

**HEALTH FUNDING CONSOLIDATED CONTRIBUTION AGREEMENT**

**FOR**

**2017-2018**

**HEALTH FUNDING CONSOLIDATED CONTRIBUTION AGREEMENT BETWEEN:**

**HER MAJESTY THE QUEEN**, in Right of Canada, as represented by the Minister of Health, hereinafter referred to as the "Minister"

**AND:**

**[COMMENT]**If recipient is not incorporated, use the following**[COMMENT]**

**[/:RecipientName]**, hereinafter referred to as the "Recipient".

**[COMMENT]**If recipient is incorporated, use the following**[COMMENT]**

**[COMMENT]**The jurisdiction of incorporation refers to where the Recipient was incorporated. If it is a federally-incorporated entity (under the Canada Corporations Act) the jurisdiction of incorporation is Canada. Otherwise, it will be the province or territory in which it is incorporated.**[COMMENT]**

**[/:RecipientName]**, a non-profit corporation, incorporated under the laws of **[/:ProvinceTerritoryOfIncorporation]**, hereinafter referred to as the "Recipient".

**PREAMBLE**

**WHEREAS** the Recipient wishes to provide certain Health Programs and Services in accordance with the terms and conditions of this Agreement and its Plan, where applicable.

**WHEREAS** the Minister wishes to provide funding to the Recipient in accordance with the terms and conditions of this Agreement to support the provision of these Health Programs and Services.

**WHEREAS** the Minister and the Recipient intend that nothing in this Agreement shall have the effect of, or be interpreted as, limiting or expanding any fiduciary relationships between Her Majesty the Queen, in Right of Canada, and First Nations people.

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

**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 **[/:RecipientName]**.

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

**1. DEFINITIONS**

**"Agency"** means an authority, board, committee or other entity authorized to act on behalf of the Recipient.

**"Agreement"** means this Health Funding Consolidated Contribution Agreement and includes all Schedules, the Program Plan where applicable, any Notices of Budget Adjustment, and any amendments to this Agreement.

**"Asset"** means an asset of any kind other than a Capital Facility which is in the possession, control or ownership of the Recipient and which has been acquired in whole or in part by the Recipient with any Funding or funding from a previous health contribution agreement between the parties, and which is not consumed or expended in the natural course of its use.

**"Block Funding"** means that portion of the Funding, if any, set out in Schedule "FED-1" under the heading "Block Funding".

**"Capital Facility"** means a building or facility of any kind, including any fixtures thereto which has been constructed, purchased or maintained by the Recipient in whole or in part with the Funding or funding from a previous health contribution agreement between the parties.

**"DIAND"** means the Department of Indian Affairs and Northern Development also known as Aboriginal Affairs and Northern Development Canada.

**"Financial Statements Package"** means the Annual Audited Consolidated Financial Statements package set out in the Reporting Guide.

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

**"Flexible Funding"** means that portion of the Funding, if any, set out in Schedule "FED-1" under the heading "Flexible Funding".

**"Funding"** means the funding payable or paid by the Minister to the Recipient under this Agreement, consisting of all Set Funding, Flexible Funding and Block Funding.

**"Health Programs and Services"** means the programs, services, initiatives or projects listed in Schedule "FED-1" under the heading Program Activity/Functional Area Group/Functional Area and described in the Program Plan or any Plan.

**"Management Action Plan"** means a plan developed by the Recipient and approved by the Minister which reflects decisions and measures which are necessary to remedy a default under this Agreement.

**"Mandatory Programs"** means the Communicable Disease Control, Environmental Public Health and Treatment Services programs as described in the Plan, if applicable.

**[COMMENT]** Select one of the Member definitions. If the recipient is a Tribal Council, a treatment centre, an incorporated entity or any other non-First Nation or non-band entity, use the 3<sup>rd</sup> definition. **[/COMMENT]**

**"Member"** means a person whose name appears on the band list of the Recipient maintained by DIAND or the Recipient in accordance with the Indian Act.

**"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.

**"Member"** means a person whose name appears on the band list of a First Nation maintained by DIAND or that First Nation in accordance with the *Indian Act*, whose members receive Health Programs and Services from the Recipient.

**"Ministerial Audit"** means an audit of the Recipient's accounts, records and supporting documentation conducted by the Minister in accordance with section 9.

**"Notice of Budget Adjustment (NOBA)"** means a notice, issued by the Minister, which amends this Agreement to adjust Funding and/or cash flow installments in accordance with section 4.

**"Program Plan"** means the plan for the delivery of Health Programs and Services funded by Set Funding pursuant to this Agreement, as more particularly described in section 10.

**"Plan"** means the Recipient's plan for the delivery of Health Programs and Services funded by Flexible Funding or Block Funding, prepared by the Recipient in accordance with section 11.

**"Reporting Guide"** means the Reporting Guide issued by the Minister 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 "FED-1" under the heading "Set Funding".

**"Third Party Funding Agreement Manager"** means a third party, appointed by the Minister to administer Funding otherwise payable to the Recipient and the Recipient's obligations under this Agreement, in whole or in part, and that may assist the Recipient to remedy default under this Agreement.

## 2. DURATION, RESPONSIBILITY AND NON-DEROGATION

### 2.1 Duration

2.1.1 This Agreement will take effect on the date it is signed by both parties and will apply to Health Programs and Services to be delivered by the Recipient commencing on the [/:ArrMultiYearStartDateDay] day of [/:ArrMultiYearStartDateMonth], [/:ArrMultiYearStartDateYear].

- 2.1.2 This Agreement will expire on the [/:ArrMultiYearEndDateDay] day of [/:ArrMultiYearEndDateMonth], [/:ArrMultiYearEndDateYear] unless terminated earlier, or extended by amendment.

