

SUCCESSOR CANADA FUNDING AGREEMENT

(pursuant to the *British Columbia Tripartite Framework Agreement on First Nation Health Governance*)

BETWEEN:

HIS MAJESTY THE KING IN RIGHT OF CANADA
as represented by the Minister of Indigenous Services

AND:

FIRST NATIONS HEALTH AUTHORITY,
a not-for-profit society incorporated under the *Society Act* of British Columbia
and transitioned to the *Societies Act* of British Columbia with its head office at
Squamish Nation - Capilano Indian Reserve No. 5 in West Vancouver

RECITALS

Whereas:

- A. The Parties, together with the province of British Columbia, are parties to the *British Columbia Tripartite Framework Agreement on First Nation Health Governance* (the “*Framework Agreement*”) dated October 13, 2011;
- B. The purpose of the *Framework Agreement* is to give legal expression to the Parties' commitment and shared goal of improving the health and well-being of First Nations individuals and communities in British Columbia as envisioned in the Tripartite First Nations Health Plan (2007) by ensuring that British Columbia First Nations are fully involved in health program and service delivery and decision-making regarding the health of their people in British Columbia;
- C. The Parties, together with the province of British Columbia, have also developed a Health Partnership Accord (HPA). The HPA describes the long term vision and goals of the Parties for a better, more responsive and integrated health system for First Nations in British Columbia. The HPA also describes the broad and enduring relationship of the Parties and their political commitment to pursue their shared vision;
- D. The *Framework Agreement* provides that the parties to the *Framework Agreement*

“wish to work together to build:

- (1) a new Health Governance Structure that avoids the creation of separate and parallel First Nation and non-First Nation health systems and in which First Nations will plan, design, manage and deliver certain health programs and services in British Columbia and undertake other health and wellness-related functions;
- (2) a more integrated health system:
 - with stronger linkages among the FNHA, First Nation Health Providers, Health Canada, the BC Ministry of Health and BC Health Authorities, to better coordinate the planning, design, management and delivery of FN Health Programs so as to improve the quality, accessibility, delivery, effectiveness, efficiency, and cultural appropriateness of health care programs and services for First Nations;
 - that reflects the cultures and perspectives of BC First Nations and incorporates First Nations’ models of wellness;
 - that embraces knowledge and facilitates discussions in respect of determinants of health in order to contribute to the design of First Nation health programs and services;
 - in which First Nations in all regions of British Columbia will have access to quality health services at a minimum comparable to those available to other Canadians living in similar geographic locations.”;

E. The *Framework Agreement* provides for the Transfer of Federal Health Programs from Canada to the FNHA and that Canada and the FNHA shall enter into discussions immediately following the signing of the *Framework Agreement* with the objective of entering into all further agreements necessary to effect and support the Transfer of Federal Health Programs;

F. The Parties entered into the initial *Canada Funding Agreement* (the “Canada Funding Agreement #1”) on or about May 3, 2013, the Canada Funding Agreement #1 having an expiry date of March 31, 2023;

G. The Canada Funding Agreement #1 was contemplated and provided for in the *Framework Agreement*, where the parties agreed to the objective of Canada and the FNHA entering into the Canada Funding Agreement #1, pursuant to which Canada provided block contribution funding to the FNHA for its Interim and Multi-Year Health Plans for a ten (10) year period;

H. The Transfer of Federal Health Programs from Canada to the FNHA was completed on October 1, 2013;

I. The Parties amended the Canada Funding Agreement #1 by way of Amending

Agreement No.1, entered into on or about September 30, 2016, which Amending Agreement amended the Canada Funding Agreement #1 retroactively to May 3, 2013;

J. Effective November 30, 2017, Canada's Order in Council 2017-1465 (OIC) transferred control and supervision of the First Nations and Inuit Health Branch of the Department of Health to the Department of Indigenous Services Canada, to be presided over by the Minister of Indigenous Services;

K. This Successor Canada Funding Agreement was negotiated pursuant to subsection CF 9(b) of Schedule 1 of the *Framework Agreement* as a successor agreement to the Canada Funding Agreement #1;

L. The Parties agree the following programs –for which funding was provided as part of the *Canada Consolidated Contribution Agreement for Non-CFA Funding* (“CCCA”), entered into on or about October 1, 2013, pursuant to section CF 10 and CF 13 of Schedule 1 of the *Framework Agreement*– will be funded under this Successor Canada Funding Agreement by way of including an amount equal to that provided for each program in the 2022-2023 fiscal year of the CCCA to the Annual Federal Amount of this Successor Canada Funding Agreement starting in the 2023-2024 Fiscal Year:

- Canadian Drugs and Substances Strategy Problematic Prescription Drug Use and Harm Reduction Funding;
- Canada's Tobacco Control Strategy;
- Mental Wellness Interim Measures;
- Home and Community Care Based Palliative Care;
- Health Emergency Preparedness Activity;
- Climate Change and Health Adaptation Program;
- Health Benefits Program – Pre-Natal Escorts and Traditional Healers; and
- Health Benefits Program – Supplemental HB Funding for New Eligible Populations (Qalipu, McIvor, and Gender Equity in Indian Registration Act).

M. The Parties agree that funding for the Shingrix and Deschenaux health programs will be provided under this Successor Canada Funding Agreement pursuant to subsection CF 10(1) of Schedule 1 of the *Framework Agreement*;

N. The Parties agree that any remaining funds in the FNHA's Reserve Fund upon expiry of the Canada Funding Agreement #1 may be retained by the FNHA and used in accordance with the provisions of this Successor Canada Funding Agreement;

O. The Parties agree that any Surplus under the Canada Funding Agreement #1 upon

expiry of the Canada Funding Agreement #1 may be retained by the FNHA and used in accordance with the provisions of this Successor Canada Funding Agreement;

P. The Parties wish, pursuant to this Successor Canada Funding Agreement, amend various provisions of the CCCA, Sub-Agreements and agreements entered into prior to the date this Agreement took effect between Canada and the FNHA pursuant to the *Framework Agreement* to effect and support the Transfer of Federal Health Programs such that references to “Canada Funding Agreement” are, as appropriate, deemed references to this Successor Canada Funding Agreement.

Q. Provisions of this Successor Canada Funding Agreement will be interpreted in accordance with the context and the principles established in the *Framework Agreement*.

NOW THEREFORE in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties agree as follows:

SECTION 1 – DEFINITIONS

1.1 Definitions

In this Agreement, the following definitions apply:

- (1) **Acquired Asset** means that portion of any Asset that was acquired with the Funding.
- (2) **Agreement** means this Successor Canada Funding Agreement including any Amendments thereto.
- (3) **Amendment** means a written agreement to amend this Agreement that is signed by both Parties.
- (4) **Annual Audit** means the audited financial statements of the FNHA including the Independent Auditor’s report described in section 9.1.
- (5) **Annual Escalator** means the multiplier set out in subsection 3.2(4).
- (6) **Annual Federal Amount** means the contribution funding payable to the FNHA during a Fiscal Year as set out in subsection 3.1(2) that is subject to adjustment under section 4 and re-calculation under section 3.2.
- (7) **Annual Report** means the FNHA’s Annual Report as described in Section 6.
- (8) **Asset** means an asset of any kind, including real or personal property whether tangible or intangible that has financial value and where the asset is:
 - (a) acquired in whole or in part with any of the Funding; and

- (b) not consumed or expended in the natural course of its use.
- (9) **British Columbia First Nation** means: (i) a "band" within the meaning of the *Indian Act* (Canada) in British Columbia and (ii) any Self-Governing First Nation, and the plural term **British Columbia First Nations** refers to all or a number of such bands or Self-Governing First Nations as the context requires.
- (10) **British Columbia** means His Majesty the King in right of the Province of British Columbia, as represented by the Minister of Health.
- (11) **Business Day** means a day other than a Saturday, Sunday or statutory holiday in either British Columbia or Ontario.
- (12) **Canada** means His Majesty the King in right of Canada as represented by the Minister of Indigenous Services.
- (13) **Cash Flow Statement** means the cash flow forecast of the FNHA's planned expenditures of the Annual Federal Amount for a Fiscal Year as more particularly described in section 3.4.
- (14) **CCCA** means the *Canada Consolidated Contribution Agreement for Non-CFA Funding* signed by the Parties on or about October 1, 2013.
- (15) **Canada Funding Agreement #1** means the Canada Funding Agreement entered into between the Parties on or about May 3, 2013, with an expiry date of March 31, 2023.
- (16) **Confidential Information** has the meaning set out in the Confidentiality and Non-Disclosure Agreement.
- (17) **Eligible Expenses** means the expenses described in subsection 8.1(1).
- (18) **FAMF** means the funding and accountability management framework described in subsection 7.1(1).
- (19) **FNHA** means the First Nations Health Authority.
- (20) **FNHC** means the First Nations Health Council, an unincorporated association described in section 4.4 of the *Framework Agreement*.
- (21) **FNHS** means the First Nations Health Society which is a former name of the FNHA.
- (22) **FN Health Programs** means the health programs and services or benefits and related activities, including all related administration and management functions for those programs, that the FNHA plans, designs, manages and delivers or funds the delivery of pursuant to this Agreement and the *Framework Agreement*.

