

# Delegation Agreement

This agreement is made this December 9, 2020

BETWEEN:

**Witset First Nation**, a First Nation also known as a "band" as defined in the Indian Act, as represented by its Chief and Councillors have a registered office at in Witset BC V0J2N1

AND

(hereinafter referred to as "the Band")

**Kyah Wiget Education Society | 205 Beaver Road - Suite 2 | Witset BC | V0J2N1**

(hereinafter referred to as "the Society")

WHEREAS:

- A. A Delegation Agreement for the delivery of education services to the Community is required by the funding agreement made between Indigenous Services Canada (ISC) on behalf Federal Government when the Council uses an agency to deliver those services;
- B. The Band is approving funding for the delivery of education services, as set out in the Agreement;
- C. The Band wishes to enter into an agreement with the Society for the delivery of education Services to the Band as specified in this Agreement;
- D. The society has been incorporated specifically to provide education services within the community of Witset First Nation, as the delegated authority of the Band; and is qualified under the Independent Schools Act (BC) to be an independent School, certified by the first Nations Schools Association;
- E. The Parties wish to enter into an agreement setting out the terms and conditions upon which educational services will be delivered and funded within the community of Witset First Nation.

WHEREFORE the Band and the Society agree to the following:

## 1. INTERPRETATION

### 1.1 Defined Terms in the Agreement:

- (a) "Academic Year" means the period commencing September 1st and ending on August 31st of each year during the Term of this Agreement;
- (b) "Budget" means the document that outlines all anticipated capital and operating expenses required for the delivery of services for the period from April 1st to March 31st over each year of this Agreement;
- (c) "Business Day" means any day from Monday to Friday inclusive, except for any day that is a statutory holiday in British Columbia;
- (d) "Deficit" means the amount by which funds expended by the Society exceed the annual budget;
- (e) "Effective Date" Means December 9, 2020
- (f) "Immediate family member" means a parent, the spouse of a parent, a spouse, a sibling, a child (including by adoption), or a relative who normally resides in the family home;
- (g) "Member" means either a member of the Witset First Nation Band of voting age and normally living as a resident on-Reserve or a member of the Society;
- (h) "Parties" means the Society and the Band and "Party" means either of them;
- (i) "School" means the School Society of Witset First Nation on the Band Reserve at Witset First Nation, British Columbia;
- (j) "Services" means the delivery of education to the Witset First Nation community and encompasses all associated services, programs, and activities associated with the delivery of education and those duties that are set out in Schedule "A" of this Agreement;
- (k) "Surplus" means the amount by which funds provided by the Band and other sources exceeds eligible expenditures by the Society for delivery of services contemplated within this Agreement;



## 1.2 The Term

The term of this Agreement shall be effective from December 9, 2020.

### Governing Law

The laws of British Columbia and the laws of Canada applicable in British Columbia will govern this Agreement and all matters arising under it.

## 1.3 Dispute Resolution

If a dispute or claim arises out of this Agreement, representatives of the Parties, as delegated by the Witset First Nation chief and council and the Society Board, as the case may be, shall meet to attempt to resolve the dispute. If the dispute or claim is not resolved to the Parties' satisfaction, or to the satisfaction of either Party, either Party may terminate this Agreement, in accordance with the termination provisions of the Agreement. An independent third-party mediator may be appointed by Chief and Council or the KWES board to resolve disputes between parties of this agreement.

## FINANCES

### 1.4 Budget

- (a) Witset First Nation Executive Director will provide KWES Senior Financial Officer with a cash flow statement on or near April 1 of each fiscal year with a quarterly breakdown of payment schedules.
- (b) The annual budget estimate will be drafted based on the cash flow statement. KWES will provide KWES Board of Directors with the draft within 30 days of receipt of the cash flow statement.
- (c) Any adjustments to the Budget must be submitted to the KWES Board of Directors at least one month prior to any adjustments coming into effect and the approval of any such adjustments will be at the sole discretion of KWES Board of Directors. The time period may be waived by KWES Board of Directors in the situation of an emergency.
- (d) The Budget is to include all expenses that are reasonable for the operations and regular maintenance of the School and the Society, including any proposed capital improvements.

