

## SETTLEMENT AGREEMENT

THIS AGREEMENT ENTERED INTO THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2006

Between

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA  
AS REPRESENTED BY  
THE MINISTER RESPONSIBLE FOR  
INDIAN RESIDENTIAL SCHOOLS RESOLUTION CANADA**  
(hereinafter referred to as the “Government”)

and

**THE UNITED CHURCH OF CANADA,**  
(hereinafter referred to as the Church)

WHEREAS the Government and the Church participated in developing and operating residential schools for Aboriginal children in Canada;

AND WHEREAS former residential school students have alleged abuse and other wrongs against the Government and the Church;

AND WHEREAS the Government and the Church have both expressed regret for the unintended harm to Aboriginal people incurred at residential schools;

AND WHEREAS the Government and the Church desire a fair, comprehensive and lasting resolution of the legacy of Indian Residential Schools directed to, among other things, healing and reconciliation and payment of compensation for validated claims;

AND WHEREAS former students who were abused at residential schools should receive Compensation for injuries resulting from Validated Claims;

AND WHEREAS the Government and the Church recognize that court proceedings can be adversarial, lengthy and costly and often not the best way to resolve abuse claims;

AND WHEREAS the Government and the Church have been and remain committed to working jointly with Claimants to employ fair, safe, effective and timely processes to validate and resolve IRS Abuse Claims, which processes will seek to avoid causing additional trauma for Claimants while also protecting the reputations of named abusers from unfounded allegations;

AND WHEREAS representatives of the Government and Church are parties to an Agreement in Principle amongst themselves, plaintiffs, the AFN and certain other

religious denominations dated November 20, 2005 in which the parties have agreed to enter into a final settlement agreement to give effect to the Agreement in Principle;

THIS MEMORANDUM WITNESSETH:

## **PART I DEFINITIONS**

1.1 The following definitions apply throughout this Agreement, and, unless specifically defined therein, in any subsequent documents entered into in furtherance of its objectives:

"Aboriginal Healing Foundation" or "AHF" means the non-profit corporation established under Part II of the *Canada Corporations Act*, R.S.C. 1970, c. C-32 to address the healing needs of Aboriginal people affected by Indian Residential Schools.

"Agreement", "hereto", "herein", and similar expressions refer to this Agreement and any amendments thereto, and include all schedules attached to this Agreement.

"Agreement in Principle" means the agreement signed on November 20, 2005 between the Government as represented by The Hon. Frank Iacobucci, IRS plaintiffs, the AFN, the Church, other religious denominations, and others.

"Approval Orders" means the judgments or orders of the courts certifying the Class Actions and approving the Indian Residential Schools Settlement Agreement pursuant to the applicable class proceedings legislation or the common law.

"Assembly of First Nations" or "AFN" means the national representative organization of the First Nations in Canada created by Charter of its members in 1985.

"Catholic Settlement Agreement" means the agreement entered into between certain Catholic Entities, the • Corporation and the Government dated • , 2006.

"Church" means The United Church of Canada, founded pursuant to a covenant formed between the members of its founding churches, and was incorporated between 1924 and 1926 by the Parliament of Canada, S.C. 1924 c. 100, and the Legislatures of various provinces. The statutes adopted the said covenant and were and are each known as *The United Church of Canada Act*.

"Claimant" means an individual who is entitled to make a claim under the Dispute Resolution Model or Independent Assessment Process established under the Indian Residential Schools Settlement Agreement or a former student of an IRS or

other person who opted out of the Settlement Agreement and has made an IRS Abuse Claim.

“Compensation” means damages, Costs and interest as awarded or agreed upon payable to a Claimant in an IRS Abuse Claim.

“Costs” means assessed costs, agreed upon costs, or DRM or IAP costs payable to a Claimant in an IRS Abuse Claim.

“Dispute Resolution Model” or “DRM” means the out of court process for the resolution of IRS Abuse Claims announced by the Minister Responsible for Indian Residential Schools Canada on November 6, 2003, as amended from time to time.

“Government” means the Government of Canada.

“Independent Assessment Process” or “IAP” means the process for validating and providing compensation for certain proven abuse claims as set out in Schedule B to the Agreement in Principle, as modified by the Approval Orders or thereafter in accordance with a procedure approved by those judgements.

“IAP Claim” means a claim resolved through the IAP established by the Approval Orders.

“In-Kind Services” includes in-kind services, contributions, commitments or programs as the context may require.

“Indian Residential School” or “IRS” means one or more of the Indian Residential Schools set out in Schedule “A” hereto, and any other school added to such list pursuant to the process set out in the Indian Residential Schools Settlement Agreement provided that the Church had a presence or was associated with such school.

“Indian Residential Schools Settlement Agreement” or “IRSSA” means the Settlement Agreement dated ● , 2006 (made between Canada; certain Plaintiffs, as represented by the National Consortium, the Merchant Law Group and independent counsel; the AFN; Inuit representatives; and the Church Organizations as defined in the IRSSA) as approved by the Approval Orders.

