



**A SELF-GOVERNMENT TREATY RECOGNIZING  
THE WHITECAP DAKOTA NATION / WAPAHA SKA  
DAKOTA OYATE**



**BETWEEN:**

**WHITECAP DAKOTA FIRST NATION,**  
as represented by Whitecap Dakota First Nation Chief and Councillors,  
hereinafter “WDN”

**AND**

**HIS MAJESTY THE KING IN RIGHT OF CANADA,**  
as represented by the Minister of Crown-Indigenous Relations,  
hereinafter “Canada”

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## **PREAMBLE**

**WHEREAS** Canada recognizes and affirms that WDFN is an Aboriginal people of Canada within the meaning of section 35 of the *Constitution Act, 1982*;

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

**WHEREAS** Canada recognizes that WDFN has an inherent right of self-government, recognized and affirmed by section 35 of the *Constitution Act, 1982*;

**WHEREAS** on January 25, 2012, the Parties entered into a Framework Agreement to negotiate a self-governance agreement;

**WHEREAS** on April 27, 2017, the Parties entered into a Governance Agreement-in-Principle to continue negotiations towards this Governance Treaty;

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

**WHEREAS** WDN is a Dakota First Nation and 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** WDN 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 WDN and WDN Members;

**WHEREAS** WDN asserts that its inherent right of self-government is 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 WDN's rights to its traditional lands, territories, and resources;

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

**WHEREAS** WDN asserts it has traditional territories outside WDN Reserve Lands which it has historically used, occupied, and governed and further asserts its right to preserve, protect, promote, and maintain its interests throughout such traditional territories;

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

**WHEREAS** WDN asserts that its modern relationship with the Crown is built on the inherent right of self-government and 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 and peace and friendship arrangements;

**WHEREAS** Canada recognizes its responsibility to uphold the honour of the Crown in its relationship with WDN;

**WHEREAS** the Parties are committed to an ongoing process of fair dealing and reconciliation, including establishing a nation-to-nation and government-to-government relationship;

**WHEREAS** Canada has fully endorsed the *United Nations Declaration on the Rights of Indigenous Peoples* without qualification and has committed to implement the *United Nations Declaration on the Rights of Indigenous Peoples* in partnership with Indigenous Peoples, and within the framework of Canada's constitution and in accordance with the *United Nations Declaration on the Rights of Indigenous Peoples Act (Canada)*;

**WHEREAS** the members of WDFN have approved the WDN Constitution, through which they assert and exercise their inherent right of self-government;

**WHEREAS** the members of WDFN approved and authorized Chief and Council of WDFN to sign this Governance Treaty and other documents related to the implementation of this Governance Treaty;

**AND WHEREAS** Cabinet approved and authorized the signing of this Governance Treaty and the WDN Fiscal Relationship Agreement on behalf of Canada;

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

# PART I – DEFINITIONS, INTERPRETATION, AND PURPOSE

## CHAPTER 1: DEFINITIONS, INTERPRETATION, AND COMMON OBJECTIVES

### Definitions

1.01 In this Governance Treaty:

“**Adapted FNFMA**” means the *First Nations Fiscal Management Act* (Canada) and any regulations made under that Act, as adapted by regulations made under section 141 of that Act or by regulations made under the authority established in the Implementing Legislation; (*LGFPN adaptée*)

“**Authority**” means any authority other than Jurisdiction, including the power to deliver or administer programs and services; (*pouvoirs*)

“**Canada**” means His Majesty the King in Right of Canada, and includes all departments of the Government of Canada; (*Canada*)

“**Common Objectives**” means the objectives set out in 1.10; (*objectifs communs*)

“**Conflict**” means:

- a) compliance with one law would be a breach of another; or
- b) the operation of one law would frustrate 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 modification; (*conflict*)

“**Dispute**” means any disagreement between the Parties arising out of the interpretation, application, or implementation of this Governance Treaty; (*différend*)

“**Effective Date**” means the date on which this Governance Treaty comes into force in accordance with Chapter 34; (*date d’entrée en vigueur*)

“**Exercisable Treaty Rights**” means:

- a) the rights set out in this Governance Treaty that may be asserted or exercised by WDN; and
- b) any rights of self-government that have become assertable and exercisable pursuant to processes set out in Chapter 31,

which rights are recognized and affirmed by section 35 of the Constitution Act, 1982; (*droits issus de traité pouvant être exercé*)

**“Federal Crown Lands”** means any real property belonging to Canada and includes any real property of which Canada has the power to dispose; (*terres de la Couronne fédérale*)

**“Federal Law”** includes federal statutes, regulations, ordinances, orders-in-council, and the common law; (*règle de droit fédérale*)

**“Governance Treaty”** means this agreement, entitled “A Self-Government Treaty Recognizing the Whitecap Dakota Nation / Wapaha Ska Dakota Oyate”, including the Schedules; (*traité d’autonomie gouvernementale*)

**“Implementation Committee”** means the committee referred to in 26.07 to 26.11; (*comité de mise en œuvre*)

**“Implementing Legislation”** means the Federal Law which gives effect to this Governance Treaty; (*loi de mise en œuvre*)

**“Implementation Plan”** means the plan referred to in 26.05 and 26.06; (*plan de mise en œuvre*)

**“Intellectual Property”** means any intangible property right resulting from intellectual activity in the industrial, scientific, literary, or artistic fields, including any right relating to patents, copyrights, trademarks, industrial designs, or plant breeders’ rights; (*propriété intellectuelle*)

**“Interest in WDN Reserve Lands”** means any legally recognized interest, right, or estate of any nature in or to WDN Reserve Lands, including any leasehold interest, but not including title to or fee simple interest in WDN Reserve Lands; (*intérêt sur les terres de réserve de la NDW*)

**“International Legal Obligation”** means an obligation binding on Canada under international law including an obligation that is in force on or after the Effective Date; (*obligation juridique internationale*)

**“Jurisdiction”** means the power to make a law; (*compétence législative*)

**“Land Register”** means the WDFN land register created by WDFN under the WDFN Land Code, as amended from time to time; (*registre foncier*)

**“Matters Addressed in the Governance Treaty”** means any aspect of the inherent right of self-government of WDN recognized and affirmed by section 35 of the *Constitution Act, 1982*:

- a) to the extent that such right relates to or affects the management of WDN Reserve Lands;
- b) where the subject matter of that aspect of the right is the same as the subject matter of an Exercisable Treaty Right limited to WDN Reserve Lands under this

Governance Treaty, but only to the extent of such right's application to, or the extent that the right is exercisable or may be asserted on, WDN Reserve Lands; and

- c) where the subject matter of that aspect of the right is the same as the subject matter of an Exercisable Treaty Right not limited to WDN Reserve Lands under this Governance Treaty; (*questions abordées dans le traité d'autonomie gouvernementale*)

**“National Emergency”** means “National Emergency” as defined in section 3 of the *Emergencies Act* (Canada); (*situation de crise nationale*)

**“Ordinarily Resident”** means the place where, in the settled routine of an individual's life, that individual regularly, normally, or customarily lives and may be Ordinarily Resident on WDN Reserve Lands:

- a) notwithstanding that they are away for a defined period of time for the purpose of employment, training, treatment of health and social issues, schooling, military service, or incarceration; and
- b) only if that individual is legally entitled to reside on WDN Reserve Lands in accordance with WDN Law; (*résidence habituelle*)

**“Parties”** means Canada and:

- a) prior to the Effective Date, WDFN; or
- b) after the Effective Date, WDN; (*parties*)

**“Party”** means Canada or:

- a) prior to the Effective Date, WDFN; or
- b) after the Effective Date, WDN; (*partie*)

**“Reserve”** means a “reserve” as defined in paragraph 2(1)(a) of the *Indian Act* (Canada); (*réserve*)

**“Saskatchewan”** means His Majesty the King in Right of Saskatchewan and includes all ministries of the Government of Saskatchewan; (*Saskatchewan*)

**“Saskatchewan Law”** includes statutes, regulations, ordinances, orders-in-council, and the common law of Saskatchewan; (*règle de la Saskatchewan*)

**“WDFN”** means the body of Indians known as the Whitecap Dakota First Nation Indian Band under the *Indian Act* (Canada); (*PNDW*)

**“WDN”** means the body of Indians formerly known as WDFN; (*NDW*)

**“WDN Constitution”** means a constitution approved by WDN in accordance with Chapter 33; (*Constitution de la NDW*)

**“WDN Institution”** includes:

- a) agencies, entities, boards, panels, tribunals, and commissions established under 6.01; and
- b) trusts, corporations, societies, and cooperatives established under 6.01 in accordance with Federal Law or Saskatchewan Law; (*institution de la NDW*)

**“WDFN Land Code”** means the *Whitecap Dakota First Nation Land Code 2015*, referred to in 9.04; (*code foncier de la NDW*)

**“WDN Law”** means a law, code, regulation, or other instrument enacted or made by WDN in accordance with this Governance Treaty and the WDN Constitution, as amended from time to time; (*loi de la NDW*)

**“WDN Member”** means an individual whose name appears, or whose name is entitled to appear, on the membership list referred to in the *Whitecap Dakota First Nation Membership Code*, as amended from time to time, as set out in the WDN Constitution; (*membre de la NDW*)

**“WDN Reserve Lands”** means:

- a) Whitecap Indian Reserve No. 94, described in the map in Schedule A;
- b) any tract of land added to Reserve pursuant to 9.03; and
- c) any tract of land declared as Reserve, for the use and benefit of WDN, by a court of competent jurisdiction in a final decision; (*terres de réserve de la NDW*)

**“Whitecap Dakota Council”** means the governing council and law-making body of WDN as set out in the WDN Constitution; and (*conseil des Dakota de Whitecap*)

**“Whitecap Dakota Government”** means the government established by Whitecap Dakota Nation / Wapaha Ska Dakota Oyate in accordance with the WDN Constitution. (*gouvernement des Dakota de Whitecap*)

## **Interpretation**

- 1.02 In this Governance Treaty, words or phrases with specific meanings are identified in the text by the capitalization of the word or phrase.
- 1.03 Except as otherwise provided in this Governance Treaty, this Governance Treaty will be interpreted according to the *Interpretation Act* (Canada).
- 1.04 In this Governance Treaty, the use of the word:

- a) “including”, unless it is otherwise clear from the context, means “including, but not limited to”, and the use of the word “includes” means “includes, but is not limited to”;
  - b) “will” denotes an obligation that, unless this Governance Treaty provides otherwise or it is otherwise clear from the context, must be carried out as soon as practicable after the Effective Date or the event that gives rise to the obligation; and
  - c) “or” means one, some, or all of the possibilities in that provision, unless it is otherwise clear from the context.
- 1.05 Headings and subheadings are for convenience only, do not form a part of this Governance Treaty, and in no way define, limit, alter, or enlarge the scope or meaning of any provision of this Governance Treaty.
- 1.06 There will be no presumption that doubtful expressions, terms, or provisions in this Governance Treaty are to be resolved in favour of any particular Party.
- 1.07 If this Governance Treaty requires the Parties to agree to a specific matter, that agreement will be made in writing.
- 1.08 Unless this Governance Treaty provides otherwise, the Parties may agree, in writing, to abridge or extend the time periods set out in this Governance Treaty.
- 1.09 There is an English and French version of this Governance Treaty. There may be a Dakota version of this Governance Treaty. The English and French versions are authoritative.

### **Common Objectives**

- 1.10 Except as otherwise provided in Chapter 25, the Parties aspire to be guided by the following Common Objectives:
- a) recognizing, supporting, and advancing the implementation of WDN’s inherent right of self-government;
  - b) providing for an effective and sustainable WDN self-government through, among other things, a common commitment to capacity-building and a new and enhanced fiscal relationship;
  - c) providing flexibility, clarity, and predictability for all Parties with respect to the nature, scope, and geographic extent of Exercisable Treaty Rights;
  - d) implementing the *United Nations Declaration on the Rights of Indigenous Peoples* in accordance with the Canadian Constitution;



- e) achieving equity with other Canadians in socio-economic outcomes and overall well-being of WDN and WDN Members;
  - f) enhancing economic opportunities for WDN and WDN Members; and
  - g) preserving, revitalizing, and strengthening of the language, culture, and heritage of WDN.
- 1.11 The Parties agree that Common Objectives on their own do not create independently enforceable legally binding obligations.
- 1.12 Notwithstanding 1.11, the requirement to review and evaluate progress on the Common Objectives in 31.10 is legally binding.

## CHAPTER 2: RECOGNITION, STATUS, AND PURPOSE OF THIS GOVERNANCE TREATY

### Recognition and Predictability

- 2.01 Canada recognizes that WDN:
- a) is an Aboriginal people of Canada within the meaning of section 35 of the *Constitution Act, 1982*; and
  - b) has the inherent right of self-government as recognized and affirmed by section 35 of the *Constitution Act, 1982*.
- 2.02 The Whitecap Dakota Government has been mandated by WDN to implement its inherent right of self-government as recognized and affirmed by section 35 of the *Constitution Act, 1982*.
- 2.03 This Governance Treaty is intended to achieve flexibility, clarity, and predictability in providing for the implementation of the inherent right of self-government in respect of Matters Addressed in this Governance Treaty, as part of an ongoing government-to-government relationship between the Parties, by setting out:
- a) the Exercisable Treaty Rights, their attributes, geographic extent, and any limitations thereto; and
  - b) processes in Chapter 31 for:
    - i) periodic renewal,
    - ii) an orderly process for the exercise and assertion of aspects of the inherent right of self-government of WDN as the Parties may negotiate under 32.03; and
    - iii) amendments to this Governance Treaty.
- 2.04 Canada will not assert against WDN that any of its inherent right of self-government is modified, surrendered, or extinguished as a result of this Governance Treaty or the Implementing Legislation.
- 2.05 As of the Effective Date:
- a) WDN will, in respect of the inherent right of self-government as it relates to the Matters Addressed in this Governance Treaty, only assert and exercise the Exercisable Treaty Rights; and
  - b) Canada and all other persons:

- i) will exercise their rights, Jurisdictions, Authorities, and privileges in a manner that is consistent with this Governance Treaty; and
- ii) do not have any obligations to consult, in respect of any inherent right of self-government, as it relates to the Matters Addressed in this Governance Treaty, that is not an Exercisable Treaty Right.

2.06 For greater certainty, this Governance Treaty does not:

- a) affect the ability of WDN to exercise and assert;
- b) affect Canada's obligations in relation to; or
- c) define or limit,

any aspect of the inherent right of self-government of WDN that is not a Matter Addressed in this Governance Treaty.

2.07 Subject to 2.10 to 2.12, WDN agrees that it will not, for a period of three (3) years commencing on the Effective Date, pursue against Canada or any other persons any suits, actions, claims, proceedings, or demands of whatever kind, whether known or unknown, relating to or arising from any act or omission:

- a) before the Effective Date, that may have affected, interfered with, or infringed any Aboriginal right of self-government of WDN that is in respect of a Matter Addressed in this Governance Treaty; or
- b) on or after the Effective Date, that may have affected, interfered with, or infringed any Aboriginal right of self-government of WDN that is in respect of a Matter Addressed in this Governance Treaty that 2.05 prevents from being asserted and exercised.

2.08 The commitment in 2.07 includes any suits, actions, claims, proceedings, or demands based on the duty to consult in respect of the matters set out in 2.07.

2.09 Nothing in 2.07 is intended to affect any rights or recourses that WDN may have:

- a) with respect to any suits, claims, demands, actions, or proceedings that are not based on any Aboriginal right of self-government of WDN that is in respect of a Matter Addressed in this Governance Treaty; or
- b) to enforce the terms of this Governance Treaty in accordance with Chapter 30.

2.10 If Canada wishes to seek the inclusion in this Governance Treaty of any releases from WDN in relation to the matters set out in 2.07, Canada will, no later than six (6) months after the Effective Date, give notice in writing to WDN to begin discussions.

- 2.11 If Canada gives notice under 2.10, the period of time under 2.07 will begin to run from the date of the notice, and run for a period of three years from the date of the notice, in order to allow the Parties to discuss Canada's request for the inclusion of releases from WDN in relation to matters set out in 2.07.
- 2.12 Any period of time under 2.07 and 2.11 will not be included in the computation of any limitation period or under the doctrine of laches.
- 2.13 The Parties will not challenge and will vigorously defend any challenge to the validity or legal effectiveness of the agreement by WDN in 2.05 to not assert or exercise its inherent right of self-government, as it relates to the Matters Addressed in this Governance Treaty, in a manner, that is other than, or different in attributes, geographic extent, or limitations from, the Exercisable Treaty Rights.

### **Status of this Governance Treaty**

- 2.14 This Governance Treaty is a Treaty within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.

### **Purpose of this Governance Treaty**

- 2.15 The purpose of this Governance Treaty is to:
- a) support and advance the implementation of the inherent right of self-government of WDN as recognized and affirmed by section 35 of the *Constitution Act, 1982*; and
  - b) set out the:
    - i) Jurisdiction and Authority of WDN; and
    - ii) intergovernmental relationship, including fiscal relations, between the Parties.
- 2.16 The Parties recognize WDN, the WDN Constitution, and the Whitecap Dakota Government through this Governance Treaty.
- 2.17 Nothing in this Governance Treaty or any Implementing Legislation:
- a) is intended to alter the Canadian Constitution, including the division of powers between Canada and Saskatchewan, or any inherent right of self-government; or
  - b) defines, creates, extinguishes, modifies, limits, restricts, or surrenders any inherent right or jurisdiction of WDN, including the inherent right of self-government.