## 2.2 Responsibility for the Provision of Health Programs and Services

- 2.2.1 The Recipient shall use the Funding to deliver the Health Programs and Services in accordance with the terms and conditions of this Agreement, the Plan (if applicable), and applicable laws.

**[COMMENT]** If the Recipient wishes to include a reference to Non-Derogation, the Recipient may include the following clauses 2.3.1 (a) to (d) which have been authorized for use. **[COMMENT]**

## 2.3 Non-Derogation

- 2.3.1 Nothing in this Agreement shall:
- (a) be construed to diminish, derogate from, or prejudice any treaty or Aboriginal rights of the [/:FirstNationOrMembersOfFirstNations];
  - (b) prejudice whatsoever any applications, negotiations or settlements with respect to land claims or land entitlement between Her Majesty the Queen, in Right of Canada, and the [/:FirstNationOrMembersOfFirstNations];
  - (c) prejudice whatsoever the implementation of any inherent right to self-government nor prejudice in any way negotiations with respect to self-government involving the [/:FirstNationOrMembersOfFirstNations];
  - (d) be construed as modifying Treaty No. [/:TreatyNumber] or creating a new treaty within the meaning of the *Constitution Act, 1982*.

## 3. FUNDING PROVISIONS

### 3.1 Total Funding

- 3.1.1 The Minister shall, subject to the terms and conditions herein, transfer up to [/:Multi-YearTotalFundingAlpha] dollars (\$[/:Multi-YearTotalFundingNumeric]) to the Recipient as the Funding, inclusive of all Fiscal Years, as follows:
- (a) an amount of up to [/:FiscalYear1TotalFundingAlpha] dollars (\$[/:FiscalYear1TotalFundingNumeric]) for Fiscal Year [/:FiscalYear1];
  - (b) an amount of up to [/:FiscalYear2TotalFundingAlpha] dollars (\$[/:FiscalYear2TotalFundingNumeric]) for Fiscal Year [/:FiscalYear2];
  - (c) an amount of up to [/:FiscalYear3TotalFundingAlpha] dollars (\$[/:FiscalYear3TotalFundingNumeric]) for Fiscal Year [/:FiscalYear3];
  - (d) an amount of up to [/:FiscalYear4TotalFundingAlpha] dollars (\$[/:FiscalYear4TotalFundingNumeric]) for Fiscal Year [/:FiscalYear4];
  - (e) an amount of up to [/:FiscalYear5TotalFundingAlpha] dollars (\$[/:FiscalYear5TotalFundingNumeric]) for Fiscal Year [/:FiscalYear5];
  - (f) an amount of up to [/:FiscalYear6TotalFundingAlpha] dollars (\$[/:FiscalYear6TotalFundingNumeric]) for Fiscal Year [/:FiscalYear6];
  - (g) an amount of up to [/:FiscalYear7TotalFundingAlpha] dollars (\$[/:FiscalYear7TotalFundingNumeric]) for Fiscal Year [/:FiscalYear7];
  - (h) an amount of up to [/:FiscalYear8TotalFundingAlpha] dollars (\$[/:FiscalYear8TotalFundingNumeric]) for Fiscal Year [/:FiscalYear8];
  - (i) an amount of up to [/:FiscalYear9TotalFundingAlpha] dollars (\$[/:FiscalYear9TotalFundingNumeric]) for Fiscal Year [/:FiscalYear9];
  - (j) an amount of up to [/:FiscalYear10TotalFundingAlpha] dollars (\$[/:FiscalYear10TotalFundingNumeric]) for Fiscal Year [/:FiscalYear10].

### 3.2 Payments

- 3.2.1 The Funding will be paid by way of the periodic advance payments set out in Schedule "FED-1".
- 3.2.2 The initial payment due under this Agreement for each Fiscal Year will be issued within twenty (20) calendar days of the date indicated for that payment in Schedule "FED-1". All other payments within a Fiscal Year will be issued on the first business day of the month as indicated in the cash flow set out

**4. NOTICE OF BUDGET ADJUSTMENT**

**4.1** The Minister may, by way of NOBA: (i) amend Schedule "FED-1" during any Fiscal Year in order to adjust Funding and/or cash flow installments for that Fiscal Year; and (ii) provide a new Schedule "FED-1" in order to establish Funding and cash flow installments for any Fiscal Year after the initial Fiscal Year.

**4.2** A NOBA shall: (i) briefly explain its purpose; and (ii) be signed by the Minister and issued to the Recipient.

**4.3** A NOBA shall only be used to establish or adjust Funding levels and/or cash flow installment(s) without reducing the total available Funding under this Agreement, and shall not be used to alter the terms and conditions of any Health Programs and Services or other activities under this Agreement.

**5. MANAGEMENT OF FUNDING**

**5.1 Set Funding**

5.1.1 The Recipient may only expend Set Funding:

- (a) for the Health Programs and Services for which it is allocated in Schedule "FED-1" or reallocated in accordance with this section;
- (b) in accordance with the requirements of this Agreement for those Health Programs and Services;
- (c) during the Fiscal Year in which the annual amount of the Set Funding is shown to be payable in Schedule "FED-1".

5.1.2 The Recipient may, with the written approval of the Minister, re-allocate any Set Funding among any Functional Areas within the same Functional Area Group according to Schedule "FED-1" during the same Fiscal Year.

5.1.3 The Recipient shall identify any expected underspending of Set Funding at any time during a Fiscal Year and immediately inform the Minister in writing.