“IRS Abuse Claim” means a continuing claim as defined for the IAP, or outside of the IAP, means a claim for Compensation for the mistreatment or neglect of a child arising from, or connected to, the operation of an Indian Residential School, other than a claim arising from the alleged loss or diminution of aboriginal language or culture (which is a continuing claim as defined for the IAP) that is founded on:

one or more intentional torts such as physical or sexual assault, forcible confinement or the intentional infliction of mental suffering where the Government or the Church has or accepts vicarious liability;

negligence or breach of fiduciary duty where the Government or the Church has or accepts any part of the legal responsibility;

any other head of liability recognized by the courts as of the date this Agreement comes into force, where the Government or the Church has or accepts any part of the legal responsibility.

“Other Released Claim” means any claim deemed to have been released pursuant to the Class Action Judgments.

“United Church Healing and Reconciliation Service and Evaluation Committee” or “UCHRSEC” means the Committee established in Schedule B to this Agreement,

“Validated Claim” means an IRS Abuse Claim that has been found to be proven:

by a final decision of a DRM, the IAP or a court; or

as a result of an assessment conducted by Government counsel in accordance with this Agreement, including the principles set out in Part III hereof

and “Validation” means any of the above methods used to decide if an IRS Abuse Claim is a Validated Claim.

1.2 For greater certainty, for purposes of this Agreement the definitions in this Agreement prevail over those used in the IRSSA. Where a word or term is capitalized in this Agreement and not herein defined, then the definition in the IRSSA applies unless the context requires otherwise.

1.3 The following Schedules are appended to this Agreement and are incorporated into and form part of this Agreement by this reference as fully as if contained in the body of this Agreement:

Schedule A, Indian Residential Schools Related to the United Church;

Schedule B, Healing and Reconciliation and In-Kind Services Criteria; and

Schedule C, Full and Final Release of Claims by Persons who Opt Out of the IRSSA.

**PART II  
COMING INTO FORCE**

2.1 This Agreement comes into force and will become effective and binding on the parties on the Implementation Date (see Article 1.01 of the IRSSA). For greater certainty, if the IRSSA does not become effective and binding, then this Agreement has no force and effect.

**PART III  
DEFENCE AND RESOLUTION OF IRS ABUSE CLAIMS**

3.1 As long as there is a prospect of settling a claim solely on the basis of the allegations which fall within the definition of an IRS Abuse Claim, it is to be treated as such for the purposes of this Agreement notwithstanding the fact that claims arising from alleged loss or diminution of aboriginal language or culture or other claims falling outside the definition are also being made.

3.2 It is the Government's intention to defend or resolve all IRS Abuse Claims in which it is a named party. For claims based on intentional torts arising prior to May 14, 1953, the Government will assert immunity if the matter proceeds to trial and will play no role in the defence after a court finds such immunity. The Government will provide written notice of its intention to the Church not later than 120 days before the start of such trial, and the Church will defend the claims or otherwise settle them.

3.2.1 The Government agrees to wholly indemnify the Church for all Compensation paid to a Claimant pursuant to this Section or Section 5.2.; and

3.2.2 The Government will further indemnify the Church for legal fees and expenses incurred by the Church in defending an IRS Abuse Claim based on an intentional tort arising prior to May 14, 1953 for the period of time from and after a court has dismissed the claim against the Government based on Crown immunity to date of the resolution of the claim. The indemnification will be in an amount as agreed between the Government and Church, or as determined in accordance with Part VI hereof. In the event of resort to Part VI the parties and any Mediator appointed under Section 6.6 shall have regard to the rules, principles and case law that would apply in the taxation of a solicitor and own client account in the province or territory where the claim was brought.

3.3 The Church will cooperate in the validation and resolution of all IRS Abuse Claims against it, whether advanced within or outside the IAP, and may elect to participate at its own expense in the validation and resolution of any claim, or certain aspects of it, and reconciliation, subject to any applicable rules and procedures. In the case of a claim being resolved through the IAP, the Church's rights to participate and obligations are as set out therein.

3.4 The Government agrees to co-operate with the Church to minimize the circumstances in which a Claimant pursues independent causes of action or theories of liability against the Church in an IRS Abuse Claim.

3.5 The Government, where requested by the Church, shall provide disclosure of and production of relevant files and documents to counsel for the Church and its researchers and/or experts, excepting files and documents with respect to which solicitor-client privilege or other lawful privilege applies and is asserted and subject to privacy concerns and legislation. Any information obtained from records pursuant to this section will be used exclusively for the DRM or IAP processes or the defence of the IRS Abuse Claim for which the information was sought unless otherwise agreed in writing.

3.6 The Government and the Church agree that instructions given to their respective counsel will be consistent with the terms and intent of this Agreement, and further accept and acknowledge that their respective representatives and counsel are instructed by, act for, and represent only their principal.

3.7 The Government and the Church will within sixty (60) days of the coming into force of this Agreement withdraw any third party claim or cross claim against each other in IRS Abuse Claims on a reciprocal, without costs basis, other than in a class action or representative proceeding which includes allegations beyond IRS Abuse Claims, and will refrain from issuing such claims in the future, except in a class action or representative proceeding which includes allegations beyond IRS Abuse Claims.