- (23) **Federal Auditor** means an auditor employed by, or contracted to, Canada to conduct a financial compliance or performance audit of this Agreement in accordance with subsection 9.3(1).
- (24) **Federal Health Programs** means the health programs, services or benefits and related activities that were funded or delivered by Canada in British Columbia through the HC/FNIH Regional Office on the date prior to the Phase 1 Transfer Date or Phase 2 Transfer Date, as the case may be, and which are set out in Schedule 3 of the *Framework Agreement*, as well as the programs identified in Recital L and Recital M.
- (25) **First Nation Health Provider** means any person or party funded by the FNHA to provide FN Health Programs as described in Section 7, including but not limited to Indian bands within the meaning of the *Indian Act*, tribal councils, Self-Governing First Nations, First Nation or non-First Nation corporations or organizations, hospitals, universities, provincial regional health authorities and any order of government.
- (26) **First Nations Community Health and Wellness Plan** means a health plan developed by a First Nation Health Provider for the health needs of its community and which guides the use of funding provided by the FNHA.
- (27) **Fiscal Year** means any period during the term of this Agreement commencing on April 1 and ending on March 31 of the following calendar year, and includes part thereof in the event this Agreement expires or terminates before March 31 of any Fiscal Year.
- (28) **Framework Agreement** means the *British Columbia Tripartite Framework Agreement on First Nation Health Governance* signed on October 13, 2011.
- (29) **Funding** means the Annual Federal Amount, any Surplus, any Reserve Fund and any Proceeds.
- (30) **GAAP** means generally accepted accounting principles and, with respect to the FNHA, means either (i) Part III of the Canadian Institute of Chartered Accountants (CICA) Handbook; or (ii) the international standards in Part I of the CICA Handbook, as may be chosen by the FNHA, and includes such other or further standards as may be approved by the CICA from time to time for private non-profit entities.
- (31) **HC/FNIH Regional Office** has the meaning set out in subsection 1.1(18) of the *Framework Agreement*.
- (32) **Health Benefits** means the program to be provided by the FNHA that is described in section 2 of Schedule 5 of the *Framework Agreement* and **Health Benefits Program** has the meaning set out in the *Health Benefits Sub-Agreement*.
- (33) **Health Benefits Service Agreements** means the *Health Benefits Service Agreement (2013)*, the *Health Benefits Service Agreement (2017)* and the *Health Benefits Service Agreement (2019)* entered into by the Parties on or about June 25, 2013, September 5, 2017, and October 22, 2019, respectively, pursuant to the *Framework*

Agreement and the Health Benefits Sub-Agreement.

- (34) **Independent Auditor** has the meaning set out in subsection 9.1(1).
- (35) **iFNHA** means the Interim First Nations Health Authority which is a former name of the FNHA.
- (36) **Multi-Year Health Plan** or **MYHP** means the plan or plans developed by the FNHA under section 5.22.
- (37) **Notice of Funding Adjustment** has the meaning set out in section 4.5.
- (38) **Parties** means Canada and the FNHA and **Party** means either of them.
- (39) **Personal Information** has the meaning set out in the *Information Sharing Sub-Agreement*.
- (40) **Phase 1 Transfer Date** means July 2, 2013, being the date the Parties agreed to proceed with Phase 1 of the Transfer of Federal Health Programs in accordance with subsection 2.3(2) of the Canada Funding Agreement #1.
- (41) **Phase 2 Transfer Date** means October 1, 2013, being the date the Parties agreed to proceed with Phase 2 of the Transfer of Federal Health Programs in accordance with subsection 2.3(3) of the Canada Funding Agreement #1.
- (42) **Proceeds** means: (i) any proceeds, including but not limited to any interest, gains, tax refunds or rebates such as GST/HST rebates, earned by the FNHA from the use of the Annual Federal Amount, any Surplus, and the Reserve Fund; and (ii) proceeds earned from other proceeds earned under (i).
- (43) **Record** has the meaning set out in the *Records Transfer Sub-Agreement*.
- (44) **Remedial Management Plan** means a plan developed by the FNHA and approved by Canada which sets out measures to be taken by the FNHA to remedy a default under this Agreement.
- (45) **Reserve Fund** has the meaning set out in subsection 8.5(1).
- (46) **Self-Governing First Nation** means a First Nation in British Columbia that is or becomes recognized as self-governing by the federal government as a result of a final self-government, treaty or land claims agreement.
- (47) **Sub-Agreement** means a Sub-Agreement within the meaning of Schedule 5 of the *Framework Agreement*.
- (48) **Surplus** has the meaning set out in subsection 8.6(2).
- (49) **Transfer of Federal Health Programs** has the meaning set out in subsection 6.3(1) of the *Framework Agreement*.

SECTION 2 – GENERAL

2.1 Purpose, Activities and Goals

- (1) The Parties agree that:
 - (a) Purpose: this Agreement is to provide funding to the FNHA to support the Transfer of Federal Health Programs, including the planning, design, management, delivery and funding of the delivery of FN Health Programs by the FNHA.
 - (b) Activities: the FNHA shall use the Annual Federal Amount for the activities set out in Section 5, Section 7 and Section 8 and in accordance with its MYHP and in accordance with the terms and conditions of this Agreement, the Sub-Agreements and applicable laws.
 - (c) Goals: the FNHA shall pursue the goals set out for it in the *Framework Agreement* and in its health plans related to the delivery of FN Health Programs.

2.2 Term

- (1) Except for those provisions of this Agreement that explicitly state they become effective upon execution of this Agreement by the FNHA or by the Parties, this Agreement will be in effect from April 1, 2023, and will expire on March 31, 2033, unless terminated earlier in accordance with Section 15.

SECTION 3 – FUNDING

3.1 Annual Federal Amount

- (1) Subject to the terms of this Agreement, Canada shall make contribution payments to the FNHA for each Fiscal Year consisting of the Annual Federal Amount.
- (2) The Annual Federal Amount for each Fiscal Year will be calculated in accordance with section 3.2. The amounts that the Parties have agreed, as of the date of signing of this Agreement, to be the Annual Federal Amounts for each Fiscal Year are set out below. These amounts are inclusive of the Annual Escalator for Fiscal Years one (1) through ten (10) of this Agreement and are subject to adjustment and re-calculation in accordance with Section 4 and section 3.2. Payment of the Annual Federal Amount for each Fiscal Year is also subject to the other terms and conditions of this Agreement:

Fiscal Year	Annual Federal Amount
2023-2024	652,172,191
2024-2025	684,780,800
2025-2026	719,019,840
2026-2027	754,970,832
2027-2028	792,719,374
2028-2029	832,355,342
2029-2030	873,973,110
2030-2031	917,671,765
2031-2032	963,555,353
2032-2033	1,011,733,121
TOTAL	8,202,951,728

(3) The Annual Federal Amount will be paid in quarterly instalments in accordance with the Cash Flow Statement and all payments will be made by way of electronic deposit unless the Parties agree otherwise.