5.1.4 If, at the end of a Fiscal Year, the Recipient has not expended all Set Funding for that Fiscal Year, the unspent amount shall be repaid by the Recipient to the Minister within one hundred and twenty (120) calendar days of the end of that Fiscal Year.

**5.2 Flexible Funding**

5.2.1 The Recipient may only expend Flexible Funding:

- (a) for the Health Programs and Services for which it is allocated in Schedule "FED-1" or reallocated in accordance with this section; and
- (b) in accordance with the requirements of this Agreement, including the Plan for those Health Programs and Services.

5.2.2 The Recipient may re-allocate any Flexible Funding among any Functional Area Groups within the same Program Activity according to Schedule "FED-1" during a Fiscal Year, provided that Mandatory Programs are delivered in that Fiscal Year.

5.2.3 If, at the end of a Fiscal Year other than the final Fiscal Year, the Recipient has not expended all Flexible Funding for that Fiscal Year, the Recipient may retain the unspent amount for expenditure in a subsequent Fiscal Year in accordance with:

- (a) an unexpended funding plan that is: (i) prepared and submitted by the Recipient to the Minister within one hundred and twenty (120) calendar days after the end of that Fiscal Year and (ii) approved by the Minister by way of written notice to the Recipient; and
- (b) subject to (a), the terms of this Agreement.

5.2.4 If, upon expiry of this Agreement, the Recipient has not expended all Flexible Funding, the Recipient shall repay the unspent amount to the Minister within one hundred and twenty (120) calendar days of the

expiry of this Agreement.

### **5.3 Block Funding**

5.3.1 The Recipient may only expend Block Funding:

- (a) for the Health Programs and Services listed under the heading of "Block Contribution" in Schedule "FED-1"; and
- (b) in accordance with the requirements of this Agreement, including the Plan for those Health Programs and Services.

5.3.2 The Recipient may re-allocate any Block Funding among any Program Activity set out in Schedule "FED-1" during a Fiscal Year, provided that Mandatory Programs are delivered in that Fiscal Year.

5.3.3 If, at the end of a Fiscal Year other than the final Fiscal Year, the Recipient has not expended all Block Funding for that Fiscal Year after delivering all Mandatory Programs, the Recipient may retain the unspent amount for expenditure in a subsequent Fiscal Year in accordance with the terms of this Agreement.

5.3.4 If, upon expiry of this Agreement, the Recipient has not expended all Block Funding after delivering all Mandatory Programs, the Recipient may retain the unspent amount if all subsequent expenditures of that amount are in accordance with:

- (a) an unexpended funding plan that is prepared and submitted by the Recipient to the Minister within one hundred and twenty (120) calendar days after the end of that Fiscal Year and the Minister accepts the unexpended funding plan by way of written notice to the Recipient; or
- (b) any other agreement of the Parties made in writing.

### **5.4 General**

5.4.1 The Recipient may only expend Funding where:

- (a) the expense is directly related to the carrying out of the Recipient's responsibilities under this Agreement; and
- (b) the Recipient follows generally accepted business practices in negotiating the price and other terms and conditions for the expenditure.

5.4.2 The Recipient may not re-allocate any Funding from Non-Insured Health Benefits programs, the Indian Residential Schools Resolution Health Support program, the Health Services Integration Fund, Jordan's Principle or any Capital Investments.

5.4.3 The Recipient shall be responsible for any expenditure which it makes in excess of the Funding.

## **6. STACKING OF ASSISTANCE**

**6.1** The Recipient has advised the Minister prior to the signing of this Agreement, and shall further advise the Minister during the term of, and upon expiry or termination of this Agreement, of the details and amount of any government (federal, provincial, territorial and municipal) assistance which it has received or may receive from a source other than this Agreement and which has been or may be used by the Recipient to support any of the Health Programs and Services or other activities set out in this Agreement.

**6.2** The Minister may recover from the Recipient an amount equivalent to any other government (federal, provincial, territorial and municipal) assistance received by the Recipient for the same purposes as the Funding.

## **7. AVAILABILITY OF APPROPRIATIONS AND CONTINUANCE OF PROGRAMS**

**7.1** The provision of any Funding for any Fiscal Year is subject to an appropriation of funds by the Parliament of Canada for that Fiscal Year and the Funding herein may be reduced or terminated in accordance with any reduction or termination of an appropriation required for this Agreement.

**7.2** In the event that any departmental funding authority for any Health Programs and Services is modified or cancelled for any Fiscal Year by the Treasury Board of Canada or by the Minister, or if departmental funding levels are

[/:ArrangementNumber]

reduced or cancelled by Parliament for any Fiscal Year, the Minister may reduce or terminate further payments to be made in that Fiscal Year under this Agreement accordingly.

**7.3** Where Funding is to be reduced or cancelled under section 7.2, the Minister shall provide the Recipient with at least sixty (60) calendar days written notice. This notice shall specify the Health Programs and Services, the Fiscal Year(s) and amounts in respect of which any such Funding will be reduced or terminated.

**7.4** Where any Block Funding is to be reduced or cancelled under section 7.2, the Minister shall provide the following amount of prior notice to the Recipient:

7.4.1 one (1) year, where the reduction or cancellation is made by the Minister; and

7.4.2 one (1) year or such lesser other time as the Minister can reasonably provide, where the modification or cancellation is made by, or required by, Parliament or by the Treasury Board of Canada.

