

## COMPREHENSIVE FUNDING AGREEMENT

### BETWEEN:

HER MAJESTY THE QUEEN, in Right of Canada, as represented by the Minister of Indigenous Services [OPTIONAL – if multi-departmental] and the Minister of [OTHER FUNDING DEPARTMENT] (“Canada”)

### AND:

Select from 1 of the following 3 options

1. *If Council is a First Nation, use the following:*

[/:CouncilName], a First Nation that is a “band” as defined in the *Indian Act*, as represented by its Chief and Councillors (the “Council”).

2. *If Council is a Tribal Council, use the following:*

[/:CouncilName], an incorporated Tribal Council represented by its Directors (the “Council”).

3. *If Recipient is incorporated and non-profit but not a Tribal Council, use the following:*

*The jurisdiction of incorporation may be federal (i.e. the Canada Not-for-profit Corporations Act) or provincial/territorial. Records of incorporation should be kept on file and updated.*

[/:Recipient Name], a non-profit corporation, incorporated under the laws of [/:Canada or Province or Territory] (the “Recipient”).

4. *[If Recipient is an Inuit organization or corporation, use the following and describe the entity]*

[/:RecipientName] [describe entity type] (the “Recipient”).

## PREAMBLE

**WHEREAS** the parties wish to enter into an agreement for the funding of community-based programs and services.

**WHEREAS** this Agreement has been developed in the context of an ongoing initiative to establish a new fiscal relationship between First Nations and the Crown, an initiative whereby the Crown has committed to co-developing solutions:

- to support capacity-building and self-determination by First Nations and empower First Nation Councils to plan and invest based on their own priorities; and
- to underpin progress toward the elimination of socio-economic and health gaps between First Nation members and other Canadians.

[OPTIONAL]

**WHEREAS** Her Majesty the Queen, in Right of Canada, entered into Treaty No.[:TreatyNumber] with certain First Nations within the Province of [:TreatyProvince].

[OPTIONAL]

**WHEREAS** the parties acknowledge the historical and contemporary importance of the treaties to the relationship between Her Majesty the Queen, in Right of Canada, and the First Nation(s) of [:CouncilName].

[OPTIONAL]

**WHEREAS** Canada and the Council intend that nothing in this Agreement will have the effect of, or be interpreted as, limiting or expanding any fiduciary relationship between the Crown and First Nations people.

**WHEREAS** the parties anticipate that the terms and conditions of this Agreement will continue to evolve over time and that such change will be informed by policy and framework processes between Canada and First Nations arising from their new fiscal relationship.

**NOW THEREFORE**, the parties agree as follows:

## **1 Purpose**

- 1.1 The purpose of this Agreement is to provide the Funding to the Council to support its delivery of the Programs and Services in the community or communities that it serves.

## **2 Programs and Services**

- 2.1 The Council shall use the Funding to deliver the Programs and Services and undertake the other activities set out for it in this Agreement in accordance with the terms of this Agreement and applicable laws.

## **3 Duration**

- 3.1 This Agreement will be in effect from \_\_\_\_\_ (the “effective date”) and will expire on \_\_\_\_\_, unless terminated earlier or shortened or extended by amendment.

## **4 Relationship**

- 4.1 Canada and the Council will at all times undertake their responsibilities under this Agreement in a spirit of partnership and in good faith.
- 4.2 The Council shall at all times act on its own behalf and on behalf of its Members under this Agreement and in the delivery of the Programs and Services.
- 4.3 Nothing in this Agreement creates or is to be construed as creating the relationship of principal and agent, employer and employee, legal partnership or a joint venture between the parties. The Council shall not represent itself (including in any agreement with a third party), as an agent, employee, legal partner of the Crown, or as acting on behalf of the Crown.

[OPTIONAL CLAUSE]

## 5 Non-Derogation

- 5.1 Nothing in this Agreement will be construed to diminish, abrogate, derogate from, or prejudice any treaty or aboriginal rights of the Council and nothing in this Agreement will:
- (a) prejudice whatsoever any applications, negotiations or settlements with respect to land claims or land entitlement between the Crown and the Council;
  - (b) prejudice whatsoever the implementation of the inherent right to self-government nor prejudice in any way negotiations with respect to self-government involving the Council;
  - (c) be construed as modifying any existing treaty; or
  - (d) be construed to create a treaty within the meaning of the *Constitution Act, 1982*.

## 6 Funding

- 6.1 Subject to the terms and conditions of this Agreement, Canada shall transfer to the Council the amounts set out in Schedule 4 in the initial and subsequent Fiscal Years. These amounts will be paid according to the schedule of periodic advance payments set out in Schedule 4.

## 7 Formula-based or Factor-based Funding Adjustments

- 7.1 Where the amount of any Funding to be provided under Schedule 4 will change in accordance with a predetermined adjustment factor or formula set out in a Schedule, Canada shall, by NOBA, amend Schedule 4 accordingly.

## 8 Notice of Budget Adjustment (NOBA)

- 8.1 Canada may, by NOBA, amend Schedule 4 in order to adjust Funding and/or periodic advance payments for one or more Fiscal Years for any Programs and Services.
- 8.2 A NOBA will be signed by Canada, set out the details of the Funding changes and contain an amended Schedule 4 for this Agreement.
- 8.3 A NOBA may not:
- (a) reduce overall Funding except according to an adjustment factor or formula set out in a Schedule; or
  - (b) add new programs or services or alter the terms and conditions of any Programs and Services.

## 9 Multiple Departments

- 9.1 Except where otherwise indicated or prohibited by law, where more than one Federal Department contributes any of the Funding under this Agreement on behalf of Canada:
- (a) Indigenous Services Canada may transfer the Funding on behalf of other Federal Departments; and
  - (b) Canada's rights and remedies under this Agreement may be exercised by any Federal Department, and Canada's obligations under this Agreement may be carried out by any Federal Department, as determined by Canada.

