

SCHEDULE "I"

TRUST AGREEMENT

THIS AGREEMENT is made as of the ■ day of ■, 2006,

A M O N G:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA as represented by the MINISTER OF HUMAN RESOURCES AND SKILLS DEVELOPMENT and the MINISTER OF CANADIAN HERITAGE AND STATUS OF WOMEN (the "Trustee")

- and -

PLAINTIFFS, as represented by the National Consortium, Merchant Law Group, and other legal counsel as undersigned

- and -

THE ASSEMBLY OF FIRST NATIONS and INUIT REPRESENTATIVES

- and -

THE GENERAL SYNOD OF THE ANGLICAN CHURCH OF CANADA, THE PRESBYTERIAN CHURCH IN CANADA, THE UNITED CHURCH OF CANADA AND ROMAN CATHOLIC ENTITIES

WHEREAS:

- A. On ■, 2006, the Settlement Parties entered into the Settlement Agreement for the resolution of the legacy of Indian Residential Schools, including the making of Common Experience Payments.
- B. Pursuant to the Settlement Agreement, the Settlement Parties agreed to enter into this Agreement to establish a trust to provide for the funding of the Common Experience Payments and certain other matters, on and subject to the terms set out in this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSES that, in consideration of the premises and the covenants and agreements herein contained, the Parties agree as follows:

ARTICLE 1

INTERPRETATION

1.1 Definitions

In this Agreement, in addition to the terms defined in the description of the Parties set out above:

“Agreement” means this trust agreement including its recitals, as amended, supplemented or restated from time to time.

“Beneficiaries” means: (i) all Eligible CEP Recipients who have complied with the timing and other requirements of Section 5.04 of the Settlement Agreement, (ii) the Personal Representatives of all Eligible CEP Recipients who are Cloud Student Class Members who died on or after October 5, 1996 who have complied with the timing and other requirements of Sections 5.04 and 17.02 of the Settlement Agreement, and (iii) the Personal Representatives of all other Eligible CEP Recipients who died on or after May 30, 2005 who have complied with the timing and other requirements of Sections 5.04 and 17.01 of the Settlement Agreement and “Beneficiary” shall have a corresponding meaning.

“Business Day” means a day other than a Saturday or a Sunday or a day observed as a holiday under the laws of the Province or Territory in which the person who needs to take action pursuant to this Agreement is situated or a holiday under the federal laws of Canada applicable in the said Province or Territory.

“Fiscal Year” means, with respect to the Trust, the period commencing on the day and year first written above and ending on the immediately following December 31 and thereafter the calendar year.

“Initial Amount” has the meaning set out in Section 3.1 of this Agreement.

“Parties” means collectively and individually the signatories to this Agreement.

“Personal Representative” includes, if a person is deceased, an executor, administrator, estate trustee, trustee or liquidator of the deceased or, if the person is mentally incompetent, the tutor, committee, Guardian, curator of the person or the Public Trustee or their equivalent or, if the person is a minor, the person or party that has been appointed to administer his or her affairs.

“Representative Ministers” has the meaning set out in Section 11.1 of this Agreement.

“Settlement Agreement” means the final settlement agreement made as of ■, 2006 among Canada, Plaintiffs, as represented by the National Consortium, Merchant Law Group and other legal counsel, The Assembly of First Nations, Inuit Representatives, The General Synod of the Anglican Church of Canada, The Presbyterian Church in Canada, The United Church of Canada and Roman Catholic Entities and its recitals and Schedules, as amended, supplemented or restated from time to time.

“Settlement Parties” means collectively and individually the signatories to the Settlement Agreement.

“Termination Date” has the meaning set out in Section 7.1 of this Agreement.

“Trust” means the trusts established by this Agreement for the purposes stated in Section 2.1 of this Agreement.

“Trust Account” has the meaning set out in Section 5.1 of this Agreement.

“Trust Fund”, at any time, means each of the following money and other assets that are at such time held by the Trustee pursuant to this Agreement:

- (a) the Initial Amount;
- (b) the Designated Amount;
- (c) the moneys received by the Trustee pursuant to Section 5.06 of the Settlement Agreement, if any, and specified to form part of the assets of the Trust;
- (d) the income which shall be received and accumulated by the Trustee in accordance with Section 6.1 of this Agreement; and
- (e) all additional assets, rights and benefits of any kind or nature whatsoever arising, directly or indirectly, from or in connection with or accruing to any of the foregoing.

1.2 Capitalized Terms Not Defined Herein

All capitalized terms used in this Agreement and not defined herein shall have the meanings given to such terms in the Settlement Agreement.

1.3 Headings

The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement. The terms “herein”, “hereof”, “hereunder” and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles and Sections are to Articles and Sections of this Agreement.

1.4 Extended Meanings

In this Agreement words importing the singular number only include the plural and *vice versa*, words importing any gender include all genders and words importing persons include individuals, partnerships, associations, trusts, unincorporated organizations, corporations and governmental authorities. The term “including” means “including without limiting the generality of the foregoing.”

