

AMENDMENT TO THE FUNDING AGREEMENT

Aboriginal Healing Foundation

-and-

HER MAJESTY THE QUEEN IN  
RIGHT OF CANADA, AS REPRESENTED  
BY THE MINISTER OF INDIAN RESIDENTIAL  
SCHOOLS RESOLUTION CANADA

MARCH 17<sup>TH</sup>, 2005

AGREEMENT TO AMEND THE FUNDING AGREEMENT MADE the  
31st day of March, 1998.

THIS AGREEMENT is made as of the 31st day of March 2005,

BETWEEN:

ABORIGINAL HEALING FOUNDATION, a Corporation established under Part II of 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  
responsible for the Indian Residential Schools Resolution of Canada ("Her Majesty")

OF THE SECOND PART

WHEREAS the Government of Canada has announced a 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 creation of a healing strategy  
to address the healing needs of Aboriginal People affected by the Legacy of Physical and  
Sexual Abuse in Residential Schools, including the intergenerational impacts;

WHEREAS, in order to implement the creation of the healing strategy, the Government  
of Canada entered into an Agreement with the Foundation on the 31st day of March,  
1998 ("the Agreement");

AND WHEREAS the Foundation and Her Majesty desire to amend the Agreement and  
set forth in this agreement their agreement relating to those amendments ("this  
Agreement");

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 1 DEFINITIONS

The Parties hereby acknowledge and agree that the definition of the terms "Amount" and "Minister" in the Agreement are hereby revoked and substituted with the following terms ("revised terms"):

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

"Minister" means the Minister responsible for Indian Residential Schools Resolution of Canada.

## ARTICLE III

The Parties hereby acknowledge and agree that the following Section 3.02 is added to the Agreement:

3.02 Additional Grant Her Majesty will make a payment to the Foundation of \$40,000,000, payable on March 31<sup>st</sup>, 2005, as soon as reasonably possible after the appropriation provision provided for under the Act implementing the 2005 Budget comes into force. 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 the Funding Agreement.

## ARTICLE IV INVESTMENT AND MANAGEMENT OF THE AMOUNT

The Parties hereby acknowledge and agree that Section 4.01 in the Agreement is hereby revoked and substituted with the following Section 4.01 ("revised Section 4.01"):

4.01 Investment of the Amount The Foundation 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. Having regard to all factors that may affect the funding of the Foundation and the ability of the Foundation to meet its financial obligations and anticipated obligations, the Board of Directors:

- (a) shall establish a statement of investment policy. This shall include:
  - (i) categories of investments;
  - (ii) permitted transactions;
  - (iii) diversification of the investment portfolio;
  - (iv) asset mix and rate of return expectations;
  - (v) liquidity of investments;
  - (vi) policies for the management of financial risks;
  - (vii) performance measurement and monitoring procedures; and
  - (viii) levels of authority of officials who can commit the Foundation to different types of transactions.
- (b) shall retain independent professional investment advice or portfolio management to

provide investment advice to the Foundation with respect to the investment of the Amount;

- (c) shall ensure that proper external custodial arrangements are established for the Amount;
- (d) shall invest, or cause to be invested, the Amount in Eligible Securities; and
- (e) shall make investment decisions without regard to the funding of individual Eligible Projects, except as provided in Section 4.02 (b).
- (f) 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 extent 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.

The Parties hereby acknowledge and agree that Section 4.02(e) in the Agreement is hereby revoked and substituted with the following Section 4.02(e) ("revised Section 4.02(e)":

- (e) review, no less frequently than annually, the statement of investment policy established under Section 4.01.

#### ARTICLE V ELIGIBLE RECIPIENTS

The Parties hereby acknowledge and agree that Section 5.02 in the Agreement is hereby revoked and substituted with the following Section 5.02 ("revised Section 5.02"):

**5.02 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.

**5.04 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

#### ARTICLE VIII COMMITMENTS AND DISBURSEMENTS

The Parties hereby acknowledge and agree that Section 8.01 in the Agreement is hereby revoked and substituted with the following Section 8.01 ("revised Section 8.01"):

**8.01 Commitments** The Foundation shall make best efforts to commit the Amount by March 31, 2007.

The Parties hereby acknowledge and agree that Section 8.02 in the Agreement is hereby revoked and substituted with the following Section 8.02 ("revised Section 8.02"):

8.02 Disbursement The Foundation shall disburse the Amount prior to March 31, 2009.

#### ARTICLE X FINANCIAL MATTERS AND AUDIT

The Parties hereby acknowledge and agree that Section 10.06 in the Agreement is hereby revoked and substituted with the following Section 10.06 ("revised Section 10.06"):

10.06 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.