## 10 Funding Subject to Appropriations and Departmental Funding Authorities

- 10.1 Notwithstanding any other provision of this Agreement, the amount and payment of any Funding is subject to the appropriation of funds by the Parliament of Canada.
- 10.2 In the event that any funding authority of any Federal Department for any Program or Service for which the Funding is provided is modified or cancelled by the Treasury Board of Canada or by that Federal Department, or if funding levels of any Federal Department are reduced, increased or cancelled by Parliament for any Fiscal Year in which payment is to be made, Canada may adjust or cancel the Funding accordingly.
- 10.3 Where Set Funding, Fixed Funding or Flexible Funding is to be reduced or cancelled under subsection 10.2, Canada shall provide notice to the Council at least 60 days prior. This notice will specify the Programs and Services, the Fiscal Year(s) and amounts in respect of which any such Funding will be reduced or cancelled.
- 10.4 Where any Block Funding, Grant Funding is to be reduced or cancelled under subsection 10.2 Canada shall provide at least 1 year's notice to the Council.

## **11 Exceptional Circumstances**

- 11.1 If exceptional circumstances occur during the term of this Agreement which were not reasonably foreseeable at the date this Agreement came into effect and which have a significant impact on the Council's ability to fulfill the terms and conditions of this Agreement, the Council may request changes to the level of Funding for the affected Program or Service. If Canada agrees to change the level of Funding, this Agreement will be amended accordingly.

## **12 Deficits**

- 12.1 The Council shall be responsible for any expenditure it makes in excess of the Funding.

*[OPTIONAL: If the Council is a First Nation and if this Agreement permits the making of loans by the Council from any of the Funding, include one of the following two clauses]*

## **13 Loans**

- 13.1 Where the Delivery Requirements for a Program or Service permit the making of loans, the Council may make loans from Funding for that Program or Service provided that:
- (a) the loans are directly related to the specific Program or Service and will not be made for personal use; and
  - (b) the Council's loan policy is in writing and available to Members and Canada upon request, and all loans are evidenced by an agreement in writing between the Council and each borrower.

*The following section is to be included when the Council is a Tribal Council AND may make loans with funds provided under this Agreement.*

- 13.2 Where the Delivery Requirements for a Program or Service permit the making of loans, the Council may make loans from Funding for that Program or Service provided that:

- (a) the loans are directly related to the specific Program or Service and will not be made for personal use; and

- (b) the Council's loan policy is in writing and available to Member First Nations, Members and Canada upon request, and all loans are evidenced by an agreement in writing between the Council and each borrower.

## 14 Tribal Council Membership

- 14.1 Where the Council is a Tribal Council and receives notice of a Member First Nation's withdrawal or notice of a First Nation's addition to the Council, the Council shall immediately provide Canada with notice and shall include with such notice a copy of the Band Council Resolution confirming the Member First Nation's withdrawal from or addition to the Council.
- 14.2 For the purposes of the status of the Council under this Agreement, a change in Council membership under subsection 14.1 will not take effect until the April 1st occurring after 1 calendar year has elapsed from the date the Council has notified Canada of the change in membership, or at such other time as the parties may agree in writing, and during that notice period the Council and Canada agree to meet to discuss the impacts of the change in membership on the continuing obligations of the parties.
- 14.3 Nothing in this section obliges Canada to enter into any funding agreement with a former Member First Nation.

## 15 Sub-Contracting and Delegation

- 15.1 Subject to the other provisions of this section, the Council and Canada may subcontract or delegate any of their functions or activities under this Agreement to any third party, including any subcontractor, delegate or agent. The parties acknowledge that they will remain responsible to the other for the performance of all such subcontracted or delegated functions or activities.
- 15.2 Where statutory authority to act on behalf of a Federal Department is delegated to the Council, as in the case of delegated authority under sections 53 or 60 of the *Indian Act* to administer lands, the Council shall not delegate any of that authority.
- 15.3 If the Council wishes to subcontract or delegate all or a substantial part of its functions or activities under this Agreement to a third party, including an Agency, it will first discuss the matter with Canada in order that the parties can discuss and plan how the Council will maintain effective control over those functions and activities and to ensure that the third party complies with all requirements of this Agreement on behalf of the Council.

## 16 Environmental Obligations

- 16.1 The Council and Canada shall cooperate to ensure that, with respect to any project to be undertaken by the Council with any of the Funding, all applicable requirements of the *Canadian Environmental Assessment Act, 2012* and any other applicable environmental laws will be followed.

## 17 Indemnification

- 17.1 The Council shall indemnify and save harmless the Crown, her Ministers, officers, employees, agents, successors and assigns from and against all claims, liabilities, and demands arising directly or indirectly from any acts or omissions of the Council or of any of employees or agents in respect of or resulting from: (i) the Council's performance or non-performance of its obligations under this Agreement; or (ii) the Council entering into any loan, capital lease or other long term obligation.
- 17.2 Canada shall save harmless and indemnify the Council from and against all claims, liabilities and demands arising directly or indirectly from any breach of this Agreement by Canada.

## 18 Performance Management

- 18.1 The Council shall, in conjunction with its Members, monitor its own performance under this Agreement and adjust its performance if necessary to: (i) ensure that it complies with all of the terms of this Agreement; and (ii) pursues the goals of this Agreement.

## 19 Default [Note: the parameters of the new Default Prevention Policy are subject to change based on co-development discussions and direction from Treasury Board]

- 19.1 In the event that the Council identifies what it believes to be a Default *[Note: this term is being defined with input from partners and is expected to set out elements of what constitutes risks to the health and safety of members and the integrity of Federal funding]* or if any of its Members or Canada believe there has been a Default and so notify the Council, the Council shall promptly undertake a self-assessment of the matter through a process that is open to its Members and it shall promptly take steps necessary and within its capacity to rectify the Default. The Council shall notify Canada of the results of its self-assessment process and the steps it is taking to address the Default.
- 19.2 The Council and Canada shall meet to discuss the results of the self-assessment on a prompt basis to determine whether the Council should take one or more of the following steps, to be agreed by both parties, if the Default remains outstanding:
- (a) seek capacity development supports from a qualified third party organization to help the Council address performance shortcomings and to prevent or manage similar defaults in the future. In this case the Council will share any recommendations of the third party organization with Canada; or
  - (b) any other process that both parties agree is appropriate.