## **Aboriginal and Treaty Rights**

- 2.18 Nothing in this Governance Treaty or an agreement required by this Governance Treaty will be construed so as to abrogate or derogate from, define, recognize, deny, or otherwise affect any Aboriginal or treaty rights of WDN recognized and affirmed by section 35 of the *Constitution Act, 1982* that is not an Exercisable Treaty Right.
- 2.19 Nothing in this Governance Treaty 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.
- 2.20 Nothing in this Governance Treaty will be construed as prejudicing, limiting, or restricting either Party's position with respect to any Aboriginal or treaty rights of WDN recognized and affirmed by section 35 of the *Constitution Act, 1982* that is not an Exercisable Treaty Right.

## **PART II – WHITECAP DAKOTA GOVERNMENT**

### **CHAPTER 3: WDN, LEGAL STATUS, CAPACITY, AND TRANSITION**

#### **Legal Status and Capacity**

- 3.01 WDN acts through the Whitecap Dakota Government.
- 3.02 WDN is a legal entity with the rights, powers, and privileges of a natural person at law, which include the capacity to:
- a) enter into agreements and contracts with any person, government, or legal entity;
  - 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 their own behalf in legal proceedings;
  - e) hold, spend, invest, or borrow money;
  - f) secure or guarantee the repayment of money borrowed;
  - g) operate, contribute to, act as trustee of, or otherwise deal with trusts; and
  - h) do other things ancillary to the exercise of their rights, powers, and privileges,
- but does not include the capacity to be appointed or to act as a guardian.

#### **Transition**

- 3.03 The elected council of WDFN as it existed under the *Indian Act* (Canada) on the day preceding the Effective Date is deemed to be the Whitecap Dakota Council until the members of the Whitecap Dakota Council are determined according to the WDN Constitution and WDN Law.
- 3.04 Laws and by-laws enacted by WDFN pursuant to Federal Law and in effect on the day preceding the Effective Date are deemed to be WDN Laws on the Effective Date, with such modification as may be required, if the subject matter of such laws or by-laws is a subject matter in relation to which WDN has Jurisdiction under this Governance Treaty.
- 3.05 Any action taken or determination or decision made by WDFN before the Effective Date is deemed to be valid to the extent that the action, determination, or decision is a requirement of this Governance Treaty.

3.06 On the Effective Date, WDFN ceases to exist and all rights, interests, assets, and obligations vest in WDN.

## **CHAPTER 4: WDN CONSTITUTION**

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



- b) have rights of appeal and access to redress mechanisms in relation to any WDN Law or administrative decision.

## **PART III – WDN LAWS**

### **CHAPTER 5: GENERAL PROVISIONS IN RELATION TO WDN JURISDICTION AND AUTHORITY**

#### **General Provisions in Relation to WDN Jurisdiction and Authority**

- 5.01 WDN has Jurisdiction and Authority set out in this Governance Treaty.
- 5.02 WDN Law applies to WDN, the Whitecap Dakota Government, Whitecap Dakota Council, WDN Institutions, and WDN Members.
- 5.03 Except as otherwise provided for in this Governance Treaty, WDN Law applies to all other persons on WDN Reserve Lands.
- 5.04 Nothing in this Governance Treaty limits the ability of WDN to make programs or services available to, or to operate facilities or establish WDN Institutions for, WDN Members residing off WDN Reserve Lands.
- 5.05 Nothing in this Governance Treaty or other agreements required by this Governance Treaty affect any existing arrangements or prevent WDN from entering into agreements to provide services to WDN Members residing off WDN Reserve Lands.
- 5.06 WDN has Jurisdiction and Authority with respect to:
- a) the privileges and immunities for the members of the Whitecap Dakota Government consistent with those applicable to the members of provincial legislatures; and
  - b) the limiting of personal liability of elected or appointed members, officials, employees, and agents of the Whitecap Dakota Government and WDN Institutions, provided that WDN retains liability for their acts and omissions pursuant to the doctrine of vicarious liability.
- 5.07 The *Statutory Instruments Act* (Canada) does not apply to WDN Law.

#### **Delegation**

- 5.08 WDN may delegate its Authority to:
- a) a WDN Institution;
  - b) an official of the Whitecap Dakota Government;
  - c) an aggregate of First Nations, such as a tribal, regional, provincial, or national First Nation organization;

- d) other governments in Canada, including a department, agency or office of government;
  - e) a board or other administrative body established by provincial legislation or Federal Law; or
  - f) a person or any non-government organization, including an agency or private contractor in Canada.
- 5.09 A delegation under 5.08 c), d), e), or f) must be agreed to in writing by the delegate.
- 5.10 WDN may delegate its Jurisdiction to:
- a) a WDN Institution;
  - b) an aggregate of First Nations, such as a tribal, regional, provincial, or national First Nation legal entity;
  - c) other governments in Canada, including a department, agency or office of government; or
  - d) a board or other administrative body established by provincial legislation or Federal Law.
- 5.11 Any delegation of Jurisdiction under 5.10 will be:
- a) given effect by:
    - i) WDN Law, in the case of a delegation to a WDN Institution; or
    - ii) written agreement with an entity listed in 5.10 b), c), or d);
  - b) made in a manner so as to retain public accountability to WDN Members; and
  - c) revocable by WDN.

### **Registry and Notification of WDN Laws**

- 5.12 WDN will maintain a publicly accessible registry of all WDN Law and the WDN Constitution.

### **Language of WDN Law**

- 5.13 WDN Law and the WDN Constitution will be in the English language.
- 5.14 WDN Law and the WDN Constitution may be made available in the Dakota language.

### **Judicial Notice of WDN Law**

5.15 Judicial notice may be taken of a WDN Law if it is registered in the public registry referred to in 5.12.

### **Application of the *Canadian Charter of Rights and Freedoms***

5.16 The *Canadian Charter of Rights and Freedoms* applies to the Whitecap Dakota Government, Whitecap Dakota Council, and WDN Institutions.

### **Application of Federal Law**

5.17 Except as otherwise provided in this Governance Treaty, Federal Law applies to WDN, WDN Reserve Lands, the Whitecap Dakota Government, Whitecap Dakota Council, WDN Institutions, WDN Members, and all persons on WDN Reserve Lands.

5.18 In the event of a Conflict between:

- a) this Governance Treaty or the Implementing Legislation and other Federal Law, this Governance Treaty or the Implementing Legislation prevails to the extent of a Conflict; and
- b) this Governance Treaty and the Implementing Legislation, the Governance Treaty prevails to the extent of a Conflict.

### **No Direct or Indirect Jurisdiction**

5.19 Notwithstanding any other provision of this Governance Treaty, WDN 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; and
- d) Intellectual Property.

### **Laws of Overriding National Importance**

5.20 Notwithstanding any other provision of this Governance Treaty, Federal Law in relation to matters of overriding national importance, including:

- a) the preservation of peace, order, and good government in Canada;
- b) the protection of human rights;
- c) the protection of health and safety of all Canadians; or

- d) other matters of overriding national importance,  
prevails over WDN Law to the extent of any Conflict.

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

- 5.21 Nothing in this Governance Treaty 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**

- 5.22 Notwithstanding any other provision of this Governance Treaty, where a WDN Law has an incidental impact on a subject matter for which:

- a) no WDN Jurisdiction is provided in this Governance Treaty; or
- b) WDN has Jurisdiction but this Governance Treaty does not provide for the priority of WDN Laws;

and there is a Conflict between that WDN Law and a Federal Law, the Federal Law prevails to the extent of the Conflict.

### **Double Aspects**

- 5.23 Notwithstanding any other provision of this Governance Treaty, if a WDN Law has a double aspect in relation to a subject matter for which:

- a) no WDN Jurisdiction is provided in this Governance Treaty; or
- b) WDN has Jurisdiction but this Governance Treaty does not provide for the priority of WDN Laws,

and there is a Conflict between that WDN Law and a Federal Law, the Federal Law prevails to the extent of the Conflict.

### **Application of Saskatchewan Law Which Applies of its Own Force**

- 5.24 Saskatchewan Law which applies of its own force continues to apply in the same manner and to the same extent as it did before the Effective Date.

- 5.25 In the event of a Conflict between a Saskatchewan Law and:

- a) this Governance Treaty;
- b) the Implementing Legislation; or
- c) a WDN Law,

this Governance Treaty, the Implementing Legislation, or the WDN Law prevails to the extent of the Conflict.

### **Application of Saskatchewan Law Incorporated by Reference**

- 5.26 Except as otherwise provided in this Governance Treaty and subject to any other Federal Law, Saskatchewan Law applies to and in respect of WDN Members, except to the extent that Saskatchewan Law:
- a) is in conflict with this Governance Treaty, the Implementing Legislation, or WDN Law; and
  - b) makes provision for any matter for which provision is made by or under this Governance Treaty, the Implementing Legislation, or WDN Law.
- 5.27 5.26 is intended to have the same effect on Saskatchewan Law as section 88 of the *Indian Act* (Canada) has on provincial laws of general application.

### **WDN Law Not a Federal Law or a By-Law**

- 5.28 WDN Laws are not Federal Laws or by-laws within the meaning of the *Indian Act* (Canada).
- 5.29 Canada has no authority to approve or disallow WDN Law.

### **Emergencies**

- 5.30 Nothing in this Governance Treaty affects or limits the application of the *Emergencies Act* (Canada) or the *Emergency Management Act* (Canada).
- 5.31 Special temporary measures required under the *Emergencies Act* (Canada) to deal with a National Emergency must be expressly authorized by an order or regulation of the Governor in Council.
- 5.32 Emergency management plans developed under the *Emergency Management Act* (Canada) in force on the Effective Date continue to apply and updated or new emergency management plans, if applicable, will include any programs, arrangements, or other measures to assist Saskatchewan, and WDN through Saskatchewan, when dealing with an emergency.
- 5.33 Nothing in this Governance Treaty limits the capacity of Saskatchewan to treat WDN as a “local authority” under the *Emergency Planning Act* (Saskatchewan) and to give WDN Authority under that Act to exercise the powers of a “local authority.”

### **Limitations**

- 5.34 Nothing in this Governance Treaty limits the public right of navigation.

### **Application of the *Indian Act* (Canada)**

- 5.35 Except as otherwise provided in this Governance Treaty, the *Indian Act* (Canada) does not apply to WDN, the Whitecap Dakota Government, WDN Members, or WDN Reserve Lands.
- 5.36 The following provisions of the *Indian Act* (Canada), and any regulations or orders made pursuant to those provisions, continue to apply:
- a) section 2(1) (Definitions);
  - b) section 3 (Administration);
  - c) sections 5 to 7 (Indian Register); and
  - d) section 90 (Property Deemed Situated on Reserve).
- 5.37 Unless otherwise provided by WDN Law enacted under 9.05 or Chapter 11, the following provisions of the *Indian Act* (Canada), and any related regulations or orders made pursuant to those provisions, continue to apply:
- a) section 87 (Property Exempt from Taxation); and
  - b) section 89 (Restriction on Mortgage, Seizure, etc., of Property on Reserve).
- 5.38 Where, pursuant to this Governance Treaty, the *Indian Act* (Canada) continues to apply, a reference in the *Indian Act* (Canada) to:
- a) “band” means WDN;
  - b) “council of the band” means Whitecap Dakota Council;
  - c) “reserve” means WDN Reserve Lands; and
  - d) “member of a band” means a WDN Member.
- 5.39 For regulations or orders made under the *Indian Act* (Canada) that continue to apply, WDN is deemed to be a “band”.
- 5.40 For greater certainty, where this Governance Treaty states that a provision of the *Indian Act* (Canada) continues to apply, that provision of the *Indian Act* (Canada) applies only for the period that it is in effect.

### **Application of the *First Nations Land Management Act* (Canada)**

- 5.41 The Framework Agreement on First Nation Land Management and the *First Nations Land Management Act* (Canada) no longer apply to WDN, the Whitecap Dakota Government, WDN Institutions, WDN Members, and WDN Reserve Lands.

- 5.42 Notwithstanding 5.41, WDN, the Lands Advisory Board, and Canada may enter into an agreement deeming a WDN Law related to land to be a “land code” or “First Nation law” within the meaning of the Framework Agreement on First Nation Land Management, and making any other adaptation necessary to this Governance Treaty and to that Framework Agreement to enable WDN to benefit from any aspect of that Framework Agreement, as agreed upon by the Parties.
- 5.43 An agreement made pursuant to 5.42 will not have the effect of making that Framework Agreement prevail over this Governance Treaty. This Governance Treaty will prevail over that Framework Agreement to the extent of any Conflict.

#### **Application of the *First Nations Fiscal Management Act (Canada)***

- 5.44 The Implementing Legislation will enable the Governor in Council to make any regulations that the Governor in Council considers necessary for the purpose of enabling WDN to benefit from the provisions of the *First Nations Fiscal Management Act (Canada)* or obtain the services of any body established under the *First Nations Fiscal Management Act (Canada)*, including any regulations:
- a) adapting any provision of the *First Nations Fiscal Management Act (Canada)* or of any regulation made under the *First Nations Fiscal Management Act (Canada)*; and
  - b) restricting the application of any provision of the *First Nations Fiscal Management Act (Canada)* or of any regulation made under the *First Nations Fiscal Management Act (Canada)*.
- 5.45 Notwithstanding any other provision in this Governance Treaty, in the event that WDN requests to be named in the schedule to regulations made under section 141 of the *First Nations Fiscal Management Act (Canada)* or under the authority established by the Implementing Legislation and is accepted as a borrowing member under the Adapted FNFMA, the provisions of the Adapted FNFMA:
- a) prevail to the extent of any Conflict with a provision of this Governance Treaty or a WDN Law made under this Governance Treaty; and
  - b) are not subject to any restriction or condition precedent set out in this Governance Treaty, WDN Law, or the WDN Constitution.
- 5.46 For greater certainty, if WDN obtains financing from the First Nations Finance Authority under the Adapted FNFMA, 5.08 to 5.11 do not apply to the exercise of any powers under the Adapted FNFMA.

#### **WDN Eligibility for Federal Programs and Services**

- 5.47 WDN and WDN Members are eligible to participate in and benefit from federal programs or federally-sponsored programs in accordance with general eligibility criteria established from time to time, to the extent that WDN or a WDN Institution



has not assumed responsibility for the programs, or part thereof, under Fiscal Arrangements or other fiscal arrangements pursuant to this Governance Treaty.

### **Fiduciary Relationship**

5.48 The Parties agree that:

- a) notwithstanding this Governance Treaty, the overall fiduciary relationship between the Parties continues; and
- b) as WDN exercises Jurisdiction and Authority in accordance with this Governance Treaty, fiduciary obligations owed by Canada to WDN will be as determined by jurisprudence respecting fiduciary relationships.

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

### **WDN Laws About Whitecap Dakota Government**

- 6.01 WDN has Jurisdiction and Authority with respect to the structure, management, operations, and procedures of Whitecap Dakota Government, including:
- a) providing for referenda by WDN Members in relation to decision-making of the Whitecap Dakota Government;
  - b) establishing WDN Institutions;
  - c) the collection, retention, accuracy, disposal, use, or disclosure of information about an identifiable individual by the Whitecap Dakota Government and WDN Institution; and
  - d) access to information in the custody of or under the control of the Whitecap Dakota Government and WDN Institutions.
- 6.02 The Whitecap Dakota Council is the governing council and law-making body of Whitecap Dakota Government, as set out in the WDN Constitution.

### **Conduct of WDN Business**

- 6.03 WDN business may be conducted in the Dakota language.

### **Election, Selection and Appointment to Whitecap Dakota Government**

- 6.04 WDN has Jurisdiction and Authority with respect to the method of election, selection, or appointment of representatives of the Whitecap Dakota Government and WDN Institutions.

### **Financial Management**

- 6.05 WDN has Jurisdiction and Authority with respect to its internal financial management, including:
- a) establishing policies, regulations, and procedures in relation to the financial affairs of Whitecap Dakota Government;
  - b) authorizing or enabling Whitecap Dakota Government to make decisions pertaining to WDN public funds; and
  - c) providing for fiscal planning, financial management, and accountability to WDN Members.
- 6.06 WDN Laws enacted under 6.05 will reflect the principles of accountability, flexibility, and transparency in the relationship between the Whitecap Dakota Government and WDN Members.

6.07 In addition to matters set out in 3.02, WDN may perform such other functions with respect to financial management and administration as may be required from time to time.

**Conflict**

6.08 In the event of a Conflict between a WDN Law enacted under this Chapter and a Federal Law, the WDN Law prevails to the extent of the Conflict.

## **CHAPTER 7: WDN MEMBERSHIP**

### **WDN Laws about WDN Membership**

- 7.01 WDN has Jurisdiction and Authority with respect to the determination of WDN membership.
- 7.02 Notwithstanding 5.02, WDN Law in relation to the determination of WDN membership applies on and off WDN Reserve Lands.
- 7.03 WDN will establish and maintain a process by which an individual who has been denied WDN membership may have that decision reviewed in accordance with WDN Law.
- 7.04 An individual who, on the day preceding the Effective Date:
- a) has their name entered on WDN's membership list, is deemed to be a WDN member; and
  - b) is entitled to have their name on WDN's membership list, is deemed to be entitled to be a WDN Member.
- 7.05 A WDN Law enacted under 7.01 may not provide for the revocation of membership of individuals referred to in 7.04 on any ground other than a ground on which membership may be revoked with respect to any other WDN Member.
- 7.06 Upon a WDN Law enacted under 7.01 coming into effect, WDN will establish and maintain a register of WDN Members.
- 7.07 WDN will enter on that register the names of all:
- a) WDN Members and the date those individuals became WDN Members; and
  - b) individuals who cease to be WDN Members after the Effective Date and the date those individuals ceased to be WDN Members.