3.8 The provisions of Appendices III and IV of the IAP apply to the collection and submission of documents and to the participation and evidence of an alleged perpetrator in IAP.

3.8A The Church will provide documents to the Government as required to assist with validation of applications for the Common Experience Payment (CEP) as that term is defined in the IRSSA.

3.9 In litigation and, subject to the provisions of Appendices III and IV of the IAP, in IAP, where the Church elects not to participate in the validation or resolution of IRS Abuse Claims, then the Church will at its own expense:

3.9.1 Comply with all reasonable requests from the Government for information during the proceedings;

3.9.2 Provide counsel for the Government and its researchers and experts with full access to all relevant files and databases, excepting documents with respect to which solicitor-client privilege or other lawful privilege applies and is asserted. Any information obtained from records pursuant to this section will be used exclusively for the DRM or IAP processes or for the defence of the IRS Abuse Claim for which the information was sought unless otherwise agreed in writing;

3.9.3 Participate, through one or more representatives, to the extent consistent with its values and traditions in any apologies, reconciliation or closure ceremonies that are agreed to as part of the resolution of an IRS Abuse Claim, and, provided the terms of this Agreement have been followed, support the result achieved as if they had been represented by counsel and had defended the Claim;

3.9.3.1 For greater certainty, the Church is responsible for the expense of participation by its representative at the event or ceremony, but is not responsible for any of the expense of the event or ceremony itself;

3.9.4 Provide disclosure and production of relevant documents in its possession or control, and provide witness statements on request;

3.9.5 Attend, as appropriate, at the discovery of their witnesses, and otherwise facilitate the testimony of witnesses within its employ; and

3.9.6 Accommodate a Claimant's reasonable request that a representative of the United Church attend a hearing while a Claimant is giving evidence or otherwise relating his or her experience at an IRS.

3.10 In IAP, where the Church elects not to participate in the validation or resolution of IRS Abuse Claims and subject to Appendix III of the IAP:

3.10.1 Provided a witness statement is submitted in advance, or the individual provides a full interview to the Government, the Government will pay the reasonable travel and accommodation costs of a member, employee or former employee of the Church to appear at a DRM or an IAP hearing. In other proceedings involving IRS Abuse Claims, the Government will only be responsible for any expense related to the participation of the member, employee or former employee of the Church where the Government requires the participation of such member, employee or former employee for its own purposes; and

3.10.2 Subject to Section 3.11, the Government will participate in and may conclude negotiations to determine the amount of Compensation in any settlement.

3.11 Notwithstanding anything to the contrary in the Settlement Agreement or the IAP, it is agreed that in IAP Claims in which the Church is financially contributing to the Compensation paid to a Claimant, the Government will, at the sole discretion of the Church, require the claim to proceed to a hearing. In the event that the Church insists that a hearing proceed in this manner, the Church will pay 50% of the reasonable process costs of that hearing.

3.11.1 In an IAP Claim in which the Church is not financially contributing to any resulting award, the Government agrees to consult with the Church prior to settling the claim.

3.12 Where a trial is held in a matter arising under the IAP, neither the Government nor the Church will rely upon the defence of limitations or the doctrine of laches or other defence not going to the merits. This section does not apply to claims by a plaintiff who has opted out of the IRSSA.

3.12.1 Where an opt-out claim can be settled, the Government and the Church agree that it will be resolved without regard to possible defences which do not go to the merits, such as limitations or laches. Should such a claim proceed to trial, Crown immunity, where applicable, will be asserted by the Government, and the Church will be free to determine the defences it will assert.

3.13 The Government will in a timely manner provide the Church with copies of IRS Statements of Claim served on the Government, and copies of Notices of Examinations it serves on IRS Claimants, in order to facilitate informed decisions about potential participation by the Church.

3.14 Where IRS Abuse Claims are being advanced in litigation, the Government and the Church will each notify the other of any settlement overtures from claimants.

3.15 Where the Church receives from the IAP Secretariat a copy of a Claimant's IAP application or receives from the Government a copy of an application to the DRM, the Church agrees to be bound by trust conditions imposed on it with respect to confidentiality or, if it does not so agree in one or more instances, to return the document(s) without copying, reading or making use of it in any way.

3.16 Releases by Class Members, Cloud Class Members and Non-resident Claimants are as provided for in the IRSSA, specifically Articles 4.06, 11.01, 11.02 and Schedule P, and the Approval Orders. As part of any resolution of a claim brought by any person not bound by the IRSSA arising out of or in relation to an Indian Residential School or the operation generally of Indian Residential Schools, the Government will concurrently secure from the claimant a dismissal of the claim and release for itself and the Church from any and all past, present and future claims, whether or not now known to or existing at law, arising from or connected to, directly or indirectly, an Indian Residential School.

3.16.1 The release by a person not bound by the IRSSA shall be in the form attached as Schedule C.

3.17 The Church and Canada agree that they will bring no action or claim whatsoever against the other or its counsel related in any way to the validation or resolution of any DRM, IAP or opt-out claims, and agree that this section shall operate as a full and complete defence to any such claim and that each of them shall be barred from recovering as against the other any and all amounts claimed by way of damages, interest,



costs or expenses in any way related to such claims. The parties further agree to indemnify each other for any and all costs, expenses and damages suffered by each of them as a result of such action or claim being brought against the other or its counsel by them.