1.5 No Contra Proferentem

The Parties acknowledge that their respective legal counsel have reviewed and participated in settling the terms of this Agreement and they agree that any rules of construction to the effect that any ambiguity is to be resolved against the drafting party is not applicable in interpreting this Agreement.

1.6 Statutory References

In this Agreement, unless something in the subject matter or context is inconsistent therewith or unless otherwise herein provided, a reference to any statute is to that statute as enacted on the date hereof or as the same may from time to time be amended, re-enacted or replaced and includes any regulations made thereunder.

1.7 Day for any Action

If any day on or by which any action required to be taken hereunder is not a Business Day, such action must be taken on or by the next succeeding day which is a Business Day.

1.8 Currency

All references to currency herein are to lawful money of Canada.

**ARTICLE 2
PURPOSES OF AGREEMENT**

2.1 Purposes

The Parties have entered into this Agreement to: (i) provide for the payment to and receipt by the Trustee of the Initial Amount and the Designated Amount, and (ii) provide for the establishment of the Trust for the benefit of Beneficiaries and other persons entitled to be paid out of the Trust in accordance with this Agreement and the Settlement Agreement.

**ARTICLE 3
SETTLEMENT OF TRUST**

3.1 Settlement of the Trust

The Trustee has received the sum of \$100 from the legal representatives of the Class Members and the Cloud Class Members for the purpose of settling the Trust (the "Initial Amount"). The Trustee acknowledges receipt of the Initial Amount and agrees to hold the Initial Amount and all other amounts at any time forming part of the Trust Fund upon the trusts and subject to the terms contained in this Agreement and the Settlement Agreement.

3.2 Name of the Trust

The name of the Trust shall be the "Designated Amount Fund."

3.3 Legal Entitlements

The legal ownership of the Trust Fund and the right to conduct the administration of the Trust shall be vested exclusively in the Trustee and the Beneficiaries of the Trust have no right to compel or call for any partition, division or distribution of the Trust Fund or any part thereof. No Beneficiary of the Trust shall have or shall be deemed to have any right of ownership in any of the assets of the Trust.

3.4 Irrevocable Trust

The Trust is intended and is hereby declared to be irrevocable.

**ARTICLE 4
DESIGNATED AMOUNT**

4.1 Liability to Pay

The legal representatives of the Class Members and the Cloud Class Members shall pay to the Trustee and the Trustee shall receive the Designated Amount on the Implementation Date.

**ARTICLE 5
INVESTMENT**

5.1 Investment

The Trustee shall deposit all amounts received at any time in accordance with this Agreement and the Settlement Agreement and all income accumulated in accordance with this Agreement and forming part of the Trust Fund within the Consolidated Revenue Fund pursuant to section 21 of the *Financial Administration Act*. The Trust Fund shall bear interest as provided in Order in Council P.C. 1970-300 of February 17, 1970 made pursuant to subsection 21(2) of the *Financial Administration Act*. For greater certainty, the Trustee shall have no obligation or authority to invest or reinvest the funds constituting the Trust Fund and subsections 27(5) and (6) of the *Trustee Act (Ontario)* shall have no application to the Trust.

**ARTICLE 6
INCOME AND CAPITAL**

6.1 Accumulation of Income

Until the Termination Date, the Trustee shall accumulate the income from the Trust Fund and shall each month add such income to the capital of the Trust Fund to be dealt with as part of the capital.

6.2 Distributions to Beneficiaries

The Trustee shall pay to each Beneficiary from the capital of the Trust Fund an amount, representing his or her Common Experience Payment, calculated in accordance with Section 5.02 of the Settlement Agreement.

6.3 Reviews of the Trust Fund

The Trustee shall review the Trust Fund as specified in Section 5.05(1) of the Settlement Agreement to determine the sufficiency of the Trust Fund to pay all distributions to Beneficiaries who have applied for a CEP as of the date of the review. In the event that the Trust Fund is insufficient to pay all distributions to all Beneficiaries who have applied for a CEP as of the date of the review under Section 6.2 of this Agreement, Canada shall, in accordance with Section 5.06 of the Settlement Agreement, pay to the Trustee an amount sufficient to remedy such deficiency and that amount shall form part of the Trust Fund.

6.4 Excess in the Trust Fund

If the audit of the Trust Fund made pursuant to Section 5.05(2) of the Settlement Agreement determines that the balance in the Trust Fund exceeds the amount required to make all remaining distributions to Beneficiaries under Section 6.2 of this Agreement, the amount remaining in the Trust Fund after all remaining distributions to Beneficiaries under Section 6.2 of this Agreement have been made shall be distributed by the Trustee in accordance with the provisions of Section 5.07 of the Settlement Agreement.