### **Relationship to Canadian Citizenship, Permanent Residency, and Indian Status**

- 7.08 Membership in WDN does not grant Canadian citizenship or permanent residency or confer or deny any right of entry into Canada or the right to be registered as an Indian under the *Indian Act* (Canada).
- 7.09 WDN Members who are Canadian citizens or permanent residents of Canada, as defined by Federal Law, continue to be entitled to all the rights and benefits of all other Canadian citizens or permanent residents of Canada.

## **Conflict**

7.10 In the event of a Conflict between a WDN Law enacted under 7.01 and a Federal Law, the WDN Law prevails to the extent of the Conflict.

## **CHAPTER 8: LANGUAGE AND CULTURE**

### **WDN Laws about Language and Culture**

- 8.01 WDN has Jurisdiction and Authority with respect to the preservation, promotion, revitalization, and enhancement of WDN language and culture.
- 8.02 The traditional language of WDN is Dakota.

### **WDN Laws about Cultural Resources**

- 8.03 WDN has Jurisdiction and Authority on WDN Reserve Lands with respect to cultural resources, including:
- a) the management and protection of WDN places, land uses, and heritage sites; and
  - b) public access to WDN places and heritage sites.
- 8.04 Section 91 of the *Indian Act* (Canada) continues to apply until the coming into force of a WDN Law enacted under this Chapter with respect to the protection of cultural resources.

### **Conflict**

- 8.05 In the event of a Conflict between a WDN Law enacted under this Chapter and a Federal Law, the WDN Law prevails to the extent of the Conflict.

## **CHAPTER 9: WDN RESERVE LANDS AND LANDS MANAGEMENT**

### **General**

- 9.01 WDN Reserve Lands may not be:
- a) alienated except if they are exchanged for other land in accordance with this Chapter; and
  - b) expropriated except in accordance with this Chapter.
- 9.02 Subject to 9.22, 9.28, and 9.37, WDN Reserve Lands remain “lands reserved for the Indians” within the meaning of subsection 91(24) of the *Constitution Act, 1867* and remain a Reserve.

### **Additions to WDN Reserve Lands**

- 9.03 If WDN has acquired, or intends to acquire, a parcel of land and proposes to Canada that the parcel become WDN Reserve Lands, the Parties will proceed under Canada’s additions to reserve policy and applicable Federal Law, as amended from time to time.

### **Transition of WDFN Land Code**

- 9.04 The WDFN Land Code in effect on the day preceding the Effective Date is deemed to be WDN Law on the Effective Date, with such modification as may be required to be consistent with this Governance Treaty.

### **WDN Laws About Management of WDN Reserve Lands**

- 9.05 WDN has Jurisdiction and Authority with respect to the management of WDN Reserve Lands, including:
- a) the creation and regulation of Interests in WDN Reserve Lands, including:
    - i) rights of possession,
    - ii) rights of use,
    - iii) transfer of Interests in WDN Reserve Lands,
    - iv) taking of Interests in WDN Reserve Lands by WDN for community purposes; and
    - v) encumbrances of Interests in WDN Reserve Lands, including rules affecting the exception referred to in section 89 of the *Indian Act* (Canada);
  - b) creating a registration system for Interests in WDN Reserve Lands;

- c) land use planning and zoning;
- d) subject 9.06 to 9.10, access and trespass;
- e) nuisances;
- f) use, construction, maintenance, repair, and demolition of buildings and other structures; and
- g) residency.

### **Continued Access to WDN Reserve Lands for Lawful Purpose**

- 9.06 Nothing in this Chapter affects the ability of persons acting in an official capacity under Federal Law or Saskatchewan Law to have access to WDN Reserve Lands.
- 9.07 Access under 9.06 is without charge, except as provided under Federal Law or Saskatchewan Law.
- 9.08 Persons accessing WDN Reserve Lands under 9.06 will:
  - a) comply with WDN Law where such compliance does not interfere with the carrying out of their lawful duties; and
  - b) subject to 9.09, give prior notice to WDN of such access when it is reasonable to do so.
- 9.09 Canada is not required to notify WDN under 9.08 b) with respect to access to WDN Reserve Lands by first responders, peace officers, federal investigators, and law enforcement officers carrying out lawful duties under Federal Law or Saskatchewan Law.
- 9.10 WDN may enter into agreements relating to the procedure for access by persons referred to in 9.06.

### **WDN Laws About Surveys**

- 9.11 WDN has Jurisdiction and Authority with respect to surveys of the boundaries of Interests in WDN Reserve Lands.
- 9.12 A WDN Law enacted under 9.11 will:
  - a) ensure the compatibility of surveys carried out under WDN Law and surveys carried out under any applicable Federal Law and Saskatchewan Law;
  - b) create or identify a public registry for surveys of WDN Reserve Lands;
  - c) ensure the ongoing integrity of the survey fabric as it relates to WDN Reserve Lands; and



- d) provide for standards relating to surveys that are at least equal to any comparable standards set out in the *Canada Lands Surveys Act* (Canada).

### **WDFN Land Register**

9.13 WDN will continue to administer the WDFN Land Register.

### **Existing Interests in WDN Reserve Lands**

9.14 An Interest in WDN Reserve Lands which exists on the Effective Date continues in accordance with its terms but is subject to WDN Laws.

### **Taking of Interests in WDN Reserve Lands by WDN for Community Purposes**

9.15 If a WDN Law makes provision for the taking of an Interest in WDN Reserve Lands by WDN for necessary community purposes or works, that WDN Law will provide for the payment of compensation by WDN to the holder of the Interest in WDN Reserve Lands that is taken without the consent of that holder based on:

- a) the market value of the Interest in WDN Reserve Lands being taken, as determined in accordance with the rules set out in the *Expropriation Act* (Canada), with such modifications as the circumstances require;
- b) the damages attributable to disturbance by WDN to the holder of that Interest in WDN Reserve Lands;
- c) damages for any reduction in the value of the remaining Interest in WDN Reserve Lands to the holder of that Interest in WDN 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 WDN Reserve Lands, to the extent that this value is not otherwise compensated in accordance with 9.15 a) to c).

9.16 An Interest in WDN Reserve Lands obtained under section 35 of the *Indian Act* (Canada) or held by Canada before the Effective Date is not subject to expropriation by WDN.

### **Conflict**

9.17 In the event of a Conflict between a WDN Law enacted under this Chapter and a Federal Law, the WDN Law prevails to the extent of the Conflict.

### **Exchange of Lands**

9.18 Subject to 9.19 to 9.21, WDN Reserve Lands will not be alienated except in exchange for other land in circumstances if:

- a) WDN will receive lands of greater or equivalent size or value in consideration for

the exchange, taking into account all of WDN's interests;

- b) Canada is willing to set apart the lands received in exchange as a Reserve;
  - c) WDN has made full disclosure to WDN Members of all the circumstances surrounding the exchange; and
  - d) WDN Members have approved the exchange in accordance with an approval process established in WDN Law for this purpose.
- 9.19 If the criteria in 9.18 have been satisfied, WDN may execute an authorization to proceed with the land exchange and issue a request to Canada to set aside the lands provided by Canada as a Reserve.
- 9.20 Upon receipt of an authorization and a request under 9.19, Canada will consider WDN's request to set the lands apart as WDN Reserve Land in accordance with:
- a) the authorization;
  - b) the terms and conditions of the land exchange;
  - c) procedural requirements applicable to acquisitions and dispositions of Federal Crown Lands; and
  - d) Canada's additions to reserve policy and applicable Federal Law, as amended from time to time.
- 9.21 WDN is responsible for determining whether the criteria referred to in 9.18 are fulfilled. WDN's determination is definitive and Canada may rely on it.
- 9.22 Any WDN Reserve Land alienated by the WDN to Canada is no longer WDN Reserve Lands.

### **Expropriation by Canada**

- 9.23 Canada may expropriate a parcel of WDN Reserve Land or an Interest in WDN Reserve Land for the use of a federal department or agency with the consent of and by order of the Governor in Council only if:
- a) the expropriation is:
    - i) justifiable and necessary for a federal public purpose that serves the national interest; or
    - ii) deemed to be for a public purpose under Federal Law; and
  - b) Canada is satisfied that, in addition to any other requirements under Federal Law 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 WDN Reserve Lands,
- ii) reasonable efforts have been made to acquire the parcel or the Interest in WDN Reserve Lands under 9.17 to 9.20,
- iii) the least amount of WDN Reserve Land or minimum Interest in WDN 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 the WDN.

9.24 Before Canada expropriates under 9.23, Canada will give notice to WDN:

- a) stating that Canada considers the expropriation is:
  - 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 9.23 b).

9.25 If WDN objects to a proposed expropriation for the reasons set out in:

- a) 9.24 a) i), WDN may bring an application for judicial review of that decision under the *Federal Courts Act* (Canada) to resolve the Dispute; or
- b) 9.24 a) ii), WDN may refer the matter to Dispute resolution under Chapter 30, within sixty (60) days after it receives the notice from Canada.

9.26 Canada will not seek the consent of the Governor in Council to the expropriation under 9.23:

- a) until at least sixty (60) days after it gives the notice under 9.24; or
- b) if WDN has referred the Dispute for resolution under 9.25 b), until that Dispute has been resolved.

9.27 If Canada expropriates an Interest in WDN Reserve Lands:

- a) the parcel on which the Interest in WDN Reserve Lands is expropriated continues to be WDN Reserve Lands and subject to WDN Law that is not inconsistent with the expropriation; and
- b) WDN 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.

9.28 Any WDN Reserve Land expropriated by Canada is no longer WDN Reserve Lands.

**Compensation for Expropriation by Canada**

- 9.29 If Canada expropriates under 9.23, the Parties will negotiate and attempt to reach agreement on the compensation Canada will provide to WDN in accordance with 9.30 to 9.32.
- 9.30 If Canada expropriates a parcel of WDN Reserve Lands, compensation will be provided to WDN consisting of:
- a) land acceptable to WDN; and
  - b) if required, any additional compensation to achieve the total compensation determined under 9.29.
- 9.31 If WDN consents, land provided to WDN as compensation under 9.30 may consist of an area that is less than the area of the parcel of WDN Reserve Land which has been expropriated.
- 9.32 If Canada expropriates a parcel of WDN Reserve Lands or an Interest in WDN 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 WDN 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 WDN 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 WDN Reserve Lands;
  - f) the value of any special economic advantage arising out of, or incidental to, the occupation or use of the parcel or the Interest in WDN Reserve Lands to the extent that the value is not otherwise compensated under 9.32 a) to e); and
  - g) if land has been provided to WDN as compensation for the expropriation of a parcel, the fair market value of the land provided.
- 9.33 Canada will pay interest on monetary compensation from the effective date of an expropriation to the date of payment at the prejudgment interest rate that is payable in civil proceedings in His Majesty's Court of King's Bench of Saskatchewan for the same period.

- 9.34 If the Parties do not reach an agreement on compensation, either Party may refer the matter to Dispute resolution under Chapter 30.
- 9.35 Any damages received by WDN resulting from a claim with respect to the expropriation by Canada under 9.23 will be offset against the compensation that has been paid or is payable to WDN under this Chapter.
- 9.36 If land is provided to WDN as compensation for the expropriation of a parcel of WDN Reserve Lands and WDN proposes that the land be set apart as WDN Reserve Lands, the Parties will proceed under Canada's additions to reserve policy and applicable Federal Law, as amended from time to time.

### **Restitution**

- 9.37 If Canada no longer requires a parcel of WDN Reserve Lands expropriated under 9.23 for the purpose for which it was expropriated:
- a) Canada will return that parcel to WDN in accordance with an agreement on the terms and conditions for the return of that parcel and the disposition of any improvements on that parcel; and
  - b) that parcel will become WDN Reserve Lands.
- 9.38 If the Parties do not reach agreement under 9.37, either Party may refer the matter to Dispute resolution under Chapter 30.
- 9.39 If Canada no longer requires an Interest in WDN Reserve Lands expropriated under 9.23 for the purpose for which it was expropriated, that Interest in WDN Reserve Lands will revert to WDN.

## **CHAPTER 10: EMERGENCIES AND PUBLIC ORDER, PEACE, AND SAFETY**

### **WDN Laws About Emergency Preparedness**

- 10.01 WFN has Jurisdiction and Authority with respect to emergency preparedness and emergency measures, including protections, immunities, and limitations with respect to liability, on WDN Reserve Lands that are equivalent to those of a local authority under Federal Law and Saskatchewan Law.
- 10.02 WDN may declare a state of local emergency and exercise the powers of a local authority with respect to a local emergency in accordance with Federal Law and Saskatchewan Law with respect to emergency measures, but any declaration and any exercise of those powers is subject to the authority of Canada and Saskatchewan under that Federal Law or Saskatchewan Law.
- 10.03 Nothing in this Governance Treaty affects the authority of:
- a) Canada to declare a national emergency in accordance with Federal Law; or
  - b) Saskatchewan to declare a provincial emergency, in accordance with Federal Law or Saskatchewan Law.

### **WDN Laws About Public Order, Peace and Safety**

- 10.04 WDN has Jurisdiction and Authority with respect to the regulation, control, or prohibition of any actions, activities, or undertakings on WDN Reserve Lands that constitute, or may constitute, a nuisance, a danger to public health, or a threat to public order, peace, or safety.

### **Conflict**

- 10.05 In the event of a Conflict between a WDN Law enacted under this Chapter and a Federal Law, the Federal Law prevails to the extent of a Conflict.

### **Transition from the *Indian Act* (Canada)**

- 10.06 Paragraph 73(1)(f) of the *Indian Act* (Canada) and any regulations made thereunder continue to apply:
- a) to the extent the WDFN Land Code does not cover the same subject matters; and
  - b) until a WDN Law is enacted under 10.04, in which case paragraph 73(1)(f) ceases to apply with respect to that subject matter.

## CHAPTER 11: TAXATION

### Definitions

11.01 In this Chapter:

“**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*; (*directe*)

“**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; (*personne*)

“**Real Property Taxation**” means taxation imposed on the basis of:

- a) the value of land or improvements or both; or
- b) a single amount for each parcel of land, the taxable area of a parcel of land or the taxable frontage of a parcel of land; and (*impôt foncier*)

“**WDN Capital**” means all assets transferred to the WDN under this Governance Treaty or recognized as owned by the WDN under this Governance Treaty. (*capitaux de la NDW*)

### Taxation Powers

11.02 WDN has Jurisdiction and Authority with respect to:

- a) Direct taxation of WDN Members within WDN Reserve Lands in order to raise revenue for Whitecap Dakota Government purposes;
- b) Real Property Taxation within WDN Reserve Lands, subject to 11.06 to 11.09; and
- c) the implementation of any taxation agreement with Canada or Saskatchewan, including those referred to in 11.10, extending WDN Jurisdiction under 11.02 a) to apply to Persons other than WDN Members on WDN Reserve Lands.

11.03 A WDN Law enacted under 11.02 a), as may be extended by application of 11.10 a), applies notwithstanding section 87 of the *Indian Act* (Canada).

11.04 WDN Jurisdiction under 11.02 a) does not limit the taxation powers of Canada or Saskatchewan.

11.05 Notwithstanding any other provision of this Governance Treaty, any WDN Law enacted under this Chapter, or any exercise of Jurisdiction or Authority by WDN, is subject to Canada’s International Legal Obligations with respect to taxation, and

Chapter 30 does not apply to Canada with respect to International Legal Obligations respecting taxation.

### **Real Property Taxation**

- 11.06 The Parties will enter into a Real Property Tax Agreement which addresses the terms:
- a) under which WDN will exercise its Jurisdiction under 11.02 b) with respect to Persons other than WDN Members; and
  - b) in accordance with which the Real Property Tax Agreement may be amended or terminated.
- 11.07 The Real Property Tax Agreement comes into effect on the Effective Date.
- 11.08 A WDN Law enacted under 11.02 b) that pertains to Persons other than WDN Members will comply with the terms set out in a Real Property Tax Agreement.
- 11.09 In the absence of a Real Property Tax Agreement with Canada, WDN will not exercise its Jurisdiction under 11.02 b) with respect to Persons other than WDN Members.

### **Other Tax Agreements**

- 11.10 At the request of WDN, Canada, and Saskatchewan, together or separately, may negotiate an agreement with WDN respecting the:
- a) extent to which the WDN Direct taxation Jurisdiction under 11.02 a) may be extended to apply to Persons other than WDN Members within WDN Reserve Lands; and
  - b) coordination of WDN taxation of any Person with federal or provincial tax systems.
- 11.11 For greater certainty, an agreement under 11.10 may also provide for comparable tax arrangements available under existing Federal Law and federal policy for *Indian Act* (Canada) bands.
- 11.12 An agreement under 11.10 may also address the manner in and the extent to which sections 87 and 89 of the *Indian Act* (Canada) will cease to apply to the property of a WDN Member, WDN, an Indian, or band for the purposes of the administration, collection, and enforcement of a WDN, federal, or provincial tax, as contemplated by that agreement, only for the period of time set out in that agreement and, if necessary, subject to being given force of law by Federal Law.
- 11.13 Notwithstanding Chapter 24, a taxation agreement concluded under 11.10 may provide for or enable a WDN Law to provide for:



- a) fines or terms of imprisonment in relation to taxation that are greater than the limits set out in 24.06; and
- b) other measures related to the administration, enforcement, adjudication, and appeal of matters in relation taxation.

### **Transfer of WDN Capital**

- 11.14 A transfer of WDN Capital under this Governance Treaty is not taxable and a recognition of ownership of WDN Capital under this Governance Treaty is not taxable.
- 11.15 For federal income tax purposes, WDN Capital is deemed to have been acquired by WDN at a cost equal to its fair market value on the latest of the following two dates:
- a) the Effective Date; or
  - b) the date of transfer of ownership or recognition of ownership.

