

FUNDING AGREEMENT

ABORIGINAL HEALING FOUNDATION

- and -

**HER MAJESTY THE QUEEN IN
RIGHT OF CANADA, AS REPRESENTED
BY THE MINISTER OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT
AND FEDERAL INTERLOCUTOR FOR MÉTIS AND NON-STATUS INDIANS**

Table of Contents

TABLE OF CONTENTS	2
ARTICLE I - DEFINITIONS	5
1.01 DEFINITIONS.....	5
ARTICLE II - REPRESENTATIONS AND WARRANTIES	7
2.01 REPRESENTATIONS OF THE FOUNDATION	7
2.02 REPRESENTATIONS AND WARRANTIES OF HER MAJESTY:.....	8
2.03 SURVIVAL.....	9
2.04 TERMINATION.....	9
ARTICLE III - GRANT	9
3.01 GRANT.....	9
3.02 ADDITIONAL GRANT.....	9
3.03.....	9
ARTICLE IV - INVESTMENT MANAGEMENT OF THE AMOUNT	9
4.01 PRUDENT PERSON PRINCIPLE.....	9
4.02 INVESTMENT COMMITTEE.....	9
4.03 INVESTMENT OF THE AMOUNT.....	9
4.04 STATEMENT OF INVESTMENT POLICY	10
4.05 INVESTMENT ADVISOR AND PORTFOLIO MANAGER	10
4.06 CONFLICT OF INTEREST CONCERNING INVESTMENT MANAGEMENT:	10
4.07 BORROWING	10
4.08 QUANTITATIVE LIMITS ON INVESTMENT HOLDINGS OF THE AMOUNT.....	10
4.09 INVESTMENT HOLDINGS IN FOREIGN CURRENCIES	11
4.10 MATURITIES OF THE SECURITIES	11
4.11 PERMITTED INVESTMENTS	11
4.12 PROHIBITED INVESTMENTS AND TRADING ACTIVITIES	11
ARTICLE V – OVERHEAD AND ADMINISTRATIVE COSTS	12
5.01 OVERHEAD AND ADMINISTRATIVE COSTS.....	12
5.02 REMUNERATION	12
ARTICLE VI - ELIGIBLE RECIPIENTS	12
6.01 ELIGIBLE RECIPIENTS	12
6.02 EXCLUDED RECIPIENTS – FEDERAL.....	12
6.03 EXCLUDED RECIPIENTS – PROVINCIAL AND TERRITORIAL	12
6.04 EXCLUDED RECIPIENTS - SUBSIDIARIES OF THE ABORIGINAL HEALING FOUNDATION.....	12
6.05 DONATIONS	12
ARTICLE VII - ELIGIBLE PROJECTS AND ELIGIBLE COSTS	12
7.01 ELIGIBLE PROJECTS	12
7.02 MANDATORY CRITERIA:.....	13
7.03 GENERAL CRITERIA.....	13
7.04 CONTENTS OF APPLICATION	13
7.05 ELIGIBLE COSTS	14
7.06 INELIGIBLE COSTS	14
ARTICLE VIII - OTHER CONTRIBUTIONS	14
8.01 OTHER CONTRIBUTIONS	14
ARTICLE IX - COMMITMENTS AND DISBURSEMENTS	14
9.01 COMMITMENTS	14
9.02 DISBURSEMENT	14
9.03 GUIDELINES ON FUNDING.....	14
9.04 ADVANCES AND PAYMENTS	15
9.05 PERIODIC PAYMENTS.....	15
ARTICLE X - COVENANTS OF THE FOUNDATION	15
10.01 COVENANTS OF THE FOUNDATION	15
ARTICLE XI - FINANCIAL MATTERS AND AUDITS	15
11.01 BOOKS OF ACCOUNT	15
11.02 AUDITOR	16
11.03 CONDUCT OF THE AUDIT	16
11.04 AUDIT COMMITTEE	17
11.05 ANNUAL REPORT.....	17
11.06 PUBLIC COMMUNICATION AND ACCOUNTABILITY	18

11.07	WIND-UP PROVISION	18
11.08	OFFICIAL LANGUAGES	19
11.09	CONFLICT OF INTEREST	19
11.10	CORPORATE PLAN	19
11.11	PERFORMANCE AUDIT	20
11.12	MINISTER'S AND AUDITOR GENERAL'S RIGHT TO AUDIT	20
11.13	PROGRAM EVALUATION	20
11.14	MINISTER'S RIGHT TO CONDUCT A PROGRAM EVALUATION.....	20
11.15	DEFAULT	21
11.16	RECTIFICATION PERIOD	21
ARTICLE XII – ARBITRATION		22
12.01	ARBITRATION	22
12.02	POWER OF ARBITRATOR	22
12.03	TRANSFER OF FUNDS TO THIRD PARTY	22
12.04	COSTS OF ARBITRATION	22
ARTICLE XIII – CONFIDENTIALITY		22
13.01	CONFIDENTIALITY	22
ARTICLE XIV - INTERPRETIVE MATTERS AND CONVENTIONS		22
14.01	GENDER AND NUMBER	22
14.02	HEADINGS	22
14.03	STATUTORY REFERENCES	22
14.04	CALCULATION OF TIME PERIOD	23
14.05	PERFORMANCE ON HOLIDAYS	23
14.06	REFERENCES.....	23
ARTICLE XV – MISCELLANEOUS		23
15.01	SEVERABILITY	23
15.02	AMENDMENTS	23
15.03	MEETING OF THE PARTIES	23
15.04	WAIVER.....	23
15.05	GOVERNING LAW	23
15.06	ENTIRE AGREEMENT	23
15.07	INDEMNIFICATION AND LIMITATION OF LIABILITY	24
15.07.01	LIMITATION OF LIABILITY ARISING FROM THE CHARTER AND HUMAN RIGHTS LEGISLATION ...	24
15.07.02	SURVIVAL	24
15.08	FURTHER ASSURANCES	24
15.09	NOTICES	24
15.10	TIME OF THE ESSENCE.....	25
15.11	THIRD PARTY BENEFICIARIES	25
15.12	ASSIGNMENT AND SUCCESSORS	25
15.13	RELATIONSHIP OF THE PARTIES	25
15.14	REMEDIES CUMULATIVE	25
15.15	COSTS AND EXPENSES.....	25
15.16	EXECUTION IN COUNTERPARTS	25
15.17	EXCUSABLE DELAYS	25
15.18	EXCLUDED PERSONS	26
15.19	LOBBYISTS	26

FUNDING AGREEMENT

THIS AGREEMENT made as of the _____ day of _____, 2007.

BETWEEN:

ABORIGINAL HEALING FOUNDATION, a Corporation established under Part II the Canada Corporations Act, chapter C-32 of the Revised Statutes of Canada, 1970 herein represented by a duly authorized officer (“the Foundation”)

OF THE FIRST PART

-and-

HER MAJESTY THE QUEEN IN RIGHT OF CANADA, as represented by THE MINISTER OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT AND FEDERAL INTERLOCUTOR FOR MÉTIS AND NON-STATUS INDIANS (“Her Majesty”)

OF THE SECOND PART

WHEREAS the Government of Canada has announced a new national Aboriginal strategy “Gathering Strength – Canada’s Aboriginal Action Plan” which includes initiatives aimed at renewing the partnership with Aboriginal People;

WHEREAS one element of the Action Plan provides for the creating of a healing strategy to address the healing needs of Aboriginal People affected by the Legacy of Indian Residential Schools, including the intergenerational impacts;

WHEREAS, in order to implement the creation of the healing strategy, the Government of Canada is prepared to enter into this agreement with the Foundation;

WHEREAS the Government of Canada is prepared to fund the Foundation to support the objective of addressing the healing needs of Aboriginal People affected by the Legacy of Indian Residential Schools, including the intergenerational impacts, by supporting holistic and community-based healing to address needs of individuals, families and communities, including Communities of Interest:

WHEREAS the following measures are recognized as examples of means for the Foundation to fulfill the objective:

- (a) promotion of linkages to other federal/provincial/territorial/ aboriginal government health and social services programs;
- (b) focus on early detection and prevention of the intergenerational impacts of physical and sexual abuse;
- (c) recognition of special needs, including those of the elderly, youth and women; and
- (d) promotion of capacity-building for communities to address their long-term healing needs;

WHEREAS the Foundation was established for the purpose of funding Eligible Recipients for Eligible Projects to address the healing needs of Aboriginal people affected by the Legacy of Indian Residential Schools, including the intergenerational impacts;

WHEREAS the Foundation and Her Majesty desire that this agreement set forth their agreement relating to the terms and conditions under which the Foundation shall administer and invest the funds received by it and the Foundation shall determine to whom it shall disburse the funds held by it taking into account, and honouring, in a fair and equitable manner the geographical and demographic reality and the concentration across Canada of those who attended Indian Residential Schools and those who are affected by the Legacy of Indian Residential Schools, including the intergenerational impacts;

AND WHEREAS the Foundation and Her Majesty desire that the Amount not be used to duplicate programs, activities or services provided by or within funding from federal, provincial or territorial governments;

AND WHEREAS Her Majesty has entered into a settlement agreement to resolve the Legacy of Indian Residential Schools, including the intergenerational impacts, which agreement provides for a grant to the Foundation;

NOW THEREFORE in consideration of the premises, the mutual covenants contained herein and the receipt of other good and valuable consideration which the Parties acknowledge, this agreement provides as follows:

ARTICLE I - DEFINITIONS

1.01 Definitions: Unless otherwise defined herein, the following terms shall have the following meanings in this Agreement:

“Aboriginal People” means individuals who are included as Aboriginal peoples referred to in S.35 of the *Constitution Act* 1982 and, for greater certainty, includes Inuit, Métis and First Nations, on and off reserve, regardless of whether they are registered under the *Indian Act*.

“Act” means the *Canada Corporations Act, R.S.C. 1970, C-32*.

“Amount” means the grant from Her Majesty to the Foundation of \$350,000,000 and any additional grant from Her Majesty, and any proceeds arising from the investment of the grant.

“Arbitration Act” means the *Commercial Arbitration Act, R.S.C. 1985, C-34.6*.

“Auditor” means the auditor for the Foundation appointed under Section 10.02 (1).

“Board” means the board of directors of the Foundation as constituted from time to time.

“Business Day” means any day of the year, other than a Saturday, Sunday or any day on which banks are required or authorized to close in Ottawa, Ontario.

“Chairperson” means the Chairperson of the Board.

“Communities of Interest” means a body, collective, association, incorporation, coming together, or other amalgamation of Aboriginal People.

“Community-based” means responding to the healing needs of Aboriginal communities, including Communities of Interest.

“Director” means an individual who is on the Board and includes the Chairperson.

“Eligible Costs” means costs of operating, managing and administering an Eligible Project subject to the provisions of Sections 7.05 and 7.06.

“Eligible Project” means a project carried on or to be carried on to address the healing needs of Aboriginal People affected by the Legacy of Indian Residential Schools, including the intergenerational impacts.

“Eligible Recipient” means an organization located in Canada or individual residing in Canada that carries on, or in the opinion of the Board is capable of carrying on, projects to address the healing needs of Aboriginal People affected by the Legacy of Indian Residential Schools, including the intergenerational impacts.

“Eligible Securities” means securities which are within those classes of securities in which the Foundation may invest the Amount as specified in Section 4.02 to the Funding Agreement.

“FAA” means the *Financial Administration Act*, R.S.C. 1985 c. F-11

“Fiscal Year” means the fiscal year of the Foundation as determined in accordance with its by-laws.

“Foundation” means the non-profit Aboriginal Healing Foundation established under the *Canada Corporation Act* to address the healing needs of Aboriginal People affected by the Legacy of Indian Residential Schools, including the intergenerational impacts.

“Funding Agreement” means this agreement providing for the ongoing relationship between the Parties hereto and includes all schedules and exhibits hereto and any amendments hereto or thereto.

“Implementation Date” has the meaning set out in the Settlement Agreement.

“Indian Residential Schools” has the meaning set out in the Settlement Agreement and, for greater certainty, includes any institution included in the Settlement Agreement.

“Legacy of Indian Residential Schools” means any continuing direct or indirect effects of Indian Residential Schools, including the intergenerational impacts, on individuals, families and communities, including Communities of Interest.

“Member” means a member of the Foundation as elected or appointed from time to time in accordance with the Act and the letters patent and

by-laws of the Foundation for so long as such individual remains a member of the Foundation.

“Minister” means the Minister responsible for Indian Affairs and Northern Development or such other Minister as may be designated from time to time.

“Non-profit Organization” means a corporation, society, association, organization or body operated for profit and no part of whose income is payable to or otherwise available for the personal benefit of any of its proprietors, members or shareholders.

“Party” means either the Foundation or Her Majesty as represented by the Minister, as the context permits or requires, and “Parties” means both of them.

“Person” means any individual, partnership, limited partnership, joint venture, syndicate, sole proprietorship, company or corporation, with or without share capital, trust, trustee, executor, administrator or other personal legal representative, unincorporated association, institute, institution, or Regulatory Authority howsoever designated or constituted and pronouns have a similarly extended meaning.

“Regulatory Authority” means any government or any governmental, administrative or regulatory entity, department, authority, commission, tribunal official or agency having jurisdiction.

“Settlement Agreement” means the final Indian Residential Schools settlement agreement executed by representatives of Canada, Plaintiffs, The Assembly of First Nations, Inuit Organizations, The General Synod of the Anglican Church of Canada, The Presbyterian Church in Canada, The United Church of Canada and Roman Catholic Entities.

“Special Resolution of the Members” means a resolution passed by not less than two thirds of the votes cast by the Members who voted on the resolution at a meeting of the Members or signed by all the Members entitled to vote on the resolution.

ARTICLE II - REPRESENTATIONS AND WARRANTIES

2.01 Representations of the Foundation: The Foundation represents, warrants to, and covenants with. Her Majesty that:

- (a) it is in good standing under the laws of Canada and of each jurisdiction in which it is required to be registered;
- (b) it has the requisite power (corporate and other) to own its assets and to carry on its activities as contemplated by this Funding Agreement;
- (c) the execution and delivery of this Funding Agreement by it, and the carrying out by it, of all of the activities contemplated hereby, have been duly authorized by all requisite corporate action;
- (d) it has full power to execute and deliver this Funding Agreement and to perform its obligations hereunder;
- (e) it has and will continue to have a Board composed of individuals who reflect the interests of Aboriginal People and who possess the competence, capacities and attributes required to fulfill the obligations of the Foundation under this Funding Agreement, which may include:

- (i) healing and financial expertise
 - (ii) regional representativeness;
 - (iii) attendance at Indian Residential Schools; or
 - (iv) person credentials and merit;
- (f) The Foundation agrees that:
- (i) membership of the board is and shall at all times be comprised of a majority of non-federal government representatives or agents; and
 - (ii) federal government representatives or agents shall not comprise a majority proportion of number required to attain quorum or to effect any decision of the Foundation, its members, the Board, or any committee hereof, or to comply with the letters patent and its by-laws.
- (g) this Funding Agreement constitutes a legally binding obligation of the Foundation, enforceable against it in accordance with its terms, subject with respect to enforcement of remedies, to applicable bankruptcy, insolvency, reorganization and other laws affecting generally the enforcement of the rights of creditors and subject to a court's discretionary authority with respect to the granting of specific performance or other equitable remedies in accordance with and subject to the authority of the arbitrator as referred to in Article XI;
- (h) the execution and delivery of this Funding Agreement by the Foundation and the performance by the Foundation of its obligations hereunder will not, with or without the giving of notice or the passage of time or both:
- (i) violate the provisions of the Act or of any other applicable law;
 - (ii) violate the provisions of the Foundation's charter, by-laws, any other corporate governance document subscribed to by the Foundation or any resolution of the Board or Members;
 - (iii) violate any judgement, decree, order or award of any court, Regulatory Authority or arbitrator; or
 - (iv) conflict with or result in the breach or termination, of any material term or provision of, or constitute a default under, or cause any acceleration under, any licence, permit, concession, franchise, indenture, mortgage, lease, equipment lease, contract, permit, deed of trust or any other instrument or agreement by which it is bound; and
- (i) there are no actions, suits, investigations or other proceedings pending or, to the knowledge of the Foundation, threatened and there is no order, judgment or decree of any court or Regulatory Authority which could materially and adversely affect the activities contemplated by the Act and this Funding Agreement.

