

Worksheet for Engagement: DRAFT Comprehensive Funding Agreement

This Worksheet is not a legal document. It is intended to be used by Indigenous Services Canada for discussions with First Nations regarding the details of the Comprehensive Funding Agreement (CFA) model. The Worksheet contains key agreement clauses specifically selected for engagement because they reflect significant change from previous models. However, input is welcome on the entire agreement.

Agreement Component	Engagement Question
<p>PREAMBLE</p> <p>WHEREAS the parties wish to enter into an agreement for the funding of community-based programs and services.</p> <p>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:</p> <ul style="list-style-type: none">• to support capacity-building and self-determination by First Nations and empower First Nation Councils to plan and invest based on their own priorities;• to underpin progress toward the elimination of socio-economic and health gaps between First Nation members and other Canadians; and <p>[OPTIONAL] WHEREAS Her Majesty the Queen, in Right of Canada, entered into Treaty No.[:TreatyNumber] with certain First Nations within the Province of [:TreatyProvince].</p> <p>[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].</p> <p>[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</p>	<p>The new Comprehensive Funding Agreement is aligned with the departmental priority of building a New Fiscal Relationship.</p> <p>Does the current wording in the Whereas clauses reflect your understanding of the New Fiscal Relationship?</p>

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<p>fiduciary relationship between the Crown and First Nations people.</p> <p>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.</p> <p>NOW THEREFORE, the parties agree as follows:</p>	
<p>8 Notice of Budget Adjustment (NOBA)</p> <p>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.</p> <p>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.</p> <p>8.3 A NOBA may not:</p> <ul style="list-style-type: none"> (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. 	<p>Area for exploration:</p> <p>The Department is considering another vehicle with the capability of adding terms and conditions, and associated funding within specific limits.</p> <p>Would you be supportive of a vehicle to change the terms and conditions for certain programs and services, outside of the formal amendment process that requires countersignatures? (e.g., Professional and Institutional Development and other project funding within a dollar limit)</p>
<p>19 Default</p> <p>[Note: the parameters of the new Default Prevention Policy are subject to change based on co-development discussions and direction from Treasury Board]</p> <p>19.1 In the event that the Council identifies what it believes</p>	<p>Currently, the consequences and urgency of a default situation are assessed to determine the Overall Risk to Service Population:</p> <p>Consequences (low to high):</p> <ul style="list-style-type: none"> • Programs are delivered with minimal impact, health and safety is not impaired. • Programs are disrupted creating hardship for the service population.

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<p>to be a Default <i>[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]</i> 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.</p> <p>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:</p> <p>(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</p> <p>(b) any other process that both parties agree is appropriate.</p>	<ul style="list-style-type: none"> • Programs are disrupted threatening the health & safety of the service population or essential community infrastructure. <p>Urgency (low to high):</p> <ul style="list-style-type: none"> • Action is required but can be delayed until higher priority items are taken care of. • The potential negative impacts can be remedied, but there are impacts to the wellbeing of individuals and the achievement of longer term objectives. • The potential negative impacts could not be reversed by their very nature (e.g. loss of life or suffering) or due to the cost of rebuilding assets. <p>Q1 – The new approach to default prevention and management is to narrow the definition of Default to a situation in which a First Nation is unwilling or unable to address risks to the health and safety of community members and/or the integrity of federal funds. In terms of risks to health and safety, how would Council determine if there is a Default, and how would they assess the Default? For example, using the assessment criteria above, where would you set the Default threshold for risk to health and safety?</p> <p>Q2 – What organizations could be considered qualified organizations for the purpose of assisting Council in addressing defaults? What qualifications should an organization possess? (19.2(a) – General Terms and Conditions)</p>
<p>20 Remedial Measures for Default</p> <p>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:</p>	<p>Section 20.1(a) of the general terms and conditions dealing with Default Management addresses circumstances under which funding may be withheld. Section 20.1 refers to situations where a recipient may be unwilling or unable to address a default in a prompt manner or where the parties are unable to come to agreement on how to address the default.</p> <p>Current policy direction states that for Default Management, withholding of funding for non-essential</p>

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<p>(a) withhold any Funding, commensurate with the nature and extent of the Default; and/or</p> <p>(b) appoint a Default Trustee to administer the Funding on behalf of the Council.</p> <p>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.</p> <p>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.</p> <p>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.</p>	<p>programs and services may be undertaken where progress is not being made in addressing the default situation. With respect to performance management, it states that where a recipient does not remit a program report within 30 days of the due date, funding for all non-essential programs and services related to that program / service area will be withheld. Funding for essential programs and services is never withheld. Given this:</p> <p>Q1 – Are there instances in which the withholding of funds for non-essential programs and services is / is not acceptable? Should there be a distinction made between unwilling and unable?</p> <p>Q2 – Are there other, more effective ways to address non-compliance with the terms and conditions of agreements?</p>
<p>38 Provision of Information</p> <p>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:</p> <p>(a) any fiscal management policies of that Federal</p>	<p>This clause refers to publicly available information:</p> <p>Q1 – Have you made use of the provisions of this clause to obtain information? If so, what type of information?</p> <p>Q2 – Would it be useful to have access to information that can be shared, but is not easily accessible by the public? If so, what type of information might this be?</p>

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<p>Department relevant to the Funding upon such policy becoming available to the public; and</p> <p>(b) any publicly available information or guidelines produced by that Federal Department relevant to the Programs and Services for which the Funding is provided.</p>	
<p>SCHEDULE 2 – SET, FIXED, FLEXIBLE, BLOCK AND GRANT FUNDING</p>	
<p>17 Accountability to Members</p> <p>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:</p> <ul style="list-style-type: none"> (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. <p>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:</p> <ul style="list-style-type: none"> (a) written standards, policies or procedures of the relating to the provision of the Programs and 	<p>Q1 – In cases where a First Nation has an approved FAL or a comparable accountability framework in place, how should this clause be streamlined?</p> <p>Q2 – For First Nations with a 10 Year Grant, should this clause be optional?</p>

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<p>Services;</p> <p>(b) a redress process for any disputes or complaints about the delivery of any Programs or Services; and</p> <p>(c) a conflict of interest policy for Council officers, counsellors, directors and volunteers who work for or manage the Council.</p> <p>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.</p>	
<p>SCHEDULE 3 – 10 YEAR GRANT FUNDING</p> <p><i>To follow at a later date.</i></p>	