### **Tax Treatment Agreement**

- 11.16 The Parties may enter into a tax treatment agreement which comes into effect on the later of the Effective Date and the effective date of the tax treatment agreement as set out in the tax treatment agreement.
- 11.17 Canada will recommend to the Parliament of Canada that the tax treatment agreement be given effect and force of law by Implementing Legislation.

### **Status of Taxation Agreements**

- 11.18 An agreement under 11.06, 11.10, and 11.16:
- a) does not form part of this Governance Treaty;
  - b) is not a treaty or land claims agreement; and
  - c) does not abrogate or derogate from, recognize, deny, or otherwise affect any Aboriginal or treaty rights of WDN recognized and affirmed by section 35 of the *Constitution Act, 1982*.

### **Transitional Provisions for Existing Tax Arrangements**

- 11.19 The *Whitecap Community Improvement Fee Bylaw, 2008* and the Whitecap Dakota First Nation Goods and Services Tax Administration Agreement, dated January 2, 2009, continue to apply within WDN Reserve Lands as if WDN were still a band for the purposes of the *First Nations Goods and Services Tax Act* (Canada) until the date on which that by-law or the Whitecap Dakota First Nation Goods and Services Tax Administration Agreement is terminated or amended.

11.20 The *Whitecap Liquor Consumption Fee Bylaw, 2007* and the Liquor Taxation Agreement between WDN and Saskatchewan, dated August 2, 2007, continue to apply within WDN Reserve Lands as if WDN were still a band for the purposes of the *First Nations Goods and Services Tax Act* (Canada) until the date on which that by-law or Liquor Taxation Agreement is terminated or amended.

## CHAPTER 12: ENVIRONMENT

### Definitions

12.01 In this Chapter:

**“Environment”** means the components of the Earth and includes:

- a) air, land, and water;
- b) all layers of the atmosphere;
- c) all organic and inorganic matter and living organisms; and
- d) the interacting natural systems that include components referred to in a) to c);  
(*environnement*)

**“Environmental Emergency”** means an uncontrolled, unplanned, accidental, or unlawful release of a substance into the Environment, or the reasonable likelihood of such a release into the Environment, that:

- a) has or may have an immediate or long term harmful effect on the Environment;
- b) constitutes or may constitute a danger to the Environment on which human life depends; and
- c) constitutes or may constitute a danger to human life or health in Canada;  
(*urgence environnementale*)

**“Federal Environmental Assessment”** means an environmental assessment conducted in accordance with Federal Environmental Law; (*évaluation environnementale fédérale*)

**“Federal Environmental Law”** means the requirements established under Federal Law in relation to:

- a) environmental protection;
- b) assessment of the environmental effects of a Federal Project; or
- c) the assessment of the environmental effects of a development; (*lois fédérales sur l’environnement*)

**“Federal Project”** means a proposed physical activity that is subject to a Federal Environmental Assessment; (*projet fédéral*)

**“Pollution Prevention”** means the use of processes, practices, materials, products, substances, or energy that:

- a) avoid or minimize the creation of pollutants or waste; or
- b) reduce the overall risk to the Environment or human health; (*prévention de la pollution*)

**“WDN Environmental Assessment”** means an environmental assessment conducted in accordance with WDN Law; (*évaluation environnementale de la NDW*)

**“WDN Project”** means a proposed physical activity, as defined in WDN Law, to be carried out wholly or partly on WDN Reserve Lands; and (*projet de la NDW*)

**“WDN Asserted Traditional Use Lands”** means those lands referred to in 12.14 and shown for illustrative purposes in Schedule 12-1. (*terres utilisées à des fins traditionnelles par la NDW*)

### **WDN Laws About Environmental Protection and Environmental Assessment**

- 12.02 WDN has Jurisdiction and Authority with respect to protection of the Environment and WDN Environmental Assessment on WDN Reserve Lands, including:
- a) Pollution Prevention, with respect to persons or entities causing pollution on WDN Reserve Lands;
  - b) waste management;
  - c) local air quality;
  - d) Environmental Emergencies; and
  - e) WDN Environmental Assessment of undertakings, works, or physical activities on WDN Reserve Lands.
- 12.03 A WDN Law enacted under 12.02 will be equivalent to or exceed the requirements established under Federal Environmental Law or Saskatchewan Law.
- 12.04 A WDN Law enacted under 12.02 e) will:
- a) establish a process by which WDN Environmental Assessments of WDN Projects will be undertaken; and
  - b) provide to what extent proponents will be responsible for the costs of the process referred to in 12.04 a).

12.05 Nothing in this Governance Treaty restricts the jurisdiction or obligation of Canada to carry out a Federal Environmental Assessment or review under Federal Environmental Law.

### **Conflict**

12.06 In the event of a Conflict between a WDN Law enacted under 12.02 and a Federal Law, the Federal Law prevails to the extent of the Conflict.

### **WDN Participation in Federal Environmental Assessment**

12.07 If a proposed Federal Project may reasonably be expected to adversely affect WDN Reserve Lands, Exercisable Treaty Rights, or other WDN rights that may exist that are not Matters Addressed by this Governance Treaty, recognized and affirmed under section 35 of the *Constitution Act, 1982*, Canada will ensure that WDN is provided with:

- a) timely notice of the Federal Environmental Assessment; and
- b) information describing the Federal Project in sufficient detail to permit WDN to determine whether it is interested in participating in the Federal Environmental Assessment.

12.08 If WDN confirms that it is interested in participating in the Federal Environmental Assessment, Canada will provide WDN with an opportunity to comment on the Federal Environmental Assessment, including:

- a) the scope of the Federal Project;
- b) the environmental effects of the Federal Project;
- c) any mitigation measures to be implemented; and
- d) any follow-up programs to be implemented.

12.09 During the course of the Federal Environmental Assessment referred to in 12.07 and 12.08, Canada will:

- a) provide WDN with access to information under Canada's control related to the Federal Environmental Assessment, in accordance with the public registry provisions set out in Federal Environmental Law;
- b) give full and fair consideration to any comments provided by WDN under 12.08; and
- c) respond to the comments before taking any decision to which those comments pertain.

- 12.10 Without limiting Canada's constitutional duty to consult, if a proposed Federal Project that is referred to a panel under Federal Environmental Law may reasonably be expected to adversely affect WDN Reserve Lands, Exercisable Treaty Rights, or other potential WDN rights that may exist that are not Matters Addressed by this Governance Treaty recognized and affirmed under section 35 of the *Constitution Act, 1982*, Canada will provide WDN with the opportunity to:
- a) propose to Canada a list of names that Canada may consider for appointment to the panel, unless WDN is a proponent of the Federal Project; and
  - b) appear before or make representations to the panel.
- 12.11 If a proposed Federal Project that is referred to a panel under Federal Environmental Law is located on WDN Reserve Lands, Canada will provide WDN with the opportunity to:
- a) propose to Canada a list of names from which Canada will appoint one member in accordance with the requirements of Federal Environmental Law, unless WDN is a proponent of the proposed Federal Project;
  - b) comment on the terms of reference of the panel; and
  - c) appear before or make representations to the panel.

### **Coordination of Assessments**

- 12.12 The Parties will:
- a) make best efforts to share expertise, collaborate, and coordinate consultation and decision-making when contemplating both a WDN Environmental Assessment and a Federal Environmental Assessment which may have significant environmental effects on WDN Reserve Lands;
  - b) negotiate and attempt to reach an agreement on harmonizing processes for WDN Environmental Assessment and Federal Environmental Assessment on WDN Reserve Lands with the aim of requiring only one process if an undertaking, work, project, or physical activity is subject to more than one environmental assessment process; and
  - c) negotiate and attempt to reach an agreement to coordinate and harmonize requirements, timelines, and processes, to the extent possible, if both a WDN Environmental Assessment and a Federal Environmental Assessment are required.

### **Federal Projects on WDN Reserve Lands**

- 12.13 Canada will consult with WDN in order to seek the free, prior, and informed consent of WDN before making a decision to proceed with a Federal Project on WDN Reserve Lands.

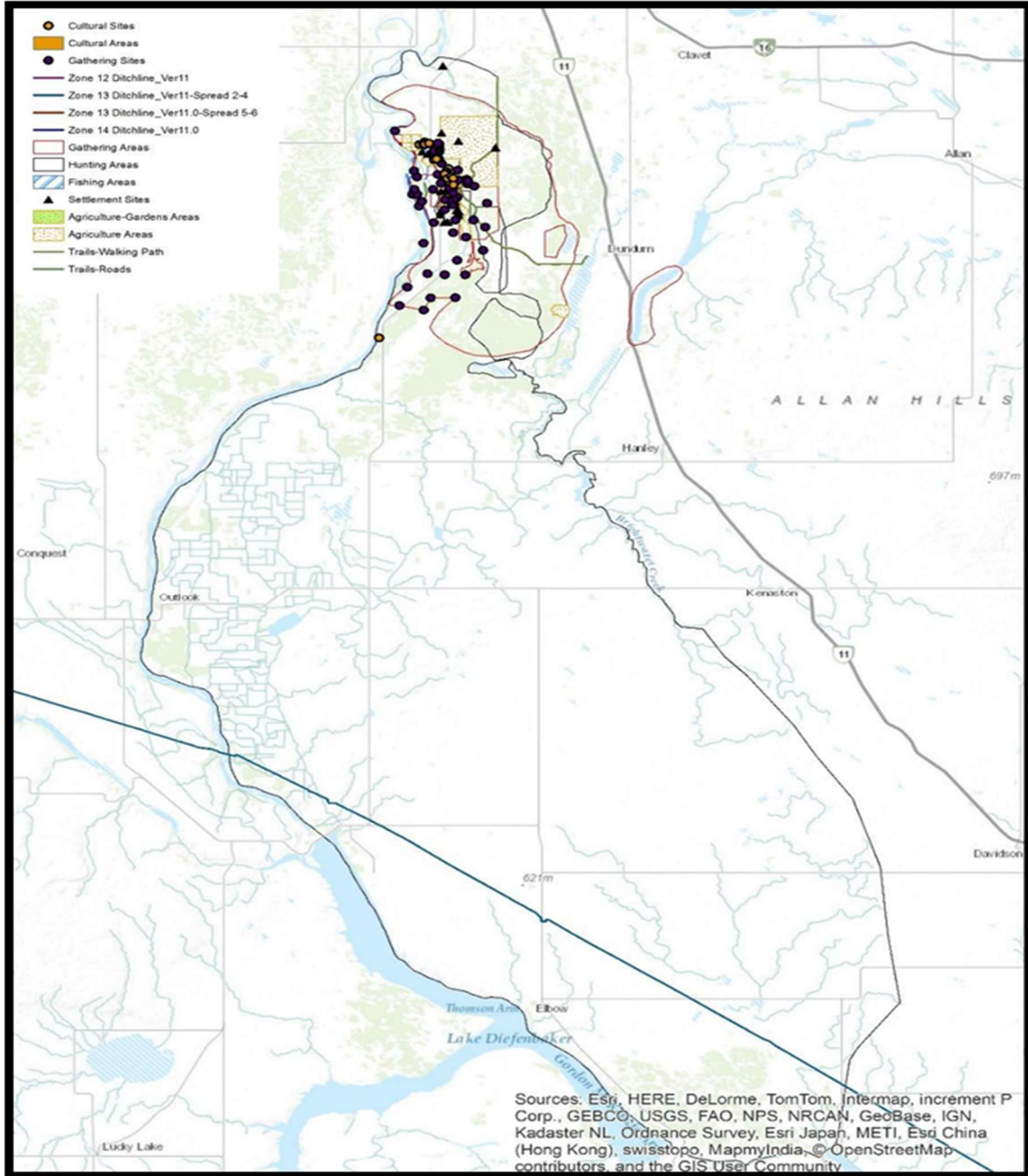
### **WDN Asserted Traditional Use Lands**

- 12.14 Without limiting Canada's constitutional duty to consult, WDN will be consulted and, if appropriate, accommodated, with respect to any Federal Project within, or that might adversely affect, WDN Asserted Traditional Use Lands. The scope of Canada's duty to consult will be determined in accordance with the common law.

### **Agreements Relating to Environmental Matters**

- 12.15 WDN may enter into agreements with Saskatchewan for the environmental assessment of projects that are not Federal Projects or WDN Projects.
- 12.16 WDN may enter into agreements with Canada, other governments, or appropriate bodies to enhance cooperation and coordination of their respective environmental functions, relating to:
- a) protection of the Environment;
  - b) Environmental Emergencies occurring on or off WDN Reserve Lands; or
  - c) environmental assessment processes.

Schedule 12-1 WDN Asserted Traditional Use Lands are lands identified in the following map.





## CHAPTER 13: NATURAL RESOURCE MANAGEMENT

### Definitions

13.01 In this Chapter

“**Fish**” has the same meaning as in the *Fisheries Act* (Canada); (*poissons*)

“**Forest and Plant Resources**” means:

- a) all trees, whether standing, fallen, living, dead, limbed, bucked, or peeled, including all parts thereof;
- b) all plants, including medicinal plants, bushes, roots, moss, ferns, floral greens, herbs, berries, spices, and seeds; and
- c) fungi and lichen; (*ressources forestières et végétales*)

“**Migratory Birds**” has the same meaning as in the *Migratory Birds Convention Act, 1994* (Canada); (*oiseaux migrants*)

“**Minerals**” means all precious and base metals and other non-living, naturally occurring substances, whether solid, liquid, or gaseous, including coal, gas, oil, oil shales, gold, silver, and potash, but water and Nuclear Substances are not considered Minerals in this Governance Treaty; (*minéraux*)

“**Natural Resources**” means any renewable and non-renewable natural resource or material in, on, or under WDN Reserve Lands in their natural state, including:

- a) Wildlife and their natural habitat;
- b) Forest and Plant Resources and their natural habitat;
- c) gravel, clay, sand, soil, stone, peat, coal, bitumen, limestone, marble, gypsum, ash, marl, any building stones mined for building purposes, or any other element forming part of the agricultural surface of WDN Reserve Lands;
- d) Minerals; and
- e) water, as set out in this Governance Treaty; (*ressources naturelles*)

“**Nuclear Substance**” has the same meaning as in the *Nuclear Safety and Control Act* (Canada); (*substance nucléaire*)

“**Species at Risk**” means those species listed as species at risk under the *Species at Risk Act* (Canada); and (*espèce en péril*)

“**Wildlife**” means all fauna existing in a wild state, including Migratory Birds, fur-bearing animals, Fish, and all parts and products thereof. (*faune*)

### **WDN Laws About Natural Resource: General**

- 13.02 WDN has Jurisdiction and Authority with respect to Natural Resources on, or forming part of, WDN Reserve Lands, including:
- 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 WDN 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 consent of a rights or interest holder.
- 13.03 WDN Law enacted under 13.02 e) will provide that the holders of the rights or interests in Natural Resources taken receive fair compensation.
- 13.04 WDN Law enacted under 13.02 will not affect Canada's ability to fulfill any legal obligation to collect information for statistics or reports on Natural Resources.
- 13.05 Subject to 13.08 b), 13.13, and 13.18, in the event of a Conflict between a WDN Law enacted under 13.02 and a Federal Law, the WDN Law prevails to the extent of the Conflict.
- 13.06 Upon a WDN Law enacted under 13.02 coming into effect which deals with the same or similar matters as those matters dealt with in the *Indian Oil and Gas Act* (Canada), that Act no longer applies to WDN, WDN Reserve Lands, or the royalties on oil and gas obtained from WDN Reserve Lands.

### **WDN Laws About Water**

- 13.07 WDN has Jurisdiction and Authority with respect to:
- a) bodies of water entirely within WDN Reserve Lands; and
  - b) groundwater within WDN Reserve Lands.
- 13.08 In the event of a Conflict between a WDN Law enacted under:
- a) 13.07 a) and a Federal Law, the WDN Law prevails to the extent of the Conflict; or
  - b) 13.07 b) and a Federal Law, the Federal Law prevails to the extent of the Conflict.

13.09 WDN may enter into agreements with Canada or Saskatchewan with respect to the control, use, or management of bodies of water that are not entirely within WDN Reserve Lands.

### **WDN Laws About Forest and Plant Resources**

13.10 WDN has Jurisdiction and Authority with respect to Forest and Plant Resources on WDN Reserve Lands.

13.11 Subject to 13.12, in the event of a Conflict between a WDN Law enacted under 13.10 and a Federal Law, the WDN Law prevails to the extent of the Conflict.

13.12 In the event of a Conflict between a WDN Law enacted under 13.10 and a Federal Law that relates to forest and plant health or Species at Risk, the Federal Law prevails to the extent of the Conflict.

### **WDN Laws About Fish, Fish Habitat, and Aquatic Plants**

13.13 WDN has Jurisdiction and Authority with respect to:

- a) the protection, harvesting, and management of Fish in bodies of water entirely within WDN Reserve Lands;
- b) the conservation and protection of Fish habitat within WDN Reserve Lands; and
- c) the protection, harvesting, and management of aquatic plants in bodies of water entirely within WDN Reserve Lands.

13.14 In the event of a Conflict between a WDN Law enacted under 13.13 and a Federal Law, the Federal Law prevails to the extent of the Conflict.

13.15 WDN may enter into agreements with Canada or Saskatchewan with respect to the protection, harvesting, or management of Fish or aquatic plants in bodies of water which are not entirely within WDN Reserve Lands.

### **WDN Laws About Wildlife, other than Fish**

13.16 WDN has Jurisdiction and Authority with respect to Wildlife, other than Fish or their habitat, on WDN Reserve Lands.

13.17 Subject to 13.18, in the event of a Conflict between a WDN Law enacted under 13.16 and a Federal Law, the WDN Law prevails to the extent of the Conflict.