## **8. ACCOUNTING AND REPORTING**

**8.1** The Recipient shall:

8.1.1 keep and maintain all accounts, financial records and supporting documentation in respect of the Funding for a period of seven (7) years from the end of the latest Fiscal Year to which the accounts and records relate, in accordance with generally accepted accounting principles unless advised otherwise by the Minister in writing;

8.1.2 prepare the Financial Statements Package for the Funding for each Fiscal Year in accordance with the *Reporting Guide*;

8.1.3 engage an independent auditor to conduct an audit of the Financial Statements Package for each Fiscal Year and to prepare an auditor's report in respect thereof;

8.1.4 ensure that all accounts, records and supporting documents are available for the above noted audit and that the independent auditor is provided with any necessary assistance for the performance of the audit; and

8.1.5 for each Fiscal Year:

**[COMMENT]** Use this first version of the "deliver the audit" text when First Nations (i.e. Bands) have an Agreement with FNIHB and a separate agreement with INAC (Common Recipients). Other Recipients such as Tribal Councils, incorporated entities, Treatment Centres, etc. are not to use this clause. **[COMMENT]**

(a) deliver to DIAND the Financial Statements Package, together with the auditor's report. The Recipient acknowledges that DIAND will deliver a copy of the Financial Statements Package to the Minister; and

**[COMMENT]** Use this second version of the "deliver the audit" text when the recipient is NOT a First Nation (i.e. If the Recipient is a Tribal Council, incorporated entity, a Treatment Centre, etc.). **[COMMENT]**

(a) deliver to the Minister the Financial Statements Package, together with the auditor's report; and

(b) deliver to the Minister all other reports, including program reports, required by the Reporting Guide; in accordance with the due dates set out in Schedule "2".

**8.2** The Minister:

**[COMMENT]** Use this first "notice of receipt" text for First Nations (i.e. Bands) that have an Agreement with FNIHB and a separate agreement with INAC (Common Recipient). Other Recipients such as (Tribal Councils, incorporated entities, Treatment Centres, etc. are not to use this clause. **[COMMENT]**

8.2.1 shall provide the Recipient with notice of receipt of the Financial Statements Package within thirty (30) calendar days of receipt of the report from DIAND;

**[COMMENT]** Use this second "notice of receipt" text when the recipient is NOT a First Nation (i.e. If the Recipient is a Tribal Council, incorporated entity, Treatment Centre, etc.). **[COMMENT]**

8.2.1 shall provide the Recipient with notice of receipt of the Financial Statements Package within thirty (30) calendar days of receipt of the report;

8.2.2 may extend the deadline by notice in writing for the receipt of any reports required by Schedule "2" if the Recipient provides written notice, prior to the date the reports are due, of circumstances beyond the Recipient's control. The Minister's extension notice will amend reporting dates in this Agreement

accordingly;

8.2.3 shall, where this Agreement applies to more than one Fiscal Year, issue a new Schedule "2" setting out reporting requirements and due dates for each subsequent Fiscal Year.

## **9. MINISTER'S RIGHT TO AUDIT**

**9.1** The Minister reserves the right to audit or cause to have audited the accounts and records of the Recipient, or any Agency of the Recipient, relating to the Funding in order to ensure compliance with the terms and conditions of this Agreement. The scope, coverage and timing of such a Ministerial Audit shall be as determined by the Minister and, if conducted, may be carried out by employees of the Minister, or the Minister's agent(s).

**9.2** The Minister will notify the Recipient in writing at least two (2) weeks in advance of a Ministerial Audit under this section.

**9.3** The Recipient shall provide the Minister with all accounts, records and supporting documentation relating to the Funding, for the purposes of a Ministerial Audit, and shall provide all necessary assistance, including reasonable access to its premises, for such Ministerial Audits.

**9.4** The Recipient shall permit the Minister to inspect all of its original accounts, records and supporting documentation relating to Funding, and shall permit the Minister to take copies and extracts from such records during a Ministerial Audit. The Minister shall not, unless authorized by law or by the Recipient, remove or cause to be removed any original books, records or supporting documentation from the Recipient's premises.

**9.5** If at any time during the term of this Agreement, the Minister believes that there may have been a default by the Recipient under this Agreement, the notice period set out in subsection 9.2 shall not apply and the Recipient shall, on request, provide the Minister with access to its accounts, records and supporting documentation relating to the Funding, or those of any Agency, without delay.

## **10. PROGRAM PLAN FOR SET FUNDING**

**10.1** This section is only applicable if this Agreement contains Set Funding.

**10.2** The parties have agreed to the Program Plan, dated [/:ProgramPlanDate]. The Recipient shall undertake the delivery of the Health Programs and Services funded by Set Funding in accordance with the terms and conditions of the Program Plan and any amendments thereto.

**10.3** In the event of a conflict between the Program Plan and the other provisions of this Agreement, the other provisions of this Agreement shall govern.

## **11. PLAN FOR FLEXIBLE FUNDING AND BLOCK FUNDING**

**[COMMENT]** If applicable, insert the Plan Date. If not applicable, insert N/A/[COMMENT]

**11.1** This section is only applicable if this Agreement contains Flexible Funding and/or Block Funding.

**11.2** The Recipient has prepared and presented to the Minister a Plan dated [/:PlanDate]. The Recipient shall update or amend the Plan from time to time as necessary to reflect any changes made to its program priorities and objectives. The Recipient shall provide all amendments and updates to the Minister prior to implementing them.

**11.3** The Minister has reviewed the Plan and will review any updates or amendments thereof to determine whether the Plan is eligible to be paid for or implemented by the Recipient with the Funding in whole or in part. The Minister may require adjustments to the Plan, prior to the commencement or continuation of the provision of the Funding. Where the Plan is eligible to be paid for or implemented with the Funding, the Recipient shall undertake the delivery of Health Programs and Services funded by Flexible Funding and/or Block Funding in accordance with the terms and conditions of the Plan and any amendments thereto.