3.2 Computation of the Annual Federal Amount and Annual Escalator

(1) *First Fiscal Year:* The Annual Federal Amount (“AFA”) inclusive of the Annual Escalator under subsection 3.2(4) for the initial Fiscal Year is the initial amount set out in subsection 3.1(2), plus or minus any adjustments to be made to that sum in accordance with Section 4.

(2) *Subsequent Fiscal Years:* The Annual Federal Amount for Fiscal Years two (2) through ten (10) as set out in subsection 3.1(2) has been and will continue to be calculated and adjusted as necessary according to the following formula:

AFA for current Fiscal Year (during Fiscal Years two (2) through ten (10))
= $[(A + S) \times B] + C \times D$, where:

A. is the prior Fiscal Year AFA, expressed on an annualized* basis in the case of a partial Fiscal Year, inclusive of:

(i) the sum of any adjustments (positive or negative) made to the AFA in the prior Fiscal Year under sections 4.1, 4.3, and 4.4 expressed on an annualized* basis if made for only part of the prior Fiscal Year;

B. is the Annual Escalator under subsection 3.2(4);

C. is the sum (positive or negative) of any adjustments made during the current Fiscal Year under sections 4.1, 4.3 and 4.4;

D. is any fraction required by section 4.2 in the event the current Fiscal Year is terminated before it is complete; and

- S. is the sum, expressed as a positive number, of any deductions for Self-Government made in the prior Fiscal Year under section 4.4 expressed on an annualized* basis.

*For the purposes of the above formula, “**annualized**” means to adjust an amount of money applicable to part of a Fiscal Year so as to reflect what the amount would have been if it had been applied at the same daily rate for a full Fiscal Year (FY), by using this formula: annualized amount = amount paid or deducted for part of the FY x 365 / (divided by) the number of days the amount was actually paid or deducted.

(3) In the event of a conflict between this formula and the other terms of this Agreement, the other terms of this Agreement will govern.

(4) *Annual Escalator - Fiscal Years one (1) through ten (10)*: The Annual Escalator applicable to Fiscal Years one (1) through ten (10), and which has been included in the calculation of the amounts set out in subsection 3.1(2), is 5% or the multiplier of 1.05.

3.3 Appropriations

(1) The payment of the Annual Federal Amount to the FNHA pursuant to this Agreement is subject to there being a sufficient unencumbered balance of an appropriation made by the Parliament of Canada during the Fiscal Year in which the payment becomes due.

3.4 Cash Flow Statement

(1) Within two (2) calendar days upon execution of this Agreement by the FNHA if the FNHA executes this Agreement on or before March 29, 2023, otherwise immediately upon the FNHA’s execution of this Agreement, the FNHA shall prepare and provide to Canada a written statement of its cash flow requirements for the initial Fiscal Year. Thereafter, the FNHA shall prepare a written statement of its cash flow requirements for the pending Fiscal Year on or before February 28 of each Fiscal Year. The provisions of this subsection (1) are effective immediately upon execution of this Agreement by the FNHA.

(2) The written statement of the FNHA’s cash flow requirements will indicate quarterly instalments payable on the first Business Day of April and the last Business Day of June, September and December (“Cash Flow Statement”). The Cash Flow Statement will be based on forecasted needs of the FNHA broken down on a monthly basis for the upcoming Fiscal Year and will take into account:

- (a) the planning and budgeting elements for the next Fiscal Year from the Annual Report; and
- (b) the expected Annual Federal Amount.

(3) The FNHA shall deliver new Cash Flow Statements required for each successive Fiscal Year to Canada by letter or incorporate the new statement into the Annual Report (planning component). Cash Flow Statements need not be added or appended to this Agreement.

(4) The FNHA shall promptly revise any Cash Flow Statement during a Fiscal Year in the event of a significant change to its forecasted cash flow needs during that year. Any revised Cash Flow Statement will be delivered to Canada by letter and accompanied with an explanation. If the revised statement is not delivered at least one month prior to the date the next instalment is due under this Agreement, Canada will not be obliged to implement the change until the next following instalment date and in such case will advise the FNHA so that the FNHA can re-submit a revised cash flow to take this into account.

3.5 Annual Federal Amount not affected by other source funding or changes to Federal Health Programs

(1) The Annual Federal Amount will not be reduced if the FNHA receives funds from other sources, even if such other funds are given to, or used by, the FNHA for the same purposes as the Annual Federal Amount.

(2) In the event a Federal Health Program from which any funding contained in this Agreement was originally sourced is cancelled by Canada nationally or regionally, there will be no associated deduction to the Annual Federal Amount, and any related funds may be retained by the FNHA and used in accordance with this Agreement.

SECTION 4 - FUNDING ADJUSTMENTS

4.1 General

(1) The Annual Federal Amount for any Fiscal Year may be adjusted at any time in accordance with this section or for any other reason or purpose agreed to by the Parties. All adjustments to the Annual Federal Amount will be made by way of delivery of a Notice of Funding Adjustment under section 4.5.

4.2 Partial Fiscal Years

(1) In the event that this Agreement expires or is terminated prior to the conclusion of a Fiscal Year of 365 days, the Annual Federal Amount for any such Fiscal Year will be the amount set out in subsection 3.1(2) or as otherwise calculated under section 3.2 for the full Fiscal Year, multiplied by the number of days in the Fiscal Year that the Annual Federal Amount is payable, and dividing by 365.

4.3 New Programs and Services Funding

(1) The Annual Federal Amount may be increased for any of the reasons set out in

section CF 10 of Schedule 1 of the *Framework Agreement*.

4.4 Self-Government adjustments

In this section, “*Health Matters*” means health programs, health services, health benefits and health infrastructure.

General

(1) British Columbia First Nations that are or become self-governing may receive funding, benefits and services for Health Matters from the federal government in place of the FNHA pursuant to self-government agreements.

(2) The Annual Federal Amount for any Fiscal Year or Years will be reduced in accordance with the other provisions of this section and the formula set out in subsection 3.2(2) where, and following the time that:

- (a) a Self-Governing First Nation that is receiving funding for FN Health Programs from the FNHA chooses to terminate or not renew such arrangements in whole or in part in order to provide any health programs, benefits or services for its members or others by itself or by means other than the FNHA; and
- (b) the federal government enters into funding, service or benefit arrangements with the Self-Governing First Nation for any Health Matters described in paragraph (a).

Reduction of Annual Federal Amount

(3) An annual adjustment shall be made by way of section 4.5 to reduce the Annual Federal Amount for each Fiscal Year in which a Self-Governing First Nation receives health funding, services or benefits from the federal government pursuant to subsection (2) (“Opt-Out SGFN”). The amount of the annual reduction shall be the total amount paid or incurred by the federal government for Health Matters to or for the benefit of the Opt-Out SGFN and its members. The reduction by Canada under this subsection must be for Health Matters in respect of which the FNHA has received health funding from Canada, including the following categories:

- (a) *Core health program funding*: all amounts paid, transferred or incurred by Canada, directly or indirectly, to fund Health Matters for the Opt-Out SGFN and its members for the Fiscal Year at a core or block level under fiscal financing agreements or other funding arrangements signed by the Department of Crown-Indigenous Relations and Northern Affairs Canada (“CIRNAC”) or Canada;
- (b) *Supplemental health program funding*: all amounts not included in paragraph (a) that are paid, transferred or incurred by Canada, directly or indirectly, to fund Health Matters for the Opt-Out SGFN and its

members for the Fiscal Year under supplemental contribution, grant or other funding arrangements signed by CIRNAC or Canada. All amounts to be deducted by Canada under this paragraph must be for Health Matters in respect of which the FNHA has received health funding from Canada that it could have used to fund the same or similar Health Matters, at the same or similar funding level, for the Opt-Out SGFN;

- (c) *Adjustment for inflation / escalation*: all amounts paid, transferred or incurred by Canada as inflation or escalation adjustments on the amounts described in paragraphs (a) and (b) as paid by CIRNAC and by Canada for the Fiscal Year; and
- (d) *Health benefit and health service costs*: all amounts other than amounts in paragraph (a) that are paid, transferred or incurred by Canada, directly or indirectly, to provide or fund the provision of health benefits and health services for the Opt-Out SGFN and its members, including costs for the Non-Insured Health Benefits Program.