13.18 In the event of a Conflict between a WDN Law enacted under 13.16 and a Federal Law relating to:

- a) Migratory Birds or their habitat; or
- b) Species at Risk or their habitat,

the Federal Law prevails to the extent of the Conflict.

**Transition from the *Indian Act* (Canada)**

- 13.19 Section 57 and subsection 73(1) of the *Indian Act* (Canada) and any regulations made thereunder continue to apply:
- a) to the extent they are not covered by the WDFN Land Code; and
  - b) until a WDN Law is enacted under 13.02, 13.07, 13.10, 13.13, or 13.16, in which case section 57 and subsection 73(1) cease to apply with respect to that subject matter.

## **CHAPTER 14: AGRICULTURE**

- 14.01 WDN has Jurisdiction and Authority with respect to agriculture on WDN Reserve Lands.
- 14.02 In the event of a Conflict between a WDN Law enacted under 14.01 and a Federal Law or Saskatchewan Law, the Federal Law or Saskatchewan Law prevails to the extent of the Conflict.

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

### Definitions

15.01 In this Chapter:

“**Roads**” includes road allowances, streets, lanes, and sidewalks; and (*routes*)

“**Drains**” includes culverts, drainage ditches, drains, and dikes. (*égouts*)

### WDN Laws About Public Works, Community Infrastructure, and Local Services

15.02 WDN has Jurisdiction and Authority with respect to public works, private works, community infrastructure, and local services on WDN Reserve Lands, including:

- 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 prevention services; and
- h) the control of domestic animals.

15.03 WDN has Jurisdiction and Authority with respect to the levying and collection of development cost charges, user fees, and development permit fees to provide for public works, community infrastructure, or local services on WDN Reserve Lands.

15.04 A WDN Law enacted under this Chapter will provide for standards that are at least equal to any standards provided for under a comparable Federal Law or Saskatchewan Law.

### Conflict

15.05 In the event of a Conflict between a WDN Law enacted under this Chapter and Federal Law, the WDN Law prevails to the extent of the Conflict.

**Transition from the *Indian Act* (Canada)**

- 15.06 Until a WDN Law under a paragraph set out in 15.02 comes into force, the corresponding power under subsection 73(1) of the *Indian Act* (Canada) and any regulations made thereunder continue to apply.

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

16.01 WDN has Jurisdiction and Authority with respect to:

- a) the regulation and control of local ground traffic, parking, and transportation; and
- b) the design, construction, maintenance, and management of the local ground transportation infrastructure.

16.02 WDN Jurisdiction and Authority under this Chapter does not include Jurisdiction and Authority to regulate dangerous goods as that term is defined in Federal Law.

16.03 A WDN Law enacted under this Chapter will provide for health and safety standards, regulations, and technical codes that are 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 WDN Law enacted under 16.01 and a Federal Law, the Federal Law prevails to the extent of the Conflict.

### **Transition from the *Indian Act* (Canada)**

16.05 Until a WDN Law under 16.01 comes into force:

- a) the *Indian Reserve Traffic Regulation* applies on WDN Reserve Lands; and
- b) paragraph 73(1)(c) of the *Indian Act* (Canada) and any regulations made thereunder apply.



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

### **WDN Laws about Licensing, Regulation, and Operation of Businesses**

- 17.01 WDN has Jurisdiction and Authority with respect to the regulation, licensing, and prohibition of businesses on WDN Reserve Lands, including:
- a) regulating the types of businesses that may carry out business activities;
  - b) regulating business activities, including providing for business licenses, permits, approvals, and inspections;
  - c) the terms and conditions of business licenses, permits, or approvals; and
  - d) the duration, suspension, or cancellation of business licenses, permits, or approvals.
- 17.02 In the event of a Conflict between a WDN Law enacted under 17.01 and a Federal Law, the WDN Law prevails to the extent of the Conflict.

### **WDN Laws about Economic Development**

- 17.03 WDN may exercise the Jurisdiction and Authority set out in this Governance Treaty in order to promote or participate in economic development or tourism.

## CHAPTER 18: ALCOHOL, GAMING, AND INTOXICANTS

### Definitions

18.01 In this Chapter:

**“Alcoholic Beverages”** means:

- a) alcohol;
- b) alcoholic, spirituous, vinous, fermented malt, or other intoxicating liquor or combination of liquors; and
- c) mixed liquor a part of which is spirituous, vinous, fermented, or otherwise intoxicating,

which does not contain an Intoxicant; and (*boissons alcoolisés*)

**“Intoxicant”** means all products or substances capable of producing an intoxicated state, excluding:

- a) Alcoholic Beverages; and
- b) any medication or other products or substances used as prescribed or authorized by a health care professional registered under Federal Law or provincial law. (*intoxicant*)

### WDN Laws About Prohibition of Alcoholic Beverages

18.02 WDN has Jurisdiction and Authority with respect to the prohibition of the sale, barter, supply, manufacture, possession, or consumption of Alcoholic Beverages on WDN Reserve Lands.

18.03 In the event of a Conflict between a WDN Law enacted under 18.02 and a Federal Law, the WDN Law prevails to the extent of the Conflict.

### Agreements

18.04 WDN has the Authority to implement and enter into any agreements with Canada or Saskatchewan and, if necessary, other parties, with respect to the regulation of the sale, barter, supply, manufacture, possession, or consumption of Alcoholic Beverages.

### Gaming

18.05 WDN has the Authority to implement and enter into any agreements with Canada or Saskatchewan and, if necessary, other parties, with respect to the conduct and management of gaming on WDN Reserve Lands.

- 18.06 Canada may enter into discussions with WDN with respect to the means by which WDN can exercise Jurisdiction and Authority in relation to all forms of gaming on WDN Reserve Lands, consistent with the objectives set out in subsection 2.1 of the 2002 Saskatchewan-FSIN Gaming Framework Agreement.
- 18.07 Nothing in this Governance Treaty will be construed to restrict the ability of WDN to participate in the regulation, conduct, or management of gaming and gambling permitted under any Federal Law or Saskatchewan Law.

### **Intoxicants**

- 18.08 WDN has Jurisdiction and Authority on WDN Reserve Lands to:
- a) control and restrict the possession of Intoxicants; and
  - b) control, restrict, and prohibit the consumption of Intoxicants.
- 18.09 In the event of a Conflict between a WDN Law enacted under 18.08 and a Federal Law, the Federal Law prevails to the extent of the conflict.
- 18.10 WDN has the Authority to implement and enter into any agreements with Canada or Saskatchewan and, if necessary, other parties, with respect to the regulation of the sale, barter, supply, manufacture, possession, or consumption of Intoxicants.

## CHAPTER 19: WILLS AND ESTATES

### Definitions

19.01 In this Chapter:

“**Estate**” means any real or personal property owned wholly or partially by an individual, including Interests in WDN Reserve Lands and tangible and intangible personal property; (*biens*)

“**Indian**” has the same meaning as that term is defined in subsection 2(1) of the *Indian Act* (Canada); and (*Indien*)

“**Minor**” means WDN Members who are under the age of eighteen (18) years. (*mineur*)

### Administration of Estates of Deceased Individuals

19.02 WDN has Jurisdiction and Authority in relation to wills and Estates of:

- a) WDN Members who are Ordinarily Resident on WDN Reserve Lands; and
- b) Indians who are not WDN Members and who are Ordinarily Resident on WDN Reserve Lands.

19.03 WDN Law enacted under 19.02 may include matters in relation to the:

- a) form and validity of wills;
- b) probate of wills;
- c) distribution of property of an individual who died with or without a will; and
- d) relief of hardship or inequity in the maintenance and support of individuals who were dependent upon a deceased individual at the time of death.

19.04 Notwithstanding 19.02 and 19.03, estates under administration before the exercise of Jurisdiction under 19.02 continue to be administered under the *Indian Act* (Canada).

19.05 The definition of “child” and “estate” referred to in section 2 of the *Indian Act* (Canada) and sections 42 to 50.1 of the *Indian Act* (Canada) and associated regulations continue to apply to the estates of:

- a) WDN Members who are Ordinarily Resident on WDN Reserve Lands, until a WDN Law enacted under 19.02 comes into force in relation to the Estates of those WDN Members; and

- b) Indians who are not WDN Members who are Ordinarily Resident on WDN Reserve Lands, until a WDN Law enacted under 19.02 comes into force in relation to the Estates of those Indians.

19.06 In the event of a Conflict between a WDN Law enacted under 19.02 and a Federal Law, the WDN Law prevails to the extent of the Conflict.

### **Administration of Property of Mentally Incompetent Individuals**

19.07 WDN has Jurisdiction and Authority in relation to the administration of property of:

- a) WDN Members who are Ordinarily Resident on WDN Reserve Lands; and
- b) Indians who are not WDN Members and are Ordinarily Resident on WDN Reserve Lands,

who are found to be mentally incompetent by a court of competent jurisdiction.

19.08 A WDN Law enacted under 19.07 does not apply to individuals for whom a guardianship arrangement for the administration of their estate was lawfully made before the enactment of the WDN Law, unless the guardian or substitute decision-maker consents in writing.

19.09 The definition of “child” and “estate” referred to in section 2 of the *Indian Act* (Canada), and section 51 of the *Indian Act* (Canada) continue to apply to:

- a) WDN Members who are Ordinarily Resident on WDN Reserve Lands who are found to be mentally incompetent by a court of competent jurisdiction, until a WDN Law enacted under 19.07 comes into force in relation to the property of those WDN Members; and
- b) Indians who are not WDN Members who are Ordinarily Resident on WDN Reserve Lands who are found to be mentally incompetent by a court of competent jurisdiction, until a WDN Law enacted under 19.07 comes into force in relation to the property of such Indians.

19.10 In the event of a Conflict between a WDN Law enacted under 19.07 and a Federal Law, the WDN Law prevails to the extent of a Conflict.

### **Administration of Property of Minors**

19.11 WDN has Jurisdiction and Authority in relation to the administration of the property of Minors and who are Ordinarily Resident on WDN Reserve Lands, including the procedure and criteria for the appointment of guardians and the description of the duties and responsibilities of guardians.

- 19.12 Where an employee of Indigenous Services Canada has been appointed by the Minister to act as a guardian of the property of a Minor at the time a WDN Law enacted under 19.11 comes into force, their appointment ceases sixty (60) days after the WDN Law comes into force or such later date as the procedure for appointment of a new guardian under the WDN Law requires and a new guardian will be appointed under the WDN Law.
- 19.13 Until a WDN Law enacted under 19.11 comes into force, the definition of “child” referred to in section 2 of the *Indian Act* (Canada) and section 52 of the *Indian Act* (Canada) continue to apply.
- 19.14 In the event of a conflict between a WDN Law enacted under 19.11 and a Federal Law, the WDN Law prevails to the extent of the Conflict.

### **General**

- 19.15 Notwithstanding 19.02, 19.07, and 19.11, procedures and requirements for the transfer of immovable property situated off WDN Reserve Lands remain under the jurisdiction where the immovable property is situated.

## **CHAPTER 20: LANDLORD AND TENANT**

20.01 WDN has Jurisdiction and Authority on WDN Reserve Lands with respect to landlord and tenant matters for residential premises, commercial premises, and agricultural land, including:

- 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 of interests in premises or land and regaining possession of those premises or land;
- f) compliance with health and safety codes;
- g) dispute resolution and appeal mechanisms;
- h) requirements for the creation of tenancy agreements; and
- i) procedures for the amendment of tenancy agreements.

20.02 In the event of a Conflict between a WDN Law enacted under 20.01 and a Federal Law, the WDN Law prevails to the extent of the Conflict.

## CHAPTER 21: EDUCATION

### Definitions

21.01 In this Chapter:

**“Early Years Education”** means education before Kindergarten to Grade 12 Education for three (3) to five (5) year olds; (*éducation de la petite enfance*)

**“Kindergarten to Grade 12 Education”** means kindergarten through grade 12 education for children who are four (4) years of age, who are not in Early Years Education, to twenty-one (21) years of age; (*éducation de la maternelle à la douzième année*)

**“Post-Secondary Education”** means education after Kindergarten to Grade 12 Education, typically where individuals attend college, university, vocational school, or other educational facilities that provide an academic degree, diploma, or certificate; and (*enseignement postsecondaire*)

**“Student”** means an individual who is:

- a) attending Early Years Education;
- b) attending Kindergarten to Grade 12 Education; or
- c) receiving programs or educational services from WDN or a WDN Institution under the Jurisdiction or Authority set out in this Governance Treaty. (*élève*)

### WDN Laws About Early Years Education and Kindergarten to Grade 12 Education

21.02 WDN has Jurisdiction and Authority with respect to Early Years Education and Kindergarten to Grade 12 Education on WDN Reserve Lands, including:

- a) the development of curricula with respect to Dakota language and culture;
- b) the development of education programs;
- c) the establishment of WDN Institutions, structures, or mechanisms for delivering education services; and
- d) the certification and, where necessary, accreditation of individuals to teach:
  - i) Dakota language and culture; and
  - ii) other subjects.



### **WDN Laws About Post-Secondary Education**

21.03 WDN has Jurisdiction and Authority with respect to the:

- a) development of Post-Secondary Education curricula; and
- b) establishment of WDN Institutions, structures, or mechanisms for delivering Post-Secondary Education services to both WDN Members and non-WDN Members.

21.04 WDN Post-Secondary Education curricula developed under 21.03 a) and delivered by a WDN Institution established under 21.03 b) may be offered to WDN Members on or off WDN Reserve Lands or non-WDN Members on WDN Reserve Lands.

### **WDN Laws About Education Support Programs and Services**

21.05 WDN has the Jurisdiction and Authority to develop and administer education support programs and services for WDN Members residing on or off WDN Reserve Lands.

### **Standards**

21.06 WDN Laws enacted under this Chapter will provide for standards of Early Years Education, Kindergarten to Grade 12 Education, and Post-Secondary Education and qualifications of teachers that are at least equal to any comparable standards under Saskatchewan Law, except if the WDN Law relates to Dakota language and culture.

21.07 WDN Kindergarten to Grade 12 Education system will be designed to enable:

- a) the transfer of Students between WDN and provincial school systems without academic penalty to the same extent as transfers are effected between other education jurisdictions in Canada; and
- b) admission of Students to provincial Post-Secondary Education systems.

### **Agreements**

21.08 WDN may enter into agreements in support of the exercise of its Jurisdiction and Authority under this Chapter.

### **Conflict**

21.09 In the event of a Conflict between a WDN Law enacted under this Chapter and a Federal Law, the WDN Law prevails to the extent of the Conflict.

**Transition from the *Indian Act* (Canada)**

21.10 Sections 114 to 122 of the *Indian Act* (Canada) continue to apply to Kindergarten to Grade 12 Education on WDN Reserve Lands:

- a) until a WDN Law with respect to any grade level of Kindergarten to Grade 12 Education enacted under 21.02 comes into force; and
- b) to any grade level of Kindergarten to Grade 12 Education that is not addressed by a WDN Law.

## CHAPTER 22: CHILD AND FAMILY SERVICES

### Definitions

22.01 In this Chapter:

“**Child**” means an individual under the age of majority as set by Saskatchewan Law and includes an adopted Child; and (*enfant*)

“**Child and Family Services**” means services, including prevention services, early intervention services, Child protection services, and youth services, to support:

- a) Children and families; and
- b) youth transitioning from receipt of Child and Family Services when they were a Child. (*services à l'enfance et à la famille*)

22.02 WDN has Jurisdiction and Authority in relation to Child and Family Services for Children who are:

- a) WDN Members; and
- b) Ordinarily Resident on WDN Reserve Lands.

### Conflict

22.03 In the event of a Conflict between a WDN Law enacted under 22.02 and a Federal Law, other than sections 10 to 15 of *An Act respecting First Nations, Inuit and Métis children, youth and families* (Canada) and the *Canadian Human Rights Act* (Canada), the WDN Law prevails to the extent of the Conflict.

### Agreements

22.04 WDN may enter into administrative agreements in support of its exercise of Jurisdiction and Authority under this Chapter.

22.05 Nothing in this Governance Treaty limits WDN from exercising jurisdiction, including legislative authority, in relation to child and family services within the framework of *An Act respecting First Nations, Inuit and Métis children, youth and families* (Canada) instead of Jurisdiction and Authority under 22.02.

## **CHAPTER 23: HEALTH**

### **WDN Law About Health**

23.01 WDN has Jurisdiction and Authority on WDN Reserve Lands with respect to:

- a) the practice and practitioners of traditional Dakota medicine; and
- b) authorizing individuals to practice as aboriginal healers.

23.02 Jurisdiction and Authority under 23.01 does not include the Jurisdiction or Authority to regulate:

- a) medical or health practices that, or practitioners who, require licensing or certification under Federal Law or provincial law; or
- b) products or substances that are regulated under Federal Law or provincial law.

### **Standards**

23.03 WDN Law enacted under 23.01 will establish standards:

- a) in relation to competence, ethics, and quality of practice that are reasonably required to protect the public; and
- b) that are reasonably required to safeguard personal client information.

### **Agreements**

23.04 WDN may enter into agreements with any level of government in Canada, including any government agency or entity or any other national, regional, or local entity, group, or organization concerning delivery of health services or the application of federal or provincial or other health standards.

### **Conflict**

23.05 In the event of a Conflict between a WDN Law enacted under 23.01 and a Federal Law, the WDN Law prevails to the extent of the Conflict.

## CHAPTER 24: ADMINISTRATION AND ENFORCEMENT OF WDN LAWS

### General

24.01 WDN Jurisdiction and Authority under this Chapter includes the Authority to establish WDN Institutions to administer WDN Laws.