**11.4** In the event of a conflict between the Plan and the other provisions of this Agreement, the other provisions of this Agreement shall govern.

## **12. PROGRAM EVALUATION**

**12.1** The Recipient will, if requested by the Minister, participate in an evaluation of any or all of the Health Programs and Services delivered by it under this Agreement. For this purpose, the Recipient will retain the information and data required to be kept by it under the *Reporting Guide*, for a period of seven (7) years from the end of the latest Fiscal Year to which the information and data relate. The Recipient will provide such information and data to the Minister upon request subject to and in accordance with applicable laws, including privacy laws.



**13. CONFIDENTIALITY**

**13.1** Each party shall comply with applicable laws pertaining to privacy, confidentiality and access to information in relation to information and records pertaining to this Agreement.

**13.2** For greater certainty and to ensure openness and transparency, information and records which each party agrees may be released to the public, subject to subsection 13.1, shall include the following:

13.2.1 this Agreement and any amendments thereto;

13.2.2 any financial, activity or evaluation reports required to be submitted to the Minister under this Agreement; and

13.2.3 any report arising from any audit conducted under this Agreement.

**14. LIABILITY AND INDEMNIFICATION**

**14.1** The Recipient will save harmless and fully indemnify the Minister, its officers, employees, servants and agents, successors and assigns from and against all claims, liabilities, and demands arising directly or indirectly from any negligent act or omission of the Recipient or any Agency, under this Agreement, from any breach of this Agreement by the Recipient (whether by the Recipient or any Agency), and from any claims, liabilities and demands that may arise from the Recipient entering into any loan, capital lease or other long term obligation, under this Agreement. This indemnity will cover reasonable legal costs.

**14.2** The Minister will save harmless and fully indemnify the Recipient, its officers, employees, servants and agents, successors and assigns from and against all claims, liabilities, and demands arising directly or indirectly from any negligent act or omission of the Minister under this Agreement for which there is liability under the *Crown Liability and Proceedings Act*, and from any breach of this Agreement by the Minister. This indemnity will cover reasonable legal costs.

**15. DELEGATION**

**15.1** Either party may, for the purpose of convenient administration, delegate any or all of its obligations under this Agreement to its duly authorized representative or agent, which in the case of the Recipient will be an Agency, by an agreement in writing.

**15.2** Where a party has delegated any or all of its obligations pursuant to this section, the delegating party will remain liable to the other party to this Agreement for the performance of all its obligations under this Agreement.

**15.3** Where the Minister delegates:

15.3.1 any or all of its obligations under this Agreement, the Minister shall ensure that the terms of the delegation are evidenced by an agreement in writing entered into between the Minister and the delegate which will, at a minimum, provide that:

(a) the delegate has a specified mandate, a clearly identified role and a defined relationship with the Minister; and

(b) upon written request of the Recipient, a copy of the Minister's delegation agreement referred to in this section shall be made available to the Recipient.

**15.4** Where the Recipient delegates:

15.4.1 any or all of its obligations under this Agreement, to an Agency, the Recipient shall ensure that the terms of the delegation are evidenced by an agreement in writing entered into between the Recipient and the Agency which will, at a minimum, provide that:

(a) the Agency has a specified mandate, a clearly identified role and a defined relationship with the Recipient;

(b) the Agency adheres to the accountability principles set out in this Agreement;

(c) the Agency will follow the accounting and record keeping standards set out in section 8.1.1 on behalf of the Recipient so as to permit the preparation of the Financial Statements Package by the

Recipient and to facilitate any audit process;

- (d) the Agency will provide the Minister, within two (2) weeks of any request by the Minister to the Agency, with reasonable access to its premises and all accounts, records and supporting documentation relating to any service or program delegated by the Recipient pursuant to this Agreement; and that
- (e) no principal-agent, employer-employee, partnership or joint venture relationship is created between the Agency and the Minister.

15.4.2 any or all of its obligations under this section, to an Agency, the Recipient shall, if requested by the Minister, take all reasonable and necessary steps to ensure that the Minister is given reasonable access to the premises of the Agency and access to all of the Agency's records relating to any service or program delegated by the Recipient, in accordance with the Recipient's delegation agreement, or in accordance with any other lawful power which the Recipient may exercise over the Agency; and

15.4.3 upon written request of the Minister, a copy of the Recipient's delegation agreement referred to in this section shall be made available to the Minister.

## **16. ACCOUNTABILITY TO MEMBERS**

**16.1** The Recipient shall maintain a system of accountability and transparency to its Members in accordance with principles of sound governance and public administration. This system shall include a conflict of interest policy for members and employees of the Recipient.

## **17. UNFORESEEN CIRCUMSTANCES**

**17.1** In the event that exceptional circumstances (including but not limited to health emergencies or disaster) occur during the term of this Agreement that were not reasonably foreseeable at the time this Agreement was entered into and that have a significant impact on the Recipient's performance of the terms and conditions of this Agreement, the Recipient may return to the Minister to seek changes to the level of Funding or to seek other assistance. In the event that the Minister agrees to change the level of Funding, that change will be made by way of a written amending agreement.

## **18. CAPITAL FACILITIES & ASSETS**

**18.1** The Recipient shall use each Capital Facility and Asset solely for the purposes of providing Health Programs and Services, unless otherwise agreed to in writing by the Minister.

**18.2** Unless each party agrees in writing, the Recipient shall not:

18.2.1 change the use of any Capital Facility or Asset or permit them to be used for additional uses which are not directly related to fulfilling the terms and conditions of this Agreement or any agreement under which funding for the Capital Facility or Asset was provided;

18.2.2 pledge, mortgage, charge or permit the creation of any security interest, claim or lien against the Capital Facilities and Assets;

18.2.3 undertake significant alteration of the Capital Facilities and Assets; or

18.2.4 sell, exchange, transfer or dispose of such Capital Facilities and Assets.

