

RECIPROCAL TUITION AGREEMENT

THIS AGREEMENT is dated for reference the ____ day of _____, 202__.

BETWEEN:

HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA,
as represented by the Minister of Education (the "Province")

AND:

(Name of First Nation) |
as represented by its Chief and Band Council (the "First Nation")

(collectively, the "Parties")

1.0 PURPOSES OF AGREEMENT

1.01 The purposes of this Agreement are to

- (a) implement the intent of the Province to make reciprocal tuition payments to First Nations that, on their own or through a School Authority, operate Schools enrolling Eligible Students; and
- (b) set out the conditions under which the Province will provide funding to the First Nation in exchange for the provision of an educational program to Eligible Students.

2.0 DEFINITIONS

2.01 In this Agreement:

"Agreement" means this Agreement and, unless otherwise provided for in the Agreement, includes its schedules, if any;

"British Columbia Curriculum" means the Ministry of Education and Child Care's Educational Program Guides in force at the time that the courses are taught and, in particular, without limiting the foregoing, the learning outcomes set out in Appendix A of the Educational Program Guides;

"Board" means a board of education constituted under the *School Act*, RSBC 1996, c. 412 and includes a francophone education authority established or continued under section 166.12 of the *School Act*;

“educational program” means an organized set of learning activities that is designed to enable learners to become literate, to develop their individual potential and to acquire the knowledge, skills and attitudes needed to contribute to a healthy, democratic and pluralistic society and a prosperous and sustainable economy;

“Eligible Student” means a person of school age who

- (a) is enrolled to receive an educational program at the School,
- (b) is, and whose parents or guardians are, ordinarily resident in British Columbia, and
- (c) if that person attended a public school, would be eligible for an education program funded by the Province;

“First Nations Education Authority” means the legally constituted entity established under the *First Nations Jurisdiction over Education in British Columbia Act* (S.C. 2006, c. 10);

“IEP” means an IEP as defined in Ministerial Order 638/95, the Individual Education Plan Order, made pursuant to the *School Act*, section 168(2)(a);

“Ministry” means the Ministry of Education and Child Care;

“Parent” means, in respect of an Eligible Student,

- (a) the guardian of the person of the student,
- (b) the person legally entitled to custody of the student, or
- (c) the person who usually has the care and control of the student;

“Participating First Nation” means a First Nation named in the schedule to the *First Nations Jurisdiction over Education in British Columbia Act*;

“School” means the school or schools operated by the First Nation or a School Authority;

“school age” means the age between the date on which a person is permitted under section 3 (1) of the *School Act* to enrol in an educational program and the end of the School Year in which the person reaches the age of 19 years;

“School Authority” means, where the First Nation does not directly operate a School, the person or entity authorized by the First Nation to operate that School;

“School Year” means the period beginning on July 1 and ending on the following June 30;

“Student Block Rate” means the rate determined by the Ministry to be the rate that would be paid by or on behalf of the First Nation to a Board for the provision of an educational program to a student.

3.0 OBLIGATIONS

3.01 The Parties understand that nothing in this Agreement affects the First Nation’s jurisdiction over students who are not Eligible Students.

3.02 The First Nation must request a personal education number under section 170.1 (2) (f) of the *School Act* for each Eligible Student by accessing [PEN Web](#) and entering the information requested in that application.

3.03 The First Nation must not charge, or permit the School Authority to charge, any Eligible Student a fee for the provision of an educational program, other than fees permitted under the *School Act*.