### 1.5 Payments

- (a) Witset First Nation Executive Director will provide KWES Senior Financial Officer with a monthly invoice for operational costs of structures utilized by KWES for the purposes of delivering academic services to Witset students. Costs agreed upon are shared hydro, rental fees, and a partial contribution to infrastructure insurance.

- (b) Payments from Witset administration to KWES shall be made on a quarterly basis. KWES Executive Director may on occasion request additional funds for monthly purchases, this is not to exceed the yearly budget and it's only upon approval of the KWES Board of Directors.
- (c) The Principal/Director of Education will provide monthly financial information to the Band appointed KWES Board Members (2) and all society board members at monthly meetings of the board. This financial information will be provided to the Witset First Nation each month by the band appointed KWES Board member(s). This will include monthly financial statements. A full report of financial audit of The Society will be presented at the KWES Annual General Meeting which will be attended by WFN council members.

## **2. DUTIES OF THE SOCIETY**

### **2.1 Delegated Authority**

The Band Council delegates the authority to the Society to deliver education services to students normally resident on Reserve, from Daycare/Kindergarten to Grade 12 and College and University Programs at the society's Independent School at Witset First Nation reserve. The Band Council also delegates the authority to administer the Witset First Nation's post-secondary assistance program. Where Indigenous Services Canada wishes to delegate certain of its obligations with respect to the delivery of Educational Services to the Society or the First Nation School, the Society shall enter into a written agreement with Indigenous Services Canada with respect to the delegation and any funding that Indigenous Services Canada may transfer for the purpose of the delegation.

For greater details and certainty the Society shall deliver the services as set out in Schedule "A" to this Agreement and in so doing shall comply with all requirements set out in law and here in, including the First Nation's obligations under the Federal Government funding agreement including the ISC's reporting requirements and accounting requirements, and shall comply with all provincial standards and other applicable legislation.

2.2 The Society shall appoint a total of two members of Witset First Nation Council to the Kyah Wiget Education Society Board of Directors. One appointed board seat shall be retained by Chief Councillor of Witset First Nation for a two-year term.

## **3. LOCAL EDUCATION AGREEMENT (LEA) Schedule C**

- (a) The parties recognized their shared interest in the factual tracking of student achievement as the best indicator of the School District fulfilling its mission;

- (b) Kyah Wiget Education Society will monitor and report on matters that are included in the LEA and as requested by the KWES Board;

#### 4. MODIFICATIONS AND NOTICE

##### 4.1 Modifications to the Agreement

The Band Council may, with a minimum of 90 days written notice, make modifications and/or changes to this Agreement that have been approved through a Motion of Band Council through a duly convened Council Meeting with a quorum of Council participating, with such changes taking effect at the first day of the new school year following.

##### Notice

- (a) Any notice or communication required to be given under this Agreement will be in writing and will be considered to have been given if delivered by hand, transmitted by facsimile transmission or emailed to the Chair of the Society to the Executive Director of the Band, or mailed by prepaid registered post in Canada, to the address or facsimile transmission number of each Party set out below:

- (b) if to the Band:

**Witset First Nation**  
c/o Chief and Council  
205 Beaver road | Suite 3  
Witset BC | V0J 2N1  
Fax: 250-847-9291

- (c) if to the Society:

**Kyah Wiget Education Society**  
c/o KWES Board Chair  
205 Beaver Road | Suite 2  
Witset BC | V0J2N1  
Fax: 250-877-5092

- (d) Or to any other address or facsimile transmission or email address as a Party may designate in the manner set out above.
- (e) Any notice or communication shall be considered to have been received if delivered by hand during business hours on a day the School is normally open (a School day), upon receipt by a responsible representative of the receiver, and if not delivered before 4:00 p.m., upon commencement of School on the next School day.
- (f) If mailed by prepaid registered post in Canada, upon the fifth School day following the posting; except that in the case of a disruption or impending or threatened disruption in postal services every notice or communication will be delivered by hand or by email.