(4) In the event that the total rate of inflation or escalation funding paid by all federal departments in a Fiscal Year on all federal health funding to an Opt-Out SGFN referred to in paragraph (3)(c) exceeds the rate of the Annual Escalator for that Fiscal Year, Canada shall apply the lesser rate of the Annual Escalator for the purpose of calculating the deduction in paragraph (3)(c) for that Fiscal Year.

(5) All initial and continuing annual deductions to be made to the Annual Federal Amount under subsection (3) shall be made after escalation of the Annual Federal Amount in accordance with the formula set out under subsection 3.2(2) of this Agreement, so as to not affect the amount of escalation funding that would otherwise be received by the FNHA.

(6) The amount of all funding reductions to be made to the Annual Federal Amount under subsection (3) shall be determined by Canada in consultation with the FNHA. For the purposes of the consultation, the Parties will work together and share such information and documentation regarding the past and proposed funding of the Opt-Out SGFN by each of them as is lawful and necessary for that purpose. In the event of a dispute concerning a Notice of Funding Adjustment, the Parties shall follow the dispute resolution process under Section 14.

Funding by the FNHA of Self-Governing First Nations

(7) For greater certainty, nothing in this Agreement will restrict or preclude the FNHA from entering into health funding, service or benefit arrangements with the Self-Governing First Nation for any Health Matters either before or after the time such a First Nation has entered into any such arrangements with the federal government under subsection 2(b), and provided that the provision of such health funding, benefits or services by the FNHA is not inconsistent with any applicable final self-government, treaty or land claims agreement. In such case, the Parties will work to coordinate their

respective funding and service arrangements with the Self-Governing First Nation. In the event any FNHA health funding, benefits or services overlaps with any provided by the federal government to an Opt-Out SGFN, such that Canada may reduce its health funding, benefits or services to the Opt-Out SGFN, the Parties shall discuss the matter and Canada may make corresponding adjustments to restore funding to the FNHA that had been previously reduced under this section.

Nisga'a and Westbank

(8) The Parties agree to apply this section 4.4 to certain funding that is included in this Agreement for the Nisga'a Lisims Government and the Westbank First Nation that was not novated or assigned to the FNHA in accordance with the *Novation of Canada Contribution Agreements Sub-Agreement*, and which those Self-Governing First Nations have asked to be delivered by the federal government.

4.5 Notice of Funding Adjustment

(1) Before Canada makes an adjustment to funding levels pursuant to this section, it will first advise the FNHA in writing of the pending adjustment and the reasons therefor and shall offer to discuss the proposed adjustment with the FNHA.

(2) Following discussions under subsection (1), Canada will issue a notice to the FNHA setting out the funding adjustment, the date from which it will apply ("application date") and the resulting Annual Federal Amount for the Fiscal Year(s) in question ("Notice of Funding Adjustment"). A Notice of Funding Adjustment may adjust the Annual Federal Amount for more than one Fiscal Year. The application date may be prior to or subsequent to the date of the Notice of Funding Adjustment. Where the application date is in the past, the funding adjustment will have retroactive effect, without interest.

(3) A Notice of Funding Adjustment adjusts funding payable under this Agreement in accordance with its terms but is not an Amendment and will not require the Parties to enter into an Amendment.

(4) In the event of a dispute with any Notice of Funding Adjustment, the Parties shall follow the disputes process in Section 14.

SECTION 5 - HEALTH PLANNING AND DELIVERY OF FN HEALTH PROGRAMS

5.1 General

(1) The FNHA shall plan, design, manage, deliver and fund the delivery of FN Health Programs in accordance with its MYHP, Section 7 and Section 8, the terms of any Sub-Agreements, and in accordance with applicable laws.

5.2 Multi-Year Health Plan

(1) For the purposes of the initial Fiscal Year of this Agreement the FNHA shall, if not yet done so prior to the FNHA's execution of this Agreement, within two (2) calendar days upon execution of this Agreement by the FNHA update its five (5) year MYHP that was prepared and approved in January, 2023, which MYHP expires on March 31, 2028, to, aside for the Shingrix and Deschenaux programs, set out for the initial Fiscal Year of this Agreement the FNHA's goals, priorities, FN Health Program plans and services, health performance standards, anticipated allocation of resources and use of the funding to be provided by Canada and British Columbia, in accordance with the requirements of section 5.3 of the *Framework Agreement*. The FNHA shall, if it has not yet done so prior to the FNHA's execution of this Agreement, provide a copy of the MYHP for the initial Fiscal Year of this Agreement to its members, Canada, and British Columbia within two (2) calendar days upon execution of this Agreement by the FNHA. The provisions of this subsection (1) are effective immediately upon execution of this Agreement by the FNHA.

(2) The FNHA shall update the MYHP for the initial Fiscal Year of this Agreement referred to in subsection (1) by June 30, 2023, to include the relevant information for the Shingrix and Deschenaux programs and the FNHA shall provide a copy of that updated MYHP to its members, Canada, and British Columbia.

(3) The FNHA shall update the MYHP for the initial Fiscal Year of this Agreement referred to in subsection (1) and which was subsequently updated in accordance with subsection (2) annually for each upcoming Fiscal Year, a copy of which shall be provided by the FNHA to its members, Canada, and British Columbia on or before February 28 of the preceding Fiscal Year to which it applies.

(4) The FNHA shall prepare a new five (5) year MYHP every five (5) years that sets out the FNHA's goals, priorities, FN Health Program plans and services, health performance standards, anticipated allocation of resources and use of the funding to be provided by Canada and British Columbia, in accordance with the requirements of section 5.3 of the *Framework Agreement*. For greater clarity, the FNHA shall prepare a new five (5) year MYHP for the 2028-29 to 2032-2033 Fiscal Years no later than February 28, 2028, a copy of which shall be provided by the FNHA to its members, Canada, and British Columbia on or before February 28, 2028.

(5) The FNHA shall update its five (5) year MYHP annually for each upcoming Fiscal Year. A copy of the update shall be provided by the FNHA to its members, Canada, and British Columbia on or before February 28 of the preceding Fiscal Year to which it applies. The FNHA may amend an MYHP at any time.

5.3 Content of Health Plans

- (1) Each MYHP, and any update or amendment thereof must:
- (a) be consistent with the FNHA's obligations under the *Framework Agreement*, this Agreement and all Sub-Agreements or other agreements

required thereunder that have been signed by the Parties;

- (b) meet the requirements of section 5.2 of this Agreement, and any requirements for these plans set out in any Sub-Agreements;
- (c) contain sufficient detail to indicate how the FNHA plans to design, manage, deliver and fund the delivery of FN Health Programs and undertake other obligations and functions of the FNHA set out in the *Framework Agreement*;
- (d) contain a summary of the FNHA capital plan recognizing that the FNHA's detailed capital plans will be set out in its Multi-Year Capital Plan under, and as defined in, the *Capital Planning Sub-Agreement*;
- (e) contain a listing and detailed description of FN Health Programs to be delivered or funded during the period covered by the plan;
- (f) be consistent with law; and
- (g) be satisfactory to Canada.

(2) In the event of a conflict between the MYHP and this Agreement or any Sub Agreement relating to a matter set out in the MYHP, the conflict will be resolved in favour of this Agreement or the Sub-Agreement, as the case may be, unless the Parties expressly agree otherwise.

5.4 Satisfactory to Canada

(1) For the purposes of paragraph 5.3(1)(g), the MYHP or any update or amendment thereof will be satisfactory to Canada if it meets the other conditions of section 5.33, is consistent with the purposes of the *Framework Agreement* and contains no provisions which in Canada's view, acting reasonably, would jeopardize the sustainability of the Transfer of Health Programs or which would seek to impose obligations or liabilities on Canada.

(2) Canada will review each MYHP and every update or amendment thereof and shall identify and explain, in writing, any concerns it may have with such plans, updates or amendments within one month of their receipt from the FNHA. In the case that Canada has any concerns, the FNHA and Canada shall make reasonable good faith efforts to resolve any such concerns and the FNHA shall revise the MYHP in accordance with any agreed resolution.