2.02 Representations and Warranties of Her Majesty: Her Majesty represents and warrants to the Foundation that:

- (a) the execution and delivery of this Funding Agreement by Her Majesty and the carry out by Her Majesty of all of the activities contemplated hereby, have been duly authorized;
- (b) Her Majesty has full power to execute and deliver this Funding Agreement and to perform Her Majesty's obligations hereunder; and
- (c) this Funding Agreement constitutes legally binding obligations of Her Majesty enforceable against Her Majesty in accordance with its terms

subject to a court's discretionary authority with respect to the granting of a specific performance or other equitable remedies, in accordance with and subject to the authority of the arbitrator as referred to in Article XI.

2.03 Survival: All representations and warranties will survive the execution of this Funding Agreement until the tenth (10th) anniversary of such execution, or such earlier date as may be mutually agreed to by the Parties.

2.04 Termination: This Funding Agreement shall terminate at such time as

- (a) none of the Amount remains with the Foundation;
- (b) Eligible Recipients have accounted for all funds received from the Foundation in a manner acceptable to the Foundation; and
- (c) the Foundation has fulfilled all of its obligations under this Funding Agreement.

ARTICLE III - GRANT

3.01 Grant: Her Majesty made a payment to the Foundation of \$350,000,000 in the federal government fiscal year 1998-99.

3.02 Additional Grant: Her Majesty made a payment to the Foundation of \$40,000,000 on March 31st, 2005.

3.03 Her Majesty made a payment to the Foundation of \$25,000,000.00 in accordance with the **Contribution Agreement** between the parties dated May 28 2007, and attached hereto as Schedule 12.

3.04 Her Majesty will make a payment to the Foundation of \$100,000,000.00 payable forthwith upon execution of this Funding Agreement with the Foundation. No interest is payable by the Minister on the amount. The Foundation agrees to hold, invest, administer and disburse the additional grant in accordance with this Funding Agreement.

ARTICLE IV - INVESTMENT MANAGEMENT OF THE AMOUNT

4.01 Prudent Person Principle: The Recipient shall invest and manage the Amount according to investment policies, standards and procedures that a prudent person would exercise in making investment decisions regarding property belonging to others.

4.02 Investment Committee: The Foundation shall establish a committee (the "Committee") that oversees all matters related to the investment management of the Amount. The Committee should be composed of at least three directors who are not officers or employees of the Foundation. Members of the Committee shall be financially literate and have broad knowledge or experience in investment matters.

4.03 Investment of the Amount:

Without limiting the generality of section 4.01, the Foundation shall ensure that the Amount that has not been disbursed or committed be invested in accordance with the Prudent Person Principle. Investment decisions shall be made with the principal objective being the preservation of the capital to meet future disbursements requirements.

Until the Board approves the Statement of Investment Policy and appoints an investment advisor for the Fund, the Committee shall ensure that the principal

amount of the Fund be invested in low-risk, liquid short-term securities denominated in Canadian dollars.

4.04 Statement of Investment Policy:

(1) The Committee shall establish a written Statement of Investment Policy in respect to the Amount's portfolio of investments for approval of the Board. The Committee shall ensure that the Board is regularly made aware of any significant financial risks facing the Foundation, including the consequences of potential significant losses of investments of any or all of the Amount. The Statement of Investment Policy shall be reviewed no less frequently than annually. The Statement of Investment Policy shall include the following components:

- (a) long-term return objectives and expectations;
- (b) diversification policy of the Amount's investment portfolio, including various quantitative limits on investments;
- (c) asset allocation strategy including specific range for short-term fluctuation for each asset class and the long-term targeted asset mix;
- (d) permitted investment instruments and trading activities;
- (e) prohibited investment instruments and trading activities;
- (f) liquidity policy outlining how the Amount's liquidity needs will be addressed;
- (g) risk management policies outlining procedures to manage and mitigate various types of risks that the Foundation faces;
- (h) policy on the lending of cash or securities;
- (i) performance measurement and monitoring procedures;

(2) The Committee shall also establish and approve an investment strategy, describing the means used by the Foundation to best implement the Statement of Investment Policy. The investment strategy shall define the style of investment management, such as active versus passive managers, as well as specific investment instruments that would be used. The investment strategy shall be reviewed no less frequently than annually.

4.05 Investment Advisor and Portfolio Manager: The Committee shall recommend to the Board for their approval the appointment of one or more independent, external investment advisors to provide investment advice. The Committee may also recommend to the Board the appointment of one or more professional portfolio managers to invest the Amount consistent with the approved Statement of Investment Policy and the investment strategy.

4.06 Conflict of Interest Concerning Investment Management: The Board shall ensure that all investment advisors or portfolio managers who are involved in the investment management of the Amount disclose in writing, on a timely basis, the nature and extend of his/her interest, including any material interest in any entity that is a party of a transaction with the Board.

The Board shall also ensure that the Foundation's conflict of interest policies and procedures cover, among others, voting, prohibited transactions, continuing disclosure and avoidance standards.

4.07 Borrowing: The Foundation shall not borrow money, issue any debt obligation, or give any guarantees to secure a debt of another entity.

4.08 Quantitative Limits on Investment Holdings of the Amount:

- (a) Investments in the securities of any one issuer, or two or more affiliated entities shall be limited to no more than 10% of the assets of the Amount's investment portfolio.
- (b) Section 4.08 (a) does not apply in respect to:
 - (i) investments in securities issued by the Government of Canada or the government of a province, or securities that carry the full faith and credit of either; and
 - (ii) any index, segregated, mutual or pooled fund.
- (c) Investments in the securities with a credit rating of "A" (including all sub-classifications of this rating category) by at least one of the recognized credit rating agencies shall be limited to no more than 20% of the assets of the Amount's investment portfolio.
- (d) Investments in the securities with a credit rating of "AA" (including all sub-classifications of this rating category) by at least one of the recognized credit rating agencies shall be limited to no more than 70% of the assets of the Amount's investment portfolio.
- (e) Investment in securities that are not issued by, or carry the full faith and credit of either the Government of Canada or the government of a province shall be limited to no more than 80% of the assets of the Amount's investment portfolio.

4.09 Investment Holdings in Foreign Currencies: The Amount shall not invest in securities that are not denominated in Canadian dollars.

4.10 Maturities of the Securities: The maturities and terms of investments shall match the profile of the Amount's forecasted disbursements. In cases where the timing of disbursements is unknown, investments shall be held in securities with term to maturity of one year or less.

4.11 Permitted Investments: The Foundation may invest the Amount in the following:

- (a) Bank certificate of deposit;
- (b) Banker's acceptance;
- (c) Treasury bills, commercial paper and other short-term securities, bonds and notes issued by the federal government, provincial governments, municipal governments and corporations;
- (d) Asset-backed securities;
- (e) Mortgage-backed securities

4.12 Prohibited Investments and Trading Activities: The Foundation undertakes not to engage or invest the Amount in the following:

- (a) Equities or shares issued by any corporation;
- (b) Hedge funds or funds of hedge funds;
- (c) Fixed-income instruments rated below A- by Standard & Poors or Fitch Ratings, A3 by Moody's or A- by DBRS;
- (d) Derivatives or any instruments that have derivative holdings or features;
- (e) Non-marketable securities;
- (f) Commodities;

- (g) Repurchase agreements against securities which are not permitted to be held in the portfolio; and
- (h) Margin transactions or any form of leveraging.