- (g) If by email, upon confirmation that the email was sent, and if not transmitted before 4:00 p.m., upon commencement of School on the next School day.

## 5. DEFAULT AND TERMINATION

### 5.1 Default

The Society shall be in default of this Agreement in the event that:

- (a) The terms and conditions of this Agreement (including the Schedules) are not met by the Society; or
- (b) The Society's auditor issues a denial of opinion, or gives an adverse opinion, with respect to the financial statements of the Society in the course of conducting an audit as required under this Agreement; or
- (c) The Society:
  - i. causes or permits a third party claim to arise against it or against the Band;
  - ii. is or is at risk of becoming insolvent;\*
  - iii. is judged as bankrupt;
  - iv. has a bankruptcy petition filed against it or makes a general assignment for the benefit of creditors under the *Bankruptcy and Insolvency Act*;\* or ceases to operate, commits an act of bankruptcy or insolvency;
  - v. is placed in receivership or upon any proceeding being commenced to appoint a receiver, receiver-manager or an official having a similar function in respect of the Society;
  - vi. is unable to perform or continue to perform the services by reason of strike, lock-outs, labour disputes, restrictive governmental laws or regulations, riots, war, acts of God or any other reason beyond the control of the Society.
  - vii. takes steps to liquidate, wind-up or dissolve the Society; or
  - viii. ceases to be a Society in good standing under the laws of British Columbia
- (d) In the event the Society is in default, the Parties will meet to review the situation and attempt to remedy the default.
- (e) Notwithstanding the previous section of this Agreement, in the event that the Society is in default under this Agreement and has failed to remedy the default within 90 days of being notified of the default, the Band Council may take one or more of the following actions on behalf of the Band, as may reasonably be necessary, having regard to nature and extent of the default:
  - i. withholding any funds otherwise payable under this Agreement;
  - ii. require the Society to take any other reasonable action necessary to remedy the default;
  - iii. take other such reasonable action as the Band Council may deem necessary, including the termination of this Agreement without notice and without any further obligation to the Society.

## 5.2 Termination without Cause

- (a) This Agreement may be terminated by either Party without cause by providing 365 days notice in writing indicating the date of termination, which shall be no less than August 31 of each year and the reasons for such termination.

## 5.3 Obligations upon Termination

- (a) Witset First Nation will provide Kyah Wiget Education Society with one-year notice of termination of this agreement.
- (b) Upon completion of termination of this Agreement, the Society shall return to the Band any unspent funds that were previously advanced by the Band to the Society shall also provide the Band with all financial information and records associated with the Society's services under this Agreement. The Society shall cooperate fully with the Band in the turnover of all equipment, lesson plans, intellectual property, confidential student records, confidential personnel records and any other property that is related to the service provided by the Society under this Agreement, to either the Band or to an agent of the Band that has been delegated authority to deliver education services within the community of Witset First Nation, including by providing access codes and passwords, as required. Confidentiality of all student and personnel records is paramount.

## 6. OWNERSHIP OF PROPERTY

6.1 The Society acknowledges that any purchases carried out under this Agreement are done as the Band's agent and further, that all property purchased shall be the property of the Band and that all such property shall be handed over to the Band upon demand and immediately upon termination or expiry of this Agreement.

6.2 The Society acknowledges and agrees that any curriculum, programs, art work and any other intellectual property created by its employees during the course of their employment shall be the property of the Society and agrees to include a term to that effect in all of its employment agreements. The Society further commits that all such property shall be handed over to the Band upon demand upon termination of this Agreement, regardless of the reason for such termination.

## 7. CONFLICT OF INTEREST

7.1 The Society shall ensure that in the event a Director or employee of the Society has a personal interest in the outcome of any decision to be made by the Society, that the conflict and the extent of the interest will be disclosed to the Society's Board of Directors, which must then ensure that the Director or employee does not take part in any way in the decision.



