

**WHITECAP DAKOTA FIRST NATION GOVERNANCE  
AGREEMENT**

*Plain Language Version <sup>1</sup>*

*Working Draft*

The *Whitecap Dakota First Nation Governance Agreement* (referred to in the rest of this document as the “Agreement”) is a proposed self-government agreement between Whitecap Dakota First Nation and Canada, represented by the Minister of Crown-Indigenous Relations and Northern Affairs Canada.

The Agreement includes Canada’s recognition of Whitecap Dakota First Nation jurisdiction over:

- elections
- membership
- language and culture
- Reserves lands and lands management
- emergency preparedness and public order
- taxation
- environmental protection and assessment
- natural resources management
- agriculture
- public works and infrastructure
- local traffic and transportation
- licensing, regulation and operation of businesses
- alcohol, gaming and intoxicants
- wills and estates
- landlord and tenants matters
- education
- child and family services
- health
- administration and enforcement of WDFN Laws

This document describes the Agreement in plain language. The full agreement is available at [www.whitecapdakota.com](http://www.whitecapdakota.com) on its self-governance page.

**PREAMBLE**

The Preamble contains statements by each Party delineating the history of the negotiations between Canada and WDFN, as well as the principles that have guided the negotiations of the Agreement.

The Preamble is not legally enforceable, however, everything that is included after the Preamble is legally enforceable for the Whitecap Dakota First Nation and Canada, once federal legislation is passed to approve it.

**CHAPTER 1 – DEFINITIONS AND INTERPRETATION**

The Definitions are legal terms for this Agreement only. These have been negotiated and agreed to by the Parties. They appear in capital letters throughout the Agreement.

This Interpretation section provides guidance to the reader on how to read and interpret the Agreement.

## **CHAPTER 2 – PURPOSE OF THIS AGREEMENT**

The purpose of this Agreement is to set out WDFN law-making powers and responsibilities on different subject matters as well as to establish an intergovernmental relationship between the parties which includes financial relations.

Through this Agreement the parties recognize the WDFN Constitution and the Whitecap Dakota Government. However, nothing in this Agreement will change the Constitution of Canada, the division of powers between Canada and the province of Saskatchewan or the inherent right of WDFN to self-govern.

## **CHAPTER 3 – WHITECAP DAKOTA GOVERNMENT LEGAL STATUS, CAPACITY AND TRANSITION**

The Agreement recognizes Whitecap Dakota First Nation (WDFN) and the Whitecap Dakota Government as legal entities. This means that they have the ability to enter into agreements and contracts; to sue or be sued and act of their behalf in legal proceedings; hold, spend and borrow; but does not include the capacity to act as a guardian.

The chapter also provides for guidelines around the transition to self-government. These guidelines include that the elected council of WDFN that will be in office on the day preceding the effective date will continue to be in office until they hold an election in accordance with the WDFN Constitution and WDFN Law and that laws, bylaws enacted by WDFN and decisions already taken before the effective date will continue to apply on the Effective Date to the extent that they are compatible with this Agreement.

## **CHAPTER 4 – WDFN CONSTITUTION**

This chapter provides for WDFN to maintain a written Constitution that is consistent with Dakota customs, practices and traditions as well as this Agreement. The WDFN Constitution will address the following matters:

- The structures of the Whitecap Dakota Government;
- Memberships rules and process for the determination of membership;
- Elections process and terms of office;
- The exercise of WDFN law-making powers and duties;
- The publication of WDFN Laws;
- Systems of reporting by the Whitecap Dakota government to WDFN members;
- Procedures for making changes to the WDFN Constitution;
- The rights for appeal and redress for WDFN Members affected by the Whitecap Dakota government decisions;
- The criteria for the delegation of WDFN responsibilities to other agencies; and
- The processes by which WDFN institutions will be establish.