3.04 The First Nation must, on its own, or through a School Authority:

- (a) in respect of Eligible Students, provide an educational program that meets learning outcomes equivalent to the grade level in another school within the school system of the Province, and, where applicable, permit entry into the post-secondary education system;

- (b) prepare and submit school and student data to the Ministry in the manner and at the times set out in Schedule A of this Agreement;
- (c) ensure that, as of September 30 of each year, the School has full certification by the First Nations Schools Association;
- (d) employ only teachers who are certified by the Ministry of Education and Child Care to teach the British Columbia Curriculum or, in the case of schools operated by a Participating First Nation, teachers who hold a First Nations Schools Teaching Certificate issued by the First Nations Education Authority, other than teachers who teach First Nations language or culture;
- (e) ensure that Parents receive reports with regard to the student's attendance, behaviour and academic progress at least 5 times during the School Year as follows:
 - (i) 3 written reports, one of which shall be at the end of the School Year, and
 - (ii) at least 2 informal reports;
- (f) upon the request of the Parent or the Eligible Student, and while accompanied by a person designated by the First Nation to interpret the records, allow the Parent or Eligible Student to examine all student records kept by the First Nation pertaining to that Eligible Student;
- (g) establish and maintain a record for each Eligible Student that includes
 - (i) a file that contains the most recent Ministry of Education and Child Care form entitled "Permanent Student Record" and all documents listed as inclusions, completed in accordance with the Ministry's "Permanent Student Record Completion Instructions" in effect at the time of completion;
 - (ii) student progress reports for the two most recent years, or a copy of the Transcript of Grades issued by the Ministry of Education and Child Care;
 - (iii) where letter grades are not set out in a student progress report for a student in grade 4 or 5, a written record of those letter grades; and
 - (iv) a copy of the student's current IEP, if any;
- (h) permit the student record kept by the First Nation for an Eligible Student to be disclosed to a person who is planning for the delivery of, or delivering, health services, social services or other support services to that Eligible Student;
- (i) provide opportunities through which an Eligible Student and his or her Parents may consult with the teacher or principal of the School with regard to that Eligible Student's educational program;
- (j) where applicable, submit data to the Ministry, either electronically or manually, respecting student registration and submission of grades for Eligible Students enrolled in grades 10, 11 and 12;
- (k) in the case of a School closure, transfer a copy of the Permanent Student Record for all Eligible Students and all records in the School's possession relating to former Eligible Students to the Ministry within 60 days;
- (l) upon receipt of a request from the Board with which a former Eligible Student has enrolled, transfer the original documents listed in section 3.04 (g) to that board;
- (m) where a former Eligible Student is enrolled at a School administered by another First Nation, an independent school, or an educational institution outside the Province, and the First Nation receives a request from that school, transfer a copy of the documents listed in paragraph 3.04 (g) to that school, independent school or educational institution.

3.05 The First Nation must, on its own or through a School Authority, in respect of every individual who is engaged as an employee or contractor for work that involves working with children directly, or that involves or potentially involves unsupervised access to children, with the exception of teachers who are certified by the Ministry of Education and Child Care, in the case of schools operated by a Participating First Nation, by the First Nations Education Authority:

(a) conduct a criminal records check by using the Canadian Police Information Centre (CPIC) process;

(b) prior to conducting the CPIC process, receive the written consent of the individual who will be the subject of the check, authorizing the First Nation or School Authority to obtain and verify information on the CPIC system, including any notations made in accordance with section 6.3 of the *Criminal Records Act*, S.C. 2000, c. 1, which allows for determinations of records for sexual offences in which a pardon has been granted; and

(c) if the First Nation or School Authority learns that an existing or proposed employee has been convicted of or is under police investigation for an offence or circumstances that may compromise the safety and well being of Eligible Students

(i) take appropriate action to ensure the safety and well being of Eligible Students, including but not limited to dismissing that employee or contractor from employment at the School, and

(ii) advise the Province of the circumstances and the action taken.

3.06 The Parties agree that nothing in this Agreement, express or implied, requires the Minister of Education to issue a BC Certificate of Graduation to an Eligible Student.

4.0 APPEAL PROCESS

4.01 The First Nation agrees that Parents and Eligible Students are entitled to appeal a decision of a teacher, principal or other person working at the School that significantly affects the education, health or safety of the Eligible Student.

4.02 The First Nation, on its own or through a School Authority, will establish procedures and identify a body to hear appeals under section 4.01.