## 20 Remedial Measures for Default

- 20.1 If in Canada's opinion the Council is unable or unwilling to address a Default in a prompt manner under subsection 19.1; or if the parties cannot agree on an appropriate manner of redress for the Default under subsection 19.2, Canada may:
- (a) withhold any Funding, commensurate with the nature and extent of the Default; and/or
  - (b) appoint a Default Trustee to administer the Funding on behalf of the Council.
- 20.2 Any Funding withheld by Canada under this section shall be released by Canada to the Council within 45 days of resolution of the Default, subject to the repayment and set-off provisions of this Agreement.
- 20.3 Prior to appointing a Default Trustee, Canada shall offer to meet with the Council to discuss the choice of a Default Trustee and shall consider any concerns expressed by the Council with respect to such choice. Following appointment of a Default Trustee, Canada shall offer to meet with the Council and the Default Trustee (jointly or separately as may be requested by the Council) at 3 month intervals or at such other times acceptable to both parties in order to monitor progress and to consider capacity support processes that may assist the Council to re-take control of the Funding.
- 20.4 The costs of: (i) any Default Trustee; and (ii) any capacity development process that is acceptable to Canada will be paid by Canada and not deducted from the Funding.

## 21 Funding Repayment

- 21.1 The Council shall, at such times as this Agreement specifies and otherwise upon written demand, repay to Canada any amount of the Funding which:
- (a) has not been accounted for by the Council in accordance with this Agreement;
  - (b) is spent by the Council for purposes other than those authorized under this Agreement;
  - (c) Canada determines to be a recoverable stacking amount under section 10 of Schedule 2; or
  - (d) is an overpayment or any other amount that is repayable by the Council under this Agreement.

Such amounts are debts due to the Crown.

- 21.2 Interest will be charged on any debts in accordance with the *Interest and Administrative Charges Regulations* and also constitutes a debt due to the Crown.

## **22 Set-Off**

- 22.1 Without limiting the scope of set-off or compensation rights available to the Crown at common law and under statute, Canada may set-off or seek compensation against:
- (a) any amount that is a debt due to the Crown pursuant to section 21;
  - (b) any portion of the Funding that is payable to the Council pursuant to this Agreement and any amount that the Council owes to the Crown under legislation or any other agreement of any kind; or
  - (c) any amounts that are owed to Canada by the Council and any amount that is payable by Her Majesty under legislation or any other agreements of any kind to the Council.

## **23 Termination**

- 23.1 Either party may terminate this Agreement by providing notice to the other party stipulating the reason for termination, provided that before any such termination can become effective:
- (a) the parties exhaust the dispute resolution process provided for in section 24 if relevant to the termination; and
  - (b) the parties agree on a time frame to terminate the Agreement in a manner that will not jeopardize the administration and delivery of the Programs and Services.
- 23.2 In the event of the termination of this Agreement:
- (a) the Council shall provide Canada with Consolidated Audited Financial Statements for all Contribution Funding together with all schedules and reports required under the Reporting Guide, or such parts of that financial reporting as specified by Canada, within 120 days of the date of termination;
  - (b) without limiting any other obligation under this Agreement to repay amounts to Canada, the Council shall repay to Canada any unexpended Funding transferred to the Council up to the termination date of this Agreement, and within 120 days thereof, unless the Council and Canada agree otherwise in writing;

- (c) subject to Canada's right to set-off any amount owing to Canada under this Agreement, Canada shall pay to the Council any Funding owed to the Council up to the termination date of this Agreement, unless the Council and Canada agree otherwise in writing; and
- (d) the Council shall fulfill any other obligation relating to termination set out in any Schedule.

## 24 Dispute Resolution

- 24.1 Canada and the Council shall attempt to negotiate a resolution to any disputes arising between them regarding the interpretation of a provision of this Agreement or the obligation of a party under this Agreement in a timely manner.
- 24.2 Canada and the Council may agree to non-binding mediation to resolve any dispute where each party will bear its own costs and bear equally the costs of any independent third party appointed to assist the parties to try to resolve the dispute.

## 25 This Agreement

- 25.1 This Agreement constitutes the entire agreement between the parties and supersedes all discussions, negotiations and commitments in relation to the subject matter of this Agreement which may have preceded the signing of this Agreement. For greater certainty, this clause does not supersede or affect any obligations of the parties in relation to other subject matter, including obligations arising under prior or other funding agreements between the parties.
- 25.2 The following Schedules are attached to and form part of this Agreement:
  - SCHEDULE 1 - DEFINITIONS
  - SCHEDULE 2 - CONTRIBUTION FUNDING
  - SCHEDULE 3 - 10 YEAR GRANT FUNDING
  - SCHEDULE 4 - FUNDING AND SCHEDULE OF PAYMENTS
  - SCHEDULE 5 - DELIVERY REQUIREMENTS AND ADJUSTMENT FACTORS
  - SCHEDULE 6 - REPORTING AND DUE DATES
  - SCHEDULE [OFD abbreviation]-1" [Other Federal Departments Name] terms and conditions, where applicable.
- 25.3 Descriptive headings are inserted solely for convenience of reference, do not form part of this Agreement, and are not to be used as an aid in the interpretation of this Agreement.
- 25.4 All amendments to this Agreement are to be made in writing and signed by both parties except where made by NOBA, by NAAAF or by a reporting extension notice issued by Canada under subsection 11.3 of Schedule 2.
- 25.5 All rights and obligations of the parties which expressly, or by their nature, survive termination or expiry of this Agreement will survive unless and until they are fulfilled, or by their nature expire. Without limiting the generality of the foregoing, the sections found under the following headings of this Agreement contain rights and obligations of the parties that will remain in effect after the termination or expiry of this Agreement:  
*[Placeholder: insert affected clauses and section numbers].*
- 25.6 This Agreement will be interpreted in accordance with the laws of Canada and the applicable laws of the Province or Territory in which the Programs and Services are delivered.