ARTICLE V – OVERHEAD AND ADMINISTRATIVE COSTS

5.01 Overhead and Administrative Costs: The Foundation shall minimize overhead and administrative costs required to carry on its business and affairs. Without limiting the generality of the foregoing, the payments from Her Majesty provided for in Article III, and/or the proceeds from the investment thereof may, be used by the Foundation to the extent necessary to fund any reasonable costs and expenses incurred by it in the ordinary course of its business and affairs subject to this Funding Agreement.

5.02 Remuneration: Remuneration of directors, committee members, and officers of the Foundation shall be reasonable and shall only be paid to the extent permitted by law.

ARTICLE VI - ELIGIBLE RECIPIENTS

6.01 Eligible Recipients: The Foundation shall provide funding only to Eligible Recipients whose Eligible Projects are consistent with Article VII and Article VIII.

6.02 Excluded Recipients – Federal: The Foundation shall not provide funding to any federal department (as defined in the FAA), departmental corporation (as defined in the FAA), parent Crown corporation or wholly owned subsidiary of a parent Crown corporation (as defined in subsection 83(1) of the FAA), any not-for-profit corporation or trust established by a federal department, departmental corporation, or parent Crown corporation or wholly owned subsidiary of a parent Crown corporation. This does not preclude payments for employee interchanges, if any.

6.03 Excluded Recipients – Provincial and Territorial: The Foundation shall not provide funding to any provincial or territorial department, agency, or provincial or territorial Crown Corporation. This does not preclude payments for employee interchanges, if any.

6.04 Excluded Recipients - Subsidiaries of the Aboriginal Healing Foundation: The Foundation shall not provide funding to any subsidiary of the Aboriginal Healing Foundation. This does not preclude payments or commitments already made prior to March 31st, 2005 out of the first grant to the Foundation of \$350M and proceeds arising from its investment.

6.05 Donations: The Foundation shall not accept donations offered with conditions that are contrary to the spirit of this conditional grant agreement.

ARTICLE VII - ELIGIBLE PROJECTS AND ELIGIBLE COSTS

7.01 Eligible Projects: The Foundation shall disburse the Amount by providing funding to Eligible Recipients in respect of the Eligible Costs for Eligible Projects. Taking into account, and honouring, in a fair and equitable manner, the geographical and demographic reality and the concentration across Canada of those who attended Indian Residential Schools and those who are affected by the Legacy of Indian Residential Schools, including the intergenerational impacts.

7.02 Mandatory Criteria: In order to be eligible, projects:

- (a) shall address healing needs of Aboriginal People affected by the Legacy of Indian Residential Schools, which could include the intergenerational impacts;
- (b) shall establish complementary linkages, where possible in the opinion of the Board, to other health/social programs and services (federal/provincial/territorial/aboriginal); and
- (c) shall be designed and administered in a manner that is consistent with Canadian Charter of Rights and Freedoms and applicable human rights legislation.

7.03 General Criteria: An Eligible Project may, but need not:

- (a) focus on prevention and early detection of the effects of the Legacy of Indian Residential Schools, including the intergenerational impacts on all generations;
- (b) include elements of research and of capacity building for communities, including Communities of Interest, to address their long-term healing needs;
- (c) include, where and when possible, and depending on local needs and circumstances, a holistic approach including medial and traditional methodologies;
- (d) address special needs of segments of the population, including those of the elderly, youth and women; and
- (e) be based on a community healing approach designed to address needs of individuals, families and communities, which may include Communities of Interest.

7.04 Contents of Application: For the purpose of assessing projects submitted by Eligible Recipients, the Foundation shall require all Eligible Recipients making application for funding to include in their applications:

- (a) a proposal, which shall outline the objectives of the proposed project and the intended activities and results with regard to the Legacy of Indian Residential Schools, including the intergenerational impacts; and
- (b) an implementation plan, which shall provide information on:
 - (i) the qualifications of the management team and other staff who would work on the project;
 - (ii) time lines and projected expenditures for all elements of the project;
 - (iii) funding commitments received by the Eligible Recipient from other sources with respect to the project, if any;
 - (iv) the specific population of Aboriginal People targeted by the project;
 - (v) the sustainability of the project, and the capacity of the applicant to conduct the activities and achieve the results stated in the proposal;
 - (vi) the relationship between the costs and potential benefits of the project;
 - (vii) an evaluation plan for the project; and
 - (viii) related programs, activities, and services where complementary linkages can be established.

7.05 Eligible Costs: The Foundation in providing funding for Eligible Projects, may pay, subject to section 7.06, all costs of the projects in accordance with the guidelines established in Article IX hereof.

7.06 Ineligible Costs: The following are not Eligible Costs:

- (a) the cost of purchasing, directly or indirectly, real property or of repairing or maintaining real property owned directly or indirectly by the Eligible Recipient is not an Eligible Cost, except in exceptional cases where, in the opinion of the Board, such costs are necessary and ancillary to the effective implementation of the Eligible Project;
- (b) the costs related to compensation to individuals, any litigation or any public inquiry related to Indian Residential Schools is not an Eligible Cost; this does not preclude elements of projects involving locally based public inquiries for healing purposes relating to Indian Residential Schools; and
- (c) the cost related to an Eligible Project which duplicates programs, activities or services provided by or within funding from the federal, provincial or territorial government is not an Eligible Cost.

ARTICLE VIII - OTHER CONTRIBUTIONS

8.01 Other Contributions: The Foundation shall:

- (a) encourage Eligible Recipients to develop collaborative arrangements with the private sector, the voluntary sector, religious organizations, and with the aboriginal, municipal, provincial, territorial and federal governments; and
- (b) encourage Eligible Recipients to secure commitments from the private sector, the voluntary sector, religious organizations, and with the municipal, provincial and territorial governments for contributions, either financial or in kind, to fund Eligible Projects.

ARTICLE IX - COMMITMENTS AND DISBURSEMENTS

9.01 Commitments: The Foundation shall make best efforts to commit the Amount by the first anniversary of the Implementation Date.

9.02 Disbursement: The Foundation shall make best effort to disburse the Amount prior to the fourth anniversary of the Implementation Date.

9.03 Guidelines on Funding:

- (a) The Foundation may provide funding up to 100 per cent of the Eligible Costs for any Eligible Project.
- (b) The Foundation shall require that all Eligible Recipients receiving funding for any Eligible Project account by providing reports on activities and results to the project's target population and to the Board. All agreements entered into by the Foundation with Eligible Recipients shall be subject to financial and project audits by the Foundation.
- (c) The Foundation shall ensure that the process for the assessment of project proposals is transparent with clear selection criteria and that

there is a clearly defined appeal process conducted for unsuccessful project proposals.

9.04 Advances and Payments: The Foundation shall enter into agreements with the Eligible Recipients respecting, among other things, the manner in which the Foundation will make advances in respect of the commitment to the Eligible Recipient, when those advances will be made and any terms and conditions on which payments will be made, including the achievement of agreed upon milestones.

9.05 Periodic Payments: The Foundation shall make periodic payments to Eligible Recipients to whom funding has been committed in accordance with a schedule of payments agreed to by the Foundation and the Eligible Recipient, (which schedule shall match as closely as possible the expected disbursements to be made by the Eligible Recipient) or, if the Foundation and the Eligible Recipient so agree, a lump sum payment may be made on the condition that the part of the amount not needed for immediate disbursement be invested and proceeds of that investment be accounted in the project.

ARTICLE X - COVENANTS OF THE FOUNDATION

10.01 Covenants of the Foundation: The Foundation covenants and agrees with Her Majesty not to authorize or permit, except by mutual agreement, the adoption of any by-law, or any amendment or change in its letters patent or by-laws or the adoption of any rule, regulation or procedure, whether or not in writing, that is contrary to or in conflict with any provision of this Funding Agreement including the conditions in Schedule 9.01. No material changes in the objectives of the Fund, the use of the Fund's investment policy will be undertaken without prior written approval of the responsible Minister.