(3) Notwithstanding subsections (1) and (2), unless Canada advises otherwise in writing within the one month period referred to in subsection (2), each MYHP and every update or amendment thereof submitted to Canada in accordance with this Agreement will be deemed to be satisfactory to Canada and no express 'satisfactory' endorsement need be sought by the FNHA.

(4) Any plan that is deemed, or is expressly advised by Canada, to be satisfactory means that the plan is eligible for funding, and implies no approval, endorsement, assurance or release that the plan is otherwise compliant with the *Framework Agreement* or law and will not prejudice the application of any other provisions of this Agreement, including the default provisions.

5.5 Summary Service Plan

(1) The FNHA shall prepare an annual summary service plan that will reflect its current MYHP. The summary service plan may be included in the Annual Report or otherwise made available to the public.

SECTION 6– ANNUAL REPORT

6.1 General

(1) On or before October 1 of each Fiscal Year, the FNHA shall prepare an Annual Report which consists of separate planning and reporting components.

(2) In addition to subsection (1), if this Agreement has not expired or terminated prior to March 31, 2033, and the FNHA has not entered into a successor to this Agreement with Canada, the FNHA shall prepare an Annual Report on or before October 1, 2033, which consists only of the reporting component for the final Fiscal Year.

(3) In the event that this Agreement expires or is terminated prior to the conclusion of a Fiscal Year of 365 days and the FNHA has not entered into a successor to this Agreement with Canada, the FNHA shall prepare within six (6) months of such expiry or termination date an Annual Report which consists only of:

- a) the reporting component for the prior Fiscal Year if the FNHA has not yet prepared an Annual Report for that prior Fiscal Year; and
- b) the reporting component for the final Fiscal Year.

(4) An Annual Report prepared under this section shall be provided to Canada and British Columbia and made available to the public.

6.2 Annual Report – Planning Component

(1) The planning component of the Annual Report must set out for the coming Fiscal Year:

- (a) FN Health Program descriptions and service objectives;
- (b) a statement of all anticipated revenues of the FNHA and their sources;
- (c) a detailed plan of the FNHA’s activities, planned performance measures and outcomes consistent with and in furtherance of the MYHP; and

- (d) an annual budget which clearly identifies the planned expenditures and budget items required to support the activities of the FNHA, including the planning, design, management, delivery and funding of FN Health Programs.

(2) The Annual Report to be prepared by the FNHA must contain a reporting component to be prepared in accordance with section 6.3.

6.3 Annual Report – Reporting Component

(1) The reporting component of the Annual Report for the initial Fiscal Year of this Agreement must set out for the 2022-2023 fiscal year:

- (a) the FNHA’s financial statements described in paragraphs 9.1(2)(b) and (c) of the Canada Funding Agreement #1 and the report of the Independent Auditor described in paragraph 9.1(2)(d) of the Canada Funding Agreement #1;
- (b) to the extent not included in the financial statements, the FNHA’s revenues and expenditures for the 2022-2023 fiscal year broken down in a manner which separates and highlights its various funding sources and its key activities, programs and expenses so as to provide an general overview of its operations;
- (c) an explanation of any significant deviations from the MYHP that was prepared and/or updated pursuant to the Canada Funding Agreement #1 for the 2022-2023 fiscal year;
- (d) a report on the establishment, addition to and use of any Reserve Fund or any Surplus; and
- (e) a report on the FNHA’s activities, performance, successes and challenges for the 2022-2023 fiscal year. The performance measures and data to be supplied for the purposes of the Annual Report shall include the data being collected for the Tripartite Evaluation as available and such other data as may be agreed by the Parties that facilitates monitoring of the effectiveness of the Canada Funding Agreement #1 and this Agreement by Canada.

(2) Following the initial Fiscal Year, the reporting component of its Annual Report must set out, for the prior Fiscal Year:

- (a) the FNHA’s financial statements described in paragraphs 9.1(2)(b) and (c) and the report of the Independent Auditor described in paragraph 9.1(2)(d);
- (b) to the extent not included in the financial statements, the FNHA’s revenues and expenditures for the prior Fiscal Year broken down in a

manner which separates and highlights its various funding sources and its key activities, programs and expenses so as to provide an general overview of its operations;

- (c) an explanation of any significant deviations from the MYHP;
- (d) a report on the establishment, addition to and use of any Reserve Fund or any Surplus; and
- (e) a report on the FNHA's activities, performance, successes and challenges for the prior Fiscal Year. The performance measures and data to be supplied for the purposes of the Annual Report shall include the data being collected for the Tripartite Evaluation as available and such other data as may be agreed by the Parties that facilitates monitoring of the effectiveness of this Agreement by Canada.

SECTION 7– FUNDING OF FIRST NATION HEALTH PROVIDERS

7.1 General

(1) The FNHA shall maintain a funding and accountability management framework (“FAMF”) for the function of funding First Nation Health Providers at all times during the term of this Agreement. The MYHP will incorporate, or otherwise be deemed to include, this framework. A copy of the FAMF and any updates the FNHA may make to the FAMF from time to time will be provided to Canada. The FAMF will, at a minimum, include provision for:

- (a) an open and transparent decision-making process by the FNHA, based on discussion with affected British Columbia First Nations and First Nation Health Providers, regarding the process of selection of First Nation Health Providers and the programs and services they will be funded to deliver;
- (b) the use of written funding agreements between the FNHA and First Nation Health Providers which will contain, at a minimum, terms and conditions for:
 - (i) the amount of funding provided; the financial and non-financial conditions of the assistance;
 - (ii) program objectives and descriptions; flexibilities, performance standards, reporting and evaluation requirements of First Nation Health Providers;
 - (iii) the FNHA to make known Canada's role in providing the funding that is received by First Nation Health Providers; and
 - (iv) audit, enforcement and recovery processes of the FNHA;

- (c) FNHA liaison, advisory and support services to First Nation Health Providers to support their planning, management and delivery of FN Health Programs to their communities, including the development of their Community Health and Wellness Plans;
- (d) a redress system for complaints regarding decisions of the FNHA relating to persons or entities that applied for or received funding from the FNHA; and
- (e) audit and enforcement policies and procedures of the FNHA sufficient to ensure full accountability of funding provided to First Nation Health Providers.

SECTION 8- USE OF FUNDING

8.1 Eligible Expenses

- (1) The FNHA may only use the Funding for Eligible Expenses. Eligible Expenses means expenses of the FNHA of any kind which are:
- (a) exclusively for the planning, management, design and delivery or funding of FN Health Programs and for the other activities, including Health Governance Structure activities, set out for the FNHA in the *Framework Agreement* or any Sub-Agreement and which are in accordance the MYHP, this Agreement and applicable laws. Such expenses may include but will not be limited to any of the following, to the extent these expenses are exclusively required for the above purposes:
 - (i) expenses for director, officer, and employee remuneration and benefits and any associated remittances or taxes required by statute;
 - (ii) the leasing, rental, purchase or construction of any real or personal property, including moveable assets, equipment, office space;
 - (iii) the purchase of any services, intellectual property or other rights;
 - (iv) the costs of any contractor, service provider, agent, researcher or consultant;
 - (v) the cost of funding First Nation Health Providers;
 - (vi) overhead costs including the costs of utilities, materials, supplies, travel expenses, insurance, rental of premises, leasing or purchase of vehicles and equipment;
 - (vii) accounting, audit and legal services costs; and

(viii) taxes, remittances or other levies required by law;

- (b) reasonable and prudent in amount, having been paid or negotiated by the FNHA with due regard for economy and efficiency and in accordance with generally accepted business practices, including competitive contracting procedures and the purchase of any Acquired Assets at fair market value;
- (c) subject to subsections 8.5(4) and 8.6(5) (use of reserve and surplus funds upon expiry), incurred during the term of this Agreement except for costs incurred in preparing final reports or evaluations due under this Agreement if they are due following the expiry or termination date of this Agreement;
- (d) not expenses, deposits or uses of funds prohibited by section 8.2.