4.03 The First Nation, on its own or through a School Authority, will ensure that information regarding the appeal process is provided to Parents and Eligible Students.

5.0 PERSONAL INFORMATION

5.01 In sections 5.02 and 5.03, "personal information" has the same meaning as in the *Freedom of Information and Protection of Privacy Act*.

5.02 Any personal information collected as required under this Agreement by the First Nation or School Authority is collected on behalf of the Province.

5.03 The Province may, in its sole discretion, issue instructions to the First Nation or where there is a School Authority, to the First Nation and the School Authority so that the Province is able to comply with its duties under Part 3 of the *Freedom of Information and Protection of Privacy Act* in relation to any personal information collected in respect of an Eligible Student or his or her Parents in the possession of the First Nation or School Authority to which that Part applies, and the First Nation must comply with those instructions.

6.0 PAYMENT

6.01 By January 31 of every School Year during the Term of this Agreement, the Province will pay to the First Nation an amount per Eligible Student full-time equivalent (FTE) that is equal to the per FTE Student Block Rate applicable in the public school district in which the School is located.

6.02 The per FTE tuition payable under paragraph 6.01 will be determined by enrolment counts as of September 30 of each School Year.

7.0 TERM

7.01 The term of this Agreement commences on the reference date set out at the beginning of this Agreement, and shall continue so long as the First Nation performs its duties under this Agreement or until terminated as provided in this Agreement.

8.0 REVIEW AND AMENDMENT

8.01 At the request of a Party, the Parties will review this Agreement at any point during the term and, in any event, the Parties agree to review this Agreement every five years after the Agreement's effective date.

8.02 Without limiting section 8.01, the Parties agree that, if the First Nation enters into a self-government agreement or treaty, the Parties will review this Agreement.

8.03 Any amendments to the Agreement will be dated, signed by both Parties and attached to this Agreement, at which time they will become part of the Agreement.

9.0 DISPUTE RESOLUTION PROCESS

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

10.0 DEFAULT AND TERMINATION

10.01 Either Party may terminate this Agreement

- (a) for any reason, by giving at least 60 days written notice of termination to the other Party;
or
- (b) if either Party fails to comply with this Agreement, immediately, by providing written notice of termination.

10.02 Either Party, in a notice provided under 10.01 (b), may include details of any alleged default and suggestions for how the default may be remedied, and a request that the dispute be resolved in accordance with 9.01.

10.03 Notwithstanding sections 10.01 and 10.02 the Parties agree that, if the Agreement is terminated after September 1 of the School Year, they will use their best efforts to ensure the continuation of the educational program for Eligible Students until the end of the School Year in which this Agreement terminates.

11.0 STATEMENTS AND ACCOUNTING

11.01 The First Nation must, on its own or through a School Authority, establish and maintain accounting and administrative records in the form and content satisfactory to the Province, to be used as the basis for the calculation of the payment under 6.01.

11.02 To satisfy the Ministry's responsibilities under the *Financial Administration Act*, RSBC c. 138, the First Nation will cooperate with the Province to demonstrate that funds paid under this Agreement are being used for the purposes of this Agreement and to ensure that the School is claiming enrolment in a correct and consistent manner.

12.0 REPRESENTATIONS AND WARRANTIES

12.01 The First Nation represents and warrants to the Province with the intent that the Province will rely thereon in entering into this Agreement that:

- (a) all information, statements, documents and reports furnished or submitted by the First Nation to the Province in connection with this Agreement are true and correct;
- (b) the First Nation has no knowledge of any fact, and is not in breach of, or in default under, any law that materially adversely affects, or so far as it can foresee, might materially adversely affect, its ability to fulfill its obligations under this Agreement; and
- (c) the First Nation does not operate, directly or indirectly a school certified under the *Independent School Act* enrolling students covered by this Agreement.

12.02 The First Nation represents and warrants it has taken all necessary action to authorize its Chief to enter into and sign this Agreement and to carry out its provisions on behalf of the First Nation and has the authority for all purposes of this Agreement.