ARTICLE XI - FINANCIAL MATTERS AND AUDITS

11.01 Books of Account:

- (a) The Board shall cause books of account and other record to be kept and shall establish financial and management controls, information systems and management practices that will ensure that the business and affairs of the Foundation are carried on, and the financial, human and physical resources of the Foundation are managed effectively, efficiently and economically.
- (b) The books of account and other records of the Foundation shall be maintained in accordance with generally accepted accounting principles, consistently applied, and in such a way that they shall demonstrate that the assets of the Foundation are properly protected and controlled and that its business and affairs are conducted in accordance with the provisions of this Funding Agreement, and in such a way that they will show
 - (i) descriptions and book values of all investments of the Foundation; and
 - (ii) the Eligible Recipients who have received, and are about to receive funding from the Foundation in respect of Eligible Projects, the nature and extent of the projects and the amount of the funding.

- (c) The Foundation shall account for and report on the Amount separately from other sources of funds.

11.02 Auditor:

- (1) The Members;
 - (a) as soon as possible after incorporation, shall appoint an auditor for the first fiscal year;
 - (b) at its first meeting in each fiscal year shall appoint an auditor for the Foundation for the fiscal year and fix the Auditor's remuneration.
- (2) The Auditor shall be
 - (a) a natural person who
 - (i) is a member in good standing of an institute or association of accountants incorporated by or under an act of the legislature of a province,
 - (ii) has at least five years experience at a senior level in carrying out audits,
 - (iii) is ordinarily resident in Canada, and
 - (iv) is independent of the Board, each of the Directors and each of the officers of the Foundation; or
 - (b) a firm of accountants at least one of whose Members meet the qualifications set out in paragraph (a).
- (3) If an auditor is not appointed at the first meeting of the Members in a fiscal year, the Auditor for the preceding fiscal year shall continue in office until a successor is appointed. On the expiration of the appointment of the Auditor, the Auditor is eligible for re-appointment.
- (4) The Members may by a Special Resolution remove the Auditor from office.
- (5) An Auditor ceases to hold office when the Auditor
 - (a) dies;
 - (b) resigns; or
 - (c) is removed from office under subsection (4).
- (6) The Members, at a meeting of the Members, may appoint an Auditor to fill any vacancy in the office of the auditor, but if the Members fail to fill the vacancy at a meeting, or if no meeting of the Members is convened without delay after the vacancy occurs, the Board shall appoint an Auditor to fill the vacancy.
- (7) An Auditor appointed to fill a vacancy in the office holds office for the unexpired term of the predecessor in the office.

11.03 Conduct of the Audit:

- (a) The Auditor for the fiscal year shall, as soon as possible after the end of the fiscal year, complete the audit of the books and records of the Foundation in accordance with generally accepted auditing

standards of the Canadian Institute of Chartered Accountants (CICA) Handbook, consistently applied and submit a report of the audit to the Members.

- (b) A meeting of the Members shall be convened to consider the report of the Auditor for a fiscal year and at the meeting the Members shall by resolution receive the report.

11.04 Audit Committee:

- (a) The Board shall appoint an audit committee consisting of not fewer than three Directors and fix the duties and functions of the committee
- (b) In addition to any other duties and functions it is required to perform, the audit committee may cause internal audits to be conducted to ensure compliance by the officers and employees of the Foundation with management and information systems and controls established by the Board.

11.05 Annual Report:

- (1) The Foundation shall, within 120 days after the end of each fiscal year, prepare an annual report in at least both official languages of its activities during the year and include in the report
 - (a) its financial statement for the year, prepared in accordance with Generally Accepted Accounting Principles, as approved by the Board including
 - (i) its balance sheet as at the end of the fiscal year;
 - (ii) a statement of income for the fiscal year;
 - (iii) a statement of change in financial position for the fiscal year;
 - (iv) a statement of investment portfolio; and,
 - (v) individual statements for each of the Recipient's subsidiaries.
 - (b) the report of the Auditor for the year in respect of the audit of the books and records of the Foundation for the year, the Auditor's notes to financial statement and any other reports of the Auditor respecting the financial circumstances of the Foundation in the year;
 - (c) a statement of the Foundation's objectives for that year and a statement on the extent to which the Foundation met those objectives;
 - (d) a statement of the Foundation's objectives for the next year and for the foreseeable future;
 - (e) a statement of the Foundation's investment policies, standards and procedures;
 - (f) a list of Eligible Projects, funding provided, and a description of progress achieved to date;
 - (g) criteria applied to select Eligible Projects;
 - (h) results of a program evaluation or performance audit;
 - (i) the total remuneration paid to each of the following persons in that year by the Foundation, including any fees, allowance or other benefit;

- (i) employees earning in excess of \$75,000.00;
 - (ii) Board Members earning in excess of \$75,000.00; and,
 - (iii) Contractors receiving total payments in excess of \$75,000.00.
- (j) steps taken with respect to a fair and equitable distribution of the Amount as per Section 7.01; and,
 - (k) a statement of the activities of each of the Recipient's subsidiaries.
- (2) Before the annual report of the Foundation for a fiscal year is distributed to the public, it shall be approved by the Board and by the Members at a meeting of the Members.
 - (3) After the annual report of the Foundation for a fiscal year is approved as required under subsection (2), the report shall be made public in accordance with the by-laws of the Foundation and a copy shall be sent to the Minister who shall cause a copy of the report to be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the Minister receives it.

11.06 Public Communication and Accountability:

The Foundation shall:

- (a) implement a public communications and accountability strategy to communicate its annual report and publicly account for its activities during the year, including participation in public meeting(s).
- (b) provide appropriate recognition of the contribution of the Government of Canada in its programs, advertising and public communications. Recognition of Canada's support to the Foundation will be in accordance with the Federal Identity Program.
- (c) give reasonable prior notice to the Minister of a proposed public announcement(s) or ceremonies relating to its activities. The Minister, or his designated representative, will be invited to participate in such announcements or ceremonies to take place at a mutually agreed date. Where the Minister or other representative of Canada wishes to participate in such an announcement or ceremony, the Foundation shall co-operate with the representatives of Canada during such announcement.

11.07 Wind-up Provision:

- (1) Subject to the applicable requirements of the Income Tax Act (Canada) and any other applicable legislation with respect to Non-profit Organizations or charitable organizations, as the case may be where both Parties agree that the Foundation shall wind up and dissolve, the unspent amount shall be distributed, by agreement of the Parties to either or both:
 - (a) one or more Non-profit Organization(s) in Canada whose objects are the same as or similar to the objects of the Foundation; with preference given to an aboriginally-controlled organization; and/or
 - (b) one or more charitable organizations; with preference given to an aboriginally-controlled organization.
- (2) Despite section 11.07(1), if the Foundation is wound up or dissolved, Canada may require the Foundation to repay out of the moneys arising from the liquidation to the Receiver General for credit to the Consolidated Revenue Fund any amount that is repayable under the terms of this funding agreement.

11.08 Official Languages: The Foundation shall provide its communications and services to the public in at least both official languages of Canada (French and English) in accordance with the spirit and intent of Part IV of the *Official Languages Act*, R.S.C. (1985) c.31. More specifically, the Foundation shall:

- (a) make any announcements, or documents for Eligible Recipients concerning the national strategy in the official language of their choice;
- (b) actively offer its services to Eligible Recipients in the official language of their choice;
- (c) ensure that any nation-wide communication aimed at the general public is provided in both official languages and that related documents be available in both official languages; and
- (d) ensure, when it is appropriate, that the agreements awarding funding to Eligible Recipients provide for a linguistic clause regarding the recipients' communications to the public, where a significant demand exists for services from an Eligible Recipient to the public in either official language.

11.09 Conflict of Interest:

The Foundation shall include in its by-laws provisions that:

- (a) entitle an Eligible Recipient that has made a proposal for a project to the Foundation to request the Board to make a ruling as to the possible conflict of interest of a Director in the consideration or disposal of the proposal; and
- (b) establish procedures to be followed by the Board in responding to the request and giving the ruling.
- (c) establish policies for conflict of interest and code of conduct of directors, committee members, officers and advisors of the Foundation.