As part of this chapter, WDFN also has to maintain a Law that sets out the criteria and mechanisms by which a person who is not a WDFN Member and who may be adversely affected by a WDFN Law and the exercises of its responsibilities, can make submissions for consideration by the Whitecap Dakota Government and have the rights of appeal and access to redress mechanisms in relation to any WDFN law or administrative decision.

## **CHAPTER 5 – GENERAL PROVISIONS IN RELATION TO WDFN JURISDICTION AND AUTHORITY**

This chapter provides for the application of WDFN Laws on WDFN Reserves Lands and to WDFN, the Whitecap Dakota Government, WDFN Institutions as well as to all persons on reserve lands. Furthermore, the chapter also provides for WDFN Laws and the WDFN Constitution to be publicly accessible and states that Canada has no authority to approve or disallow WDFN laws.

This chapter also recognizes that the Agreement is not a treaty and any WDFN Aboriginal or treaty rights recognized by Section 35 of the *Constitution Act, 1982* are not affected by it. The *Canadian Human Rights Act* and the *Constitution Act, 1982*, including the *Canadian Charter of Rights and Freedoms*, will apply to the Whitecap Dakota Government and WDFN institutions.

Federal laws will also continue to apply to WDFN, WDFN reserve lands, the Whitecap Dakota Council, Whitecap Dakota Government, WDFN institutions, WDFN members and all persons on WDFN reserve lands except as otherwise provided in the Agreement. As for provincial laws, they also continue to apply in the same way they did before the Agreement came into effect.

With regards to the Indian Act, the chapter provides for the end of its application to WDFN, the Whitecap Dakota Government, WDFN members and WDFN reserve lands, except as otherwise provided for in the Agreement. Indian Act provisions that remain include section 3 (Reserve lands), section 5-7 (Indian Status register), section 87 (tax exemption), and section 89 and 90 (property on Reserve).

Finally, *First Nations Land Management Act* and the Framework Agreement on First Nation Land Management will continue to apply under specific circumstances.

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

The following chapter gives the ability to WDFN to create laws around the structure, the management and the procedures of the Whitecap Dakota Government and its institutions (such as boards, tribunal, panels, etc.). The chapter also includes the ability for WDFN to regulate the election method, the selection or appointment of representatives of the Whitecap Dakota government and its institutions.

The chapter also recognizes WDFN ability to create laws in relation to its internal financial management which includes the ability to establish policies, regulations and procedures, makes decisions with regards to WDFN public funds and providing for fiscal planning and financial management as well as ensuring accountability to WDFN members.

## **CHAPTER 7 – WDFN MEMBERSHIP**

This chapter allows WDFN to create laws delimiting the criteria for WDFN membership. It is important to note that, those who are currently entitled to be WDFN members will not lose their membership once WDFN has enacted its membership law.

WDFN will also remain responsible to maintain a register of WDFN members. Furthermore, WDFN membership does not grant Canadian citizenship or permanent resident and neither confer a right of entry into Canada, or entitle the member to be registered as a status Indian under the *Indian Act*

## **CHAPTER 8 – LANGUAGE AND CULTURE**

This chapter recognizes Dakota as the traditional language of WDFN. It also provides WDFN law-making powers in relation to the preservation, promotion and enhancement of Dakota Language, culture and cultural resources. It WDFN’s ability to create laws around the management and protection of WDFN places, land uses and heritages sites as well as public access to WDFN place and heritage sites.

## **CHAPTER 9 – WDFN RESERVE LANDS AND LANDS MANAGEMENT**

This chapter gives WDFN law-making powers in relation to the management of WDFN reserve lands. Prior to this Agreement, WDFN has already been exercising such power through the *First Nation Land Management Act*. The chapter sets out how WDFN’s Land Code will continue under self-government.

The chapter also has rules and procedures about how Canada can fairly expropriate WDFN reserve lands.