- 25.7 All references throughout this Agreement to legislation and particular government publications are deemed to refer to the legislation and government publication in force or issued at the effective date of this Agreement, and include any subsequent amendments or replacements thereof, as the case may be.

### 30 Waiver

- 30.1 No provision of this Agreement and no event of default by the Council or Canada of any provision of this Agreement will be deemed to have been waived unless the waiver is in writing and signed by the party waiving.
- 30.2 The waiver by a party of default by the other party or of any provision of this Agreement will not be deemed to be a waiver of any subsequent default by the other party or of the same or any other provision of this Agreement.

### 31 Assignment

- 31.1 The parties may subcontract or delegate any responsibilities under this Agreement in accordance with section 15, but shall not assign any of their responsibilities under this Agreement without consent of the other party.
- 31.2 This Agreement is binding upon the parties and their respective administrators and successors.

### 32 Lobbyists

- 32.1 The Council represents and warrants that it and any person lobbying on its behalf to obtain Funding has been, is, and will continue to remain in compliance with the *Lobbying Act*.
- 32.2 The Council represents and warrants that it has not and will not make any payment to any individual or entity that is in whole or in part contingent upon the solicitation of funds or the negotiating/signing of this Agreement or any amendment hereto.

### 33 Warranty of Authority

- 33.1 The parties confirm that they each have the authority and the capacity necessary to enter into this Agreement and that their representatives have the authority to enter into this Agreement on their behalf.

[COMMENT]If the Council is incorporated, also include the following text in 19.6.2.[/COMMENT]

- 33.2 The Council represents and warrants that it is a corporation duly incorporated and in good standing under the laws of Canada or of a Province or a Territory of Canada, as the case may be, and will remain in good standing at all times during the term of this Agreement.

### 34 Communications Related to Funding

- 34.1 Each party reserves the right to communicate to the public about the terms of this Agreement by way of, but not limited to, announcements, interviews, speeches, press releases, publications, signage, websites, advertising and promotional materials. The timing of these communications will be at the discretion of the party giving the communication. However, the party giving the communication will notify the other party in advance of any significant public events and news releases to provide to the other party an opportunity to participate in a joint announcement or in the development of joint communications materials.

### 35 Conflict of Interest Provisions Regarding Federal Officials

- 35.1 No member of the House of Commons or the Senate of Canada will be admitted to any share or part of this Agreement or to any benefit arising from it.

- 35.2 No individual to whom the *Conflict of Interest Act*, the *Conflict of Interest and Post-employment Code for Public Office Holders*, the *Values and Ethics Code for the Public Sector*, the *Values and Ethics Code for the Public Service*, the *Policy on Conflict of Interest and Post-Employment*, or the values and ethics code of any Federal Department apply will derive any direct benefit from the Agreement unless that individual is in compliance with the Act and the applicable Codes.

## 36 Public Disclosure

- 36.1 Without limiting any right, obligation or capacity of Canada to disclose information, Canada may publicly disclose the name and address of the Council, the amount of Funding provided, the nature of the Programs and Services for which Funding is provided, and any information relating to the Funding that the Reporting Guide states that Canada may publicly disclose.

## 37 Intellectual Property

- 37.1 All intellectual property that arises out of or under this Agreement will be owned by the Council or a third party as set out in an agreement between the Council and such third party.
- 37.2 The Council hereby grants to Canada a non-exclusive, royalty-free, fully-paid, perpetual, worldwide, and irrevocable licence to exercise all intellectual property rights that arise under this Agreement for any Crown purpose.
- 37.3 The Council shall secure all necessary rights to give effect to the licence granted under this Agreement.

## 38 Provision of Information

- 38.1 Upon the Council's request to Indigenous Services Canada or to any other Federal Department, that Federal Department shall provide to the Council:
- (a) any fiscal management policies of that Federal Department relevant to the Funding upon such policy becoming available to the public; and
  - (b) any publicly available information or guidelines produced by that Federal Department relevant to the Programs and Services for which the Funding is provided.

[OPTIONAL-to be added where relevant by the Region and the Council. However, it is mandatory to use this clause for any Council that is delivering Programs and Services where there may be an impact on members of either official language group. If this clause is to be added, add numbering to it below and re-number the Notices and Execution sections accordingly]

## [TBD] Official Languages

The Council shall, in accordance with any instructions issued by Canada, provide any or all of the following in relation to the Programs and Services under this Agreement in both of Canada's official languages (English and French): (i) information; (ii) signage; (iii) oral and written communications; (iv) services; and (v) opportunities for official language minorities to participate in activities related to the Health Programs and Services.

## 39 Notices

- 39.1 Where any notice, request or other communication is required to be given or made by either party to the other party under this Agreement, it must be in writing addressed to the party for whom it is intended at the applicable address noted in this section, and may be given or made by either party by their duly authorized representatives.
- 39.2 Any notice under this section may be delivered by using any one of the following methods, and deemed to have been given and effective as at the date specified for each method:
- (a) by personal delivery, on the date upon which the notice is delivered;
  - (b) by registered mail or courier, on the date upon which receipt of the notice is acknowledged by the other party;
  - (c) by facsimile or electronic mail, on the date upon which the notice is transmitted and receipt of such transmission by the other party can be confirmed.
- 39.3 Notices will be sent to:
- (a) Canada at: [Insert address]
  - (b) the Council at: [insert address]
- 39.4 Either party may change the address information referred to above by providing notice to the other party of such change.

#### **40 Execution**

- 40.1 This Agreement is signed on behalf of the Council and on behalf of Canada by their duly authorized representatives.
- 40.2 This Agreement may be signed in counterparts, each of which constitutes an original, and such counterparts taken together will constitute one agreement. The signatures of the parties need not appear on the same counterpart, and executed counterparts may be delivered by facsimile or electronically scanned form.