11.10 Corporate Plan: The Foundation will provide corporate plans annually to the Minister at least two months prior to the beginning of the Foundation's fiscal year. Such corporate plans will include, but not be limited to:

- (a) Short and medium term outcomes, (updated as applicable) per the Strategic plan;
- (b) Reference to the Foundation's previous year's corporate plan, especially its successes and remaining challenges;
- (c) Details of the Fund and its management;
- (d) Planned expenditures for the upcoming year, including, but not limited to, the amount of revenue to be drawn from the Fund's income for the fiscal year;
- (e) Planned activities for the upcoming year;
- (f) The anticipated results of those activities;
- (g) The anticipated revenues from other sources;

- (h) Risk assessments and mitigation strategies; and,
- (i) Ongoing performance monitoring strategies.

The Minister may table a copy or a summary of these in Parliament.

11.11 Performance Audit: The Foundation agrees to have carried out an independent performance (value-for money) audit to ensure the economy, efficiency and effectiveness with which funds have been used, at least once every 5 years.

The report shall be made public and a copy shall be sent to the Minister.

The Minister may cause the copy of the report to be laid before each House of Parliament on any of the first fifteen (15) days on which the House is sitting after the Minister receives it.

11.12 Minister's and Auditor General's Right to Audit: Each of Canada and the Auditor General of Canada may, after consultation with the Foundation, choose to conduct his own performance (value-for-money) audit or compliance audit with respect to the use of funds received from Her Majesty in right of Canada, no less frequently than every five years, to be carried out by such a person as the Minister may appoint, at his own cost. The auditor (each of Canada and the Auditor General of Canada) will provide the Foundation with a description of the scope and criteria of the performance and compliance audits. The auditor will be entitled to such information as, in his opinion, is necessary for the fulfillment of its responsibilities. The Foundation will cooperate and provide access to the appropriate records and staff to the auditor to conduct such audits. The auditor will share a copy of the resulting report with the Foundation and with the Minister when the auditor is the Auditor General of Canada. Where the audits are completed by the Auditor General of Canada, the results may be reported to Parliament in a Report of the Auditor General. Where the audit is conducted by the Minister, the Minister may make the results public and report them to Parliament. The Foundation will cooperate and provide access to the appropriate records to conduct such an audit. The Minister may share a copy of the resulting report with the Foundation and agrees to discuss any concerns raised in the audit with the Foundation.

The Minister may cause the copy of the report to be laid before each House of Parliament on any of the first fifteen days on which the House is sitting after the Minister receives it.

11.13 Program Evaluation: The Foundation agrees to have carried out, no less frequently than every 5 years, by an independent third-party using recognized evaluation standards, an evaluation of its activities and projects according to a framework to be approved by the Board, at least once every 5 years. The evaluation will measure the overall performance of the Foundation in achieving the outcomes identified in the Funding Agreement.

11.14 Minister's Right to Conduct a Program Evaluation: The Minister may, after consultation with the Foundation, choose to conduct his own evaluation, by an evaluator(s) of his choosing, of the Funding Agreement as an instrument of policy of the Government of Canada, at his own cost. The Foundation will cooperate and provide access to the appropriate records to conduct such an evaluation. The evaluation report shall be made public and a copy shall be sent to the Minister. The Minister may share a copy of the resulting report with the Foundation and agrees to

discuss any concerns raised in the evaluation with the Foundation. The Minister may cause the copy of the report to be laid before each House of Parliament or any of the first fifteen days on which the House is sitting after the Minister receives it.

11.15 Default: The following shall constitute events of default:

- (a) If the Foundation becomes bankrupt or insolvent, goes into receivership or takes the benefit of any statute from time to time in force relating to bankrupt or insolvent debtors;
- (b) An order is made or resolution passed for the winding-up of the Foundation or the Foundation is dissolved, except where the Parties agree to the winding-up, dissolution and the distribution of the Uncommitted Amount in accordance with Section 11.07;
- (c) The Foundation has submitted materially false or misleading information or has made misrepresentations of a material nature to the Minister, other than in good faith;
- (d) The Foundation makes a materially false or misleading statement concerning support by the Minister or the Government of Canada in any internal and/or public communication, other than in good faith;
- (e) The Foundation ceases its activities or substantially changes the nature of its business;
- (f) The Foundation has not met or satisfied any of the material terms and conditions of the Funding Agreement.

11.16 Rectification Period:

- (a) The events of default in Subsections 11.15 (c), (d) and (e) (with respect to the Foundation ceasing its activities or substantially changing the nature of its business) and Subsections 11.15 (f) shall only be considered events of default if the Foundation has been notified in writing by the Minister of the alleged default and the Foundation has not rectified the default within thirty (30) days of written notice thereof.
- (b) Where the Minister is concerned about the probability of imminent default as outlined in the Section 11.15, under the Funding Agreement, the Minister will notify the Foundation in writing and the two parties will discuss the concerns, with the Foundation rectifying any default within thirty (30) days of written notice thereof.
- (c) Remedies. If an event of default as outlined in Section 11.15 has occurred, or in the reasonable opinion of the Minister, is likely to occur, and the Foundation has not rectified as in Section 11.16 (a), or the Minister has notified the Foundation pursuant to section 11.16(b), the Minister may require the Foundation to repay any unspent portion of the Amount.
- (d) No waiver. The fact that the Minister refrains from exercising a remedy he is entitled to exercise under the Funding Agreement will not be considered to be a waiver of such right and, furthermore, partial or limited exercise of a right conferred on him will not prevent him in any way from later exercising any other right or remedy under this Funding Agreement or other applicable law, unless the Minister waives such right in writing.

ARTICLE XII – ARBITRATION

- 12.01 Arbitration:** Any dispute arising out of or in connection with this Funding Agreement, including any question regarding its existence, validity or termination, shall be submitted to and fully resolved by arbitration under the *Arbitration Act* of Ontario as amended or substituted from time to time, except to the extent the rules and procedures therein contained are modified by the rules for arbitration set out in Schedule 11.01 hereof.
- 12.02 Power of Arbitrator:** In the event that an arbitrator concludes that either Party has not complied with its obligations under this Funding Agreement, the arbitrator may order such Party to comply with the provisions of this Funding Agreement in the future, and in the event of non-compliance by the Foundation, the arbitrator may direct the Foundation in the way in which it must modify its funding programs so as to comply with these requirements in the future.
- 12.03 Transfer of Funds to Third Party:** In the event that the arbitrator determines that the Foundation has significantly or repeatedly breached any of the provisions of this Funding Agreement, the arbitrator shall have the power to designate a third party, subject to the approval of Her Majesty (after consulting with the National Aboriginal Organizations who have nominated Members of the Board), to hold and disburse the remaining Amount in accordance with the terms of this Funding Agreement.
- 12.04 Costs of Arbitration:** The costs of arbitration shall be shared equally by the Parties.

ARTICLE XIII – CONFIDENTIALITY

- 13.01 Confidentiality:** The Foundation shall develop a policy relating to confidentiality which shall define what constitutes confidential information, the treatment to be given to such information and the circumstances under which such information may be disclosed by the Foundation, Directors and officers, employees, agents and representatives of the Foundation, Eligible Recipients or other Persons.

ARTICLE XIV - INTERPRETIVE MATTERS AND CONVENTIONS

- 14.01 Gender and Number:** Any reference in this Funding Agreement to gender shall include all genders and words importing the singular number only shall include the plural and vice versa.
- 14.02 Headings:** The provision of a Table of Contents, the division of this Funding Agreement into Articles, Sections, Subsections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in the construction or interpretation of this Funding Agreement.
- 14.03 Statutory References:** Unless expressly stated to the contrary, any references in this Funding Agreement to any law, by-law, rule, regulation, order or act of any government, governmental body or other Regulatory Authority shall be construed as a reference thereto as enacted at the date hereof as such law, by-law, rule, regulation, order or act may be amended, re-enacted or superseded from time to time.