(2) Where any expense of the FNHA has a dual character, such that part of the expense is an Eligible Expense and part is for another purpose, the FNHA may use the Funding toward that portion of the expense that is an Eligible Expense, but not towards any other portion of the expense.

8.2 Safeguarding Funds

(1) All funding received by the FNHA pursuant to this Agreement, including held as a Surplus or in a Reserve Fund must, until such time as it is expended in accordance with the terms and conditions of this Agreement, be held in a deposit account or accounts at a chartered bank or trust company in Canada or in interest-bearing certificates of deposit or treasury bills issued by the federal or a provincial government in the name of or held by the FNHA, solely.

(2) None of the Funding shall be used by the FNHA for, or paid to any other person, party or organization including First Nation Health Providers, for:

- (a) expenses or any portion thereof that would not permitted by section 8.1;
- (b) the purchase of, or expenses for, any business, activity or undertaking, except where same is for the exclusive purpose of planning, designing, managing, delivering and funding of FN Health Programs;
- (c) the purchase of stocks, bonds, shares or financial instruments or securities of any kind, including any rights or options related thereto, other than deposits referred to in subsection (1) or as necessary for paragraph (b);
- (d) making or providing a loan; or
- (e) securing, assuming or guarantying any debts as set out in subsection (3).

(3) Unless agreed to by Canada, the FNHA shall not pledge, mortgage, lien, charge or permit the creation of any security interest in: (i) any of the Funding; or (ii) any Acquired Asset.

(4) The FNHA shall prepare and implement a policy on public, competitive contracting procedures to ensure, at a minimum, that contracts over one hundred thousand dollars (\$100,000.00) are awarded through competitive processes, and that exceptions to the policy, including aboriginal procurement incentives, are clearly set out.

(5) The FNHA shall:

- (a) in addition to any terms of its conflict of interest policies, ensure that no current director, officer or senior employee of the FNHA, or any corporate or other entity in which such individuals have a pecuniary interest, shall act as a paid contractor or consultant of the FNHA; and
- (b) require that its members abide by conflict of interest policies that apply to them in relation to contracting with, or consulting for, the FNHA.

8.3 Use of Proceeds

(1) Any Proceeds must be used solely for Eligible Expenses.

8.4 Flexibility and Re-Allocation

(1) The FNHA may, subject to its MYHP and the other provisions of this section:

- (a) adjust its annual budget and spending priorities for the Annual Federal Amount at any time during a Fiscal Year if necessary in order to: (i) better serve the purposes of the MYHP; (ii) take into account any re-design, re-prioritization, creation of new or cancellation of any existing FN Health Programs; or (iii) address emerging health needs or priorities;
- (b) place any part of the Annual Federal Amount in a Reserve Fund and use it in accordance with section 8.5; and
- (c) place any unspent funding from the Annual Federal Amount for any Fiscal Year in a Surplus account and use it in accordance with section 8.6.

8.5 Reserve Fund

(1) The FNHA may maintain a reserve (“Reserve Fund”) which includes any remaining Reserve Fund retained by the FNHA upon the expiry or termination of the Canada Funding Agreement #1 in accordance with the provisions of the Canada Funding Agreement #1, for contingencies or unexpected expenses to which it may deposit any part of the Annual Federal Amount or any Surplus.

(2) The funds in the Reserve Fund must be held in a separate dedicated account or accounted for separately from other funding. The Reserve Fund must, if created, and subject to subsection (4), only be used for Eligible Expenses. Any balance in the Reserve Fund at the end of any Fiscal Year may, subject to subsection (4), be retained and carried over to future Fiscal Years.

(3) The FNHA may at any time transfer any funds from its Reserve Fund to its account for the Annual Federal Amount.

(4) Upon expiry or termination of this Agreement, any remaining Reserve Fund may be retained by the FNHA provided that the FNHA has entered into a successor to this Agreement with Canada. Such Reserve Fund must be held in a separate dedicated account in accordance with the successor agreement and only used for purposes authorized by the successor agreement. The FNHA shall otherwise pay the amount from the Reserve Fund to the Receiver General for Canada within 120 calendar days after the expiry or termination of this Agreement in accordance with paragraph 15.2(1)(d).

(5) The FNHA shall account for accumulation, transfer and expenditure of any Reserve Fund in the Annual Report and Annual Audit in a segregated manner.

8.6 Deficit and Surplus

(1) The FNHA shall be solely responsible for any expenditure which it makes in excess of the Annual Federal Amount.

(2) In addition to any remaining surplus retained in accordance with the provisions of the Canada Funding Agreement #1 by the FNHA upon the expiry or termination of the Canada Funding Agreement #1, if the FNHA does not expend all of the Annual Federal Amount for a Fiscal Year in that Fiscal Year after fulfilling its obligations under this Agreement for that Fiscal Year and making reasonable and diligent efforts toward the health program and service objectives of its MYHP for that Fiscal Year, the FNHA may retain such amount as surplus (“Surplus”).

(3) The Surplus must be held in a separate dedicated account or accounted for separately from other funding. The Surplus must, subject to subsection (5), only be used for Eligible Expenses. Any balance in the Surplus account at the end of any Fiscal Year may, subject to subsection (5), be retained and carried over to future Fiscal Years.

(4) The FNHA may at any time transfer any funds from its Surplus into its Reserve Fund or to its account for the Annual Federal Amount.

(5) Upon expiry or termination of this Agreement, any remaining Surplus may be retained by the FNHA provided that the FNHA has entered into a successor to this Agreement with Canada. Such Surplus must be held in a separate dedicated account in accordance with the successor agreement and only used for purposes authorized by the successor agreement. The FNHA shall otherwise pay the Surplus to the Receiver General for Canada within 120 calendar days after the expiry or termination of this Agreement in accordance with paragraph 15.2(1)(d).

(6) The FNHA shall account for the accumulation, transfer and expenditure of any Surplus in its Annual Report and Annual Audit in a segregated manner.

SECTION 9 - REPORTING AND AUDIT

9.1 Annual Audit

(1) For the purposes of this section, “Independent Auditor” means an auditor who meets or exceeds the qualifications under Part 9 of the *Societies Act* of British Columbia in respect of a society (regardless of whether those provisions are independently applicable to the FNHA) and in addition:

- (a) has at least five years’ experience at a senior or managing level in carrying out audits of large organizations;
- (b) is not, and has never been, a member, director, officer or employee of the FNHA, the iFNHA, the FNHS or the FNHC or any other corporation, organization or group affiliated with or related to these organizations in the previous two (2) years and is not under contract to, or in negotiations to take on such a position, other than acting as auditor to any of these organizations; and
- (c) has not provided any significant non-audit accounting services (including but not limited to business or strategic consulting services, information systems design; or appraisal or valuation service) to the FNHA, the iFNHA, the FNHS or the FNHC in the previous two (2) years and is not under contract to, or in negotiations to do so.

(2) The FNHA shall:

- (a) properly and faithfully maintain, in accordance with GAAP and any requirements of the British Columbia *Societies Act*, accounting records for its activities for a period of at least seven (7) years in relation to any Funding;
- (b) subject to subsection (3), prepare and maintain annual financial statements for the Funding for each Fiscal Year in accordance with GAAP, which financial statements must include:
 - (i) its balance sheet as at the end of the Fiscal Year;
 - (ii) a statement of income and expenditure for the Fiscal Year; and
 - (iii) a statement of changes in financial position for the Fiscal Year;
- (c) add to the annual financial statements referred to in paragraph (b) derivative and segregated entries for the accumulation, transfer and expenditure of any part of the Annual Federal Amount held in any

Reserve Fund or Surplus in accordance with sections 8.5 and 8.6. These entries shall be on a “cash” basis and net of depreciation charges or other non-cash expenses or entries;

- (d) engage an Independent Auditor to conduct a full audit of its financial statements, books and records and financial circumstances for each Fiscal Year and to prepare an auditor’s report in respect thereof in accordance with GAAP;
 - (e) ensure that all required accounting records and supporting documents are available for the above noted audit and that the representatives of the Independent Auditor are provided with any necessary assistance for the performance of the audit; and
 - (f) provide the financial statements and the Independent Auditor’s report to Canada no later than six (6) months after the end of each Fiscal Year.
- (3) Where the FNHA prepares financial statements on a global basis for all of its activities and revenue sources, it shall, for the purposes of paragraph (2)(b), create derivative and segregated statements that solely relate to the Funding.