3.18 Section 3.17 does not operate to prevent the Government or a Church from taking an action to enforce the provisions of this Agreement.

#### **PART IV HEALING AND RECONCILIATION AND FINANCIAL COMMITMENTS**

4.1 The parties agree that the maximum the Church is required to contribute towards IRS Abuse Claims is \$6,891,170 determined as follows:

4.1.1 \$4,710,420, consisting of \$2,529,670 in cash and \$2,180,750 in In-Kind Services, which is the Church's proportionate amount of the dollar value of the cash and In-Kind Services contributions made in the Catholic Settlement Agreement (being \$29,000,000 cash and \$25,000,000 in-kind required of the Catholic Entities), plus

4.1.2 A maximum of \$2,180,750, being the Church's proportionate amount of the Catholic Entities' commitment to use best efforts through a national campaign over seven years to raise \$25,000,000, as set out in the Catholic Settlement Agreement. The seven year period commences on the day following the coming into force of the Catholic Settlement Agreement.

4.1.2.1 Of the \$2,180,750, set out in section 4.1.2, the Church will pay \$1,744,600 regardless of the amount raised by the Catholic Entities through the national campaign, and will pay a further \$436,150 upon the Catholic Entities raising over \$20,000,000.

4.1.2.2 The Church shall satisfy its In-Kind Services contribution over a maximum of ten years from March 31, 2005.

4.2 Except as provided in Section 5.2 of this Agreement, the Church will have no further obligation to pay Compensation for IRS Abuse Claims beyond the amounts set out in Section 4.1.

4.2.1 For greater certainty, the Government agrees that it will be responsible for all further Compensation under the DRM and IAP, and all settlements and judgments for IRS Abuse Claims in the IAP or by opt-out claimants save for claims for alleged loss of language and culture by opt-out claimants.

4.3 Notwithstanding Sections 4.1, 4.2 and 5.1 the Church retains the right, in its sole discretion, to make some or all of its In-Kind Services contribution in cash and the further

right, in its sole discretion, to make additional cash or In-Kind Services contributions above and beyond what is required under this Agreement.

4.4 The parties agree that as at November 20, 2005 the sum of \$5,444,420 has been paid by the Church in Compensation to Claimants for Validated Claims.

4.5 Within 60 days of this Agreement coming into force, the Government and the Church will agree on the amount of Compensation paid by the Church between November 20, 2005 and the date this Agreement comes into force (the “transition period”). Within 60 days of such agreement, the Government will pay to the Church:

4.5.1 the amount of Compensation, not to exceed \$1,010,600, paid by the Church for Compensation between November 20, 2005 and the date of this Agreement coming into force, which amount will be irrevocably committed for funding of the UCHRSEC and paid out in accordance with the terms of Schedule B; (the “Committed UCHRSEC Amount”); and

4.5.2 the amount of Compensation paid by the Church between November 20, 2005 and the date of this Agreement coming into force, which exceeds \$1,010,600.

4.6 The amount of \$5,444,420 as set out in Section 4.4 plus the amount determined in accordance with Section 4.5 shall be a credit to the Church as against the amounts required to be paid or In-Kind Services to be provided in accordance with Sections 4.1, 4.7, 4.8 and 4.9.

4.7 The amount to be drawn down under the credit established by Section 4.6 or paid by the Church after the credit is exhausted, as the case may be, up to the maximum of \$6,891,170 to be contributed by the Church will be determined as follows:

4.7.1 The aggregate of \$4,710,420 and \$1,744,600 (from sections 4.1.1 and 4.1.2.1), being \$6,455,020, minus the amount determined under section 4.5; plus

4.7.2 The amount raised by the Catholic Entities through the national campaign that exceeds \$20,000,000 and up to \$25,000,000 multiplied by 0.08723.

4.7.3 For purposes of calculations under this Agreement, the Catholic fundraising campaign will terminate seven years from the date this Agreement comes into force or such longer period as may be agreed to by the Church and Government, but in no case shall the period exceed 10 years from the coming into force of this Agreement.

4.7.4 No later than sixty days after the date on which the amount raised by the Catholic Entities through the national campaign exceeds \$20,000,000 the Government will deliver a statement to the Church containing sufficient

information to enable the Church to verify the amount raised by the Catholic Entities.

4.8 Any amount required to be paid by the Church or In-Kind Services to be provided may be satisfied by making grants for healing and reconciliation in accordance with Schedule B, and a corresponding credit given against the payments or In-Kind Services required under Section 4.1.

4.8.1 All decisions concerning the eligibility of grants for healing and reconciliation shall be made by the United Church Healing and Reconciliation Service Evaluation Committee (“UHRSEC”) established in accordance with Schedule B hereto.

4.8.2 The reasonable administration costs of operating the Committee may, with the consent in writing of the Government be paid from amounts that would otherwise be applied to grants or In-Kind Services. The Government may not unreasonably withhold the consent referred to in this Section.