- 14.04 Calculation of Time Period:** When calculating the period of time within which or following which any act is to be done or step taken pursuant to this Funding Agreement, the date which is the reference date in calculating such period shall be excluded. If the last day of such period is a non-Business Day, the period in question shall end on the next Business Day.
- 14.05 Performance on Holidays:** If under this Funding Agreement any payment or calculation is to be made or any other action is to be taken on a day which is not a Business Day, the payment or calculation is to be made, and that other action is to be taken, as applicable, on or as of the next day that is a Business Day.
- 14.06 References:** In this Funding Agreement, references to “hereof”, “hereto”, and “hereunder” and similar expressions mean and refer to this Funding Agreement taken as a whole and not to any particular Article, Section, Subsection or other subdivision, “Article”, “Section”, “Subsection” or other subdivision of this Funding Agreement followed by a number means and refers to the specified Article, Section, Subsection or other subdivision of this Funding Agreement.

ARTICLE XV – MISCELLANEOUS

- 15.01 Severability:** If any provision of this Funding Agreement is determined to be invalid or unenforceable by an arbitrator that provision shall be deemed to be severed herefrom and the remaining provisions of this Funding Agreement shall not be affected thereby and shall remain valid and enforceable; provided that in the event that any portion of this Funding Agreement shall have been so determined to be invalid or unenforceable (the “offending portion”), the Parties shall negotiate in good faith such changes to this Funding Agreement as will best preserve for the Parties the benefits and obligations of such offending portion.
- 15.02 Amendments:** This Funding Agreement may only be amended, modified or supplemented by a written agreement signed by both of the Parties; Her Majesty’s execution of such agreement will be subject to internal review processes.
- 15.03 Meeting of the Parties:** Within the sixty days following the annual meeting of Members referred to in Section 11.05, the Parties may, at the request of either Party, meet to discuss the operation of the Foundation relating to the Funding Agreement, including the investment provisions.
- 15.04 Waiver:** All waivers under this Funding Agreement must be made in writing and failure at any time to require any Party’s performance of any obligations under this Funding Agreement shall not affect the right subsequently to require performance of that obligation. No waiver of any of the provisions of this Funding Agreement by either Party shall be deemed to constitute a waiver of such provision by the other Party or a waiver by such Party of any other provision (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided in writing duly executed by the Party to be bound thereby.
- 15.05 Governing Law:** This Funding Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
- 15.06 Entire Agreement:** This Funding Agreement constitutes the entire agreement between the Parties pertaining to the matters contemplated

hereby and supersedes all prior agreements, understandings, negotiations and discussion, whether oral or written, of the Parties.

15.07 Indemnification and Limitation of Liability: The Foundation shall indemnify and hold harmless Her Majesty from and against all claims, losses, damages, costs, expenses, actions and other proceedings made, sustained, brought, prosecuted, threatened to be brought or prosecuted in any manner, based upon, occasioned by, attributable to, or arising from any wilful or negligent act, omission or delay on the part of the Foundation, or the Directors, officers, employees or agents of the Foundation. Notwithstanding anything to the contrary contained herein, neither of the Parties will be liable for the indirect, or consequential damages of the other Party nor for loss of revenues or profits. Therefore, the Parties expressly acknowledge and agree that they will not be liable for each other's indirect, or consequential damages or for damages for lost profits or lost revenues under this Funding Agreement, regardless of whether such liability arises in tort (including negligence), contract, fundamental breach or breach of a fundamental term, misrepresentation, breach or warranty, breach of fiduciary duty, indemnification or otherwise.

15.07.01 Limitation of Liability arising from the Charter and Human Rights Legislation: The Foundation shall satisfy any judgement or order made by a court or human rights tribunal against Her Majesty which judgement or order determines that an act or omission of the Foundation or any entity funded by the Foundation to carry out the objects of the Foundation breached the Canadian Charter of Rights and Freedoms or human rights legislation in connection with the Eligible Project, by paying any damages or making good any financial liability and by making any modifications to the actions of the Foundation or entity funded by the Foundation to comply with such judgement or order.

15.07.02 Survival: The provisions of Sections 15.7 and 15.7.01 shall survive termination of this Agreement with respect to matters arising prior to the termination of the Agreement.

15.08 Further Assurances: The Parties will, from time to time during the course of this Funding Agreement or upon its expiry and without further consideration, execute and deliver such other documents and instruments and take such further action as the other may reasonably require to effect the activities contemplated hereby.

15.09 Notices: Any notice, direction or other instrument required or permitted to be given under this Funding Agreement shall be in writing (including telecopier, telex or any other means of communication by which words are capable of being visibly and instantaneously reproduced at a distant point of reception) and given by delivering it or sending it by telecopy or other similar means of communication addressed:

(1) if to the Foundation, at:

75 Albert, Suite 801
Ottawa, Ontario
K1P 5E7
Attention: Chief Executive Officer
Telecopier: 613-237-4442

(2) if to the Minister at:

90 Sparks Street, 3rd Floor
Ottawa, ONTARIO
K1A 0H4
Telecopier: 613-996-2808

Any such notice, direction or other instrument given as aforesaid shall be effective upon the date of delivery or transmission, as the case may be, unless delivered or transmitted on a day which is not a Business Day in which event it shall be deemed to be effective on the next Business Day. Either Party may change its address for service from time to time by notice given in accordance with the foregoing and any subsequent notice shall be sent to the Party at its changed address.

15.10 Time of the Essence: Time shall be of the essence in this Funding Agreement.

15.11 Third Party Beneficiaries: Each Party intends that this Funding Agreement shall not benefit or create any right or cause of action in, or on behalf of, any Person, other than the Parties and no Person, other than the Parties, shall be entitled to rely on the provisions hereof in any action, suit, proceeding, hearing or other forum.

15.12 Assignment and Successors: This Funding Agreement and any rights or duties hereunder may not be transferred, assigned or delegated to any other Person by either Party without the express prior written consent of the other Party to this Funding Agreement, such consent not to be unreasonably withheld. This Funding Agreement shall inure to the benefit of and be binding upon the Parties, their successors and permitted assigns.

15.13 Relationship of the Parties: Nothing contained in this Funding Agreement shall be construed to place the Parties in the relationship of partners or joint venturers and neither Party shall have any right to obligate or bind the other Party in any manner.

Moreover, this is an agreement for the performance of a service and the Foundation is engaged under the Agreement as an independent entity for the sole purpose of providing a service. Neither the Foundation nor any of the Foundation's personnel is engaged under the Agreement as an employee, servant or agent of Her Majesty. For greater certainty, in no event will the Foundation or any of its Directors, officers, employees or agents be entitled to bind or obligate Her Majesty and in no event will any of the foregoing be considered to be an agent of Her Majesty. The Foundation agrees to be solely responsible for any and all applications, reports, payments, deductions, or contributions required to be made including those required for Canada or Quebec Pension Plans, Employment Insurance, Worker's Compensation or Income Tax.

15.14 Remedies Cumulative: All rights, powers and remedies provided under this Funding Agreement or otherwise available in respect thereof at law or in equity shall be cumulative and not alternative and the exercise or beginning of the exercise of any thereof by either Party shall not preclude the simultaneous or later exercise of any other such right, power or remedy by such Party.

15.15 Costs and Expenses: The Foundation shall pay all legal and accounting costs and expenses incurred by it in authorizing, preparing and executing this Funding Agreement.

15.16 Execution in Counterparts: This Funding Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same instrument.

15.17 Excusable Delays: The dates and times by which either Party is required to perform any obligation under this Funding Agreement shall be postponed automatically to the extent, for the period of time, that the Party

is prevented from so performing by circumstances beyond its reasonable control. Said circumstances shall include acts of nature, strikes, lockouts, riots, acts of war, epidemics, government regulations imposed after the fact, fire, communications failures, power failures, earthquakes or other disasters.

