

# Aboriginal Healing Foundation



## 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

March 31, 1998

# FUNDING AGREEMENT

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## FUNDING AGREEMENT

THIS AGREEMENT made as of the                    day of March 1998,

BETWEEN:

ABORIGINAL HEALING FOUNDATION, a Corporation established under Part 11 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 "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 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 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 Physical and Sexual Abuse in 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 Physical and Sexual Abuse in 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 Residential Schools and those who are affected by the Legacy of Physical and Sexual Abuse in 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;

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

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 proceeds arising from the investment of the grant less the portion thereof required to fund reasonable costs and expenses incurred by the Foundation in the ordinary course of its business and affairs from time to time.

"Arbitration Act" means the *Commercial Arbitration Act, 222 R.S.C. 1985, C34.6*.

"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 6.05 and 6.06.

"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 Physical and Sexual Abuse in 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 Physical and Sexual Abuse in 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 Schedule 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 Physical and Sexual Abuse in 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.

"Legacy of Physical and Sexual Abuse in Residential School" means the continuing direct and indirect adverse effects of physical and sexual abuse at Residential Schools, including the intergenerational impacts, on individuals, families and communities, including Communities of Interest, which may include, but is not limited to, family violence, substance abuse, physical and sexual abuse by others, loss of parenting skills and self-destructive behaviours.

"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 of Indian Affairs and Northern Development.

"Non-profit Organization" means a corporation, society, association, organization or body not 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 of *Indian Affairs* and Northern Development, 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.

"Residential Schools" means the Residential School system attended by aboriginal students and without restricting the generality of the foregoing, includes industrial schools, boarding schools, student residences, hostels, billets, residential schools, residential schools with a preponderance of day scholars, or a combination of any of the above; provided that *none of* the above shall be excluded because some of the students attending were non-aboriginal persons.

"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 obligation 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 Residential Schools; or
  - (iv) personal credentials and merit;
- (f) 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;
- (g) 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

(h) 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 carrying 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 will make payment to the Foundation of \$350,000,000 in the federal government fiscal year 1998-99. Payments will consist of an initial grant of \$5,000,000 as close as possible to the time of incorporation of the Foundation after April 1, 1998, subject to Treasury Board approval; a further \$5,000,000 as required, subject to Treasury Board approval; and the balance subject to the approval of Parliament by way of an appropriation. Her Majesty agrees to make the grant of the balance as soon as reasonably possible after the appropriation. The Foundation agrees to hold, invest, administer and disburse the Amount in accordance with this Funding Agreement.

#### ARTICLE IV: INVESTMENT AND MANAGEMENT OF THE AMOUNT

4.01 Investment of the Amount. The Foundation shall invest, keep invested and reinvest the Amount and in that regard the Foundation:

- (a) shall establish investment policies, standards, and procedures that a Person of ordinary prudence would exercise in dealing with the property of others. These 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; and
  - (vii) levels of authority of officials who can commit the Foundation to different types of transactions;

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;

- (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).

4.02 Management of the Amount. In investing and reinvesting the grant the Foundation shall:

- (a) ensure that the part of the Amount that has not been disbursed shall be invested in accordance with Schedule 4.02 in order to ensure the preservation of that part of the Amount;
- (b) manage the Amount so as to meet as closely as possible its expected disbursement profile for funding payments to be made to Eligible Recipients;
- (c) keep all short term cash balances in any deposit-taking institution, the commercial paper or short term securities of which have a credit rating of at least "AA" as defined in Schedule 4.02, pending investment, disbursement or payment of expenses with such balances;
- (d) for the purposes of Section 4.02(c), if a deposit taking institution is a subsidiary of a parent organization and does not have its own credit rating, then the rating of the parent may be used, provided that the parent guarantees the obligations of the subsidiary; and
- (e) review, no less frequently than annually, the investment policies, standards and procedures established under Section 4.01 (a).

The Foundation shall ensure that the Board is regularly made aware of any significant financial risks facing the Foundation, including the consequences of potential losses of investments of any or all of the Amount.