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA**  
as represented by the Minister of Indigenous Services

**[Insert Name of Council / Recipient]**

\_\_\_\_\_  
(Insert Name and Title)

\_\_\_\_\_  
(Insert Name and Title)

If Tribal Council or corporation, insert after each signature: I have the authority to bind the corporation

Date: \_\_\_\_\_

\_\_\_\_\_  
(Insert Name and Title)

(Ensure that relevant Federal Departments are included in the signature block)

\_\_\_\_\_  
(Insert Name and Title)

as represented by the Minister of

\_\_\_\_\_  
(Insert Name and Title)

\_\_\_\_\_  
(Insert Name and Title)

\_\_\_\_\_  
(Insert Name and Title)

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## SCHEDULE 1

### DEFINITIONS

In this Agreement, unless otherwise provided:

[COMMENT]*Note: The following “Agency” definition is to be included where the Council is NOT a Tribal Council.*[/COMMENT]

“**Agency**” means an authority, board, committee or other entity authorized to act on behalf of the Council.

[COMMENT]*Note: The following “Agency” definition is to be included where the Council is a Tribal Council.*[/COMMENT]

“**Agency**” means an authority, board, committee, Member First Nation or other entity authorized to act on behalf of the Council.

“**Agreement**” means this Comprehensive Funding Agreement and includes all Schedules and any amendments to this Agreement.

“**Block Funding**” means that portion of the Funding, if any, set out in Schedule 4 under the heading “Block Funding”.

“**Consolidated Audited Financial Statements**” means the Council's annual Consolidated Financial Statements that are prepared, audited and provided to Canada in respect of Contribution Funding in accordance with Schedule 6.

“**Contribution Funding**” means Set Funding, Fixed Funding, Flexible Funding and Block Funding.

“**Cost-sharing**” means a requirement for the Council, in respect of any Program and Service described in Schedule 2 as being subject to cost sharing, to provide a part of the cost of the Program or Service as specified in that Schedule.

“**Crown**” means Her Majesty the Queen in right of Canada.

“**Default**” *this term is to be defined with input from partners and is expected to set out elements of what constitutes serious financial, program, governance or health and safety problems*

“**Default Trustee**” means a trustee appointed under section 20 to administer any of the Funding on behalf of the Council.

“**Delivery Requirements**” means the requirements set out in Schedule 5.

“**days**” means calendar days, unless otherwise indicated.

“**Federal Department**” means a federal department with respect to which a Minister representing the Crown in this Agreement presides and through which the Crown provides any of the Funding.

“**First Nation**” means a “band” within the meaning of the *Indian Act*.

**"Fiscal Plan"** means a multi-year plan approved by the Council at a duly convened meeting which consists of the budget required under Schedule 5 for the initial Fiscal Year and projected expenditures for each subsequent Fiscal Year, and any amendments to the plan that are approved by the Council.

**"Fiscal Year"** means any period during the term of this Agreement commencing on April 1st of any year and terminating on March 31st of the year immediately following, and includes part thereof in the event this Agreement commences after April 1st or expires or terminates before March 31st.

**"Fixed Funding"** means that portion of the Funding, if any, set out in Schedule 4 under the heading "Fixed Funding".

**"Flexible Funding"** means that portion of the Funding, if any, set out in Schedule 4 under the heading "Flexible Funding".

**"Funding"** means the amounts payable or paid by Canada to the Council under this Agreement, consisting of all Set Funding, Fixed Funding, Flexible Funding, Block Funding, Grant Funding.

**"Grant Funding"** means that portion of the Funding, if any, set out in Schedule 4 under the heading "Grant Funding" and that is subject to DISC's pre-established eligibility requirements. It does not include 10 Year Grant Funding.

**"ISC"** means the Department of Indigenous Services Canada.

**"Mandatory Programs"** means the programs described in the Delivery Requirements as Communicable Disease Control, Environmental Public Health, Treatment Services and in the table identified as Block Program, Service and Activity Standards, if applicable.

[COMMENT]Note: Only to be inserted when the Council is a First Nation. [/COMMENT]

**"Member"** means a person whose name appears on the band list of the Council maintained by the Department of Indian Affairs and Northern Development or the Council in accordance with the *Indian Act*.

[COMMENT]Note: Only to be inserted when the Council is a Tribal Council, Treatment Centre or other incorporated entity. [/COMMENT]

**"Member"** means a person whose name appears on the band list of a Member First Nation maintained by the Department of Indian Affairs and Northern Development or that Member First Nation in accordance with the *Indian Act*.

[COMMENT]Note: Only to be inserted when the Council is a Tribal Council. [/COMMENT]

**"Member First Nation"** means a First Nation which is a member of the Council.

[COMMENT]Note: Only to be inserted when the Recipient is an Inuit organization or corporation. [/COMMENT]

**"Member"** means a person who is a recognized member of (i) the Recipient or (ii) an Inuit or Innu organization that is a member of the Recipient.

**"Notice of Budget Adjustment" or "NOBA"** means a notice, issued by Canada, which amends this Agreement to adjust Funding and/or periodic advance payments in accordance with section 8.

**"Programs and Services"** means, collectively, the programs, services, initiatives or projects listed in Schedule 4 under the heading Program Activity/Functional Area Group/Functional Area and **"Programs or Services"** means any of the Programs and Services.

**"Reporting Guide"** means the guide issued by Canada as amended from time to time that sets out accounting and reporting requirements for this Agreement.

**"Schedule"** means any schedule to this Agreement.

**"Set Funding"** means that portion of the Funding, if any, set out in Schedule 4 under the heading "Set Funding".

## SCHEDULE 2

### SET, FIXED, FLEXIBLE, BLOCK AND GRANT FUNDING

#### 1 Application

- 1.1 This Schedule does not apply to 10 Year Grant Funding.
- 1.2 Any Set, Fixed, Flexible, Block and/or Grant Funding will be provided subject to and in accordance with: (i) the main body of this Agreement; (ii) this Schedule; and (iii) the applicable terms of all other Schedules except Schedule 3.