4.9 Any amount required to be paid by the Church may be used to contribute to the Compensation payable to a Claimant for an IRS Abuse Claim, and the Government contribution to such Compensation shall be accordingly reduced. In such case, there shall be a credit given to the Church against the payments or In-Kind Services required under Section 4.1. The credit shall be in the amount of contribution by the Church to the Compensation to the Claimant.

4.9.1 The Church agrees to provide reasonable notice to the Government in advance of finalization of settlement documentation of its intention to invoke this Section in any Validated Claim.

4.10 The occurrence of any of the following events or conditions will be a default:

4.10.1 If monies are not paid or In-Kind Services provided pursuant to the terms of this Agreement; or

4.10.2 Amalgamation with another entity on terms which do not provide that the amalgamated entity assumes the liabilities and obligations of the Church under this Agreement, the Settlement Agreement and Approval Orders, or becoming insolvent or bankrupt or making a proposal or filing an assignment for the benefit of creditors under *The Bankruptcy and Insolvency Act* or similar legislation in Canada or any other jurisdiction, or ceasing doing business, or winding up, unless prior to such amalgamation, insolvency, bankruptcy, or assignment to another entity that is solvent and with sufficient funds to satisfy the obligations of the Church assumes the obligations of the Church under this Agreement, the Settlement Agreement and Approval Orders.

4.11 In the event of default as defined in Section 4.10, in addition to any other rights or remedies to which the Government may have against the Church by law, the Government may:

4.11.1 Pursue remedies under Part V in an expedited manner, and failing resolution under Part V make a summary application to court for a remedial order.

## **PART V APPORTIONMENT AND PAYMENT OF COMPENSATION**

5.1 Subject to the rights of the Church in Section 4.3, where an IRS Abuse Claim is resolved after the coming into force of this Agreement the Government will pay in full all Compensation payable for such claim, and the Church shall bear no responsibility to pay any part of such Compensation.

5.1.1 For greater certainty, it is agreed that all Compensation for IRS Abuse Claims paid by the Church as of the coming into force of this Agreement shall remain undisturbed, and the amount thereof as determined under Section 4.5 shall be credited against the amounts set out in Section 4.1.

5.2 Notwithstanding Section 5.1, where all or part of the Compensation awarded at a trial relates only to an intentional tort committed prior to May 14, 1953, the Church shall pay 100% of the Compensation that relates to such intentional tort, and Section 5.1 shall apply only to the balance of such Compensation if any. The provisions of Section 3.2 and 5.6 shall apply to the amount of Compensation paid by the Church under this section so as to indemnify the Church in a timely way.

5.3 Following the coming into force of this Agreement, the Government will, at the request of a claimant whose IRS Abuse Claim was settled by the Government without contribution from the Church, on terms which do not release the Church from potential liability to the Claimant, and for an amount representing a fixed reduction from the assessed Compensation, offer to pay the balance of the assessed Compensation to the Claimant. Provided, however, that no amount shall be paid to a Claimant pursuant to this section until the Claimant agrees to accept such amount in full and final satisfaction of his or her claim against the Church and Government and to release them.

5.4 The liability of the Church for all Compensation for IRS Abuse Claims is discharged by its full compliance with the terms of this Agreement, and that thereafter the Government will not require further monies be paid or In-Kind Services be provided by the Church.

5.5 In the event that terms of this Agreement are fully complied, then notwithstanding anything to the contrary herein or elsewhere contained, the Government will release and forever discharge the Church from any and all causes of action, claims or demands for damages for IRS Abuse Claims or other claims included in Approval Orders. In such event the Government will also agree not to make any claims or demands or commence,

maintain or prosecute any action, cause or proceeding for damages, compensation, loss or any other relief whatsoever against the Church arising directly or indirectly from any IRS Abuse Claim or other claims included in the Approval Orders.

5.6 The Government agrees that full compliance by the Church with this Agreement shall operate conclusively as an estoppel in the event of any such claim, action or proceeding and may be pled as such, and further agrees to indemnify and save harmless the Church from any and all claims or demands for damages and assessed costs and disbursements payable to any party other than the Church in any IRS Abuse Claim or other claim included in the Approval Orders.

## **PART VI RESOLUTION OF DISPUTES CONCERNING THIS AGREEMENT**

6.1 The Government and the Church share the following objectives in the implementation of the Agreement, namely to:

6.1.1 co-operate with each other to develop harmonious working relationships;

6.1.2 prevent, or, alternatively, to minimize disagreements;

6.1.3 identify disagreements quickly and resolve them in the most expeditious and cost-effective manner; and

6.1.4 resolve disagreements in a non-adversarial, collaborative and informal atmosphere.

6.2 If any dispute arises out of, or has arisen relating to this Agreement, or the breach, validity or interpretation or subject matter thereof, they will endeavor diligently to settle a dispute through good faith negotiations.

6.2.1 Section 6.2 does not abrogate the rights to terminate this Agreement set out in Section 4.11, nor the right to seek specific performance as set out in Section 6.7.