4.03 Restricted Activities. The Foundation shall not borrow money, issue any debt obligations or securities, give any guarantees to secure a debt or other obligation of another Person or mortgage, pledge, or otherwise encumber property of the Foundation. Subject to Section 6.06, the Amount shall not be used to purchase, directly or indirectly, or to repair or maintain real property owned, directly or indirectly by the Foundation. Subject to Section 6.06, the Foundation shall not use the Amount to conduct activities related to advocacy (other than communicating the objects of the Foundation), research (except research related to developing the necessary knowledge base for effective program design/redesign, implementation and evaluation), or public inquiries. The Foundation shall

not use the Amount to pay costs related to compensation of individuals or litigation in any way related to Residential Schools.

- 4.04 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 payment from Her Majesty provided for in Section 3.01, 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.
- 4.05 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 V: ELIGIBLE RECIPIENTS

- 5.01 Eligible Recipients. The Foundation shall provide funding only to Eligible Recipients whose Eligible Projects are consistent with Article VI and Article VIII.
- 5.02 Excluded Recipients - Federal. The Foundation shall not provide funding to any federal department (as defined in Schedule I to the FAA), departmental corporation (as defined in Section 2 of 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.
- 5.03 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.

#### ARTICLE VI: ELIGIBLE PROJECTS AND ELIGIBLE COSTS

- 6.01 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 Residential Schools and those who are affected by the Legacy of Physical and Sexual Abuse in Residential Schools, including the intergenerational impacts.
- 6.02 Mandatory Criteria In order to be eligible, projects:
- (a) shall address healing needs of Aboriginal People affected by the Legacy of Physical and Sexual Abuse in 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.

6.03 General Criteria. An Eligible Project may, but need not:

- (a) focus on prevention and early detection of the effects of the Legacy of Physical and Sexual Abuse in 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 medical 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.

6.04 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 Physical and Sexual Abuse in 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.

6.05 Eligible Costs. The Foundation in providing funding for Eligible Projects, may pay, subject to section 6.06, all costs of the projects in accordance with the guidelines established in Article VIII hereof.

6.06 Ineligible Cost. 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 Residential Schools is not an Eligible Cost; this does not preclude elements of projects involving locally based public inquiries for healing purposes relating to 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 VII: OTHER CONTRIBUTIONS

### 7.01 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 VIII: COMMITMENTS AND DISBURSEMENTS

8.01 Commitments. The Foundation shall make best efforts to commit the Amount over a period of four years from either the date of the approval of the first Eligible Project or from one year following the signing of this Funding Agreement, whichever comes first.

8.02 Disbursement. The Foundation shall disburse the Amount over a ten year period from the date of approval of the first Eligible Project, or from one year following the signing of this Funding Agreement, whichever comes first.

### 8.03 Guidelines on Funding

- (a) Until a Board of seventeen directors is appointed, the Foundation shall not approve or make any funding commitments for any proposals or projects.
- (b) The Foundation may provide funding up to 100 per cent of the Eligible Costs- for any Eligible Project.
- (c) 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.
- (d) 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.

8.04 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.

8.05 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 IX: COVENANTS OF THE FOUNDATION

- 9.01 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 included in Schedule 9.01.

## ARTICLE X: FINANCIAL MATTERS AND AUDITS

### 10.01 Books of Account

- (1) The Board shall cause books of account and other records 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.
- (2) 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:
  - (a) descriptions and book values of all investments of the Foundation; and
  - (b) 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.
- (3) The Foundation shall account for and report on the Amount separately from other sources of funds.

### 10.02 Auditor

- (1)
  - (a) The Members, as soon as possible after incorporation, shall appoint an auditor for the first fiscal year;
  - (b) The Members 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 meets 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.

#### 10.03 Conduct of the Audit

- (1) The Auditor for a 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.
- (2) 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.

#### 10.04 Audit Committee

- (1) The Board shall appoint an audit committee consisting of not fewer than three Directors and fix the duties and functions of the committee.
- (2) 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.