9.2 Withholding

(1) Canada may, in addition to and without limiting its withholding and other remedial powers under section 13.2, but subject to the prior notice process set out in subsection (2), withhold any payment or part thereof from the Annual Federal Amount if:

- (a) the MYHP, the yearly Cash Flow Statement, Annual Report or the Annual Audit have not been prepared and submitted by the FNHA to Canada in accordance with the terms of this Agreement; and/or
- (b) the FNHA is holding a combined total of more than two hundred and twenty million dollars (\$220,000,000.00) of unspent funding from this Agreement and unspent funding from the Canada Funding Agreement #1 that was retained by the FNHA upon the expiry or termination of the Canada Funding Agreement #1 in accordance with the provisions of the Canada Funding Agreement #1 and which unspent funding is now subject to the terms and conditions of this Agreement, in all of its accounts, including any Surplus and any Reserve Fund.

(2) In the event funding is to be withheld by Canada under this section, Canada shall provide the FNHA with 30 calendar days’ prior notice in writing and advise it of the reasons for the pending withholding.

(3) Subject to subsection 13.2(4), any amounts withheld by Canada under this section shall be subsequently paid by Canada to the FNHA if the grounds for the withholding cease to exist and provided that at that time, the FNHA is in material compliance with this Agreement and current in the provision of all plans, reports or

statements referred to in paragraph (1)(a) of this section. Any amounts that are still being withheld in compliance with this provision upon the expiry or termination of this Agreement may be retained by Canada.

9.3 Audit Rights of Canada

(1) Canada may at its own cost, conduct or cause to have conducted a financial compliance or performance audit of the FNHA in relation to this Agreement and its use of the Funding. Any such audit may be conducted by an employee, contractor or agent of Canada (the “Federal Auditor”)

(2) The Federal Auditor shall notify the FNHA in writing at least two (2) weeks prior to any planned audit as to the nature, scope and proposed timing of any audit to be conducted under this section. The Parties will cooperate in scheduling the audit on dates that are acceptable for both Parties.

(3) The FNHA shall provide reasonable assistance and cooperation with an audit under this section, which shall include:

- (a) providing the Federal Auditor with access to all of the FNHA’s accounts, program records and supporting documentation relating to the use of the Funding;
- (b) permitting the Federal Auditor to inspect the records referred to in paragraph (a) and, subject to subsection (4), to take extracts from and make copies of these records;
- (c) providing the Federal Auditor reasonable access to its premises and space to work at its premises during normal business hours for the purposes of inspecting and taking extracts from records as set out in paragraph (a) and (b) above; and
- (d) providing the Federal Auditor with reasonable access to its accounting staff and such information and assistance from its staff as is reasonably necessary for the conduct of the audit and to assist the Federal Auditor to understand the records provided.

(4) The Federal Auditor shall not, unless authorized by law or by the FNHA, remove or cause to be removed any original books, records or supporting documentation from the FNHA’s premises.

(5) The Federal Auditor may:

- (a) discuss with the FNHA any concerns raised by its audit; and
- (b) make the results of any final audit report public and report them to Parliament.

9.4 Auditor General of Canada

(1) The Auditor General of Canada may pursuant to subsection 7.1(1) of the *Auditor General Act*, at his or her own cost, conduct an inquiry into the use of the Funding. The FNHA shall cooperate with the Auditor General and his or her representatives or agents in connection with such an inquiry, and shall grant access to its documents, records, information and premises as required by the Auditor General or his or her representatives or agents for the purposes of any such inquiry. The Auditor General may, at his or her own discretion, discuss any concerns raised in such inquiry with the FNHA and Canada. The results may be reported to Parliament in a report of the Auditor General.

SECTION 10 - EVALUATIONS

10.1 Five-Year Independent Evaluations

(1) For the purpose of this section, “Independent Evaluation” means an evaluation that is conducted and reported on an impartial basis by a party with no current, past or planned employment or contracting relationship with the FNHA, FNHS or FNHC, other than for the purposes of conducting an evaluation under this section, and no personal financial interest in the continuation, termination or re-design of the activities being evaluated.

(2) Subject to subsection (3), the FNHA shall commission an Independent Evaluation every five (5) years following the Phase 1 Transfer Date. The evaluation must include review and evaluation of the FNHA’s:

- (a) plans and programs;
- (b) organizational structure and organizational effectiveness; and
- (c) management of First Nation Health Provider relationships and health benefit (former First Nations and Inuit Health Branch “FNIHB”) provider relationships.

(3) The Independent Evaluation for the five-year period of July 2, 2018, to July 2, 2023, shall be commissioned by the FNHA and concluded by March 31, 2024. The Independent Evaluation for the five-year period of July 2, 2023, to July 2, 2028, shall be commissioned by the FNHA and concluded by October 1, 2028. The Independent Evaluation for the five-year period of July 2, 2028, to July 2, 2033, shall be commissioned by the FNHA and concluded by October 1, 2033.

(4) Each Independent Evaluation will be available to the FNHA members, Canada, British Columbia and the public.

SECTION 11 - INDEMNIFICATION AND INSURANCE

11.1 Indemnification

(1) In this section the “FNHA Group” means any or all of the FNHA’s directors, members, officers, employees, volunteers or any agent acting on behalf of the FNHA whatsoever including without limitation a corporation or business controlled by the FNHA.

(2) The FNHA shall indemnify and save harmless Canada, his Ministers, officers, employees, agents, successors and assigns from and against any and all claims, losses, liabilities, demands, damages, costs, expenses, actions, and any other proceedings made, sustained, brought, prosecuted, threatened to be brought or prosecuted in any manner, directly or indirectly by any person or party based upon, occasioned by, attributable to, or arising directly or indirectly from:

- (a) any wrongful or negligent act, omission, delay or breach on the part of the FNHA or any member of the FNHA Group acting under or as a result of this Agreement, including but not limited to any claim or liability for injury or death to a person, for loss or damage to property, for wrongful dismissal of employees, infringement of rights or breach of contract;
- (b) any debt or obligation incurred by the FNHA or any member of the FNHA Group incurred under or as a result of this Agreement, including but not limited to any contract debts, employment costs and loan or lease obligations; or
- (c) any infringement by the FNHA of a third party’s intellectual property rights,

except that Canada shall not claim indemnity under this section to the extent that the loss, damage or injury that is the subject of the claim, action, suit or proceeding has been caused by Canada.

(3) Canada shall give notice to the FNHA of any claim, action, suit or proceeding referred to in subsection (2) and the FNHA may, at its own expense participate in or, with the consent of the Attorney General of Canada, conduct the defence of any such claim, action, suit or proceeding and any negotiations of settlement of the same, but the FNHA shall not be liable to indemnify Canada for payment of any settlement unless it has consented to the settlement.

(4) For greater certainty, Canada will not be precluded from enforcing any other rights against the FNHA for third party or other claims not covered by the indemnity in subsection (2).

(5) Notwithstanding anything to the contrary contained herein, the Parties expressly acknowledge and agree that they will not be liable for each other's indirect or

consequential damages or for damages for lost profits or lost revenues under this Agreement, regardless of whether such liability arises in tort (including negligence), contract, fundamental breach or breach of a fundamental term, misrepresentation, breach of warranty, breach of fiduciary duty, indemnification or otherwise.

11.2 Insurance

(1) During the term of this Agreement, the FNHA shall, at its own expense, obtain appropriate policies of insurance against any liability resulting from anything done or omitted to be done by the FNHA in carrying out its functions under the *Framework Agreement*, this Agreement and all Sub-Agreements, with such coverage limits as a reasonably prudent party carrying out the same or similar activities might obtain.