6.2.2 Where a dispute arises out of or relating to the production of documents to the Truth and Reconciliation Commission by the Church under Section 2.10, the Truth and Reconciliation Commission and the Church shall resolve their dispute in accordance with this Part, and for this limited purpose the parties to this Agreement and the Truth and Reconciliation Commission have standing and rights and obligations under this Part.

6.3 If the Government and the Church do not resolve all issues in dispute during the course of, or as a result of the negotiations, their rights with respect to the remaining unresolved issues shall remain unaffected by the negotiations in any subsequent proceeding.

6.4 Within sixty (60) days of the execution date of this Agreement the Government and the Church shall each appoint one person as their Nominee to an Implementation Steering Committee for the purpose of overseeing the administration and interpretation of the provisions of this Agreement and shall provide in writing the name of their Nominee to the other.

6.5 The two Nominees constituting the Implementation Steering Committee shall meet in the Province of Ontario, or otherwise in Canada as agreed, at least once each calendar year during the currency of this Agreement. The purpose of each meeting will be to review performance under this Agreement, and to resolve by consensus all disputes that arise or have arisen in the interpretation and implementation of this Agreement. The minutes of such meetings shall be signed by each Nominee at the conclusion of the meeting and filed with the Government and the Church.

6.6 If the Government and the Church are unable to resolve the dispute through negotiations within 120 days, either may request the commencement of mediation to resolve the dispute. The Mediator would be a third party neutral, who has no authority to resolve the dispute, but would facilitate resolution.

6.6.1 The mediation will be conducted by one Mediator jointly agreed upon by the Government and the Church.

6.6.2 The Government and the Church will make a serious attempt to resolve the dispute through mediation by:

6.6.2.1 identifying underlying interests;

6.6.2.2 isolating points of agreement and disagreement;

6.6.2.3 exploring alternative solutions;

6.6.2.4 considering compromises or accommodations; and

6.6.2.5 co-operating fully with the mediator and giving prompt attention to, and responding to all communications from the mediator.

6.6.3 The Government or the Church may withdraw from mediation at any time by giving at least 21 days written notice of its intention to the other and the Mediator.

6.7 Notwithstanding Section 6.6, the Government may by notice in writing request that the Church comply with a commitment made in this Agreement.

6.7.1 Where the Government has delivered a written request to the Church in accordance with this Agreement to have the recipient comply with such request

within 60 days and the request has not been complied with, the Government may apply by way of summary application to a court of competent jurisdiction where the the Church is located for a mandatory order that they immediately comply with their obligation.

6.7.2 The Church may file responding materials to the summary application and the rules of the court having jurisdiction will thereafter determine the process to be followed in determining the summary application.

6.7.3 If the court hearing the summary application finds that the Church has failed to comply with its obligations under this Agreement the court may order that they immediately comply with its obligations.

## **PART VII GENERAL**

7.1 Notice shall be given, save as otherwise specifically provided, in writing addressed to the party for whom it is intended and shall be deemed received by the other party on the day it is signed for if sent by certified mail, and if sent by facsimile or email, it shall be deemed received on the business day next following the date of transmission. The mailing, facsimile and email addresses of the Parties shall be:

7.1.1 As to the Church:

General Council Officer, Residential Schools,  
The United Church of Canada,  
Suite 300 – 3250 Bloor Street West,  
Toronto, Ontario, M4E 3H8

Fax: 416 231 3103

Copy to:

Legal/Judicial Counsel,  
The United Church of Canada,  
Suite 300 – 3250 Bloor Street West,  
Toronto, Ontario, M4E 3H8

Fax: 416 232 6006

7.1.2 As to the Government:

Deputy Head,  
Indian Residential Schools Resolution, Canada,  
3rd floor, 90 Sparks Street  
Ottawa, Ontario

K1A 0H4

Fax: 613 996 2811

Copy to:

Department of Justice Legal Services,  
5rd floor, 90 Sparks Street  
Ottawa, Ontario, K1A 0H4

Attention: Senior Counsel

Fax: 613 996 1810

Copy to:

Deputy Attorney General of Canada,  
Department of Justice Building  
284 Wellington Street  
Ottawa, Ontario, K1A 0H8

Attention: Assistant Deputy Attorney General, Aboriginal Law

Fax: 613 996 4737

or any other mailing, facsimile or email addresses as the Parties from time to time may notify each other of in writing.

7.2 This Agreement shall be binding on and enure to the benefit of the Church and its successors and assigns and the Government.

7.3 Any provision of this Agreement which is or becomes prohibited or unenforceable in any jurisdiction that governs the interpretation, applicability or enforceability of this Agreement shall not invalidate or impair the remaining provisions of this Agreement which shall be deemed severable from the prohibited or unenforceable provision and any prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable that provision in any other jurisdiction.

7.4 No amendment, supplement or waiver of any provision of this Agreement or any other agreements provided for or contemplated by this Agreement, nor any consent to any departure by a party to this Agreement or their representative shall in any event be effective unless it is in writing and signed by the parties to this Agreement and then the amendment, supplement, waiver or consent shall be effective only in the specific instance for the specific purpose for which it has been given.