## 8. ACCOUNTABILITY AND TRANSPARENCY

In order to comply with the Funding Agreement made between the Band Council and the Federal Government and in the interest of ensuring that all Society and community members are kept fully apprised of the Society's activities, the Society will ensure that they adopt policies and procedures that are consistent with Schedule "B".

## 9. INDEMNIFICATION AND GENERAL CONDITIONS

### 9.1 Indemnification

- (a) The Society will indemnify and save harmless the Band Council, its servants, agents and employees in respect to any and all liability, loss, claims, or expenses arising out of the performance by the Society of its obligations under this Agreement.
- (b) The Band Council will indemnify and save harmless the Society, its servants, agents and employees in respect to any and all liability, loss, claims, or expenses arising out of the performance by the Band Council of its obligations under this Agreement of the Band and that all such property shall be handed over to the Band upon demand and immediately upon termination or expiry of this Agreement.


### 9.2 General Conditions


- (a) No renewal, extension, amendment, modification, supplement, termination or waiver of any provision of this Agreement will be effective unless in writing and served by Notice as outlined in Section 5.3 of this Agreement.
- (b) The Society is not a partner or employee of the Band. It acts as the Band's independent agent for the delivery of education, subject to the limits outlined within this Agreement.
- (c) All books and records maintained by the Society, including financial records in respect to the operation of the School or the services as specified under this Agreement will be open at all times for inspection and copying without charge by a representative of the Band from time to time upon request by the Witset First Nation Band Council representative. This Section shall not cover any student or personnel records that would normally be considered confidential or protected under the Privacy Act.
- (d) Neither Party may assign this Agreement without the prior consent of the other Party.
- (e) Time will be of the essence of this Agreement.
- (f) The Parties will execute and deliver all other appropriate supplemental agreements and instruments, and take any other action necessary, to give full effect to this Agreement and to make this Agreement legally effective, binding, and enforceable as between them.
- (g) This Agreement constitutes the entire agreement between the Parties and there are no representations or warranties, express or implied, statutory or otherwise and no

agreements collateral to this Agreement other than as expressly set out or referred to in this Agreement.

- (h) This Agreement will bind and benefit each of the Parties including their respective heirs, executors, administrators, and successors and permitted assigns.
- (i) This Agreement may be signed by original or by facsimile and executed in any number of counterparts and each executed counterpart will be considered to be an original. All executed counterparts taken together will constitute one agreement.

TO EVIDENCE THEIR AGREEMENT each the Band and the Society has executed this Agreement on the date appearing below.


  
**Witset FN Chief Councilor**  
By and on behalf of  
the Council of the Band

  
**Witset First Nation Executive Director**  
By and on behalf of  
Witset First Nation

January 22, 2021  
Dated

January 20, 2021  
Dated

  
**KWES Board Chair**  
By and on behalf of  
the Directors of KWES

  
**KWES Executive Director**  
By and on behalf of  
Kyah Wiget Education Society

Jan. 20 2021  
Dated

Jan. 20/21  
Dated

## Schedule A the meaning of Services Delegated

The delegation of services shall mean what is reasonably understood as Education but limited as herein defined. This schedule "A" shall be amended annually upon the Band amending its funding agreement with the Federal government to include any changes as they relate to the area of Education and Post-Secondary funding and if not formally amended shall be deemed to be amended upon the Band executing of an amendment that changes their agreement with the Federal Government.

### Elementary and Secondary - Instructional Services - General'

#### The interpretation

1.0 In this section, the 'Elementary and Secondary - Instructional Services - General', the 'Elementary and Secondary - Instructional Services – Daycare - Band Operated Schools' and 'Elementary and Secondary Education - Instructional Services - Provincial Schools' sections, Kyah Wiget Adult Learning Center the following definitions apply:

"**FNESC**" means the First Nations Education Steering Committee Society, a society incorporated under the *Society Act*, R.S.B.C. 1996, c. 433.

"**First Nation School**" means a school operated and administered by one or more First Nations in British Columbia, and providing education at one or more of the kindergarten, elementary or secondary levels, including adult learning centers.

"**FNSA**" means the First Nations Schools Association, a society incorporated under the *Society Act*, R.S.B.C. 1996, c. 433 to support First Nations schools to advance education in BC.