The Parties hereby acknowledge and agree that Section 10.07 in the Agreement is hereby revoked and substituted with the following Section 10.07 ("revised Section 10.07"):

10.07 Winding Up 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 uncommitted 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
- (b) one or more charitable organizations; with preference given to an aboriginally-controlled organization.

Article XI does not apply to any dispute arising out of winding-up and/or the manner in which the Uncommitted Amount shall be distributed.

Before dissolution, the Foundation shall liquidate all assets and meet all debts and obligations and prepare and deliver a final report of the Foundation, in accordance with Section 10.05.

The Parties hereby acknowledge and agree that the following subsection (c) is added to Section 10.09 the Agreement:

- (c) establish policies for conflict of interest and code of conduct of directors, committee members, officers and advisors of the Foundation.

The Parties hereby acknowledge and agree that the following Section 10.10 is added to the Agreement:

10.10 Corporate Plan The Foundation will provide corporate plans annually to the Minister 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.

The Parties hereby acknowledge and agree that the following Section 10.11 is added to the Agreement:

10.11 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.

The Parties hereby acknowledge and agree that the following Section 10.12 is added to the Agreement:

10.12 Minister's Right to Audit The Minister may, after consultation with the Foundation, choose to conduct his own performance (value-for-money) audit or compliance audit 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 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.

The Parties hereby acknowledge and agree that the following Section 10.13 is added to the Agreement:

10.13 Program Evaluation The Foundation agrees to have carried out, 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.

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

The Parties hereby acknowledge and agree that the following Section 10.14 is added to the Agreement:

10.14 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 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 Parties hereby acknowledge and agree that the following Section 10.15 is added to the Agreement:

10.15 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 10.07;
- (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.

The Parties hereby acknowledge and agree that the following Section 10.16 is added to the Agreement:

10.16. Rectification Period

- (a) The events of default in Subsections 10.15 (c), (d) and (e) (with respect to the

Foundation ceasing its activities or substantially changing the nature of its business) and Subsections 10.15 (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 10.15, 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 10.15 has occurred, or in the reasonable opinion of the Minister, is likely to occur, and the Foundation has not rectified as in Section 10.16 (a), the Minister may require the Foundation to repay the Uncommitted 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 XIV MISCELLANEOUS

The Parties hereby acknowledge and agree that the following Section 14.19 is added to the Agreement:

14.19 Lobbyists Any person lobbying on behalf of the Foundation must be registered pursuant to the *Lobbyist Registration Act*. Any such person will not be paid on a contingency fee basis.

#### SCHEDULE 4.02 INVESTMENT GUIDELINES

The Parties hereby acknowledge and agree that section 2 of Schedule 4.02 in the Agreement is hereby revoked and substituted with the following Section 2 of Schedule 4.02 ("revised Section 2 of Schedule 4.02"):

- 2. The deemed rating (the "Rating") of any Eligible Security will be established, at the time of acquisition of the Eligible Security, as:
  - (a) "AAA" If the Eligible Security meets the following rating criteria from at least two credit rating agencies, one of which must be Moody's or S&P.

(A) Short-term Securities	S&P	A1+
	Moody's	P1 (Aaa)
	DBRS	R1 (High)
	Fitch	F1+
(B) Long-term Securities	S&P	AAA
	Moody's	Aaa
	DBRS	AAA
	Fitch	AAA



- (b) "AA" If the Eligible Security meets the following rating criteria from at least two credit rating agencies, one of which must be Moody's or S&P.

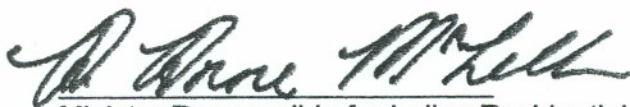
(A) Short-term Securities	S&P	A1
	Moody's	P1 (Aa)
	DBRS	R1 (Middle)
	Fitch	F1
(B) Long-term Securities	S&P	AA
	Moody's	Aa
	DBRS	AA
	Fitch	AA

Where "S&P" is the Standard and Poor's and "DBRS" is the Dominion Bond Rating Service. A designated rating for long-term securities shall include all sub-classifications. For instance, an "AA" rating by S&P shall include "AA-", "AA" and "AA+".

Short-term securities are obligations with an original term to maturity of one year or less. Long-term securities are obligations with an original term to maturity of greater than one year.

IN WITNESS WHEREOF the Parties have caused, their duly authorized representatives to execute this Agreement to Amend the Funding Agreement made the 31st day of March, 1998, as of the date first above written.

FOR HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY  
THE MINISTER RESPONSIBLE FOR INDIAN RESIDENTIAL SCHOOLS  
RESOLUTION OF CANADA



Minister Responsible for Indian Residential Schools Resolution of Canada

FOR ABORIGINAL HEALING FOUNDATION



Chairman

WITNESS: 