**18.3** The Recipient acknowledges that it holds the beneficial legal interest in any Capital Facilities and sole legal title for any Assets and acknowledges that the Minister does not exercise any ownership rights over such Capital Facilities and Assets.

**18.4** Where the Minister, its employees or agents require the use of any Capital Facilities or Assets in whole or in part to deliver any federal health programs and services in the Recipient's community, the Recipient shall permit such use or take all steps necessary to facilitate or consent to such use. Any such use shall be permitted free of rent or charge by the Recipient in view of the capital or maintenance contributions for such Capital Facilities and Assets by the Minister.

**18.5** Where this Agreement contains Funding under the Capital Investments Functional Area according to Schedule "FED-1", the Recipient will comply with all of the terms and conditions of this Agreement and the Health Infrastructure and Capital Protocol issued by the Minister with respect to such Funding.

**19. DEFAULT**

**19.1** The Recipient will be in default of this Agreement in the event:

19.1.1 the Recipient defaults in any of its obligations set out in this Agreement;

19.1.2 the auditor of the Recipient, or an auditor conducting a Ministerial Audit, gives a denial of opinion or adverse opinion as to the Financial Statements of the Recipient, or provides an opinion that any expenditure of funds by the Recipient under this Agreement does not comply with the terms and conditions of this Agreement;

**[COMMENT]** Use this first version of 19.1.3 when the Recipient is not incorporated. **[/COMMENT]**

19.1.3 the Recipient: (i) has any of the Funding or Assets taken by a creditor; (ii) becomes bankrupt or insolvent, goes into receivership, or takes the benefit of any statute from time to time being in force relating to bankrupt or insolvent debtors; or

**[COMMENT]** Use this second version of 19.1.3 when the Recipient is incorporated. **[/COMMENT]**

19.1.3 the Recipient: (i) fails to comply in a material way with the statute it was incorporated under; (ii) fails to comply in a material way with its incorporating documents or by-laws; (iii) has any of the Funding or Assets taken by a creditor; (iv) becomes bankrupt or insolvent, goes into receivership, or takes the benefit of any statute from time to time being in force relating to bankrupt or insolvent debtors; (v) becomes subject to procedures to be liquidated, wound-up or dissolved; or (vi) ceases to operate or gives notice that it will cease to operate; or

19.1.4 the Minister has a reasonable belief, based on material evidence, that the health, safety or welfare of the community members is being compromised; or

19.1.5 the Minister, having regard to the Recipient's Financial Statements Package and any other financial information relating to the Recipient reviewed by the Minister, is of the opinion that the financial position of the Recipient is such that the delivery of any Health Programs and Services provided is at risk.

**20. DEFAULT MANAGEMENT**

**20.1** In the event the Recipient is in default under this Agreement, the parties will meet to review the situation.

**20.2** Notwithstanding subsection 20.1, in the event the Recipient is in default under this Agreement, the Minister may take one or more of the following actions as may reasonably be necessary, having regard to the nature and extent of the default:

20.2.1 require the Recipient to develop and implement a Management Action Plan within sixty (60) calendar days, or at such other time as the parties may agree upon and set out in writing;

20.2.2 require the Recipient to seek advisory support acceptable to the Minister;

20.2.3 appoint, upon providing notice to the Recipient, a Third Party Funding Agreement Manager;

20.2.4 withhold any Funding otherwise payable;

20.2.5 require the Recipient to take any reasonable action necessary to remedy the default;

20.2.6 take such other reasonable action as the Minister deems necessary; and/or

20.2.7 terminate this Agreement.

**[COMMENT]** Use this first version of 20.3 when the recipient is First Nations (i.e. Band) have an Agreement with FNIHB and a separate agreement with INAC (Common Recipient). Other Recipients such as Tribal Councils, incorporated entities or Treatment Centres, etc. are not to use this clause. **[/COMMENT]**

**20.3** In addition to the remedies available to the Minister set out in section 20.2, where the Recipient defaults in its obligation to provide DIAND with the Financial Statements Package under the terms and conditions of this Agreement, the Minister may:

**[COMMENT]** Use this second version of 20.3 when the recipient is NOT a First Nation (i.e. If the Recipient is a Tribal Council,

20.3 In addition to the remedies available to the Minister set out in section 20.2, where the Recipient defaults in its obligation to provide the Minister with the Financial Statements Package under the terms and conditions of this Agreement, the Minister may:

20.3.1 require that an independent auditor recognized in the Province / Territory in which the Recipient has its administrative offices be appointed immediately by the Recipient at the Recipient's cost to prepare the Financial Statements Package and any other financial reports that may be outstanding under this Agreement;

20.3.2 appoint an independent auditor recognized in the Province / Territory in which the Recipient has its administrative offices and in which case:

(a) the Recipient will provide the auditor appointed by the Minister with full access to its financial records and provide such other information as the auditor may require to prepare the Financial Statements Package; and

(b) the Recipient will reimburse the Minister for all costs incurred in having the Financial Statements Package prepared.

## 21. REPAYMENT

21.1 The Recipient shall, at such times as this Agreement may specify and otherwise upon written demand, repay to the Minister any amount of the Funding which: (i) has not been accounted for by the Recipient in accordance with this Agreement; (ii) is spent by the Recipient for purposes other than those authorized under this Agreement; (iii) the Minister determines to be a recoverable stacking amount under subsection 6.2; (iv) the Recipient identifies as an underspending in accordance with 5.1.3; or (v) is an overpayment or any other amount that is repayable by the Recipient under this Agreement. Such amounts are debts due to the Crown.