"**Parent**" means:

- the guardian of the person of the student;
- the person legally entitled to custody of the student; or
- the person who usually has the care and control of the student.

"**School Assessment Process**" means the process for the assessment of First Nation Schools developed and approved by the First Nations Schools Association (FNSA), as amended from time to time.

"**Second Level Services**" means aggregate services provided by FNESC to First Nations and First Nation Schools, similar to services provided by the British Columbia Ministry of Education and by provincial school boards to provincial schools with specific adaptations to meet First Nations' unique circumstances, in order to improve efficiency and achieve economies of scale. Second Level Services include but are not limited to the responsibilities outlined in subsection 4.2 of the Tripartite Education Framework Agreement.

"**BC Tripartite Education Agreement (BCTEA)**" means the agreement between Canada (as represented by the Minister of Indigenous Services Canada), British Columbia (as represented by the Minister of Education), and FNESC (as represented by its President), dated for reference

January 27, 2012. The purpose of this agreement is to identify the roles, responsibilities and commitments of the Parties relating to the improvement of educational outcomes for students in First Nation Schools in British Columbia.

- 1.1 The Society shall ensure that registered Indigenous students ordinarily resident on reserve or on lands belonging to Her Majesty The Queen in Right of Canada or to a province / territory, and other students for whose education the Minister accepts funding responsibility, have access to kindergarten, elementary and secondary level education programs and services, including student support services, delivered to a standard that will allow students, where applicable, to transfer without academic penalty, at similar levels of achievement, between First Nation Daycares and Schools and public/private schools in British Columbia.
- 1.2 Where access to education services is provided in a provincial school, or in a private or independent school recognized by the Province of British Columbia as an elementary or secondary institution, the Society shall enter into and maintain a written tuition agreement with each applicable school, school district, or school board which sets out the obligations of the parties with respect to the provision of education services; and make all payments as required by each tuition agreement.
- 1.3 The Society, by signing this Agreement, acknowledges and accepts the terms and conditions of the British Columbia Tripartite Education Agreement (BCTEA)
- 1.4 The Society, by signing this Agreement, agrees to participate in the implementation of the British Columbia Tripartite Education Agreement (BCTEA) through the fulfillment of its obligations under this Agreement.
- 1.5 The Society recognizes FNEESC's responsibility to provide Second Level Services to First Nations and First Nations Schools in accordance with the Tripartite Education Framework Agreement.
- 1.6 The Society accepts the delivery of Second Level Services from FNEESC to the First Nation and the First Nation School.
- 1.7 Where FNEESC wishes to delegate certain of its obligations with respect to the delivery of Second Level Services to the Society or the First Nation School, the Society shall enter into a written agreement with FNEESC with respect to the delegation and any funding that FNEESC may transfer for the purpose of the delegation.
- 1.8 The Society shall prepare a Nominal Roll Student Census Form and an Annual Education Staff Information Form and provide them to Canada in accordance with Schedule "B".