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

This chapter recognizes WDFN ability to create laws with respect to emergency preparedness and emergency measures which include protections, immunities and limitations around liability on WDFN reserve lands. The chapter also recognizes WDFN ability to regulate, control or prohibit any activity on WDFN reserve lands that may constitute a danger to public health or threat to public order, peace or safety.

## **CHAPTER 11 - TAXATION**

The taxation chapter recognizes WDFN law-making powers with respect to direct taxation of WDFN members, real property taxation within WDFN reserve lands and give WDFN the ability to implement any taxation agreement concluded with Canada or Saskatchewan.

The chapter also provides for the Parties to enter into a Real Property Taxation Agreement that will recognizes WDFN’s ability to tax real property of non-members located on WDFN reserve lands.

## **CHAPTER 12 - ENVIRONMENT**

The environment chapter provides WDFN with law-making powers in relation to environmental protection and assessment on WDFN reserve lands. This means that WDFN have the capacity to create laws to regulate pollution prevention, waste management, local air quality, environmental emergencies and WDFN environmental assessment undertakings.

The Agreement does not restrict Canada’s power or obligation to carry environmental assessment required by federal laws. However, under this chapter, the Parties have agreed to work collaboratively meaning that Canada will ensure that WDFN has timely notice of environmental assessment of federal projects and ensure ways in which WDFN can participate in the assessment if desired. This also includes consulting WDFN and, where appropriate, accommodating WDFN regarding federal projects that could adversely affect WDFN Asserted Traditional Use Lands.

This chapter also allows WDFN to enter in any other agreements with Canada or other level of government to enhance environmental cooperation and coordination, including with Saskatchewan for the environmental assessment of projects that are not federal or WDFN projects.

### **CHAPTER 13 – NATURAL RESOURCES MANAGEMENT**

This chapter allows WDFN to create laws to administer natural resources on, or forming part of, WDFN Reserve Lands. WDFN’s ability to regulate natural resources applies to non- renewable resources such as minerals, oil, and gas as well as renewable resources such as forests, water, fish, and wildlife.

The chapter also includes, among other things, WDFN’s ability to regulate the planning, management and conservation of natural resources; the harvesting, extracting, removing of disposing of any natural resources and the creation of a system to register and record rights or interest in natural resources.

### **CHAPTER 14 - AGRICULTURE**

The chapter gives WDFN the ability to create laws in relation to agriculture on WDFN Reserve Lands.

### **CHAPTER 15 – PUBLIC WORKS, COMMUNITY INFRASTRUCTURE AND LOCAL SERVICES**

This chapter recognizes WDFN law-making powers in relation to public and private works, community infrastructure, and local services such as housing, water supply, infrastructure, fire protection, the control of domestic animals, the supply of energy, waste, recycling and sewage disposal, etc. The chapter also give to WDFN the ability to collect development fees, user fees and development permit fees in order to fund these services.

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

This chapter gives WDFN the power to regulate and control local ground traffic, parking and transportation as well as the design, the construction, the maintenance and the management of the local transportation infrastructure. Any laws with relation to these matters will provide health and safety standards, regulations or technical codes that are at least equivalent to federal and provincial standards.

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

This chapter WDFN’s ability to create laws for the regulation, licensing, and prohibition of businesses on WDFN Reserve Lands, which include laws around the types of businesses and activities allowed, the terms and conditions in order to obtain licenses and permits as well as the duration of licenses, permits and their suspension or cancellation.

## **CHAPTER 18 – ALCOHOL, GAMING AND INTOXICANTS**

Under this chapter, WDFN has the ability to create laws around the prohibition of the sale, barter, supply, manufacture, possession and consumption of Alcoholic Beverages on WDFN Reserve Lands. WDFN also has the ability to control and restrict the possession and consumption of intoxicants as well as prohibiting its consumption.

As for gaming on WDFN Reserve Lands, the chapter gives WDFN the capacity to implement and enter into other agreements with Canada or Saskatchewan and, if necessary any other parties, with respect to the conduct and management of gaming.