#### 2 Set Funding

- 2.1 The Council may only expend Set Funding:
  - (a) for the Programs and Services for which it is allocated in Schedule 4 under the heading Set Funding (or SET) or re-allocated in accordance with this section;
  - (b) in accordance with the terms and conditions of this Agreement for those Programs and Services, including those set out in the Delivery Requirements; and
  - (c) during the Fiscal Year in which the annual amount of the Set Funding is shown to be payable in Schedule 4.
- 2.2 The Council may, with the written agreement of Canada, reallocate any Set Funding among any Functional Areas within the same Functional Area Group according to Schedule 4 during the same Fiscal Year.
- 2.3 The Council shall immediately notify Canada in writing during a Fiscal Year of any expected underspending of Set Funding for that Fiscal Year.
- 2.4 If, at the end of a Fiscal Year, the Council has not expended all Set Funding for that Fiscal Year, the Council shall repay the unspent amount to Canada. If Cost-sharing applies to the Program or Service, the Council shall instead repay to Canada an amount, proportional to Canada's funding share, of the unspent amount from all sources.
- 2.5 Subject to the funding provisions of this Agreement, Canada shall reimburse to the Council any shortfall in Set Funding for any Program or Service that is described in the Delivery Requirements as being subject to full reimbursement.

#### 3 Fixed Funding

- 3.1 The Council may only expend Fixed Funding:
  - (a) for the Programs and Services for which it is allocated in Schedule 4 under the heading Fixed Funding (or FIXED) or re-allocated in accordance with this section; and
  - (b) in accordance with the terms and conditions of this Agreement for those Programs and Services, including those set out in the Delivery Requirements.

- 3.2 The Council may re-allocate any Fixed Funding among any Functional Area Groups within the same Program Inventory according to Schedule 4 during a Fiscal Year.
- 3.3 Without limiting the Council's obligation to repay unexpended Funding on termination under subsection 23.2(b) of the main body of this Agreement, the Council may retain and use unexpended Fixed Funding in respect of a Program or Service funded by Fixed Funding, if all of the following conditions have been met:
- (a) the Council has fulfilled all of the Delivery Requirements for that Program or Service in the Fiscal Year for which the Funding was provided;
  - (b) the Council expends the unexpended Fixed Funding in the 1 year period immediately following the Fiscal Year for which the Funding was provided:
    - (i) on a Program or Service that is similar to and has the same purpose as the Program or Service for which the Funding was provided; or
    - (ii) in accordance with a plan for expenditure of the unexpended Fixed Funding that is submitted by the Council to Canada within 120 days after the end of that Fiscal Year and that Canada accepts by way of notice to the Council; and
  - (c) the Council reports on its expenditure of the unexpended Fixed Funding in accordance with the Reporting Guide.
- 3.4 Subject to subsection 3.3, if, at the end of a Fiscal Year and following any reallocation permitted in this section, the Council has not expended all Fixed Funding for that Fiscal Year, the Council shall repay the unspent amount to Canada. If Cost-sharing applies to Program or Service, the Council shall instead repay to Canada an amount, proportional to Canada's funding share, of the unspent amount from all required sources.

#### 4 Flexible Funding

- 4.1 The Council may only expend Flexible Funding:
- (a) for the Programs and Services for which it is allocated in Schedule 4 under the heading Flexible Funding (or FLEX) or reallocated in accordance with this section; and
  - (b) in accordance with the terms and conditions of this Agreement for those Programs and Services including those set out in the Delivery Requirements.
- 4.2 The Council may reallocate any Flexible Funding among any Program Service Area within the same Program Activity according to the Departmental Program Authority Structure during a Fiscal Year, provided that Mandatory Programs are delivered in that Fiscal Year.
- 4.3 Without limiting the Council's obligation to repay unexpended Funding on termination under subsection 23.2(b) of the main body of this Agreement if, at the end of a Fiscal Year other than the final Fiscal Year, the Council has not expended all Flexible Funding for that Fiscal Year, the Council may retain the unspent amount for expenditure in a subsequent Fiscal Year if all of the following conditions are met:
- (a) the Council expends the unexpended Flexible Funding:



- (i) on a Program or Service that is similar to and has the same purpose as the Program or Service for which the Funding was provided; or
    - (ii) in accordance with a plan for expenditure of the unexpended Flexible Funding that is submitted by the Council to Canada within 120 days after the end of that Fiscal Year and that Canada accepts by way of notice to the Council; and
  - (b) the Council reports on its expenditure of the unexpended Flexible Funding in accordance with the Reporting Guide.
- 4.4 Subject to subsection 3.3, following any reallocation permitted in this section, the Council shall repay any unexpended Funding following the expiry or termination of this Agreement. If Cost-sharing applies to Program or Service, the Council shall instead repay to Canada an amount, proportional to Canada's funding share, of the unspent amount from all required sources.

## 5 Block Funding

- 5.1 The Council may only expend any Block Funding:
- (a) for the Programs and Services for which it is allocated in Schedule 4 under the heading Block Funding (or BLOCK) or reallocated in accordance with this section; and
  - (b) in accordance with the terms and conditions of this Agreement for those Programs and Services including those set out in the Delivery Requirements.
- 5.2 Subject to subsection 5.3, the Council may reallocate any Block Funding among any Program Service Area for each Fiscal Year provided that Mandatory Programs are delivered in that Fiscal Year and such that, for each Fiscal Year, expenditures will be against the total of all annual amounts allocated in that Fiscal Year for those Programs and Services.
- 5.3 Block Funding may not be reallocated under subsection 5.2 from any health Programs and Services to any non-health Programs and Services, or from any non-health Programs and Services to any health Programs and Services.
- 5.4 Without limiting the Council's obligation to repay unexpended Funding on termination under subsection 23.2(b) of the main body of this Agreement, the Council may retain any unexpended Block Funding in a subsequent Fiscal Year and after the expiry of this Agreement, provided that the Council:
- (a) has delivered all Mandatory Programs for the previous Fiscal Years;
  - (b) uses that Funding for purposes consistent with the Block Programs and Services or in accordance with a plan accepted by Canada by notice to the Council; and
  - (c) reports on the use of unexpended Block Funding in accordance with the Reporting Guide issued for that Fiscal Year.
- 5.5 If the Council wishes to use unexpended Block Funding in a subsequent Fiscal Year for purposes other than the Block Programs and Services, the Council shall submit a written plan for this purpose to Canada within 120 days after the end of the Fiscal Year for which there is unexpended Funding.