## Elementary and Secondary - Instructional Services – Band Operated Schools

- 2.1 The Society shall ensure that registered Indian students ordinarily resident on reserve or on lands belonging to Her Majesty The Queen in Right of Canada or a province / territory and other students for whose education the Minister accepts funding responsibility, have access to quality education and support programs and services in a band operated school.
- 2.2 The Society shall ensure that the elementary and secondary education funding is administered in accordance with:
  - (a) the ISC **Elementary and Secondary Education Program Guidelines**, as amended from time to time; or
  - (b) BC-specific education program policy and guidelines developed by Canada in consultation with FNEESC, as amended from time to time, which shall prevail over the Guidelines referred to in subsection (a) to the extent of any inconsistency.
- 2.3 The Society shall ensure that education programs and services are delivered to standards that will allow students, where applicable, to transfer without academic penalty, at similar levels of achievement. The budget is set each Fiscal Year of the Agreement based on the previous year's nominal roll and may be adjusted during each Fiscal Year of the Agreement, between First Nation Schools and provincial schools.
- 2.4 The Society shall employ teachers with a teaching certificate in good standing issued by a provincial education ministry or a recognized Canadian teacher certification authority.
- 2.5 The Society shall ensure that standardized assessments are administered to assess the performance indicators set out subsection 2.8 for the purpose of improving educational outcomes for First Nation students.
- 2.6 At the request of Indigenous Services Canada (ISC), the Society shall review the school program to evaluate the quality of education and ascertain whether the objectives of the community and school are being met. At the discretion of the Society, the review shall be conducted through any of the following processes:
  - (a) an assessment under the School Assessment Process, as administered by the FNSA;
  - (b) an evaluation conducted in accordance with the **Independent School Act**, R.S.B.C. 1996, c. 216; or (c) an alternative form of assessment or evaluation mutually agreed to by the Society and ISC.
- 2.7 The Society shall comply with conditions and commitments developed and included in the Local Education Agreement (LEA) between the School District #54, Witset First Nation and Kyah Wiget Education Society.
- 2.8 The Society shall provide specified education program reports, including performance indicator data, annually to FNEESC, for the following:
  - (a) percentage of students who meet or exceed standards for reading, writing and numeracy;

- (b) student attendance;
- (c) teacher/student ratio;
- (d) teacher certification
- (e) teacher years of experience;
- (f) student/computer ratio;
- (g) administration of standard learning assessments, where applicable.

2.9 The Society acknowledges and agrees that information contained in the specified education program reports provided by the Society to FNEESC will be subsequently provided by FNEESC to Canada in aggregate form.

### **Elementary and Secondary - Education Program – Student Support Services**

The Society shall administer the Elementary and Secondary Education Program in accordance with the Terms and Conditions for the Grants and Contributions to Support First Nations Elementary and Secondary Educational Advancement and the Elementary and Secondary Education Program National Program Guidelines issued by ISC as amended from time to time.

### **New Paths for Education**

The Society shall administer the New Paths for Education program in accordance with the proposal approved by Indigenous Services Canada, the **Terms and Conditions for the Grants and Contributions to Support First Nations Elementary and Secondary Educational Advancement and the New Paths for Education National Program Guidelines** issued by ISC as amended from time to time.

### **Post-Secondary Education Program**

The Society shall administer the Post- Secondary Student Support Program and the University and College Entrance Preparation Program in accordance with the **Terms and Conditions for the Grants and Contributions to Support First Nations and Inuit Post-Secondary Educational Advancement**, and the **Post-Secondary Student Support Program and University and College Entrance Preparation Program National Program Guidelines** issued by ISC as amended from time to time.

### **Post-Secondary Partnerships Program**

The Society shall administer the Post- Secondary Partnerships Program in accordance with the proposal approved by ISC, the **Terms and Conditions for the Grants and Contributions to Support First Nations and Inuit Post-Secondary Educational Advancement**, and the **Post-Secondary Partnerships Program National Program Guidelines** issued by ISC as amended from time to time.

## **Schedule B the Reporting out by Delegated Agency**

**The delegation of services shall bring with it the duty to report back to the council and the community on matters, outcomes and financial accounting. This schedule “B” shall be amended annually upon the Band amending its funding agreement with the Federal government to include any changes as they relate to the area of Education and Post-Secondary funding Reporting (ISC -4) and if not formally amended shall be deemed to be amended upon the Band executing of an amendment that changes their agreement with the Federal Government.**

The Society shall report as follows:

1. The Annual Register of Post-Secondary Education Students: using the ISC document collection instrument No. 4016769 prior to July 1 in each year.
2. New Paths for Education Project Report Using the ISC document collection instrument No. 432405 prior to April 30 in each year.
3. Nominal Roll Student and Education Staff Census Report Using the ISC document collection Instrument No. 462572. Prior to October 15 in each year.
4. An Annual Audited Financial Statement of the society prior to July 31 of each year.

Further the society shall ensure their policies and procedures on common matters of conflict of interest, accounting practices and other general matter of governing are reconciled and aligned with the Band’s Policies and procedures.