother of a child with legal custody, including a person who has legally adopted a child and a person who has adopted a child in accordance with the custom of a First Nation.

“Parties” mean EFN and the EFN-EA.

“Reserve” means the lands described in the definition of “reserve” in subsection 2(1) or the *Indian Act* and includes Crown lands which are recognized by the Department of Indigenous and Northern Affairs Canada as settlement lands of the Indian Band.

“Elsipogtog First Nation Education Agreement” means the agreement between EFN-EA and Canada that is intended to give EFN-EA control over the education of Eligible Students and Eligible Schools.

2.0 PURPOSE AND OBJECTIVES

2.1 The purpose of this Delegation Agreement is to:

- (a) Define the terms and conditions under which EFN delegates responsibility to EFN-EA to manage EFN Education Programs, resources, staff, Eligible Schools and Eligible Students;
- (b) The creation of, and support for, the implementation of a quality Education Program for EFN Eligible Students;
- (c) Provide mechanisms for the Parties to work together to support improved education outcomes for EFN Eligible Students.

3.0 DELEGATION OF RESPONSIBILITY

- 3.1 EFN hereby delegates to EFN-EA all responsibility associated with Education Programs, Eligible Schools and Eligible Students that are located on the EFN Reserve. The delegation of responsibilities shall include, but not be limited to, responsibility for the development and implementation of Education Programs, allocation of resources, educational staff recruitment and employment, employment of support staff, third party service providers, all operations of Eligible Schools, and responsibility and oversight of Eligible Students.
- 3.2 EFN-EA accepts the EFN delegation of responsibility and will operate EFN's on-Reserve Eligible Schools and Education Programs in accordance with Elsipogtog First Nation Regional Education Agreement.
- 3.3 The Parties acknowledge and agree that the Elsipogtog First Nation Regional Education Agreement and this Delegation Agreement will result in a change in the funding relationship between Canada and EFN. Upon implementation of these agreements, the EFN-EA will be the funding recipient for all education-related program funding, including post-secondary funding and EFN-EA will be

responsible for the same. Upon execution of this Agreement, and until such time as the Elsipogtog First Nation Regional Education Agreement is null and void, EFN will no longer receive community education resources from Canada, and should any funds be received in error, these shall be immediately redirected to EFN-EA.

4.0 DUTIES OF THE PARTIES

- 4.1 EFN agrees to assign to EFN-EA all contracts and agreements related to the Education Program, Eligible Schools and Eligible students located on EFN, including, but not limited to, service contracts with third parties, employment contracts, inventory and supply agreements, and lease agreements.
- 4.2 EFN will direct Canada to pay to the EFN-EA any funding for elementary, secondary education programs and post-secondary education services in relation to EFN.
- 4.3 During the transition period in which responsibility is transferred from EFN to EFN-EA, EFN will make its best efforts to help EFN-EA fulfill its obligations and responsibilities as contained in the Elsipogtog First Nation Regional Education Agreement. Once the transition of responsibilities from EFN to EFN-EA is complete, EFN-EA shall assume all responsibility for fulfilling its obligations and responsibilities as contained in the Elsipogtog First Nation Regional Education Agreement.
- 4.4 At all times, EFN-EA shall conduct its operations and decisions in conformity with the Elsipogtog First Nation Regional Education Agreement. EFN-EA shall not take instruction from any one individual Band Member, or Council Member, with respect to any issue, matter, decision, transaction or likewise, unless it is in specific conformity with the Elsipogtog First Nation Regional Education Agreement. EFN shall not make attempts to influence the decision or operations of EFN-EA in anyway that is contrary to the Elsipogtog First Nation Regional Education Agreement.

5.0 LIMITATION OF LIABILITY

- 5.1 EFN-EA and any director, employee or agent of EFN-EA shall not be liable to EFN for anything done, or omitted to be done, by EFN, in relation to its operation of the Eligible Schools on Reserve or the instruction of Eligible Students prior to the execution of this Delegation Agreement.
- 5.2 EFN-EA and any director, employee or agent of EFN-EA shall not be liable to EFN for anything done in the exercise of education operations, in accordance with obligations established under the Elsipogtog First Nation Regional Education Agreement and EFN-EA policies.

