

The Individual Agreement is a templated document that:

- identifies the extent of reserve lands that will apply under the First Nation's Land Code;
- provides for the transfer of authority from Canada to the First Nation in order to manage the reserve lands; and
- confirms the operational and transitional funding that will be provided by Canada to the First Nation for managing the reserve lands.

During the developmental process it is typical that the ISC Regional staff would be providing information to the First Nation and their membership on the Individual Agreement. A summary of the Individual Agreement between the First Nation and Canada includes 12 Parts and 7 Annexes:

1. Interpretation

The interpretation section defines the terms that are used in the [Individual Agreement](#) including identification of the reserve lands that will be transferred to the First Nation governance authority.

In the Individual Agreement template some of the terms identified may not be needed. When this occurs, the terms that are not required will be removed from the final version.

2. Information Provided by Canada

This section confirms that Canada has provided the First Nation with all of the information in its possession regarding the allocation, distribution, transfer, and use of reserve lands, environmental issues on reserve lands, and any similar information, including:

- A list of all land interests and licences granted by Canada, details set out in "Annex C"
- A list and copies of all existing information in Canada's possession, respecting any actual or potential environmental problems with the First Nation Land - "Annex D"
- A list and copies of any other information in Canada's possession that materially affects the interests and licences mentioned above, such as in the case of a legacy lease that requires a rent review

Here the First Nation acknowledges that they have received copies of the Reserve General Abstract Report, Lawful Possessors Report, and Instrument Reports generated from the Indian Land Registry. And that copies of each registered instrument, and all related documentation, will be provided by the Minister at First Nation's request.

3. Transfer of Land Administration

This section confirms that all of Canada's rights, obligations, powers, and authorities in or under all previous interests or licences affecting the reserve lands are transferred to the First Nation on the date the Land Code comes into effect. This includes the management, monitoring and compliance of any active interests where Canada is named as the grantor, which can include collection of all rents, proof of insurance, other terms and conditions as set out in the registered instruments under the Indian Act.

4. Acceptance of Transfer of Land Administration

This section confirms that the First Nation accepts the transfer of land administration and management from Canada and that the land management sections of the Indian Act no longer apply to that First Nation's reserve land. The First Nation will begin administration of the First Nation reserve land pursuant to the Framework Agreement.

5. Operational Funding

This section confirms that Canada will provide the First Nation with Operational Funding for administration and management of First Nation lands in accordance with the Operational Funding Formula. Details will be provided in "Annex A" which may be prorated for the first year of operations and annual payments for the years after year 1 will be determined by the funding formula. In addition, the First Nation will receive additional funding during the first and second year of operations for transitional and environmental activities.

6. Transfer of Monies

This section obligates Canada to transfer to the First Nation any revenue or capital monies that it holds in trust for the use and benefit of the First Nation, this includes any revenues it receives from reserve lands. The amounts Canada is holding will be identified in "Annex B" and the First Nation may direct by notice in writing on where the moneys transferred will be deposited in the First Nation's account at such financial institution

(see sample language provided in resource materials) Note: that the sample language provided in the resource materials is for existing Operational First Nations prior to the FA amendment #6. Newly operational FNs and current developmental FNs are not required to pass a BCR in order to receive any capital monies that they have being held in trust

7. Notice to Third Parties of Transfer of Administration

Following the approval of a Land Code the First Nation is required to give written notification to non-member parties who hold an interest or Licence in reserve lands, that there will be a transfer of administration on the effective date of the Land Code. The First Nation can obtain these addresses from Canada and a sample has been provided that follows the notice statement and requirements for notification to Canada.

8. Interim Environmental Assessment Process

This section provides that until the First Nation has developed its own Environmental Assessment laws and procedures, Environmental Assessment of projects on its lands must be undertaken in a manner that is consistent with CEAA 2012 and CEAA (1992), as that law is amended from time to time.

This gives the FN the ability to select which Act they would like to be CONSISTENT with for their EA process. Note: Consistency does not mean the FN needs to follow the Act word by word, just general process, decisions, etc.

It is the Framework Agreement that stipulates that operational First Nations' EA processes must be consistent with CEAA. **Note:** upcoming FA Amendments are considering removing “consistency with CEAA clause” all together. This will allow FN to develop EA processes that suit their concerns, needs, and capacity.

9. Amendments

This section confirms that the Individual Agreement can only be changed when the First Nation and Canada both agree to the changes. Any changes must be made in writing and signed by authorized representatives for the First Nation and Canada.

10. Notice Between the Parties

This section sets out the communication procedures and methods between the First Nation and Canada about the Individual Agreement. These communications methods include personal delivery, registered mail, courier, facsimile, or electronic mail.