7.5. No waiver or act or omission of a party to this Agreement shall extend to or be taken in any manner whatsoever to affect any subsequent event of default or breach by that party of any provision of this Agreement or the results or the rights resulting from it.

7.6 Time shall be of the essence in this Agreement.

7.7 No Member of the House of Commons or Senate may participate in or derive a benefit through this Agreement other than as a member or officer of the Church or as a Claimant.

7.8 This Agreement constitutes the entire Agreement among the Parties and cancels and supersedes any prior agreements, undertakings, declarations or representations, written or verbal in respect of it.

7.9 This Agreement shall be interpreted in accordance with the laws in force in the Province of Ontario, subject always to any paramount or applicable federal laws. Nothing in this Agreement is intended to or is to be construed as limiting, waiving or derogating from any federal Crown prerogative.

7.10 The Government and the Church acknowledge that the participation in the negotiations leading to the execution of this Agreement, and the execution of this Agreement, does not constitute any admission by the Government or the Church that they have any legal or financial liability to any party in relation to claims arising from or connected to the operation of an IRS. The Government and the Church agree that they will not advance as evidence or argument in any legal claim against each other in relation to claims arising from or connected to the operation of an IRS, the negotiations leading to and the execution of this Agreement.

7.11 This Agreement may be signed in counterparts.

IN WITNESS WHEREOF the Parties have caused this Agreement to be executed by their respective officers duly authorized as of the date stated above.

**EXECUTED** in the presence of: ) THE UNITED CHURCH OF CANADA  
)  
)  
\_\_\_\_\_)  
As to The United Church of ) (*signature*)  
Canada's authorized signatory )  
)  
)  
\_\_\_\_\_) (*name of person signing*)  
Print Name )  
)  
)  
\_\_\_\_\_) (*title*)  
Address )  
)  
)  
\_\_\_\_\_) I have the authority to bind the corporate  
Occupation ) entity

**EXECUTED** in the presence of: ) **HER MAJESTY IN RIGHT OF CANADA**, as  
) represented by the Minister of Indian Residential  
) Schools Resolution Canada  
)  
)  
)  
)  
\_\_\_\_\_) (*signature*)  
)  
)  
\_\_\_\_\_) (*name of person signing*)  
As to the signature of Canada's )  
representative )  
)  
)  
)  
\_\_\_\_\_) Minister

## **SCHEDULE A**

### **INDIAN RESIDENTIAL SCHOOLS RELATED TO THE UNITED CHURCH**

**At any and all times:**

**British Columbia**

Cocqualeetza

Kitimaat

**Alberta**

Edmonton Indian Residential School

Morley Indian Residential School

**Manitoba**

Brandon Indian Residential School

Norway House Indian Residential School

**Ontario**

Mount Elgin Indian Residential School

**After June 10, 1925:**

**British Columbia**

Ahousaht Indian Residential School

Alberni Indian Residential School

**Saskatchewan**

File Hills Indian Residential School

Round Lake Indian Residential School

**Manitoba**

Portage la Prairie Indian Residential School

## **SCHEDULE B**

### **HEALING AND RECONCILIATION AND IN-KIND SERVICES CRITERIA**

1. The parties agree that there shall be a Committee known as the United Church Healing and Reconciliation Service Evaluation Committee (“the Committee”) which shall be responsible to approve In-Kind Services to admissible programs in accordance with this Agreement.
2. The Committee shall be composed of five members, one each appointed by the All Native Circle Conference of the Church, the B.C. Native Ministries Council of the Church, the General Council Executive of the Church, the AFN, and the Government.
3. As much as possible, the Committee shall make decisions by consensus. Where a consensus cannot be reached through reasonable discussion and compromise, decisions may be taken by a majority of the Committee’s members.
4. The guiding objective of the Committee shall be to ensure that admissible programs and services are directed to healing and reconciliation for former Indian Residential School students and their families. For greater certainty, the parties recognize that programs and services aimed at the community level may be admissible to the extent that the Committee is satisfied that the programs or service benefits are reasonably connected with healing and reconciliation for IRS students and their families.
5. Where an existing program or service is proposed, the Committee may certify the program or service to the extent that the committee believes that the program or service or some part thereof is new or would not otherwise continue.
6. Programs and services must be open to all Aboriginal people regardless of denomination.
7. In addition, the Committee shall consider the following criteria to applications for grants and for the approval of In-Kind Services.
  - a) Do Aboriginal people have input in developing and delivery of the program?
  - b) Has the program been effective in the past?
  - c) To what extent are aboriginal communities involved in the program?
  - d) Does the program or service deal with former students, or their families and communities and the aftermath of IRS including providing assistance with the recovery of their histories?
  - e) What portion of the overall cost of the program addresses the social, psychological, and health issues without regard to religiosity?

8. Where the Committee approves a service or program as an admissible In-Kind Service, it shall assess the value in dollars of the program having regard to its actual cost and the market value of similar services. The lesser of these two amounts must be used unless there are compelling reasons to chose a higher amount.

9. The Committee shall require applicants to certify that no program proposed for in-kind eligibility has received funds drawn from the Church's contributions to healing and reconciliation under this Agreement. For greater certainty, this condition is only meant to ensure that services funded under the settlement (or portions thereof) are not counted as eligible In-Kind Services.