21.2 Interest shall be charged on any debts under section 21.1 subject to and in accordance with the *Interest and Administrative Charges Regulations* and also constitutes a debt due to the Crown.

21.3 The Minister may set-off from any payment due under this Agreement:

21.3.1 any amount that is a debt due to the Crown pursuant to subsections 21.1 and 21.2;

21.3.2 any other amount that is due and payable by the Recipient to the Crown, including any amount due under the terms of any prior or other contribution agreement between the parties.

## 22. TERMINATION

22.1 Without limiting the Minister's right to terminate this Agreement for default, this Agreement may be terminated at any time by either party, without cause, upon at least ninety (90) calendar days written notice to the other party.

22.2 Upon delivery of a notice of termination by either party under this section, the party providing the termination notice shall offer to meet with the other party within two (2) weeks thereof, at which time both parties will consider whether there is any basis to continue with this Agreement.

22.3 If both parties agree:

22.3.1 the ninety (90) calendar day termination notice period may be reduced or extended; and/or

22.3.2 the parties may enter into a dispute resolution process and may agree to suspend the termination notice during such process; and/or

22.3.3 the termination notice may be withdrawn and this Agreement continued on any basis agreed to by the parties.

22.4 Where either party continues to demand termination following completion of any steps required or agreed to above in this section, the parties will adhere to the requirements of following section.

22.5 In the event of the termination of this Agreement under this section or for default:

22.5.1 the Recipient shall make no further commitments in relation to the use of Funding and shall cancel or

[/:ArrangementNumber]

otherwise reduce, to the extent possible, the amount of any outstanding commitments in relation thereto;

22.5.2 the Minister shall pay any monies owed by it to the Recipient up to the termination date of this Agreement, subject to any set-off claims, unless the Recipient and the Minister agree otherwise in writing;

22.5.3 the Recipient shall, if requested by the Minister, transfer or assist in the transfer of medical records in its possession to a successor recipient or the Minister where such records relate to the Health Programs and Services that will be delivered by the successor recipient or the Minister, as the case may be. Any transfer of records shall be undertaken subject to applicable laws;

22.5.4 the Recipient shall provide the Minister with the Financial Statements Package for the period between the date covered by the last Financial Statement and the termination date, and any other outstanding reports within one hundred and twenty (120) calendar days of the date of termination, unless the Minister waives this requirement in writing; and

22.5.5 the Recipient shall pay to the Minister any amount of the Funding which is unexpended at the termination date of this Agreement, unless the Recipient and the Minister agree otherwise in writing.

### **23. DISPUTE RESOLUTION**

23.1 The Minister and the Recipient agree they will attempt to negotiate a resolution to any disputes arising in respect of this Agreement in a timely manner.

23.2 In the event of a dispute regarding the interpretation of a provision of this Agreement or the obligation of a party under this Agreement that the parties cannot resolve through negotiations, the Minister and the Recipient may agree to non-binding mediation or any other form of dispute resolution in order to attempt to resolve the dispute. In such cases, each party will bear its own costs for mediation and share equally the cost of the mediator.

[COMMENT] Select this first version if the recipient is a First Nation or Tribal Council. [COMMENT]

### **24. TRIBAL COUNCIL MEMBERSHIP**

24.1 Where the Recipient is a Tribal Council and: (i) receives notice of a member First Nation's withdrawal; or (ii) intends to approve or approves of a First Nation's request to become a member of the Recipient, the Recipient shall immediately provide the Minister with notice and shall include with such notice a copy of any Band Council Resolutions it has confirming the member First Nation's withdrawal from, or request for addition to, the Recipient.

24.2 Unless the parties agree otherwise, a change in Recipient membership under section 24.1 will not result in or be reflected by changes to this Agreement until, at the earliest, the April 1st occurring after one (1) calendar year following the date the Recipient has notified the Minister of the change in membership. During that notice period, the Recipient and the Minister agree to meet to discuss the impacts of the change in membership on the rights and obligations of the parties under this Agreement.

24.3 Nothing in this section obliges the Minister to: (i) enter into any funding agreement with a former member First Nation; or (ii) add Funding to this Agreement in respect of a new member First Nation.

[COMMENT] Select this second version if the recipient is any other non-First Nation entity, e.g. Inuit or Innu organization. [COMMENT]

24. N/A

### **25. GENERAL PROVISIONS**

#### **25.1 The Agreement**

25.1.1 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.

25.1.2 This Agreement shall be interpreted in accordance with the laws of Canada and the applicable laws of the Province / Territory in which the Health Programs and Services are delivered.

25.1.3 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.

- 25.1.4 All amendments to this Agreement are to be made in writing and signed by both parties except where made by Notice of Budget Adjustment or by a reporting extension notice issued by the Minister under section 8.2.2.
- 25.1.5 All rights and obligations of the parties which expressly, or by their nature, survive termination or expiry of this Agreement shall 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: Accounting and Reporting, Minister's Right to Audit, Program Evaluation, Confidentiality, Liability and Indemnification, Capital Facilities and Assets, Default, Default Management, and Intellectual Property Rights.

**25.2 Waiver**

- 25.2.1 No provision of this Agreement and no event of default by the Recipient or the Minister of any provision of this Agreement will be deemed to have been waived unless the waiver is in writing and signed by the other party.
- 25.2.2 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.

**25.3 Legislation and Government Publications**

- 25.3.1 All references throughout this Agreement to legislation and particular government policies, codes, protocols and publications are deemed to refer to the legislation and government publications in force or issued at the time of the execution of this Agreement, and include any subsequent amendments or replacements thereof, as the case may be.