## 6 Grant Funding

- 6.1 Without limiting the Council's obligation to repay unexpended Funding on termination under subsection 23.2(b) of the main body of this Agreement, the Council may retain any unexpended Grant Funding in a subsequent Fiscal Year and after the expiry of this Agreement.
- 6.2 If the Council no longer meets the eligibility requirements for Grant Funding for any Program or Service, Canada may require the Council to repay to Canada any amount up to the full amount of Grant Funding provided for that Program or Service.

## 7 Limit on Reallocation of Contribution Funding

- 7.1 Notwithstanding sections 2 to 5, the Council may not re-allocate, to other Programs or Services, any Contribution Funding from Non-Insured Health Benefits programs, the Indian Residential Schools Resolution Health Support program, the Health Services Integration Fund, the Jordan's Principle-Child First Initiative or the Capital Investments Functional Area according to Schedule 4.

## 8 Council requests to Adjust Cash Flow

- 8.1 Where any periodic advance payment set out in Schedule 4 for a Program or Service differs considerably from the Council's anticipated expenditures for the corresponding period, the Council may notify Canada and propose adjustments to that Schedule accordingly.
- 8.2 Where Canada accepts the proposed adjustments, Canada shall issue an adjusted Schedule 4 under a NOBA in order to amend the Agreement for this purpose.
- 8.3 No total annual amount for any Program or Service set out in Schedule 4 may be changed under this section.

## 9 Eligible Expenses

- 9.1 The Council may only expend Contribution Funding and Grant Funding where:
- (a) the expense is directly related to the carrying out of the Council's responsibilities under this Agreement; and
  - (b) the Council follows generally accepted business practices in negotiating the price and other terms and conditions for the expenditure.

## 10 Repayment of Ineligible Expenditures

- 10.1 For each Program or Services identified as Set, Fixed and Flexible in Schedule 4, the Council shall repay to Canada any expenditure it makes against annual amounts allocated in that Schedule for that Program or Service that is not in accordance with the terms and conditions of this Schedule or the Delivery Requirements set out in Schedule 5 for that Program or Service, unless Canada agrees otherwise in writing.
- 10.2 The Council shall repay to Canada any expenditure it makes in a Fiscal Year against the total of annual amounts for Programs and Services funded by Block Funding where that expenditure is not in accordance with the Delivery Requirements for at least one of those Programs and Services.
- 10.3 If Cost-sharing applies to any Program or Service, the Council shall instead repay to Canada an amount, proportional to Canada's funding share, of any expenditure against the annual amounts from all required

sources allocated for that Program or Service that is not in accordance with the terms and conditions of this Schedule or the Delivery Requirements.

## 11 Performance Management

- 11.1 Notwithstanding section 18.1 of the main body of this Agreement, Canada may withhold any Contribution Funding and/or Grant Funding if the Council is unable or unwilling to meet any of its obligations under this Agreement.
- 11.2 Any amount withheld shall be released by Canada to the Council within 45 days of complying with the terms and conditions of this Agreement, subject to the repayment and set-off provisions of this Agreement.

## 12 Non-Monetary Contributions

- 12.1 Canada may provide a contribution of goods or services to the Council to support the Council's delivery of any Programs and Services.
- 12.2 Any non-monetary contribution will be made by way of Canada :
  - (a) delivering the good and/or service to the Council; and
  - (b) issuing a notice of non-monetary contribution ("NONMC") to the Council for the delivery of the contributed good or service pursuant to section 12.3.
- 12.3 A NONMC will be signed by Canada and will:
  - (a) list each of the goods and/or services to be contributed;
  - (b) set out the location where each of the goods and/or services will be delivered and the expected date or time period for such delivery;
  - (c) indicate the value of the non-monetary contribution based on Canada's actual costs for the purchase and delivery of the contributed goods and/or services, or the fair market value of the foregoing (whichever is less); and
  - (d) be issued prior to or upon delivery of the goods and/or services and include conditions for the contribution, including any reporting conditions.
- 12.4 Where Canada contributes goods and/or services under this section, the Council shall:
  - (a) use the goods or services solely for the purposes of delivering Programs and Services as specified in the NONMC or as otherwise agreed between the parties in writing;
  - (b) comply with the conditions set out in the NONMC; and
  - (c) account for the non-monetary contribution in its financial statements.

### 13 Stacking of Assistance

- 13.1 The Council shall provide notice to Canada, prior to the end of each Fiscal Year, if the Council receives funding assistance from the Crown (other than as contained in this Agreement) or from any provincial, territorial or municipal government that may be used for any of the same Programs or Services funded by this Agreement. In such case, Canada may require the Council to repay any amount of the Funding that Canada considers a duplication of the funding from the other source.

### 14 Reports and Records

- 14.1 For each Fiscal Year, the Council shall prepare and provide to Canada each report required by Schedule 6 (Reporting Requirements and Due Dates) and prepare those reports in accordance with the Reporting Guide as published for that Fiscal Year.
- 14.2 For each Fiscal Year, Canada will publish the Reporting Guide no later than 90 days before the Fiscal Year. Canada may amend the Reporting Guide during a Fiscal Year for the same Fiscal Year only if the amendment arises from a Treasury Board requirement. Canada shall promptly notify the Council of any such amendment.
- 14.3 Subject to any statutory obligations that may apply to the Council, Canada may, by notice to the Council, extend the deadline for the receipt of any reports if the Council provides notice before the applicable due dates of circumstances beyond the Council's control preventing the Council from meeting the deadlines. Such a notice may only change the reporting date and no other reporting requirements, will be signed by Canada and will amend this Agreement in accordance with its terms.
- 14.4 The Council shall retain all financial and non-financial records that may be required to prepare reports under this Agreement and required for any audits or evaluations under this Agreement for a period of 7 years from the end of the last Fiscal Year to which the records relate.