13.0 INSURANCE & INDEMNITY

13.01 The First Nation will indemnify and save harmless the Province, its employees and agents from and against any and all liabilities, losses, claims, damages, actions, courses of action, costs and expenses that the Province may sustain, incur, suffer or be put to that in any way arise out of anything done or omitted to be done in respect of the services provided under this Agreement or any other act or omission by the First Nation, its servants, employees, agents, contractors, invitees or licensees in connection with this Agreement.

13.02 The First Nation must ensure that a general liability policy, as set out in Schedule B, is in place in respect of the School or Schools for as long as this Agreement remains in effect.

14.0 NOTICE

14.01 Any consent, approval, written instruction or other notice to be given under this Agreement will be in writing and delivered personally, by courier or prepaid registered mail to the following addresses:

if to the Province:

Via Canada Post:
 Ministry of Education and Child Care
 PO Box 9887 Stn Prov Govt
 Victoria BC V8W 9T6
 Attention: Director, Indigenous Education

Via Courier:
 Ministry of Education and Child Care
 4th Floor, 620 Superior Street
 Victoria BC V8V 1V2
 Attention: Director, Indigenous Education

and if to the First Nation:

[address]
 [address]
 [address]

Attention: [contact name]

and if to the School Authority [Delete where there is no School Authority]

[address]
 [address]
 [address]

15.0 APPROPRIATION

15.01 Notwithstanding any other provision of this Agreement the payment of money by the Province to the First Nation under this Agreement is subject to:

(a) there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act* R.S.B.C. 1996, c.138 to enable the Province, in any fiscal year or part thereof when any Payment by the Province to the First Nation falls due under this Agreement, to make that Payment; and

(b) Treasury Board, as defined in the *Financial Administration Act*, not having controlled or limited expenditure under any appropriation referred to in subparagraph (a) of this paragraph.

16.0 GENERAL

16.01 This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia.

16.02 Nothing in this Agreement is or operates as a consent, permit, approval or authorization by the government of the Province of British Columbia or any ministry, office, branch or agency thereof to or for anything related to the Agreement that, by statute, the First Nation is required to obtain unless it is expressly stated herein to be such a consent, permit, approval or authorization.

16.03 This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement, and this Agreement supersedes and replaces any agreements or undertakings regarding the subject matter of this Agreement entered into, made or given by the Parties prior to the date this Agreement is deemed to come into force.

16.04 If any provision of this Agreement is found to be invalid, illegal or unenforceable it will be severable from this Agreement and the remaining provisions will not be affected thereby and will be valid, legal and enforceable.

16.05 Sections 3.04 (k) to (m), 5.0, 10.04, 11.0, 13.01 and 15.0 continue in force indefinitely, even after this Agreement is terminated.

16.06 Nothing contained in the Agreement will create or be deemed to create, as between the Province, on the one hand, and the First Nation, on the other hand, a partnership, joint venture or agency relationship.

IN WITNESS WHEREOF the parties have executed this Agreement on the respective dates set forth below.

SIGNED on behalf of his Majesty the King in right of the Province of British Columbia by a duly authorized representative of the Minister of Education) on the __day of _____, 202__) in the presence of:)

_____))

(Witness signature and print)

_____))
For the Minister of Education

SIGNED on behalf of the First Nation by an authorized signatory of the First Nation) on the __day of _____, 202__) in the presence of:)

_____))

(Witness signature and print)

_____))
For the First Nation

Schedule A

1.0 SCHOOL DATA

1.01 As required under paragraph 3.02 of the Agreement, the First Nation will, on its own or through a School Authority, provide the Ministry with the information set out in the Ministry's First Nations School Data Collection form provided by the Manager of Data Management in the Ministry of Education and Child Care.

- (a) as soon as practicable after the agreement is signed; and
- (b) where a First Nation or School Authority creates a new School that is covered by the Agreement, as soon as practicable after the school is created.