- 5.3 EFN-EA and any director, employee or agent of EFN-EA shall not be liable to EFN for anything done, or omitted to be done, by EFN, in relation to the EFN-EA's operation of the Eligible Schools on Reserve or the instruction of Eligible Students after the execution of this Delegation Agreement.
- 5.4 EFN-EA may be liable to EFN for any act, or omission, that is contrary to the obligations established under the Elsipogtog First Nation Regional Education Agreement, if such act or omission results in a pecuniary loss.
- 5.5 EFN-EA voluntarily releases, discharges and agrees to indemnify and hold harmless EFN from any and all actions, claims, demands, liabilities, damages, losses, costs, expenses, and/or causes of action, which are in any way connected with EFN-EA's administration of the obligations under the Elsipogtog First Nation Regional Education Agreement and this Delegation Agreement, arising after the execution of this Delegation Agreement, including but not limited to any such claims which include employment claims, negligence, liability, breach of contract, omissions of EFN-EA, or breach of any statutory requirement or breach of duty of care under any applicable law.

6 EFFECTIVE DATE, TERM AND EXECUTIVE

- 6.1 This Delegation Agreement shall take effect at the same time the Elsipogtog First Nation Regional Education Agreement takes effect.
- 6.2 EFN agrees to provide to EFN-EA and to Canada a signed copy of this Delegation Agreement with five (5) days of execution.
- 6.3 This Delegation Agreement shall remain in effect for the term of the Elsipogtog First Nation Regional Education Agreement, and shall be extended for the same period as any renewal period of the Elsipogtog First Nation Regional Education Agreement, or until such time as a party has defaulted under the terms of the Elsipogtog First Nation Regional Education Agreement.
- 6.4 EFN will meet the EFN-EA and Canada twelve (12) months prior to the expiry of the Regional Education Agreement in order to discuss whether it will renew the Delegation Agreement.
- 6.5 This Delegation Agreement shall continue in effect and shall be binding on EFN and EFN-EA, notwithstanding any change in the constitution of the Chief and Council of EFN.

7 DEFAULT

- 7.1 In the event that EFN-EA is in default of the Elsipogtog First Nation Regional Education Agreement, EFN may take one or more of the following actions in the following order:
- (a) Require EFN-EA to seek advisory support;
 - (b) Require EFN-EA to develop and implement a management action plan within sixty (60) calendar days or, if EFN agrees, such other period of time as determined by EFN and EFN-EA.
 - (c) Require EFN-EA to take any other reasonable action necessary to remedy the default; or
 - (d) Appoint a temporary administrator to administer any or all of the responsibilities of EFN-EA under the Elsipogtog First Nation Regional Education Agreement.
 - (e) Only after having exhausted sections 7.1(a) to 7.1(d) herein may EFN revoke the authority delegated in this Delegation Agreement and EFN may then assume the role of EFN-EA to meet the requirements of the Elsipogtog First National Regional Education Agreement.

8 NO RESTRICTIONS

- 8.1 EFN, its members, and EFN-EA will continue to be eligible to participate in and benefit from any federal programs or services in accordance with criteria for such programs or services.
- 8.2 Nothing in this Delegation Agreement prevents EFN from pursuing or entering into a self-government agreement with Canada.

9 COMMUNICATIONS

9.1 The Contact information of EFN and EFN-EA is as follows:

Address: EFN
Elsipogtog First Nation
373 Big Cove Road
Elsipogtog, NB
E4W 2S3

Contact person: TBC
E-mail: TBC
Fax: TBC
Phone number: TBC
Cell: TBC

And

Address: EFN-EA
Elsipogtog First Nation
342 Big Cove Road
Elsipogtog, NB
E4W 2S6

Contact person: TBC
E-mail: TBC
Fax: TBC
Phone number: TBC
Cell: TBC