### 15 Audit

- 15.1 This section applies to Contribution Funding only.
- 15.2 Canada may audit or cause to have audited the accounts and records of the Council and any Agency at any time during the term of this Agreement or within 7 years of the termination or expiry of this Agreement, in order to:
- (a) assess or review the Council's compliance with the terms and conditions of this Agreement;
  - (b) review the Council's program management and financial control practices in relation to this Agreement; or
  - (c) confirm the integrity of any data which has been reported by the Council pursuant to this Agreement.
- 15.3 The scope, coverage and timing of any audit will be determined by Canada and may be carried out by one or more auditors employed or contracted by Canada.
- 15.4 Canada will notify the Council at least 2 weeks in advance of an audit under this section.
- 15.5 If at any time during the term of this Agreement, Canada is of the opinion that there may have been a Material Default, the 2 week notice period will not apply and the Council shall, on request, provide Canada

with immediate access to its accounts, records and supporting documentation relating to the Contribution Funding, or those of any Agency.

- 15.6 In the event of an audit under this section, the Council shall, upon request:
- (a) provide the auditors with all accounts and records of the Council relating to this Agreement and to the Contribution Funding, including all original supporting documentation;
  - (b) allow those auditors to inspect such accounts and records and, except where prohibited by law, to take copies and extracts of such accounts and records;
  - (c) provide to those auditors such additional information as they may require with reference to such accounts and records;
  - (d) provide all necessary assistance to those auditors, including providing them with access to the Council's premises;
  - (e) direct any entity that has provided accounting or record-keeping services to the Council to provide copies of those accounts and records to the auditors; and
  - (f) give consent to the Council's auditors to allow access by Canada's auditors to working papers of the Council's auditors that support the opinion or disclaimer of opinion on Consolidated Audited Financial Statements.
- 15.7 The accounts and records Canada may audit or cause to have audited under this section include records maintained under any previous funding agreement through which the Crown has provided funding to the Council that, in the opinion of any auditor employed or contracted by Canada, may be relevant to the audit.
- 15.8 An audit under this section does not limit:
- (a) Canada's right to conduct an evaluation of this Agreement under section 16;
  - (b) the Council's obligation to have its financial statements audited in accordance with the requirements of Schedule 6 (Reporting Requirements and Due Dates); or
  - (c) Canada's right to appoint an independent auditor or to require the Council to appoint an independent auditor under section 18.1 where financial statements have not been provided by the Council.

## 16 Evaluation

16.1 This section applies to Contribution Funding.

16.2 Canada may at any time during the term of this Agreement or within 7 years of its expiry or termination, carry out one or more audits or evaluations of the effectiveness of any or all of the Programs and Services funded under this Agreement with Contribution Funding, including those Programs and Services provided by any Agency, or of the Council's management practices in relation to this Agreement. In the event Canada decides to carry out one or more such audits or evaluations, the Council shall cooperate in the conduct of any such audit or evaluation and provide Canada or their representatives such information as they require, including any records that may be required to be provided to Canada pursuant to an audit under section 15.

## 17 Accountability to Members

- 17.1 The Council shall maintain a system of accountability toward its Members which provides, at a minimum, for transparency and openness relating to this Agreement by keeping the following documents readily available to any Member upon request, at no charge beyond the reasonable cost of reproducing documents:
- (a) this Agreement and any plans or budgets created by the Council for this Agreement;
  - (b) the Council's Consolidated Financial Statements, including the auditor's report; and
  - (c) any other reports or evaluations required by this Agreement.
- 17.2 The Council's system of accountability will also include at least the following processes, and the Council shall provide a copy of policies relating to these matters to any Member or other person to whom Programs and Services are provided, upon request, at no charge beyond the reasonable cost of reproducing documents:
- (a) written standards, policies or procedures of the relating to the provision of the Programs and Services;
  - (b) a redress process for any disputes or complaints about the delivery of any Programs or Services; and
  - (c) a conflict of interest policy for Council officers, counsellors, directors and volunteers who work for or manage the Council.
- 17.3 In the event of an inconsistency or conflict between the system of accountability established by the Council pursuant to this section and the terms of this Agreement, this Agreement will prevail.

## 18 Where Reporting or Disclosure Requirements not met

- 18.1 Without limiting remedies available to Canada under this Agreement, if the Council defaults in its obligation under this Agreement or any predecessor to provide Canada with Consolidated Audited Financial Statements, together with all schedules and reports required under the Reporting Guide, Canada may:
- (a) require that an independent auditor who is a member in good standing of a corporation, institute or association of accountants incorporated under an Act of the legislature of the Province or Territory in which the Council has its administrative offices be engaged immediately by the Council at the Council's cost and that the Consolidated Audited Financial Statements, together with all schedules and reports required under the Reporting Guide, be delivered within a reasonable time as Canada may determine; or
  - (b) appoint an independent auditor who is a member in good standing of a corporation, institute or association of accountants incorporated under an Act of the legislature of the Province or Territory in which the Council has its administrative offices and in which case:
    - (i) the Council shall provide the auditor appointed by Canada with full access to its financial records and provide such other information as the auditor may require to perform the audit; and
    - (ii) the Council shall reimburse Canada for all costs incurred in having the audit conducted.
- 18.2 Without limiting remedies available to Canada set out in this Agreement, if the Council defaults on its obligation to make Consolidated Audited Financial Statements, together with all schedules and reports

required under the Reporting Guide, readily available to Members that request them, Canada may make those documents available to those Members.

DRAFT-FOR DISCUSSION ONLY

SCHEDULE 3

10 YEAR GRANT FUNDING

[Note: To follow at a later date]

DRAFT-FOR DISCUSSION ONLY



SCHEDULE 4

FUNDING AND SCHEDULE OF PAYMENTS

[to be drafted – insert Schedule FED-1 format]

DRAFT-FOR DISCUSSION ONLY

SCHEDULE 5

DELIVERY REQUIREMENTS AND FUNDING ADJUSTMENT FACTORS

[to be drafted]

DRAFT-FOR DISCUSSION ONLY

SCHEDULE 6  
REORTING AND DUE DATES

[to be drafted]

DRAFT-FOR DISCUSSION ONLY