## **CHAPTER 19 – WILLS AND ESTATES**

This chapter gives WDFN law-making powers for the administration of wills and estates of deceased individuals who ordinarily resided on WDFN Reserve Lands. The Agreement also gives WDFN the ability to create laws for the administration of property of members who are minors which could include the appointment of guardians as well as for the administration of the property of individual who have been declared mentally incompetent by a court and who have been residing on WDFN Reserve Lands on a daily basis.

## **CHAPTER 20 – LANDLORD, TENANT AND OCCUPANCY**

The Agreement recognizes WDFN's ability to regulate landlord and tenant matters such as, but not limited to, the rights and obligations of tenants and landlords, procedures for rent increases, dispute resolutions, termination and regaining of possession of premises or lands, on residential and commercial premises as well as agricultural lands.

## **CHAPTER 21 – EDUCATION**

This chapter recognizes WDFN law-making powers in relation to early years, primary and secondary education. This chapter gives WDFN the ability to develop education curriculums for each level of education as well as to establish entities, structures or mechanisms for delivering education services to WDFN members and non-members.

WDFN standards for elementary, secondary and post-secondary education and the accreditation of teachers will need to be at least equal to comparable standards under provincial laws. Education laws in relation to Dakota culture and language, are however, not subject to any provincial standards.

## **CHAPTER 22 – CHILD AND FAMILY SERVICES**

This chapter allows WDFN to administer child and family services using the *An Act respecting First Nations, Inuit and Métis children, youth and families* (Canada). However, it also gives direct law making power to WDFN for child and family services on its lands.

## **CHAPTER 23 – HEALTH**

This chapter allow WDFN to regulate the practice of traditional Dakota medicine as well as its practitioners on WDFN reserve lands. It also allows WDFN to enter into agreements with any level of government concerning the delivery of health services or the application of federal or provincial or other health standards.

## **CHAPTER 24 – ADMINISTRATION AND ENFORCEMENT OF WDFN LAWS**

Under this chapter, WDFN have the capacity to establish Institutions for the administration of WDFN Laws. The chapter also recognizes WDFN’s capacity to develop procedures for the enforcement of its laws created under this Agreement, which includes appointing enforcement officers. As such, WDFN will be responsible for the prosecution of its laws and may appoint individuals to conduct such prosecutions.

WDFN may also provide services for traditional sanctions that are consistent with WDFN culture and values as an alternative to fines or imprisonment, provided that such sanctions are not imposed without the offender and victim’s consent.

## **CHAPTER 25 – FISCAL RELATIONS**

The Parties agree to a new government-to-government financial relationship which include working together to ensure that WDFN has access to sufficient funding to meet its need and evolves over time. This new relationship also includes Canada and WDFN working together in order to advance specific goals such as ensuring that WDFN members receive equal opportunities, equitable benefits, comparable access to programs and services than any other Canadian, as well as ensuring that WDFN has the means by which to preserve, protect, use, develop and transmit Dakota language, culture and heritage.

The implementation this new relationship will be conducted through the Fiscal Arrangement. This Agreement will be stable and predictable while allowing for flexibility to address different changes. The Fiscal Arrangement will also ensure that programs and funding currently provided to WDFN will be incorporated into the Agreement, such has funding provided for housing, labour force development, economic development, public safety, etc. Through the Implementation Committee, WDFN will also be able to request the inclusion of newly available federal program funding into the Agreement.

The chapter also provides for WDFN participation and engagement in the situation where changes are proposed to the publicly available fiscal policy of self-government arrangements.

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

The parties will act in good faith to implement the Agreement and any other agreements required by this Agreement. The implementation will be done through an implementation plan that states the roles, activities, and responsibilities of each party in implementing the Agreement.