10. Notwithstanding section 5 of this Schedule, the Committee as an interim measure may credit the value of a program or service offered between March 31, 2005 and the coming into force of this agreement toward the In-Kind Service contribution provided that:

- a) it meets the criteria set out in sections 6 and 7 of this Schedule;
- b) the program or service did not exist before March 31, 2005 unless otherwise agreed to by Canada;
- c) the same program or service cannot be certified for a period following the coming into force of this Agreement unless it can be shown that it would not otherwise continue; and
- d) in no case shall the total amount credited for programs and services provided before the coming into force of this Agreement exceed \$130,845.

11. The parties agree that the Committee may meet and make decisions under article 10 of this Schedule before the coming into force of this Agreement, and that following the coming into force of this Agreement the decisions the Committee makes in this period shall be ratified without further review and the costs and reasonable expenses incurred shall be reimbursed by the Church and to the credit of their debt under this Agreement. For greater certainty, should this Agreement not come into force the decisions made under articles 10 and 11 shall have no force or effect and the Church has no obligation to make reimbursement.

## SCHEDULE C

### FULL AND FINAL RELEASE IN CLAIMS BY PERSONS WHO OPT OUT OF THE IRSSA

IN CONSIDERATION of the payment of the sum of \$10.00 and other good and valuable consideration, all inclusive, all of which is directed to be paid to my solicitors, \_\_\_\_\_, in trust:

1. I, \_\_\_\_\_, fully, finally and forever release and discharge, separately and severally, each of

(a) Her Majesty the Queen in Right of Canada, the Attorney General of Canada, their predecessors, successors, transferees and assigns, and their Ministers, officers, employees, servants, partners, principals, attorneys, subrogees, representatives and agents; and

(b) the [Church Organization] and its predecessors, successors, transferees assigns, and their officers, employees, members, servants, directors, shareholders, partners, principals, attorneys, insurers, subrogees, representatives, administrators, receivers and agents,

(collectively the “Releasees”) from any and all actions or causes of action, liabilities, claims and demands whatsoever of every nature or kind for damages, contribution, indemnity, costs, expenses and interest which I ever had, now have or may in the future have against them (whether I now know about these claims or causes of action or not) arising from or in any way related to

(a) my attendance, presence and/or experiences at any Indian Residential School; and

(b) the operation of any Indian Residential School.

2. Paragraph 1 of this Release extends to claims that belong to and could be made by me personally, whether asserted directly by me, or by any other person, group or legal entity on my behalf or as my representative, through a class action or otherwise.

3. In addition, I fully, finally and forever release and discharge the Releasees from any and all claims which were or could have been asserted against them by me in an action against some or all of the Releasees, being [Court file no.] issued in the [Court Registry] of the [proper name of court], for compensation, damages and other relief relating to my attendance, presence and/or experiences at \_\_\_\_\_ Indian Residential School (the “Action”). I agree to the dismissal of the Action.

4. The claims and causes of action referred to in paragraphs 1 to 3 are referred to in this Release as “the Released Claims”.
5. I will not make any further claims of any kind against the Releasees with respect to the Released Claims.
6. I understand that if at any time I, or anyone on my behalf, make any further claim or demand, or threaten to start an action against any of the Releasees in respect of any of the Released Claims, the Releasees may rely on this Release as an estoppel and a complete defence to any such claim or action.
7. I represent and warrant that I have not assigned any of the Released Claims to any person or corporation.
8. I agree that I will not make any or continue any claim in relation to the Released Claims against any person or corporation who could claim for any or all of the damages, contribution or indemnity or other relief in respect of my claim from any of the Releasees whether pursuant to the provisions of the Negligence Act (Province or Territory) or its counterpart in other common law jurisdictions, the common law, or any other statute of any jurisdiction.
9. I further agree to indemnify the Releasees in respect of claims that may be brought against them by any person, legal entity, government or government agency that arise out of or are in any way connected with payments made to me by that person, legal entity, government or government agency in relation to the Released Claims. This indemnity includes, but is not restricted to, claims relating to medical and/or dental services or treatment provided to me, and claims relating to compensation paid to me by any government or government agency authority for any of the Released Claims that are criminal assaults.
10. If I later commence an claim that is not a Released Claim for damages for harm or injuries which are the same as or similar to the harm or injuries resulting from the Released Claims, and the Releasees or any of them are made parties to such action, the fact and amount of this Release, as well as the details of the damages or harm which I claimed in the Released Claims, may be disclosed by the Releasees to the court in the context of such later claim.
11. I acknowledge and declare that I fully understand the terms of this Release, and that I have signed the Release voluntarily. I further acknowledge that I have sought and obtained legal advice in respect of the Released Claims and this Release.

12. I understand that the Releasees do not admit any liability to me by acceptance of this Release or by any payment that may be made to me.

I have signed this Release the \_\_\_\_ day of \_\_\_\_\_, 200\_.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
[Name of Releasor]

Address

Seal

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Occupation

\_\_\_\_\_