### WDN Laws About Offences and Sanctions

24.02 Subject to 24.06 and 24.07, WDN Law may provide for the creation of offences and for the imposition of sanctions, including a sanction consistent with WDN culture and values, for the violation of WDN Law.

24.03 WDN Law may provide for a process for administrative or regulatory offences, such as a ticketing scheme or the use of statements of offence for the prosecution of offences under WDN Law and for related matters of procedure.

24.04 The process referred to in 24.03 is subject to the conclusion of an agreement between WDN and Saskatchewan with respect to its implementation.

24.05 Imposition of sanctions that are consistent with WDN culture and values, as an alternative to fines or imprisonment, is subject to the:

- a) offender's consent; and
- b) victim's consent, if the participation of the victim is required.

24.06 A sanction imposed for a violation of WDN Law will not exceed sanctions:

- a) provided for summary conviction for comparable regulatory offences in Federal Law or the *Summary Offences Procedure Act, 1990* (Saskatchewan), whichever is greater; or
- b) applicable to summary conviction offences under section 787(1) of the *Criminal Code* (Canada) or the *Summary Offences Procedure Act, 1990* (Saskatchewan), whichever is greater, where there is no comparable regulatory offence provided for in another jurisdiction in Canada.

24.07 Notwithstanding 24.06, WDN Law may provide for a combination of sanctions imposed under 24.06 a) or b) with a sanction consistent with WDN culture and values provided that the overall severity of the sanctions is determined in proportion to the seriousness of the offence and the responsibility of the offender.

24.08 A sanction prescribed for a violation of WDN Law enacted under Chapter 12 in relation to environmental protection may exceed the limits set out in 24.06, as long as it is not greater than a fine that may be imposed upon conviction for a comparable offence under Federal Law in relation to the protection of the Environment.

## **WDN Laws About Civil and Administrative Remedies**

24.09 WDN has Jurisdiction and Authority to:

- a) provide for civil remedies in relation to a subject matter for which WDN has Jurisdiction and Authority set out in this Governance Treaty;
- b) establish alternative dispute resolution processes, including those relying on WDN traditional methods or approaches, as an alternative to litigation in civil matters; and
- c) provide for administrative remedies in relation to a subject matter for which WDN has Jurisdiction and Authority set out in this Governance Treaty, including:
  - i) compliance orders made by enforcement officials appointed under a WDN Law,
  - ii) the right of enforcement officials to take remedial action if the compliance orders are not followed; and
  - iii) provisions that the costs incurred in taking remedial action may be enforced as a debt.

24.10 Use of administrative or civil remedies based on those traditional methods, values, or practices will be subject to the consent of all affected persons.

## **WDN Laws about Enforcing WDN Laws**

24.11 WDN is responsible for the enforcement of WDN Law.

24.12 WDN has Jurisdiction and Authority for the enforcement of WDN Law, including:

- a) the appointment of officials to enforce WDN Law; and
- b) establishing the powers of enforcement, provided such powers do not exceed those provided by Federal Law or Saskatchewan Law for enforcing similar laws in Saskatchewan.

24.13 WDN Laws may be enforced by:

- a) enforcement officials appointed under a WDN Law;
- b) enforcement officers of other governments or entities, as set out in an agreement made under 24.15, 24.25, or 24.26; and
- c) police officers, including officers of a WDN police service if such police service is created under 24.16.

24.14 If WDN appoints officials to enforce WDN Law, WDN will:

- a) establish training standards similar to those established by Canada for its enforcement officials enforcing similar laws, including ensuring that any WDN 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 WDN enforcement officials.

24.15 At the request of WDN, the Parties may negotiate and attempt to reach agreement for the enforcement of WDN Law by appropriate federal departments or enforcement agencies.

### **Policing**

24.16 WDN Jurisdiction and Authority under this Chapter does not include Jurisdiction and Authority to:

- a) establish a police force, 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 III of the *Criminal Code* (Canada); or
- c) establish or maintain a place of confinement, except for police jails or lock-ups operated by a police service established under Saskatchewan Law,

but nothing in this Governance Treaty prevents WDN from establishing a police force in accordance with applicable Saskatchewan Law.

### **WDN Laws about Prosecution of Violations of WDN Laws**

24.17 WDN has Jurisdiction and Authority with respect to the prosecution of any violation of WDN Law and may:

- a) appoint individuals to conduct such prosecution in a manner consistent with the relevant principles of prosecutorial independence; and
- b) enter into an agreement with appropriate prosecution services to arrange for prosecution of the offences.

- 24.18 WDN has Jurisdiction and Authority to provide for procedures for the enforcement and prosecution of violations of WDN Laws, including:
- a) adopting the summary conviction procedures of Part XXVII of the *Criminal Code* (Canada); or
  - b) adopting Saskatchewan Law relating to proceedings with respect to offences that are created by a Saskatchewan Law, with such modifications as may be required.
- 24.19 WDN Law may provide for orders to assist in the administration and enforcement of WDN Law.

### **Adjudication of Violations of WDN Laws**

- 24.20 The Provincial Court of Saskatchewan has jurisdiction to hear and determine proceedings in relation to:
- a) a violation of WDN Law; and
  - b) matters arising under WDN Law,
- if the Provincial Court of Saskatchewan would hear such matters if they had arisen under Saskatchewan Law.
- 24.21 His Majesty's Court of King's Bench of Saskatchewan has jurisdiction to hear and determine proceedings in relation to:
- a) matters arising under WDN Law if such matters would be heard by His Majesty's Court of King's Bench of Saskatchewan if they had arisen under Saskatchewan law;
  - b) appeals of decisions of the Provincial Court of Saskatchewan in relation to WDN Law;
  - c) challenges to WDN Law; and
  - d) judicial reviews of decisions of the Whitecap Dakota Government or WDN Institutions established under WDN Law, provided that all review mechanisms set out in WDN Law have been exhausted.
- 24.22 All payments received from fines or monetary penalties arising from the adjudication for the violation or administration of WDN Law will accrue to the Whitecap Dakota Government.



- 24.23 In any proceeding, a copy of a WDN Law certified as a true copy by a duly authorized officer of WDN is, without proof of the officer's signature or of their official character, evidence of its enactment on the date specified in WDN Law.
- 24.24 Notwithstanding anything in this Governance Treaty, matters within the jurisdiction of the Federal Court continues to be determined by the Federal Court.

### **Agreements**

- 24.25 WDN may enter into agreements with Canada or Saskatchewan relating to:
- a) correctional or rehabilitation programs or services; or
  - b) programs or services for victims of crime.

### **Decision-Making Bodies**

- 24.26 WDN may seek further negotiations with Canada or Saskatchewan to set out arrangements with respect to Jurisdiction and Authority to establish a WDN court.
- 24.27 If this Governance Treaty provides for WDN Jurisdiction or Authority in relation to a subject area, that WDN Jurisdiction includes Jurisdiction or Authority with respect to establishing administrative and quasi-judicial decision-making bodies relating to that subject area.

# PART IV – FISCAL RELATIONS, IMPLEMENTATION, AND INTERGOVERNMENTAL RELATIONS

## CHAPTER 25: FISCAL RELATIONS

### Definitions

25.01 In this Chapter:

**“Fiscal Arrangements”** means the mechanisms by which:

- a) WDN assumes responsibilities for the delivery of programs or services as they evolve over time;
- b) resources are made available either directly or through third parties to WDN, including transfer payments;
- c) the Expenditure Need of WDN at the applicable time is determined; and
- d) the Parties agree to consider WDN’s fiscal capacity to provide support towards its Expenditure Need; (*arrangements financiers*)

**“Expenditure Need”** means the measure of estimated costs, required to perform the set of Federally Supported Services, Functions, or Activities, required to meet WDN’s responsibilities pursuant to this Governance Treaty and the Fiscal Arrangements as they evolve over time. The calculation of Expenditure Need for any service, function, or activity will be based on comparative measures or standards drawn from governments or other organizations of a similar size and location providing similar services, functions, and activities for similarly sized service populations; (*besoin en matière de dépenses*)

**“Federally Supported Services, Functions or Activities”** means governance and administration, modern treaty management, economic development, language, culture, and heritage, lands and resources, infrastructure, housing, education, social development, health, environmental management, and such other services, functions, or activities listed in the Fiscal Arrangements and as may be added pursuant to Canada’s policy on self-government fiscal arrangements; and (*services, fonctions ou activités soutenus par le gouvernement fédéral*)

**“Payments from Impact Benefit Agreements”** means payments provided to WDN with respect to actual or potential impacts on WDN or WDN Members arising from projects located off WDN Reserve Lands, but does not include payments made with respect to the purchase of goods and services provided by WDN or a WDN Institution under WDN control in connection with such projects. (*paiements provenant d’ententes sur les répercussions et les avantages*)

## **Fiscal Arrangements**

- 25.02 The Parties acknowledge and agree that the government-to-government relationship set out in this Governance Treaty includes the establishment of a new intergovernmental fiscal relationship in which the Parties agree to work together on an ongoing basis to develop Fiscal Arrangements that:
- a) ensure that WDN has access to sufficient fiscal resources to meet its Expenditure Need as it evolves over time; and
  - b) advance the goals that:
    - i) WDN Members have equal opportunities for well-being as other Canadians,
    - ii) achieve and maintain equity in socio-economic outcomes between WDN Members and other Canadians,
    - iii) WDN Members have access to public programs and services that are reasonably comparable to those available to other Canadians in similar circumstances; and
    - iv) WDN has the means to preserve, protect, use, develop, and transmit Dakota language, culture, and heritage to present and future generations.
- 25.03 The new intergovernmental fiscal relationship between the Parties referred to in 25.02 will be implemented through the Fiscal Arrangements.
- 25.04 The Parties are committed to the principle that the Fiscal Arrangements be reasonably stable and predictable over time, while providing sufficient flexibility to address changing circumstances.
- 25.05 The Parties will work towards consolidating and incorporating federal program funding available to WDN, including funding provided for housing, labour force development, economic development, public safety, or language and culture, into the Fiscal Arrangements over time as follows:
- a) from time to time through the Implementation Committee, WDN may notify Canada of its desire to include funding from a federal program that is available to WDN into the Fiscal Arrangements;
  - b) upon receiving the notice under 25.05 a), Canada will:
    - i) explore whether such identified funding is eligible to be included in the Fiscal Arrangements; and
    - ii) report to the Implementation Committee on the status of such funding in a timely manner; and

- c) if such funding is eligible to be included, the Parties will work towards including it in the Fiscal Arrangements.
- 25.06 The Parties acknowledge that they each have a role in supporting WDN, through direct or indirect financial support or through access to public programs and services, as set out in the Fiscal Arrangements.
- 25.07 In circumstances where WDN's own fiscal capacity is considered in Fiscal Arrangements, no revenues will be considered from:
- a) transfers to WDN made under this Governance Treaty;
  - b) any amounts received by WDN:
    - i) to settle any claims for a breach of a lawful obligation owed to WDN brought before any court, tribunal, administrative decision maker, or other decision-making body; or
    - ii) as an award in compensation for a breach of a lawful obligation owed to WDN ordered by any court, tribunal, or other decision-making body;
  - c) proceeds from the sale or expropriation of WDN Reserve Lands;
  - d) transfers from Canada or Saskatchewan to support the delivery of programs and services by WDN; and
  - e) Payments from Impact Benefit Agreements.
- 25.08 Fiscal Arrangements that include consideration of WDN fiscal capacity will not permit:
- a) Canada to benefit from the decision of Saskatchewan to vacate tax room, to delegate tax authorities, or to transfer revenues or revenue capacity to WDN through other agreements; or
  - b) Saskatchewan to benefit from the decision of Canada to vacate tax room, to delegate tax authorities, or to transfer revenues or revenue capacity to WDN.
- 25.09 The Parties will take into account that Fiscal Arrangements should not unreasonably reduce incentives for WDN to generate revenues.

### **Amending or Subsequent Fiscal Arrangements**

- 25.10 Before the expiration or termination by the Parties of the initial Fiscal Arrangements or their replacement, Canada will engage with WDN to renew the Fiscal Arrangements in accordance with the process set out in those Fiscal Arrangements.

25.11 In any review or consideration of changes to the Fiscal Arrangements, the Parties will consider:

- a) the existing Fiscal Arrangements, including those that have most recently expired or been terminated; and
- b) Canada's prevailing fiscal policy for self-government arrangements.

25.12 Any new Fiscal Arrangements or amendments to existing Fiscal Arrangements will be consistent with the principles set out in 25.02.

### **Change to Federal Fiscal Policy**

25.13 If a proposed change to the publicly available federal fiscal policy on self-government arrangements, in place from time to time, could have an impact on existing Fiscal Arrangements:

- a) WDN is entitled to a right of participation in any national or regional collaborative process of engagement established by Canada with Indigenous self-governments on the proposed change to that federal fiscal policy; or
- b) if a process of engagement does not exist, Canada will provide WDN:
  - i) notice of the proposed change to that federal fiscal policy; and
  - ii) with an opportunity to meet and discuss its views or concerns respecting the proposed change,

before Canada makes the change to that fiscal policy.

### **No Financial Obligation**

25.14 Unless it is otherwise agreed by the Parties in Fiscal Arrangements, the creation of the Whitecap Dakota Government, the recognition of WDN Jurisdiction and Authority under this Governance Treaty, or the exercise of WDN's Jurisdiction and Authority do not create or imply any financial obligation or service delivery obligation on the part of either Party.

### **Appropriation of Funds**

25.15 Any funding required for the purposes of any Fiscal Arrangements required or permitted under any provision of this Governance Treaty 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; and

b) in the case of WDN, by the processes set out in the WDN Constitution.

## **CHAPTER 26: IMPLEMENTATION AND INTERGOVERNMENTAL RELATIONS**

### **General Principles of Implementation**

26.01 The Parties will act in good faith in the implementation of this Governance Treaty and any agreements required by this Governance Treaty.

### **Term of the Implementation Plan**

26.02 The first Implementation Plan takes effect on the Effective Date and has an initial term of ten (10) years or such other term as the Parties may agree.

26.03 Subsequent Implementation Plans have a term of ten (10) years or such other term as the Parties may agree.

26.04 Notwithstanding 26.02 and 26.03, the Parties may agree to terminate the Implementation Plan but the Implementation Committee will continue to carry out its obligations set out in this Governance Treaty.

### **Implementation Plan**

26.05 The implementation of this Governance Treaty is set out in the Implementation Plan that will:

- a) identify the obligations set out in this Governance Treaty;
- 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 as agreed to by the Parties.

### **Status of Implementation Plan**

26.06 The Implementation Plan does not:

- a) form part of this Governance Treaty;
- b) create legal obligations or constitute a contract;
- c) alter any rights or obligations set out in this Governance Treaty;
- d) limit or interpret the provisions of this Governance Treaty; or
- e) preclude any Party from asserting that other obligations exist under this Governance Treaty, even if they are not set out in the Implementation Plan.

## **Implementation Committee**

- 26.07 No later than sixty (60) days before the Effective Date, the Parties will establish an Implementation Committee comprised of one representative from each Party. Each Party may invite technical or support staff to Implementation Committee meetings.
- 26.08 The Implementation Committee will make decisions by unanimous agreement.
- 26.09 The Implementation Committee will address any implementation matters and will, among its other tasks:
- a) monitor and assess progress toward the implementation of this Governance Treaty and agreements required by this Governance Treaty;
  - b) identify issues or challenges arising from the implementation of this Governance Treaty and agreements required by this Governance Treaty;
  - c) provide advice or recommendations to the Parties on ways to strengthen the implementation of this Governance Treaty and agreements required by this Governance Treaty;
  - d) identify and make recommendations regarding whether any amendments to this Governance Treaty should be considered;
  - e) identify the Parties' representatives in the resolution of Disputes as referred to in Chapter 30;
  - f) ensure that reports on the implementation of this Governance Treaty are prepared and submitted to the Parties upon the Parties' request;
  - g) establish internal procedures and rules to govern the Implementation Committee;
  - h) meet quarterly or as often as agreed by the Implementation Committee; and
  - i) address any other matters as directed by the Parties.
- 26.10 The Implementation Committee may:
- a) amend the Implementation Plan as it deems necessary;
  - b) establish working groups as appropriate; and
  - c) seek any advice or support as required.
- 26.11 Each Party is responsible for its own costs of participation in the Implementation Committee.



## CHAPTER 27: INTERNATIONAL LEGAL OBLIGATIONS OF CANADA

### Definitions

27.01 In this Chapter:

“**Incompatibility**” means a situation in which it is impossible for WDN to comply with Federal Law or Saskatchewan Law and to also modify WDN Law to enable Canada to comply with its International Legal Obligations; (*incompatibilité*)

“**International Body**” means any international body, mechanism, or procedure, including a body that has been granted competence by International Treaty or resolution, to advise, recommend, or provide views on Canada’s compliance with an International Legal Obligation; (*organisme international*)

“**International Treaty**” means an international agreement concluded between states, or between one or more states and one or more international organizations, in written form and governed by international law, whether embodied in a single instrument or in two (2) or more related instruments and whatever its particular designation; and (*traité international*)

“**International Tribunal**” means any international court, committee, panel, tribunal, arbitral tribunal, or other body established under an International Treaty, and has competence to determine Canada’s compliance with an International Legal Obligation. (*tribunal international*)

### International Legal Obligations

- 27.02 Before expressing consent to be bound by an International Treaty that would give rise to a new International Legal Obligation, Canada will consult WDN separately or through another forum or means as appropriate, if compliance with the new International Legal Obligation may adversely affect the exercise of WDN Jurisdiction and Authority pursuant to this Governance Treaty.
- 27.03 If Canada informs WDN that Canada is of the view that a WDN Law or other WDN Jurisdiction or Authority exercised pursuant to this Governance Treaty may cause Canada to be unable to comply with an International Legal Obligation, the Parties will discuss how the WDN Law or other exercise of WDN Jurisdiction or Authority may be modified so that Canada would be able to comply with the International Legal Obligation.
- 27.04 For the purposes of this Chapter, WDN Law or other exercise of WDN Jurisdiction or Authority cover both acts and omissions that can result in Canada being in violation of its International Legal Obligations.