#### 10.05 Annual Report

- (1) The Foundation shall, within six months 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 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; and
    - (iv) a statement of investment portfolio;
  - (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 the 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; and
  - (g) steps taken with respect to a fair and equitable distribution of the Amount as per Section 6.01.
- (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.

10.06 Public Communications and Accountability. The Foundation shall 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).

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/or
- (b) one or more charitable organizations; with preference given to an aboriginally-controlled organization.

Where the Parties do not agree that the Foundation shall wind up and dissolve or as to the distribution of the uncommitted Amount, the matter shall be referred to arbitration, in accordance with Article XI.

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.

10.08 Official Language. 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.3 1. 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.

10.09 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.

#### ARTICLE XI: ARBITRATION

11.01 Arbitration. Any dispute arising out of or in connection with this Funding Agreement, including without limitation a dispute respecting the interpretation, application or implementation of this Funding Agreement, or a breach of this Funding Agreement, shall be submitted to and finally resolved by arbitration under the Arbitration Act as amended or substituted from time to time and not by the courts. The Parties shall be governed by the Rules for Arbitration as stipulated in Schedule 11.0 1, subject to any mandatory provisions of the Arbitration Act. A decision of the arbitrator shall be final and binding and not subject to appeal subject to any mandatory provisions of the Arbitration Act.

11.02 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.

11.03 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 by 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.

11.04 Costs of Arbitration. The costs of arbitration shall be shared equally by the Parties.

#### ARTICLE XII: CONFIDENTIALITY

12.01 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, Eligible Recipients, Directors and officers, employees, agents and representatives of the Foundation, Eligible Recipients or other Persons.

#### ARTICLE XIII: INTERPRETIVE MATTERS AND CONVENTIONS

- 13.01 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.
- 13.02 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.
- 13.03 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.
- 13.04 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 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.
- 13.05 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, that 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.
- 13.06 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 XIV: MISCELLANEOUS

- 14.01 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.
- 14.02 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.
- 14.03 Meeting of the Parties. Within the sixty days following the annual meeting of Members referred to in Section 10.05, 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.
- 14.04 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.

- 14.05 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.
- 14.06 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 discussions, whether oral or written, of the Parties.
- 14.07 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.
- 14.07.01 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.
- 14.07.02 Survival. The provisions of Sections 14.07 and 14.07.01 shall survive termination of this Agreement with respect to matters arising prior to the termination of the Agreement.
- 14.08 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.
- 14.09 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:  
Attention: Chief Executive Officer

Telecopier:

- (2) if to the Minister at:  
Office of the Deputy Minister of  
Indian Affairs and Northern Development  
10 Wellington Street  
Hull, Quebec K1A 0H4  
Telecopier:

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.

- 14.10 Time of the Essence. Time shall be of the essence in this Funding Agreement.
- 14.11 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.
- 14.12 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.
- 14.13 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.
- 14.14 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.
- 14.15 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.

- 14.16 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.
- 14.17 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.
- 14.18 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.

IN WITNESS WHEREOF the Parties have caused, their duly authorized representatives to execute this Funding Agreement 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

*<original signed>*

The Honourable Jane Stewart  
Minister of Indian and Affairs and Northern Development

FOR ABORIGINAL HEALING FOUNDATION

*<original signed>*

Georges Erasmus	Gene Rheaume
Janet Brewster Montague	Paul Chartrand
Jerome Berthelette	Wendy Grant-John
Debbie Reid	Marjorie Hodgson
Teresa Nahanee	

SCHEDULE 4.02: INVESTMENT GUIDELINES

1. The Foundation shall invest the Amount in Eligible Securities. Eligible Securities are defined as banker's acceptances, bank certificates of deposit, commercial paper, bonds and notes issued and, guaranteed by the federal, government, provincial governments-, territorial governments, municipal governments and corporations, government and corporate strip bonds, deposits at deposit-taking institutions in Canada, the commercial paper or short-term securities of which have a credit rating of at least AA, asset-backed securities, and collateralized mortgage obligations, with a maximum remaining term to maturity of eight years. For greater certainty, the Amount may not be invested in shares, warrants or other equities, convertible debt securities, derivatives, swaps, options, futures.
2. The deemed rating (the "Rating") of any Eligible Security will be established, at the time of the Foundation's acquisition of the Eligible Security, as:

(a) "AAA" if the Eligible Security has the following rating from two credit rating agencies (both of which must be CBRS and DBRS for Commercial Paper and one of which must be Moody's or Standard & Poors "S&P" for Other Securities):

(A) Commercial Paper	CBRS	A-1+
	DBRS	RI (High)
(B) Other Securities	CBRS	A+ +
	Moody's	Aaa
	S&P	AAA
	DBRS	AAA

(b) "AA" if the Eligible Security has the following rating from two credit rating agencies, (one of which must be "S&P" for Commercial Paper and one of which must be Moody's or "S&P" for Other Securities):

(A) Commercial Paper	CBRS	At (High)
	S&P	A1+
	DBRS	RI (Middle)
(B) Other Securities	CBRS	A+
	Moody's	Aa
	S&P	AA
	DBRS	AA

Where "CBRS" is the Canadian Bond Rating Service and "DBRS" is the Dominion Bond Rating Service. A designated rating shall include all sub-classifications. For instance, a "AA" rating by S&P shall include "AA-", "AA" and "AA+".

3. Any securities acquired shall have a Rating of at least AA.
4. All securities, shall be denominated in Canadian dollars.



5. Throughout the life of the Foundation's portfolio derived from the Amount, provided that the market value of the portfolio is greater than \$50 million Canadian, the Foundation's investments in the securities of any one issuer will be limited to an aggregate market value limit based on the Rating of the security, as set out below:

<u>Rating of Security</u>	<u>Government Securities</u>	<u>Other Securities</u>
AA	10 percent of portfolio	5 percent of portfolio
AAA	No limit	10 percent of portfolio

Throughout the life of the Foundation's portfolio derived from the Amount, provided that the market value of the portfolio is greater than \$50 million Canadian, the Foundation's investment in the securities of any one grade will be limited to an aggregate market value limit based on the Rating of the security, as set out below:

<u>Rating of Security</u>	<u>Government Securities</u>	<u>Other Securities</u>
AA	20 percent of portfolio	10 percent of portfolio
AAA	No limit	20 percent of portfolio

For greater certainty, the phrase "Government securities" means all securities issued, guaranteed by, or that have the full faith and credit of the federal government or a provincial/territorial government.

6. At any time when the market value of the Foundation's portfolio is less than \$50 million Canadian, the percentage limitations described in clause 5 shall be increased by 100 percent.
7. The Foundation shall at all times make best efforts to maintain sufficient cash or publicly traded Eligible Securities with a maturity of less than one year to meet the expected disbursements and expenses for the next twelve months.

## 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 Residential Schools.
5. Initiatives supported by the Amount shall focus on the healing needs of Aboriginal People affected by the Legacy of Physical and Sexual Abuse in 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 Residential Schools, and those who are affected by the Legacy of Physical and Sexual Abuse in Residential Schools, including the intergenerational impacts.
7. Disbursement of the Amount shall ensure that the specific healing needs of Inuit and Métis affected by the Legacy of Physical and Sexual Abuse at Residential Schools are addressed and that their access to the funding process is reflected in the criteria for guidelines for funding.
8. 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.
9. Proposals submitted shall include clear objectives, time frames and expected outcomes.
10. 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 other 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 directions, 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 orders to secure all or part of any amount in dispute in the arbitration; and
  - (xii) exercise the powers set out in sections 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.

Aboriginal Healing Foundation  
75 Albert Street, Suite 801 Ottawa, Ontario K1P 5E7  
Telephone: (613) 237-4441 Toll-free: (888) 725-8886  
Fax: (613) 237-4442  
programs@ahf.ca  
www.ahf.ca