An implementation Committee will be created consisting of one representative from each Party (one from WDFN and one from Canada). The committee will be in charge of overseeing the implementation of the Agreement which could include monitoring and assessing the implementation of the funding

agreement, identifying and attempting to address any implementation issues, developing and maintaining a roster of qualified mediators and arbitrators for potential disputes, etc.

## **CHAPTER 27 – INTERNATIONAL LEGAL OBLIGATION OF CANADA**

This chapter addresses Canada international legal obligations. It includes consulting and informing the Whitecap Dakota Government about implications for new international legal obligations, informing the Whitecap Dakota Government if a WDFN law would cause Canada to be unable to comply with an international legal obligation, and informing the Whitecap Dakota Government if a WDFN law is under consideration by an international tribunal or body.

## **CHAPTER 28 – ACCESS TO INFORMATION AND PRIVACY**

The chapter sets out the rules for the sharing of confidential information between Canada and WDFN.

Under this Chapter, Canada may also provide information to the Whitecap Dakota Government in confidence if WDFN has enacted a law for the protection of privacy or has entered into an agreement with Canada about these matters.

## **CHAPTER 29 – LIABILITY**

This chapter provides for the continuation of legal obligations or claims between the Parties, unless otherwise stated in the Agreement. The chapter also highlights that WDFN and Canada are not liable for the acts, omissions, or negligence of the other Party or their employees or agents.

## **CHAPTER 30 – DISPUTE RESOLUTION**

The following chapter aims to establish a process for addressing any disagreement that may arise in regards to the Agreement. Prior to a disagreement going to court, the Parties to the Agreement must first attempt to address the dispute through negotiations, mediation and arbitration as it is outline in this section.

## **CHAPTER 31 – AMENDMENT AND REVIEW**

The chapter acknowledges that the Agreement provides a foundation for an ongoing relationship between the Parties and may require changes from time to time. As such, the chapter defines the process by which any party can request a review. A periodic review of the Agreement by the Parties is also provided by this section and is set to happen every ten (10) years.

This chapter also provides that for any amendment to be approved, such amendment will need to be approved by Canada and WDFN respectively. Where an amendment to the Agreement is in relation to subject matters under the jurisdiction of Saskatchewan, the parties will invite Saskatchewan to participate in the negotiations.

## **CHAPTER 32 – FUTURE NEGOTIATIONS**

WDFN may propose to negotiate Canada’s recognition of other jurisdictional areas not included in this Agreement. The chapter outlines potential areas for negotiation, which some are subject to the participation of Saskatchewan.

## **CHAPTER 33 – GOVERNANCE AGREEMENT APPROVAL PROCESS**

WDFN ratification process is set out in a document created by the parties. Before the ratification vote, WDFN will take reasonable steps to inform its voters about the vote, such as how they can vote, about the Agreement, the associated funding agreement and the implementation plan. Eligible voter needs to be at least eighteen (18) years of age, and have their name appear on the membership list.

The Agreement will be considered approved by WDFN once:

1. WDFN members have approved this Agreement and the WDFN Constitution in accordance with the processes set out in the Agreement and the Community Approval Process;
2. A minimum for 25% plus one (1) of the Eligible Voters voted “YES” and those who voted “YES” constitute a majority of the votes casted; and
3. Whitecap Dakota Council has signed the Agreement and the WDFN Constitution.

Canada will approve the Agreement by signing the Governance Agreement as well as *Whitecap Dakota First Nation Fiscal Relationship Agreement* and by passing a federal law that approves the Agreement.

## **CHAPTER 34 – COMING IN EFFECT OF THE AGREEMENT**

This chapter provides that the Agreement would come into force on a date agreed to by the Parties, following the approval of the Implementing Legislation by the Parliament of Canada and in accordance with processes set out in the WDFN Constitution.

## **SIGNATURES**

The Agreement is signed as approved by the Chief and Councilors of the Whitecap Dakota First Nation on behalf of the First Nation members and by the Minister of Crown-Indigenous Relations and Northern Affairs on behalf of Canada.