ARTICLE 7 TERMINATION

7.1 Termination

The Trust shall continue until the earlier of (i) the date on which the obligations set out in Article 5 of the Settlement Agreement have been met, and (ii) January 1, 2015 (the earlier of such dates is referred to as the "Termination Date"). As soon as practicable following the Termination Date, the Trustee shall:

- (a) pay or transfer any property remaining in the Trust Fund to the National Indian Brotherhood Trust Fund and to the Inuvialuit Education Foundation in accordance with Section 5.07(4) of the Settlement Agreement;
- (b) prepare a final accounting of the Trust Fund and provide such accounting to the National Administration Committee; and

- (c) file applicable final trust information and tax returns under applicable federal and provincial law and obtain necessary clearance certificates.

ARTICLE 8
RECORDS, REPORTING AND FINANCIAL STATEMENTS

8.1 **Records**

The Trustee shall keep such books, records and accounts as are necessary or appropriate to document the assets of the Trust and each transaction of the Trust. Without limiting the generality of the foregoing, the Trustee will keep records of all amounts received by the Trustee as part of the Trust Fund and all distributions made by the Trustee from the Trust Fund.

8.2 **Annual Reporting**

The Trustee shall provide to the National Administration Committee within sixty (60) days following the close of each Fiscal Year of the Trust and within sixty (60) days of the Termination Date, a written statement of account setting forth the balance in the Trust Fund at the beginning and end of the relevant period and all receipts, disbursements and other transactions in the Trust Fund during the relevant period. Upon the expiration of thirty (30) days from the date of receipt by the National Administration Committee of a statement of account, or upon the prior approval of the National Administration Committee, the Trustee shall be forever relieved and discharged from liability or accountability to anyone with respect to the acts or transactions shown in such statement, except for any acts or transactions objected to by the National Administration Committee in writing and delivered to the Trustee within such thirty (30) days.

ARTICLE 9
AMENDMENT

9.1 **Amendment**

No amendment to this Agreement will be valid or binding unless set forth in writing and duly executed by the Parties and approved by the Courts.

ARTICLE 10
ADMINISTRATIVE EXPENSES AND TRUSTEE'S FEES

10.1 Administrative Expenses

Subject to section 5.08(2) of the Settlement Agreement, all expenses with respect to the administration of the Trust shall be paid by Canada and shall not be payable out of the Trust Fund.

10.2 No Trustee's Fees

The Trustee shall not be entitled to any fees or allowance for serving as trustee.

ARTICLE 11
CONCERNING THE TRUSTEE

11.1 Representatives of the Trustee

At all times there shall be two federal Cabinet Ministers representing the Trustee (the "Representative Ministers"). The Representative Ministers shall be the incumbent Ministers from time to time responsible for the Office of Indian Residential Schools Resolution of Canada and Service Canada. The initial Representative Ministers shall be the Minister of Canadian Heritage and Status of Women and the Minister of Human Resources and Skills Development, respectively.

11.2 Change of Department Name

In the event of a change of name of the Department of either Representative Minister, the Trustee shall promptly provide notice of such change to the other Parties. For greater certainty, any such change of name shall have no effect on a Representative Minister's status as a representative of the Trustee.

11.3 Additional Trustee's Duties

In addition to the duties imposed under this Agreement, the Trustee acknowledges and accepts the duties imposed on the Trustee under the Settlement Agreement.

ARTICLE 12
GENERAL

12.1 Notices

Any notice or other communication to be given in connection with this Agreement will be given in writing and will be given by personal delivery or by electronic communication addressed to the recipient as follows:

- (a) to Her Majesty The Queen In Right Of Canada as represented by the Minister Of Human Resources And Skills Development and the Minister Of Canadian Heritage And Status Of Women:

IRSRC Legal Services Unit
Department of Justice
90n Sparks Street
Ottawa, Ontario
K1A 0H8

Attention: Senior Counsel
Facsimile number: 613-996-1810

HRSDC Legal Services Unit
Place du Portage, Phase IV, 11th floor
140 Promenade du Portage
Gatineau, Quebec
K1A 0J9

Attention: Senior General Counsel
Facsimile number: 819-953-8301

- (b) to the Class Members and the Cloud Class Members:

■
■

Attention: ■
Facsimile number: ■

(c) to The Assembly of First Nations:

■
■

Attention: ■

Facsimile number: ■

d) to the Inuit Representatives:

e) to the General Synod Of The Anglican Church Of Canada

f) to the Presbyterian Church In Canada

g) to the United Church Of Canada; and,

h) to the Roman Catholic Entities

or to such other address, individual or electronic communication number as a Party may from time to time advise by notice given pursuant to this Section. Any notice or other communication will be exclusively deemed to have been given, if given by personal delivery, on the day of actual delivery thereof and, if given by electronic communication, on the day of transmittal thereof if transmitted during normal business hours of the recipient and on the Business Day during which such normal business hours next occur if not so transmitted.

12.2 Benefit of the Agreement

This Agreement will enure to the benefit of and be binding upon the respective successors and assigns of the Parties.

12.3 Counterparts

This Agreement may be executed in English or French in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same agreement.

12.4 Governing Law

This Agreement shall be governed by and construed according to the laws applicable in the Province of Ontario.

IN WITNESS WHEREOF the parties hereto have executed this Agreement.