- 27.05 If a WDN Law or other WDN Jurisdiction or Authority exercised pursuant to this Governance Treaty is under consideration by an International Tribunal or an International Body:
- a) Canada will inform WDN;
  - b) the Parties will collaborate in the development of the position Canada will take before an International Tribunal or an International Body with respect to the WDN Law or other exercise of WDN Jurisdiction or Authority;
  - c) WDN will contribute to the preparation of Canada's position, including by providing information, evidence and potential witnesses in relation to the WDN Law or other exercise of WDN Jurisdiction or Authority under consideration by an International Tribunal or an International Body. The Parties will discuss the specific means of contribution;
  - d) Canada will give full consideration to the views and contributions provided by WDN under 27.05 c) in the elaboration of its position and, in doing so, Canada will take into account the commitment of the Parties to the integrity of this Governance Treaty;
  - e) Canada will consider the application of any reservations and exceptions available to Canada in developing the position it will take before an International Tribunal or an International Body; and
  - f) Canada will keep WDN informed, as appropriate, throughout the proceeding before the International Tribunal or International Body.
- 27.06 If an International Tribunal has determined that Canada is not in compliance with an International Legal Obligation due to a WDN Law enacted under this Governance Treaty or WDN Jurisdiction or Authority exercised pursuant to this Governance Treaty:
- a) Canada will inform WDN of the International Tribunal's determination;
  - b) the Parties will collaborate in pursuing any available appeals, should Canada determine that an appeal is appropriate; and
  - c) subject to 27.06 b), WDN will modify the WDN Law or other exercise of WDN Jurisdiction or Authority to ensure that Canada is able to comply with its International Legal Obligation.
- 27.07 If an International Body provides advice, views, or a recommendation with respect to Canada's compliance with an International Legal Obligation, due to a WDN Law enacted under this Governance Treaty or a WDN Jurisdiction or Authority exercised

pursuant to this Governance Treaty, Canada will consult with WDN separately or through a forum or means as appropriate.

- 27.08 The Parties will give due consideration to the advice, views, or recommendation of the International Body referred to in 27.07 and collaborate to ensure that Canada is able to comply with its International Legal Obligations.
- 27.09 If a modification to a WDN Law or other exercise of WDN Jurisdiction or Authority would result in an Incompatibility with an obligation of WDN under this Governance Treaty to comply with the Federal Law or Saskatchewan Law or other exercise of governmental authority of Canada or Saskatchewan, the Parties will consider how to ensure WDN can comply.
- 27.10 The Dispute resolution process set out in Chapter 30 is available to address issues under this Chapter, except for:
- a) making any determination regarding Canada's compliance with an International Legal Obligation;
  - b) conducting a review of any determination by an International Tribunal concerning Canada's compliance with an International Legal Obligation; and
  - c) conducting a review of any advice, recommendation, or views by an International Body concerning Canada's compliance with an International Legal Obligation.

## PART V – GENERAL PROVISIONS

### CHAPTER 28: ACCESS TO INFORMATION AND PRIVACY

- 28.01 The Parties may enter into agreements to address the collection, protection, retention, use, disclosure, and confidentiality of personal, general, or other information.
- 28.02 For the purposes of the *Access to Information Act (Canada)* and the *Privacy Act (Canada)*, information that 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.
- 28.03 Canada may provide information to Whitecap Dakota Government in confidence if WDN has enacted a WDN Law under 6.01 or has entered into an agreement referred to in 28.01.
- 28.04 Canada is not required to disclose to Whitecap Dakota Government information that is confidentially disclosed to another government.
- 28.05 Subject to 28.04, if Whitecap Dakota Government requests disclosure of information from Canada, that request will be evaluated as if it were a request by a provincial government.
- 28.06 Canada is not required to disclose any information to Whitecap Dakota Government that Canada is required to withhold pursuant to any Federal Law, including sections 37 to 39 of the *Canada Evidence Act (Canada)*, or provincial law.
- 28.07 Notwithstanding any other provision of this Governance Treaty, if 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 Whitecap Dakota Government unless those conditions are satisfied.
- 28.08 Notwithstanding any other provision of this Governance Treaty, the Parties are not required by virtue of this Governance Treaty to disclose any information that may be withheld under a privilege at law.
- 28.09 Canada will recommend to the Parliament of Canada amendments to:
- a) the *Access to Information Act (Canada)* and the *Privacy Act (Canada)* to protect information provided in confidence by the Whitecap Dakota Government from disclosure as if it were information provided to Canada by another government in Canada; and

- b) the *Privacy Act* (Canada) to allow Whitecap Dakota Government access to information necessary to exercise its Jurisdiction and Authority under this Governance Treaty.

## **CHAPTER 29: LIABILITY**

- 29.01 WDN, the Whitecap Dakota Government, and WDN Institutions are not liable for the acts, omissions, or negligence of Canada or its employees or agents.
- 29.02 Canada is not liable for the acts, omissions, or negligence of WDN, Whitecap Dakota Government, WDN Institutions, or their employees or agents.

## **CHAPTER 30: DISPUTE RESOLUTION**

### **General Provisions**

- 30.01 The Parties will use best efforts to prevent or minimize Disputes.
- 30.02 Except as otherwise provided in this Chapter, if there is a Dispute between the Parties, the Parties will refer the Dispute to the dispute resolution process set out in this Chapter.
- 30.03 If a Dispute is referred to the dispute resolution process, the Parties will:
- a) participate in good faith in the process;
  - b) name representatives who have the authority, or direct access to an individual with the authority, to settle the Dispute;
  - c) bear their own costs and, unless otherwise agreed, share equally all other costs of the dispute resolution process under 30.06 a) or b); and
  - d) bear their own costs and share equally all other costs of the arbitration under 30.06 c), unless the arbitrator otherwise decides.
- 30.04 A Dispute with respect to the following matters will be referred to a court of competent jurisdiction:
- a) the meaning or extent of aboriginal or treaty rights;
  - b) the validity of WDN Laws; and
  - c) the scope of WDN Jurisdiction and Authority.
- 30.05 Notwithstanding any other provision in this Governance Treaty, arbitration under this Chapter is not available for Disputes relating to funding levels or to taxation:

### **Dispute Resolution Process**

- 30.06 The dispute resolution process consists of three (3) stages:
- a) referral of the Dispute to the Implementation Committee for assessment and informal resolution;
  - b) mediation; and
  - c) arbitration.

30.07 The Parties may agree in writing to submit the Dispute to a dispute resolution process other than one referred to in 30.06.

### **Referral to the Implementation Committee**

30.08 If a Dispute arises, either Party may refer the Dispute to the Implementation Committee.

30.09 Upon receipt of a referral of a Dispute from either Party, the Implementation Committee will convene within fourteen (14) days and subsequently as often as it deems necessary to:

- a) hear the Parties' positions with respect to the Dispute; and
- b) attempt to resolve the Dispute.

30.10 If the Implementation Committee does not resolve the Dispute within twenty-one (21) days after being referred, or within such extended period as the Parties may agree, the Parties will proceed to mediation.

30.11 Notwithstanding 30.10, after a meeting of the Implementation Committee, the Parties may agree to refer a Dispute directly to arbitration under 30.19.

### **Mediation**

30.12 Upon proceeding to mediation, the Parties will attempt to agree on a mediator within fourteen (14) days.

30.13 If the Parties do not agree on a mediator within the time period referred to in 30.12, a mediator will be chosen with the assistance of the ADR Institute of Saskatchewan or similar body within seven (7) days.

30.14 Once a mediator is chosen, the mediation will commence within twenty-one (21) days of the appointment of the mediator.

30.15 If a Dispute is referred to mediation, the Parties will meet with the mediator at a time and place set by the mediator and as often as the mediator requires.

30.16 The mediation will conclude within thirty (30) days after the initial meeting of the Parties with the mediator.

30.17 The mediator will issue a report within seven (7) days after the conclusion of the mediation which states whether the Dispute was settled or not.

30.18 If the Dispute is not settled, the Parties may, by written agreement, refer the Dispute to arbitration within fourteen (14) days after receiving the report referred to in 30.17.



If the Parties do not agree, either Party may commence legal proceedings with notice referred to in 30.37.

### **Arbitration**

- 30.19 Upon agreeing to arbitration, the Parties will attempt to agree on an arbitrator within fourteen (14) days.
- 30.20 If applicable, the Parties may agree to ask the mediator chosen under 30.12 or 30.13 to act as the arbitrator.
- 30.21 If the Parties do not agree on an arbitrator within the time period referred to in 30.19, an arbitrator will be chosen with the assistance of the ADR Institute of Saskatchewan or similar body within seven (7) days.
- 30.22 Once an arbitrator is chosen, the arbitration will commence within twenty-one (21) days after the appointment of the arbitrator.
- 30.23 Unless the Parties otherwise agree, the proceedings before the arbitrator will be held in private.
- 30.24 An arbitrator may not question the validity of, amend, or delete any provision of this Governance Treaty.
- 30.25 The Dispute will be resolved by an arbitrator who:
- a) will decide the process and procedures for the arbitration;
  - b) will decide the issues submitted to arbitration;
  - c) may order the terms of such participation;
  - d) may provide interim relief;
  - e) may order the payment of interest or costs;
  - f) may subpoena witnesses and order the production of documents; and
  - g) will correct clerical errors in decisions, awards, or orders.
- 30.26 The arbitrator will make a written decision, including reasons and a recital of the facts upon which the decision is based, within sixty (60) days after the end of the arbitration hearings, unless the Parties agree to an extension of time.
- 30.27 The arbitrator will provide a copy of the written decision to the Parties.

- 30.28 Each Party will make the arbitrator's written decision available to the public on request.
- 30.29 The decision of the arbitrator is final and binding on the Parties and will not be challenged by appeal or review in any court, except on the ground that the arbitrator erred in law or exceeded their jurisdiction.
- 30.30 An appeal or application for judicial review of an arbitrator's decision on the grounds set out in 30.29 will be heard by a court of competent jurisdiction.
- 30.31 A Party may, after the expiration of fourteen (14) days after the date of the release of an arbitration decision, award, or order, or from the date set by the arbitrator for compliance, whichever is later, file in the registry of a court of competent jurisdiction a copy of the decision, award, or order and it will be entered as if it were a decision, award, or order of that court and on being entered will be deemed, for all purposes except an appeal from the decision, award, or order, to be an order of that court and enforceable as such.

### **Intervenors**

- 30.32 An arbitrator may allow any person who is not a Party, on application and on such terms as the arbitrator may order, to participate as an intervenor in an arbitration if the interests of that person may be directly affected by the Dispute.
- 30.33 Before making a determination on an application under 30.32, the arbitrator will provide a copy of the application to the Parties and seek their views on the appropriateness of granting intervenor status to the person and, if so, on what conditions.
- 30.34 An intervenor added pursuant to 30.32 will bear its own costs of participation and will be bound by the provisions regarding costs and confidentiality set out in this Chapter.

### **Settlement of Dispute**

- 30.35 At any time after the commencement of arbitration, but before a decision or an award is issued by an arbitrator, the Parties may settle their Dispute in which case the dispute resolution process is concluded.
- 30.36 If the Parties settle their Dispute pursuant to 30.35, the issue of the costs, in the absence of an agreement on costs between the Parties and intervenors, will be referred back to the arbitrator.

### **Commencing Legal Proceedings**

- 30.37 Before commencing legal proceedings referred to in 30.18, a Party will provide fourteen (14) days written notice to the other Party.
- 30.38 A Party may commence legal proceedings to:
- a) prevent the loss of a right to commence proceedings due to the expiration of a limitation period; or
  - b) obtain interlocutory or interim relief that is otherwise available.

### **Confidentiality**

- 30.39 All oral and written information disclosed in the course of the dispute resolution process is and is to be kept confidential.
- 30.40 Neither 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 under this Chapter.
- 30.41 30.39 and 30.40 do not apply to any information that the Parties agree in writing may be disclosed.
- 30.42 No third party involved in a dispute resolution process under this Chapter is compellable in any proceeding to give evidence about any oral or written information acquired or opinion formed by that third party as a result of the dispute resolution process.

### **Procedural Matters**

- 30.43 Any settlement agreement reached in a dispute resolution process under this Chapter will be recorded in writing and signed by the authorized representatives of the Parties.
- 30.44 The Parties may agree to vary a procedural requirement set out in this Chapter as it relates to a particular Dispute.

## **CHAPTER 31: RENEWAL AND AMENDMENT**

### **General Principles**

- 31.01 The Parties recognize and acknowledge that this Governance Treaty provides a foundation for an ongoing government-to-government relationship and may require modification or amendment, from time to time, in keeping with the purpose of this Governance Treaty.
- 31.02 In implementing this Governance Treaty, the Parties will work together in a cooperative and mutually respectful manner.

### **Periodic Renewal**

- 31.03 The Parties agree to advancing the Common Objectives set out in Chapter 1 during periodic renewal.
- 31.04 The Parties will conduct periodic renewals of this Governance Treaty as follows:
- a) the first periodic renewal commences on a date agreed to by the Parties that is no later than the ten (10) year anniversary of the Effective Date;
  - b) each subsequent periodic renewal commences no later than the ten (10) year anniversary of the conclusion of the previous periodic renewal; and
  - c) each periodic renewal concludes within one (1) year from the first meeting of the Parties.
- 31.05 No later than six (6) months before the start of a periodic renewal, each Party will give notice to the other Party of the subjects or matters set out in 31.09 they wish to discuss at the periodic renewal.
- 31.06 The subjects or matters identified by the Parties under 31.05 constitute the list of subjects or matters that will be discussed by the Parties at the periodic renewal.
- 31.07 If no Party identifies any subjects or matters under 31.05, the Parties waive the requirement for conducting that periodic renewal.
- 31.08 The notice under 31.05 may include proposed amendments to this Governance Treaty.
- 31.09 The Parties may identify the following subjects or matters under 31.05:
- a) new developments in the common law related to matters set out in this Governance Treaty;

- b) changes to Federal Law that are related to, or may impact, matters set out in this Governance Treaty;
  - c) changes to Federal policy that are related to, or may impact, matters set out in this Governance Treaty;
  - d) the scope and impact of new or innovative self-government arrangements or treaties negotiated with other Indigenous Nations in Canada, with a view of incorporating innovations in this Governance Treaty, if applicable;
  - e) changes required due to unforeseen circumstances impacting the Exercisable Treaty Rights; and
  - f) other matters with respect to the implementation of the provisions of this Governance Treaty as the Parties may agree.
- 31.10 Unless the Parties otherwise agree, as part of the periodic renewal discussions, the Parties will review and evaluate progress on the Common Objectives, and determine whether steps should be taken to advance those Common Objectives.
- 31.11 The Parties acknowledge the importance of having a common agreement on the socio-economic indicators necessary to inform the review and evaluation of Common Objective 1.10 e). If at the time of the Periodic Renewal, the Parties have not reached agreement on the socio-economic indicators necessary to review and evaluate progress on Common Objective 1.10 e) and the mechanisms for measuring such indicators, the Parties will evaluate progress on Common Objective 1.10 e) based on the best available empirical data.
- 31.12 If a proposal advanced as part of periodic renewal relates to the Fiscal Arrangements between the Parties, the review will take place in accordance with 25.10 to 25.13.
- 31.13 During periodic renewal, the Parties are required to participate in the discussions and negotiations in good faith. Good faith negotiations require the Parties to, among other things:
- a) enter into negotiations with the goal of reaching a mutually acceptable outcome;
  - b) provide timely disclosure of sufficient information and documents to enable a full examination of the subject matter;
  - c) respond appropriately, and in a timely manner to bargaining positions;
  - d) not unreasonably reject a position of the other Party; and
  - e) act consistently with the standard of good faith as articulated in the common law.

- 31.14 In assessing proposals brought forward by the Parties in a periodic renewal, the Parties may consider, among other things:
- a) whether the innovation described in 31.09 d) is based on such particular circumstances that it could not reasonably be applied to WDN;
  - b) whether the proposal in relation to a specific issue can be addressed in another forum, under another process, or through other amendments, as agreed to by the Parties;
  - c) availability of resources and lower cost alternatives that would reasonably address the Parties' interests;
  - d) the interests and potential impact of the proposal on third parties;
  - e) any obligations that Canada may have to other Indigenous groups; and
  - f) other alternatives that would reasonably address the Parties' interests that do not require amendment of this Governance Treaty.
- 31.15 Within sixty (60) days after the conclusion of a periodic renewal, a Party may refer the question of whether the other Party failed to participate in the periodic renewal in good faith to the Implementation Committee as described under 30.08 and, if there is no resolution after that process, to mediation as described under 30.12.
- 31.16 If there is no resolution after the mediation, a Party may refer the question to arbitration as described under 30.18:
- a) without the consent of the other Party; and
  - b) on notice to the other Party.
- 31.17 If an arbitrator determines that a Party failed to participate in a periodic renewal in good faith, that Party will be required to pay:
- a) the costs of the arbitration;
  - b) the other Party's reasonable negotiation costs in the periodic renewal; and
  - c) a financial penalty of up to three (3) times the costs referred to in 31.17 b), as determined by the arbitrator.
- 31.18 All discussions, negotiations, and information exchanged relating to the periodic renewal:

- a) are not legally binding on the Parties;
  - b) do not create financial obligations; and
  - c) are without prejudice to the respective legal positions of the Parties.
- 31.19 If the Parties agree to amend this Governance Treaty as a result of a periodic renewal, the Parties will give effect to the amendment in accordance with 31.22 to 31.25.
- 31.20 Each Party is responsible for its own costs in relation to the periodic renewal, unless otherwise determined by the arbitrator.