**25.4 Assignment**

- 25.4.1 The parties will not assign any of their responsibilities under this Agreement.
- 25.4.2 This Agreement is binding upon the parties and their respective administrators and successors.

**25.5 No Agency**

- 25.5.1 This Agreement is intended to provide Funding to assist the Recipient to carry out the Health Programs and Services in accordance with the terms and conditions of this Agreement. The Recipient shall at all times act on its own behalf and not on behalf of, or in the name of, the Minister. No principal-agent, employer-employee, partnership or joint venture relationship exists or shall be deemed to exist between the parties by virtue of this Agreement. The Recipient further agrees not to represent itself as such, including in any agreement with a third party.

**25.6 Intellectual Property Rights**

- 25.6.1 In this section "Material" includes anything that is created or developed by the Recipient with the Funding or in the course of implementing, providing or promoting the Health Programs and Services under this Agreement, and in which copyright subsists.
- 25.6.2 Copyright in any Material shall vest in the Recipient.
- 25.6.3 The Recipient shall, upon request, provide the Minister with copies of any Material for any purpose related to this Agreement.
- 25.6.4 The Minister shall be entitled, without cost or royalty, to use, reproduce and translate any Material for any government purpose, but shall not disclose or distribute any material outside of government unless authorized by law or the Recipient.

**25.7 Conflict of Interest Provisions Regarding Federal Officials**

- 25.7.1 The Recipient declares, and shall ensure that:
  - (a) no current or former public servant or public office holder 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* or the *Policy on Conflict of Interest and Post-Employment* applies shall derive any direct benefit from this Agreement, unless the provision and receipt of such benefits is in compliance with these Codes; and

- (b) no member of the Senate or the House of Commons shall be admitted to any share or part of this Agreement, or to any benefit arising from it, that is not otherwise available to the general public.

## 25.8 Lobbyists

25.8.1 The Recipient 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*.

25.8.2 The Recipient warrants that it has not and will not make any payment to any individual that is in whole or in part contingent upon the solicitation of funds or the negotiating/signing of this Agreement or any amendment hereto.

## 25.9 Communications

25.9.1 The Recipient shall acknowledge Health Canada's financial support in any communications and materials it provides to the public relating to the activities funded by this Agreement. Such acknowledgment shall be in a form satisfactory to the Minister and shall be withdrawn upon the written request of the Minister.

25.9.2 The Recipient shall, in respect of any research study, assessment or report containing opinions of the Recipient that is prepared with the Funding, include with the Funding recognition statement a disclaimer that the views and opinions expressed therein are solely those of the Recipient and may not reflect the views and opinions of Health Canada.

25.9.3 Each of the parties 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.

## 25.10 Warranty of Authority

25.10.1 The Recipient represents and warrants that its representatives who sign this Agreement on behalf of the Recipient have the authority to do so, and agrees to provide the Minister with such evidence of that authorization as the Minister may reasonably require upon request.

**[COMMENT]** If the recipient is incorporated, also include the following text in 25.10.2. **[/COMMENT]**

25.10.2 The Recipient 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.

**[COMMENT]** The following "Official Languages" text is optional (to be determined by the Region and the Recipient), however, it is mandatory for any Recipient that is delivering Health Programs and Services where there may be an impact on members of either official language group. **[/COMMENT]**

## 25.11 Official Languages

25.11.1 The Recipient agrees, in accordance with any instructions issued by the Minister, to provide any or all of the following in relation to the Health 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.

**26. NOTICES AND ADDRESSES**

**26.1** In this Agreement, where any notice, request, direction or other communication is required to be given or made by the Minister or the Recipient, it shall be in writing and shall be deemed sufficiently given if sent by registered mail, or facsimile, electronic transmission or by delivery in person, to the other party at the following address:

**If to the Minister:**

Title  
Division (if applicable)  
First Nations and Inuit Health Branch  
Health Canada  
Address  
Address Locator (if applicable)  
City, Province or Territory, Postal Code

Tel: Telephone Number, include area code  
Fax: Fax Number, include area code

**If to the Recipient:**

Title  
Recipient's Official Name  
Address  
City, Province or Territory, Postal Code

Tel: Telephone Number, include area code  
Fax: Fax Number, include area code  
E-mail Address:

**26.2** Such notices, requests, directions or other communications shall be deemed to have been received ten (10) business days after mailing if sent by registered mail, and the following business day if sent by facsimile, electronic transmission or delivered in person.



**IN WITNESS** of the foregoing covenants, this Agreement has been executed by the Minister and the Recipient by their duly authorized representatives.

**SIGNED ON BEHALF OF HER MAJESTY THE QUEEN IN RIGHT OF CANADA**, as represented by the Minister of Health

**SIGNED ON BEHALF OF THE RECIPIENT**

by: \_\_\_\_\_

by: \_\_\_\_\_

Title  
First Nations and Inuit Health Branch Health  
Canada

Title  
Recipient's Official Name

\_\_\_\_\_

\_\_\_\_\_

Print Name

Print Name  
(If Tribal Council or other health organization insert: I have the authority to bind the corporation after all signatures)

OR

(If Band Council insert: I am a member of council and have authority to sign this Agreement)

by: \_\_\_\_\_

(Insert name and title)

\_\_\_\_\_

Print Name

In the presence of:

In the presence of:

\_\_\_\_\_

\_\_\_\_\_

(Insert name and title)

(Insert name and title)

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

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

Note: Quorum requires \_\_\_\_\_ signatures

[/:ArrangementNumber]