11. Dispute Resolution

This section provides that the dispute resolution provisions of the Framework Agreement (Part IX) apply to any disputes between Canada and the First Nation regarding the Individual Agreement.

12. Date of Coming into Force

This section confirms that the Individual Agreement and the Land Code will come into effect at the same time.

During the developmental process Canada will be providing information to the First Nation on Individual Agreement Annexes as follows:

Annex A - Funding provided by Canada

- Operational Funding – is determined through the MOU Funding Calculation ... transactions, population, land area, and other workload factors are taken into consideration when calculating the Assigning Fixed Costs through Core Contribution Categories (CCC)
- Transitional Funding – will be provided for the first 2 years after becoming operational to support transition to land code

Annex B - Details for the Transfer of Moneys

- Canada will provide the First Nation with a current Indian Act revenue monies report of the money to be transferred and forms part of this Annex
- The money will be transferred to the First Nation at a time following an affirmative ratification of a Land Code and Individual Agreement.

Annex C - List of Interest and Licences Granted by Canada

- Since it is Canada that has managed the reserve lands under the Indian Act, they will have the information related to those lands.
- This will require ISC Regional staff to:
 - Examine all existing interests and licences, to ensure that all federal responsibilities have been fulfilled and all outstanding transactions completed and registered
 - Identify any disputes, uncertainties or information gaps regarding land interests, and a timeline of when these tasks will be done
- Provide a current list of active interests to the First Nation. The list should identify all interests or licences granted by Canada that are registered in the Indian Lands Registry System (ILRS). The information can be provided through:
 - Reserve General Report
 - Lawful Possessors Report
 - Lease or Permit Reports
- Provide a final list of all active interests
- Copies of any interests granted by Canada that have not been registered or are pending registration in the ILRS shall be provided to the First Nation.
- Any other information in ISC/CIR's possession or knowledge, including arrears of rent information, that materially affects the interests or land rights and licences of First Nation Lands

Annex D - List of All Existing Information in Canada's Possession Respecting any Actual or Potential Environmental Problems with the First Nation Lands

- The information collected during the Phase I ESA will help to identify the environmental condition of the reserve lands at a particular point in time and provide recommendations for further study, prior to the change in land management jurisdiction from Canada to the First Nation.
- A summary of the areas of actual and potential environmental concern identified in the Phase I ESA report as well as recommendations for further studies (Phase II ESA) or actions to address those areas are included in this Annex. (typically, a copy of the Executive Summary from the Phase I ESA is included in the Annex of the IA and the full document made available in the administration office).
- A Joint (ISC/RC) National Guidance document to define the purpose and general process for conducting a Phase I ESA has been developed, see the HANDOUT - Phase I ESA Guidelines and Phase II ESA is being drafted.
- It is important to list as much as possible in the Individual Agreement that is of suspected or confirmed environmental concern ... ISC records will not have the important information and history of the land that the First Nation and its members hold, policy is to conduct an ESA.
- You may be wondering ... what happens if a site is missed ... It is OK, it can be picked up thorough future studies, and FA provisions requiring responsibility for acts or omissions before/after LC comes into effect doesn't change.

Annex E - List of Other Information Provided by Canada that Materially Affects Interests and Licences

- Materially affects interests & licences (e.g. rent reviews)

Annex F - Interim Environmental Assessment Process

- As mentioned earlier, it is the Framework Agreement that stipulates that an operational First Nations' EA processes must be consistent with CEAA.
- However, in August of 2019 CEAA was replaced with the Impact Assessment Act.
- It is important to note that the Council of the FN will have a duty from the time the Land Code comes into force to conduct an EA for every project on FN land.
- For both processes (CEAA 2012 and CEAA (1992), before Council takes any action to allow a project to proceed, they first need to make a decision on whether or not the project is likely to result in significant adverse environmental effects, and if so, whether those effects are justified under the circumstances.
- The Interim EA process only applies until the FN enacts its own law on EAs.

Annex G - Description of First Nation Lands

- In order for Canada to identify the reserve lands in the Individual Agreement, they need to be able to accurately describe the extent of the reserve(s). The Land Description, which is one section of the Land Description Report, is intended to describe the reserve lands that will be subject to the Land Code, and where applicable, describe those lands that are to be excluded.
- The Land Description Report, prepared by a land surveyor from the Surveyor General Branch, contains the land description, administrative sketches, and any additional items that need to be noted (usually arising from the Research Report). The Land Description Report, once approved by the First Nation and ISC Region, is recorded in the Canada Lands Surveys Records.
- Excluded Lands - Part of the Individual Agreement process is for First Nations to determine if they need to exclude any lands from their Land Code, being an entire reserve, a portion of, or any lands where the status is not known. If a First Nation and Canada agree to the exclusion, then these lands can be excluded under sub-clauses 4.1.4 and 4.1.6 of the Framework Agreement.