### **Amendment**

- 31.21 Notwithstanding 31.04, the Parties may agree at any time to amend this Governance Treaty, including additional WDN Jurisdictions and Authorities or Exercisable Treaty Rights.
- 31.22 Any amendment to this Governance Treaty will require the approval of the Parties as follows:
- a) Canada will give its approval by an order of the Governor in Council; and
  - b) WDN will give its approval by the means set out in WDN Law.
- 31.23 If Federal Law or WDN Law is required to give effect to an amendment to this Governance Treaty, Canada will recommend the necessary Federal Law to the Parliament of Canada and WDN will recommend the necessary WDN Law to the Whitecap Dakota Government.
- 31.24 If Federal Law or WDN Law is required to give effect to an amendment to this Governance Treaty, the amendment takes effect when the later of Federal Law or WDN Law comes into force.
- 31.25 If an amendment to this Governance Treaty does not require Federal Law or WDN Law, the amendment takes effect on a date agreed to by the Parties, but if no date is set, on the date that the last Party gave its approval to the amendment.

### **Participation of Saskatchewan**

- 31.26 If an amendment is proposed as part of a periodic renewal under 31.04 to provide WDN with Jurisdiction or Authority in relation to matters under the jurisdiction of Saskatchewan, including those listed in 32.02, the Parties will invite Saskatchewan to participate in the negotiations.

31.27 The negotiations will include discussion of any measures required to be taken by Saskatchewan to give effect to the proposed WDN Jurisdiction or Authority, including enacting Saskatchewan Law.



## CHAPTER 32: FUTURE NEGOTIATIONS

### Future Governance Rights

32.01 The Parties may seek to negotiate Jurisdiction and Authority in relation to:

- a) gaming and gambling; and
- b) any other matters identified by the Parties.

32.02 The Parties may seek to negotiate Jurisdiction and Authority in relation to the following subject matters under Saskatchewan jurisdiction, subject to the participation of Saskatchewan:

- a) enforcement and police services;
- b) establishment of WDN courts;
- c) corrections and rehabilitation services;
- d) programs and services for victims of crime;
- e) health services;
- f) childcare and daycare services and facilities;
- g) social services;
- h) the application of WDN Law on fee simple lands held by WDN; and
- i) any other matters identified by the Parties.

32.03 The Parties may negotiate an orderly process for this Governance Treaty to incorporate an Aboriginal right of self-government as an Exercisable Treaty Right based on:

- a) an approach in which the Parties negotiate the inclusion of the additional right as an Exercisable Treaty Right where the following conditions are met:
  - i) a final judgement of a Superior Court has confirmed the existence of an Aboriginal right recognized and affirmed under section 35 of the *Constitution Act, 1982* relating to self-government in favour of another Indigenous group;
  - ii) on the Effective Date, the right, as characterized by the final judgement referred to in 32.03 a) i), had not yet been recognized by a Superior Court in a final judgement as an Aboriginal right recognized and affirmed under section 35 of the *Constitution Act, 1982*;

- iii) the Aboriginal right of self-government relates to a matter that this Governance Treaty is not designed to resolve; and
- iv) a reasonable or *prima facie* case for the existence of the Aboriginal right of self-government right can be established in favour of WDN; or
- b) an approach in which the Parties negotiate the inclusion of the additional Aboriginal right of self-government as an Exercisable Treaty Right where the right does not relate to lands and resources or Matters Addressed in this Governance Treaty; or
- c) another approach as may be agreed to by the Parties, subject to each Party obtaining any necessary authority.

### **Reconciliation Treaty**

32.04 The Parties intend to address other WDN rights that are recognized and affirmed by section 35 of the *Constitution Act, 1982* with a view to concluding a reconciliation treaty addressing those other rights and such other matters as the Parties may agree.

## **CHAPTER 33: GOVERNANCE TREATY APPROVAL PROCESS**

### **Definitions**

33.01 In this Chapter:

“**Governance Agreement**” means the agreement that was initialled by the Parties on August 22, 2022 but prior to any amendments to make the Governance Agreement a Governance Treaty.

### **Timing for Governance Treaty Approval**

33.02 This Governance Treaty will be submitted to the Parties for approval after initialing by the Parties’ lead negotiators.

### **WDFN Community Approval**

33.03 On October 7, 2022, a WDFN community approval vote was held to approve the content of the Governance Agreement, following a fair and transparent process agreed to by the Parties, as set out in Schedule B, and by which approval was given, by a vote of 92% percent in favour and 8% percent against.

33.04 Subsequent to the WDFN community approval vote but before Canada ratified in accordance with 33.08, the Parties agreed to confer constitutional protection on the Governance Agreement, through recognition as a treaty within the meaning of sections 25 and 35 of the *Constitution Act, 1982*, and made certain consequential amendments resulting in this Governance Treaty.

33.05 In accordance with its custom and traditional practices, WDFN will undertake a fourteen (14) day community consultation and approval process to secure informed consent from its members for this Governance Treaty to be constitutionally protected through recognition as a treaty within the meaning of sections 25 and 35 of the *Constitution Act, 1982* and consequential amendments resulting in this Governance Treaty.

33.06 Prior to approval by Canada in accordance with 33.08, WDFN will provide written confirmation to Canada that informed consent was secured from its members in accordance with 33.05, and that WDFN has the mandate to sign this Governance Treaty.

33.07 WDFN will have approved the Governance Treaty when the Whitecap Dakota Council has signed this Governance Treaty.

### **Approval by Canada**

- 33.08 Canada will have approved this Governance Treaty when the:
- a) Minister of Crown-Indigenous Relations, duly authorized by Cabinet, has signed this Governance Treaty; and
  - b) Implementing Legislation comes into effect.
- 33.09 The Implementing Legislation will be developed in consultation with the Whitecap Dakota Council.
- 33.10 The Minister of Crown-Indigenous Relations will recommend to the Parliament of Canada the enactment of Implementing Legislation that provides that:
- a) this Governance Treaty is approved, given effect and declared valid;
  - b) this Governance Treaty is binding on, and can be relied on by, all persons; and
  - c) WDN Laws enacted in accordance with this Governance Treaty are binding on, and can be relied on by, all persons, entities, WDN, Whitecap Dakota Government, and WDN Institutions.

**Changes to this Governance Treaty Before Effective Date**

- 33.11 After initialing, but before the Parties sign this Governance Treaty, the lead negotiators for the Parties may agree to make minor changes to this Governance Treaty.
- 33.12 After the Parties sign this Governance Treaty, but before the Effective Date, the lead negotiators for the Parties may agree to correct any editing, grammatical, or typographical errors found in this Governance Treaty, and the corrections may be incorporated in the final printing of this Governance Treaty.

## **CHAPTER 34: COMING INTO EFFECT OF THE GOVERNANCE TREATY**

- 34.01 This Governance Treaty comes into effect after approval by Canada under 33.08 on a date agreed to by the Parties and set by a federal Order-in-Council after WDFN takes the steps referred to in 34.02.
- 34.02 WDFN will bring this Governance Treaty into effect in accordance with processes set out in the WDN Constitution.

**SIGNATURES:**

Signed in Ottawa, Canada, this 2<sup>nd</sup> day of July, 2023, signifying approval of this Governance Treaty.

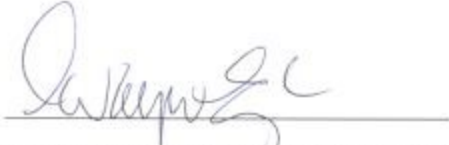
**WHITECAP DAKOTA FIRST NATION**



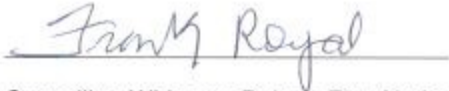
Chief, Whitecap Dakota First Nation



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



Councillor, Whitecap Dakota First Nation



Councillor, Whitecap Dakota First Nation

**HIS MAJESTY THE KING IN RIGHT OF CANADA**



Minister of Crown-Indigenous Relations



Witness



Witness

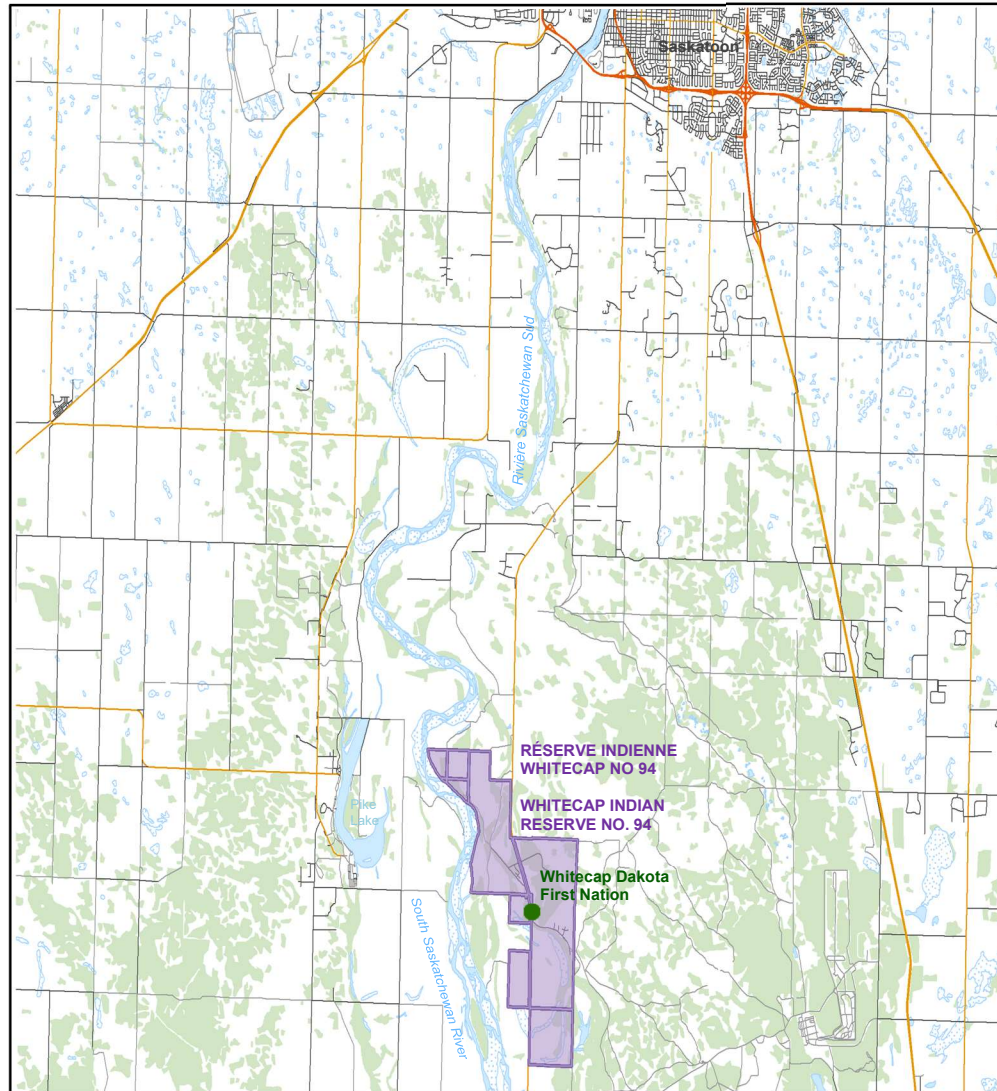
# SCHEDULE A: MAP OF WHITECAP INDIAN RESERVE NO. 94



Services aux  
Autochtones Canada

Indigenous Services  
Canada

## Réserve indienne Whitecap No 94 Whitecap Indian Reserve No. 94



- Première Nation  
First Nation
- Réserve indienne  
Indian Reserve

**CECI N'EST PAS UNE  
DESCRIPTION LÉGALE.  
THIS IS NOT A LEGAL  
DESCRIPTION**

**CETTE CARTE EST POUR FINS  
D'ILLUSTRATION SEULEMENT.  
THIS MAP IS FOR ILLUSTRATION  
PURPOSES ONLY.**

**Sources:**

Services aux Autochtones Canada:  
Système d'information sur l'administration  
des bandes, juillet 2022;  
Ressources naturelles Canada:  
Système de gestion cadastrale intégrée,  
Direction de l'arpenteur général, juillet 2022.  
Lightbox | DMTI, CanMap® Content Suite  
v2022.2

Indigenous Services Canada:  
Band Governance Management System,  
July 2022.  
Natural Resources Canada:  
Integrated Cadastral Management System,  
Surveyor General Branch, July 2022.  
Lightbox | DMTI, CanMap® Content Suite  
v2022.2



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Services aux Autochtones Canada, Services géomatiques, juillet 2022.  
Indigenous Services Canada, Geomatics Services, July 2022.



## **SCHEDULE B: WDFN COMMUNITY APPROVAL PROCESS OF OCTOBER 2022 FOR THE GOVERNANCE AGREEMENT (AS ORIGINALLY PRODUCED IN THE GOVERNANCE AGREEMENT AT THAT TIME)**

### **Definitions**

33.01 In this Chapter:

**“Approval Package”** mean the documents, as designated by the Community Approval Panel and confirmed by a Band Council Resolution of Whitecap Dakota Council, that are required to inform the Eligible Voter before the approval vote and constitution vote; (*trousse d’approbation*)

**“Eligible Voter”** means a WDFN Member:

- a) whose name appears on the WDFN membership list as of voting day, or, in the case where voting occurs on more than one day, on the last Voting Day; and
- b) who has attained eighteen (18) years of age as of voting day, or, in the case where voting occurs on more than one day, on the last voting day; and (*voquant admissible*)

**“Voting Day”** means the day or days set in accordance with the Community Approval Process. (*jour du vote*)

### **Timing for Agreement Approval**

33.02 This Agreement will be submitted to the Parties for approval after initialing by the Parties’ lead negotiators.

### **Community Approval Panel**

33.03 The Parties will establish a Community Approval Panel consisting of, at minimum, one (1) representative from WDFN and one (1) representative from Canada.

33.04 The Community Approval Panel will oversee the conduct of the WDFN community approval vote process set out in the Community Approval Process.

33.05 The Parties will determine the procedures and rules for the Community Approval Panel to conduct the WDFN community approval vote.

### **Community Approval Process**

33.06 This Agreement and the WDFN Constitution will be approved by the WDFN in accordance with the Community Approval Process and this Chapter.



- 33.07 In the event of a Conflict between this Chapter and the Community Approval Process, this Chapter prevails to the extent of the Conflict.
- 33.08 The Community Approval Process will include, among other things, the following principles:
- a) openness and transparency;
  - b) opportunities for Eligible Voters to participate in the approval of this Agreement and the WDFN Constitution; and
  - c) access to relevant information related to the approval of this Agreement and the WDFN Constitution.
- 33.09 Before conducting the WDFN community approval vote, WDFN will take reasonable steps to inform Eligible Voters of:
- a) their right to vote and how that right can be exercised; and
  - b) this Agreement, the WDFN Constitution, the Fiscal Relations Agreement, and the Implementation Plan.

### **WDFN Community Approval**

- 33.10 WDFN will have approved this Agreement when:
- a) WDFN Members have approved this Agreement and the WDFN Constitution in accordance with the process set out in the Community Approval Process and this Chapter;
  - b) a minimum of twenty-five (25) percent plus 1 of the Eligible Voters voted in favour of this Agreement, and those in favour constitute a majority of the votes cast; and
  - c) Whitecap Dakota Council has signed this Agreement and the WDFN Constitution.

### **Ballot Question**

- 33.11 All Eligible Voters will vote by secret ballot by the following ballot question:

Do you approve the Whitecap Dakota First Nation Constitution, and do you authorize Whitecap Dakota First Nation Council to, on behalf of Whitecap Dakota First Nation Band Members, move forward and reclaim our inherent right to self-government by signing the Whitecap Dakota First Nation Governance Agreement with Canada, as presented in the Approval Package?

\_\_\_\_\_ YES  
\_\_\_\_\_ NO

Mark this Ballot by placing an “X” in the box containing the word “YES”, if you agree, or “NO” if you do not agree.

**Failure to Approve**

33.12 In the event that this Agreement and the WDFN Constitution are not approved by WDFN Members, the Parties will meet to discuss the results of the vote.

**Approval by Canada**

33.13 Canada will have approved this Agreement when the:

- a) Minister of Crown-Indigenous Relations, duly authorized by Cabinet, has signed this Agreement; and
- b) Implementing Legislation comes into effect.

33.14 The Implementing Legislation will be developed in consultation with the Whitecap Dakota Council.

33.15 The Minister of Crown-Indigenous Relations will recommend to the Parliament of Canada the enactment of Implementing Legislation that provides that:

- a) this Agreement is approved, given effect and declared valid;
- b) this Agreement is binding on, and can be relied on by, all persons; and
- c) WDFN Laws enacted in accordance with this Agreement are binding on, and can be relied on by, all persons, WDFN, Whitecap Dakota Government, and WDFN Institutions.

**Changes to Agreement Before Effective Date**

33.16 After initialing, but before the Parties sign this Agreement, the lead negotiators for the Parties may agree to make minor changes to this Agreement.

33.17 After the Parties sign this Agreement, but before the Effective Date, the lead negotiators for the Parties may agree to correct any editing, grammatical or typographical errors found in this Agreement, and the corrections may be incorporated in the final printing of this Agreement.