2.0 STUDENT DATA

2.01 As required under paragraph 3.04 (b) of the Agreement, in each school year during the Term of this Agreement, the First Nation will, on its own or through a School Authority, provide to the Ministry the following data in the form and by the date requested by the Ministry, in respect of each Eligible Student who was enrolled on September 30:

- (a) Personal Education Number (PEN);
- (b) legal first, middle and family name;
- (c) birth date;
- (d) gender;
- (e) grade in which the Eligible Student is enrolled at the School;
- (f) for each Eligible Student in grades 8 through 12, report that Eligible Student's annual plan of secondary level courses in which that student is enrolled.

3.0 CONTACTS

3.1 Any correspondence regarding the requirements under this Schedule will be delivered to the following people:

if to the Province:

Via Canada Post:

Data Management Unit
Ministry of Education and Child Care
PO Box 9170 Stn Prov Govt
Victoria BC V8W 9H7

Via Courier:

Data Management Unit
Ministry of Education and Child Care
3rd Floor, 620 Superior Street
Victoria BC V8V 1V2

Or by Fax: 250 356-0277

and if to the First Nation or School Authority:

[address]
[address]
[address]

PRIVACY PROTECTION INSTRUCTIONS

These Instructions are issued in accordance with paragraph 5.03 of the Reciprocal Tuition Agreement, entered into between the Minister of Education and the [name of First Nation] on [date]. These Instructions apply only to information collected in respect of eligible students or their parents that is in the possession of the First Nation.

Definitions

1. In these Instructions,

“access” means disclosure by the provision of access;

“Act” means the Freedom of Information and Protection of Privacy Act (British Columbia), as amended from time to time;

“Agreement” means the Reciprocal Tuition Agreement entered into by the Province and the First Nation on [date];

“contact information” means information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual;

“eligible student” has the same meaning as in the Agreement;

“First Nation” includes, where applicable, the School Authority authorized by the First Nation to operate a school on behalf of the First Nation; and

“personal information” means recorded information about an identifiable individual, other than contact information, collected or created by the First Nation as a result of the Agreement or any previous agreement between the Province and the First Nation dealing with the same subject matter as the Agreement but excluding any such information that, if these Instructions did not apply to it, would not be under the “control of a public body” within the meaning of the Act.

Purpose

2. The purpose of these Instructions is to:

(a) enable the Province to comply with its statutory obligations under the Act with respect to personal information; and

(b) ensure that the First Nation is aware of and complies with its obligations with respect to personal information.

Collection of personal information

3. Unless the Agreement otherwise specifies or the Province otherwise directs in writing, the First Nation

(a) may only collect or create personal information that is necessary for the performance of the First Nation’s obligations, or the exercise of the First Nation’s rights, under the Agreement;

(b) must collect personal information directly from the individual the information is about; and

- (c) must tell an individual from whom the First Nation collects personal information
 - (i) the purpose for collecting it;
 - (ii) the legal authority for collecting it; and
 - (iii) the title, business address and business telephone number of the person designated by the Province to answer questions about the First Nation's collection of personal information.

Accuracy of personal information

4. The First Nation must make every reasonable effort to ensure the accuracy and completeness of any personal information to be used by the First Nation or the Province to make a decision that directly affects the individual the information is about.

Requests for access to personal information

5. If the First Nation receives a request for access to personal information from a person other than the Province, the First Nation must promptly advise the person to make the request to the Province unless the Agreement expressly requires the First Nation to provide such access and, if the Province has advised the First Nation of the name or title and contact information of an official of the Province to whom such requests are to be made, the First Nation must also promptly provide that official's name or title and contact information to the person making the request.

Correction of personal information

6. Within 5 business days of receiving a written direction from the Province to correct or annotate any personal information, the First Nation must annotate or correct the information in accordance with the direction.

7. When issuing a written direction under section 8, the Province will advise the First Nation of the date the correction request to which the direction relates was received by the Province in order that the First Nation may comply with section 10.

8. Within 5 business days of correcting or annotating any personal information under section 8, the First Nation must provide the corrected or annotated information to any party to whom, within one year prior to the date the correction request was made to the Province, the First Nation disclosed the information being corrected or annotated.