15.18 Excluded Persons: No member of the House of Commons or Senate shall be admitted to any share or part of this Funding Agreement nor to any benefit to arise therefrom. The members of the House of Commons and the Senate shall not be appointed as Directors on the Board.

15.19 Lobbyists: Where lobbyists are used, the Foundation must ensure that the lobbyists are registered in accordance with the *Lobbyist Registration Act*, that no actual or potential conflict of interest exists, that the Foundation does not pay lobbyists on a contingency fee basis, and in circumstances where the Foundation contracts with the lobbyists to assist them when seeking grants from federal government entities, fees paid to lobbyists cannot be related to the value of the grants received.

IN WITNESS WHEREOF the Parties have caused, their duly authorized representatives to execute this Funding Agreement made the day of ,2007, as of the date first above written.

FOR HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT AND FEDERAL INTERLOCUTOR FOR MÉTIS AND NON-STATUS INDIANS

MINISTER OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT AND FEDERAL INTERLOCUTOR FOR MÉTIS AND NON-STATUS INDIANS

FOR ABORIGINAL HEALING FOUNDATION

(Signature)
I have the authority to bind the corporation.

Date

Witness

SCHEDULE 9.01 - FEDERAL CONDITIONS FOR FUNDING THE RESIDENTIAL SCHOOLS HEALING STRATEGY

The following conditions shall be reflected at all times in either the Letters Patent of Incorporation and By-laws of the Foundation; or, in the Funding Agreement; or, both.

1. Composition of the Board shall reflect the interests of all Aboriginal People, and provide for a majority of First Nations representatives. The decision-making processes of the Board shall be fair and reflect the appropriate interests of all Aboriginal People.
2. Members of the Board shall not hold political office in any government or representative Aboriginal political organization.
3. A Board selection process, acceptable to the Government of Canada, shall be stipulated in the by-laws of said Foundation.
4. The Amount shall not be used as compensation to individuals, or to pay any costs for litigation or any public inquiry related to Indian Residential Schools.
5. Initiatives supported by the Amount shall focus on the healing needs of Aboriginal People affected by the Legacy of Indian Residential Schools, including the intergenerational impacts.
6. Disbursement of the Amount shall be fair and equitable, taking into account, and honouring, the geographical and demographic reality and the concentration across Canada of First Nations, Inuit and Métis who attended Indian Residential Schools, and those who are affected by the Legacy of Indian Residential Schools, including the intergenerational impacts.
7. The process for the assessment of initiatives to be supported by the Amount shall be transparent with clear selection criteria; this process will include a clearly defined appeal process for unsuccessful proposals.
8. Proposals submitted shall include clear objectives, time frames and expected outcomes.
9. Accountability will be achieved through public annual reports, including an annual auditor's report, as well as, a public communications and accountability strategy, including participation in public meetings.

SCHEDULE 11.01 - RULES FOR ARBITRATION

The following rules and procedures (the “Rules”) shall apply with respect to any matter to be arbitrated by the Parties under the terms of this Funding Agreement.

1. INITIATION OF ARBITRATION PROCEEDINGS

- (a) If any Party to this Funding Agreement wishes to have any matter under the Funding Agreement arbitrated in accordance with the provisions of this Funding Agreement, it shall give notice to the other Party specifying particulars of the matter or matters in dispute and proposing the name of the individual it wishes to be the single arbitrator. Within 15 days after receipt of such notice, the other Party shall give notice to the first Party advising whether such Party accepts the arbitrator proposed by the first Party. If such notice is not given within such 15 day period, the other Party shall be deemed to have accepted the arbitrator proposed by the first Party. If the Parties do not agree upon a single arbitrator within such 15 day period, either Party may apply to a judge of the Ontario Court General Division under the Arbitration Act, as amended or substituted for from time to time, for appointment of a single arbitrator (the “Arbitrator”).
- (b) The individual selected as Arbitrator shall be qualified by education and experience to decide the matter in dispute and shall be at arm’s length from both Parties.

2. SUBMISSION OF WRITTEN STATEMENTS

- (a) Within 20 days of the appointment of the Arbitrator, the Party initiating the arbitration (the “Claimant”) shall send the other Party (the “Respondent”) a statement of claim (“Statement of Claim”) setting out in sufficient detail the facts and any contentions of law on which it relies and the relief that it claims.
- (b) Within 20 days of the receipt of the Statement of Claim, the Respondent shall send the Claimant a statement of defence (“Statement of Defence”) stating in sufficient detail which of the facts and contentions of law in the Statement of Claim it admits or denies, on what grounds and on what other facts and contentions of law it relies.
- (c) Within 20 days of receipt of the Statement of Defence, the Claimant may send the Respondent a statement of reply (“Statement of Reply”).
- (d) All Statements of Claim, Defence and Reply shall be accompanied by copies (or, if they are especially voluminous, lists) of all essential documents on which the Party concerned relies and which have not previously been submitted by any Party.
- (e) After submission of all the Statements, the Arbitrator will give directions for the further conduct of the arbitration.

3. MEETINGS AND HEARINGS

- (a) The arbitration shall take place in the National Capital Region as described in the Schedule to the National Capital Act, or in such another place as the Claimant and the Respondent shall agree upon in writing. The arbitration shall be conducted in English

unless otherwise agreed by such Parties and the Arbitrator. Subject to any adjournments which the Arbitrator allows, the final hearing will be continued on successive working days until it is concluded.

- (b) All meetings and hearings will be in private unless the Parties otherwise agree.
- (c) Each Party may be represented at any meetings or hearings by legal counsel.
- (d) Each Party may examine, cross-examine and re-examine all witnesses at the arbitration.
- (e) The Parties may agree to conduct the arbitration in part or in whole by way of written submission.

4. THE DECISION

- (a) The Arbitrator will make a decision in writing and, unless the Parties otherwise agree, will set out reasons for decision in the decision.
- (b) The Arbitrator will send the decision to the Parties as soon as practicable after the conclusion of the final hearing, but in any event no later than 60 days thereafter unless that time period is extended for a fixed period by the Arbitrator on written notice to each Party because of illness or other cause beyond the Arbitrator's control.

5. JURISDICTION AND POWERS OF THE ARBITRATOR

- (a) By submitting to arbitration under these Rules, the Parties shall be taken to have conferred on the Arbitrator the following jurisdiction and powers, to be exercised at the Arbitrator's discretion subject only to these Rules and in accordance with the law, with the object of ensuring the just, expeditious, economical and final determination of the dispute referred to arbitration.
- (b) Without limiting the jurisdiction of the Arbitrator at law, the Parties agree that the Arbitrator shall have jurisdiction to:
 - (i) determine any question of law arising in the arbitration;
 - (ii) determine any question as to the Arbitrator's jurisdiction;
 - (iii) determine any question of good faith, dishonesty or fraud arising in the dispute;
 - (iv) order any Party to furnish further details of that Party's case in fact or in law;
 - (v) proceed in the arbitration notwithstanding the failure or refusal of any Party to comply with these Rules or with the Arbitrator's orders or direction, or to attend any meeting or hearing, but only after giving that Party written notice that the Arbitrator intends to do so;
 - (vi) receive and take into account such written or oral evidence tendered by the Parties as the Arbitrator determines is relevant, whether or not strictly admissible in law;
 - (vii) make one or more interim awards;

- (viii) hold meetings and hearings and make a decision (including a final decision) in Ontario or elsewhere with the concurrence of the Parties thereto;
 - (ix) order the Parties to produce to the Arbitrator and to each other for inspection and to supply copies of, any documents or classes of documents in their possession or power which the Arbitrator determines to be relevant;
 - (x) order the preservation, storage, sale or other disposal of any property or thing under the control of either of the Parties;
 - (xi) make interim order to secure all or part of any amount in dispute in the arbitration; and
 - (xii) exercise the powers set out in section 11.02 and 11.03 of the Funding Agreement.
- (c) Without otherwise limiting the jurisdiction of the Arbitrator at law, the Arbitrator shall not make any order requiring the reimbursement of any part of the Amount to Her Majesty.