9. If the First Nation receives a request for correction of personal information from a person other than the Province, the First Nation must promptly advise the person to make the request to the Province and, if the Province has advised the First Nation of the name or title and contact information of an official of the Province to whom such requests are to be made, the First Nation must also promptly provide that official's name or title and contact information to the person making the request.

Protection of personal information

10. The First Nation must protect personal information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or disposal, including any expressly set out in the Agreement.

Storage and access to personal information

11. Unless the Province otherwise directs in writing, the First Nation must not store personal information outside Canada or permit access to personal information from outside Canada.

Retention of personal information

12. Unless the Agreement otherwise specifies, the First Nation must retain personal information until directed by the Province in writing to dispose of it or deliver it as specified in the direction.

Use of personal information

13. Unless the Province otherwise directs in writing, the First Nation may only use personal information if that use is for the performance of the First Nation's obligations, or the exercise of the First Nation's rights, under the Agreement.

Disclosure of personal information

14. Unless the Province otherwise directs in writing, the First Nation may only disclose personal information inside Canada to any person other than the Province if the disclosure is for the performance of the First Nation's obligations, or the exercise of the First Nation's rights, under the Agreement.

15. Unless the Province otherwise directs in writing, the First Nation must not disclose personal information outside Canada.

Notice of foreign demands for disclosure

16. If in relation to personal information in its custody or under its control the First Nation

- (a) receives a foreign demand for disclosure;
- (b) receives a request to disclose, produce or provide access that the First Nation knows or has reason to suspect is for the purpose of responding to a foreign demand for disclosure; or
- (c) has reason to suspect that an unauthorized disclosure of personal information has occurred in response to a foreign demand for disclosure

the First Nation must immediately notify the Province and, in so doing, provide the information described in section 30.2(3) of the Act. In this section, the phrases "foreign demand for disclosure" and "unauthorized disclosure of personal information" will bear the same meanings as in section 30.2 of the Act.

Notice of unauthorized disclosure

17. If the First Nation knows that there has been disclosure of, production of or the provision of access to personal information to which the Act applies, if that disclosure, production or access is not authorized by the Act, the First Nation must immediately notify the Province.

Inspection of personal information

18. In addition to any other rights of inspection the Province may have under the Agreement or under statute, the Province may, at any reasonable time and on reasonable notice to the First Nation, enter on the First Nation's premises to inspect any personal information in the possession of the First Nation or any of the First Nation's information management policies or practices relevant to its management of personal information or its compliance with these Instructions and the First Nation must permit, and provide reasonable assistance to, any such inspection.

Compliance with directions

19. The First Nation must, in relation to personal information, comply with any further direction given by the Province.

Notice of non-compliance

20. If for any reason the First Nation does not comply, or anticipates that it will be unable to comply, with a provision in these Instructions in any respect, the First Nation must promptly notify the Province of the particulars of the non-compliance or anticipated non-compliance and what steps it proposes to take to address, or prevent recurrence of, the non-compliance or anticipated non-compliance.

Termination of Agreement

21. In addition to any other rights of termination which the Province may have at law, the Province may, subject to sections 9.0 and 10.0 of the Agreement, terminate the Agreement by giving written notice of such termination to the First Nation, upon any failure of the First Nation to comply with these Instructions in a material respect.

Interpretation

22. The obligations of the First Nation in these Instructions will survive the termination of the Agreement.

23. If a provision of the Agreement (including any direction given by the Province under these Instructions) conflicts with a requirement of the Act or an applicable order of the commissioner under the Act, the conflicting provision of the Agreement (or direction) will be inoperative to the extent of the conflict.

24. Subject to section 27, the First Nation must comply with the provisions of these Instructions despite any conflicting law of a jurisdiction outside Canada.

25. Nothing in these Instructions requires the First Nation to contravene the law of any jurisdiction outside Canada unless such contravention is required to comply with the Act.