(2) Without limiting subsection (1) the FNHA shall provide and maintain at least the following insurance with insurers licensed in British Columbia:

- (a) comprehensive / commercial general liability insurance in an amount not less than \$2,000,000.00 per occurrence against bodily injury and property damage.
- (b) professional liability insurance, unless waived by Canada in writing, in an amount not less than \$2,000,000.00 per occurrence against errors and omissions in the performance of professional health or other professional services it provides in relation to this Agreement. Where professional services are delivered by an agent or subcontractor, the FNHA will cause the agent or subcontractor to be equally insured;
- (c) tenant liability insurance with respect to leased premises and property owner's insurance for any premises owned by the FNHA;
- (d) automobile liability insurance on all vehicles owned, operated or licensed in the name of the FNHA and used under this Agreement, in an amount not less than \$1,000,000.00.

(3) The FNHA shall provide Canada with valid certificates of insurance (and any replacements thereof) if requested by Canada to confirm the above requirements.

SECTION 12 - PRIVACY AND CONFIDENTIALITY

12.1 General

(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.

(2) For Canada, applicable laws include the *Privacy Act* (Canada), the *Access to Information Act* (Canada) and the *Canadian Charter of Rights and Freedoms*. For the FNHA, applicable laws include the *Personal Information Protection Act* (British

Columbia) or, if designated as a "public body", the *Freedom of Information and Protection of Privacy Act* (British Columbia).

(3) To ensure openness and transparency, information and records which each Party agrees may be released to the public, subject to subsection 12.1(1) and section 12.2, include the following:

- (a) this Agreement and any Amendments thereto;
- (b) the Annual Report; and
- (c) any report arising from an audit conducted under this Agreement.

12.2 Sharing of Information

(1) The terms and conditions of the *Confidentiality and Non-Disclosure Agreement*, the *Information Sharing Sub-Agreement* and the *Records Transfer Sub-Agreement*, whichever is or are in force and effect, shall apply to any Confidential Information, Personal Information and Records shared under this Agreement.

12.3 Personal Information

(1) The FNHA shall act in accordance with applicable laws governing Personal Information including its collection, use, disclosure and care (accuracy, protection and retention). Given the sensitivity of Personal Information, the FNHA shall incorporate the protection of Personal Information in its activities, policies and procedures which shall include a requirement to undertake internal privacy reviews, assessments and audits of such information.

SECTION 13 - DEFAULT AND REMEDIES

13.1 Default

- (1) The FNHA will be in default ("Default") of this Agreement in the event that:
- (a) it defaults in any of its obligations set out in this Agreement, the *Framework Agreement*, any Sub-Agreement or the Health Benefits Service Agreements;
 - (b) it fails to comply with any material requirements of its MYHP, including any failure to deliver or fund the delivery of any FN Health Programs in accordance with those plans;
 - (c) any auditor or the Auditor General of Canada gives a denial of opinion or adverse opinion as to the financial statements of the FNHA, or provides an opinion that any expenditure of funds by the FNHA under this Agreement does not comply with the terms and conditions of this Agreement;

- (d) it: (i) fails to comply in a material way with its Incorporating Documents, by-laws or policies in carrying out its activities; (ii) amends, repeals, replaces or supplements its Incorporating Documents, by-laws or policies in a manner which does not comply with section 4.2 of the *Framework Agreement* or which jeopardizes the performance of this Agreement by the FNHA; or (iii) it fails to comply with any requirements of the *Societies Act*; or
 - (e) it: (i) takes on debts which jeopardize its ability to remain financially solvent or jeopardize its ability to fund or deliver its MYHP and FN Health Programs under this Agreement; or (ii) fails to pay any material debts, taxes or employee source deductions as they come due.
- (2) The FNHA will be in urgent default (“Urgent Default”) with immediate remedial rights for Canada in the event that:
- (a) any of the following occur:
 - (i) the FNHA becomes bankrupt or insolvent or takes the benefit of any statute from time to time being in force relating to bankrupt or insolvent debtors;
 - (ii) a receiver or receiver manager (interim or otherwise), is appointed or put in place with powers over a material part of the business, property or assets of the of the FNHA;
 - (iii) any material assets of the FNHA, are seized under any writ of execution or security instrument and such seizure is not vacated within 30 calendar days of such seizure;
 - (iv) an order is made by a court for the winding up of the FNHA, an order or decision is made by the registrar or any other person under the *Societies Act* for cancellation or dissolution of the FNHA, or a resolution is passed by the members of the FNHA for the FNHA’s dissolution or winding-up, or if the FNHA is in fact cancelled, dissolved, liquidated or wound-up;
 - (b) Canada has a reasonable belief, based on material evidence, that the health, safety or welfare of First Nation persons in British Columbia is being or has been jeopardized as a result of: (i) any actions of the FNHA; or (ii) any inactions of the FNHA where it has or had the mandate, resources and legal capacity to act;
 - (c) a default occurs that is designated an “urgent default” under a Sub-Agreement or other agreement between the Parties that is connected to the *Framework Agreement* where that agreement provides that defaults thereunder will be addressed under this Agreement; or

- (d) the FNHA ceases all or a material part of its operations or gives notice that it will do so.

(3) If in the opinion of Canada there has been an event of Default under subsection 13.1(1), Canada will notify the FNHA in writing and offer to discuss the matter within two (2) weeks or such other time as the Parties may agree. If the Default has not been cured or if no agreement is reached as to how to cure the Default or otherwise resolve the matter within two (2) weeks after the date of notice of Default or such later time as both Parties agree, Canada may treat this Agreement as being in Default.

(4) If in the opinion of Canada there has been an event of Urgent Default under subsection 13.1(2), Canada will so notify the FNHA in writing and may treat this Agreement as being in Urgent Default as of the date of Canada's notice.

13.2 Remedies

(1) In the event that (i) the FNHA is in Default, Canada may, subject to the two (2) week curative period referred to in subsection 13.1(3) and following any further sixty (60) day or other informal resolution period applicable under subsection 14.2(2); or (ii) the FNHA is in Urgent Default, Canada may take one or more of the following actions as may reasonably be necessary, having regard to the nature and extent of the default:

- (a) require the FNHA to remedy the default or develop and implement a Remedial Management Plan to remedy the default within thirty (30) calendar days, or at such other time as the Parties agree;
- (b) withhold any or all of the funding payable under this Agreement;
- (c) require the FNHA to repay any part of the Annual Federal Amount that relates to a default in accordance with section 13.3;
- (d) require the FNHA to enter into a co-management agreement with a third party acceptable to Canada whereby the co-manager would have co-management powers for FNHA obligations and co-signing authority for FNHA expenditures under this Agreement;
- (e) appoint, upon providing notice to the FNHA, a third party manager to administer funding otherwise payable to the FNHA and the FNHA's obligations under this Agreement, in whole or in part; or
- (f) cease the provision of any or all of the Annual Federal Amount under this Agreement.

(2) In addition to and without limiting the remedies available to Canada set out in subsection 13.2(1), Canada may, as may reasonably be necessary having regard to the nature and extent of the default, invoke any other remedy provided for a Default or Urgent Default that may be set out in a Sub-Agreement.

(3) In addition to and without limiting the remedies available to Canada set out in subsection 13.2(1), where the FNHA defaults in its obligation to provide Canada with an Annual Audit report under the terms and conditions of this Agreement:

- (a) Canada may require that the FNHA immediately appoint an Independent Auditor at the FNHA's cost and that the audited financial statements be delivered to Canada upon thirty (30) calendar days following the appointment of the Independent Auditor or such other time as the Parties may agree; or
- (b) Canada may itself appoint an Independent Auditor, in which case:
 - (i) the FNHA shall provide the auditor with full access to its financial records and provide such other information as the auditor may require to perform the audit; and
 - (ii) the FNHA shall reimburse Canada for all costs incurred in having the audit conducted.

(4) In addition to and without limiting the remedies available to Canada set out in subsection 13.2(1), any funding withheld by Canada under section 9.2 and/or paragraph 13.2(1)(b) may be retained by Canada in the event that:

- (a) in respect of a withholding under paragraph 9.2(1)(a), the late or incomplete plans, reports, audits or statements referred to in that paragraph have not been filed or re-filed in accordance with the requirements of this Agreement by the earlier of: (i) 180 calendar days from the time funds were withheld; or (ii) expiry of this Agreement; and/or
- (b) in respect of a withholding for any other matter, including a withholding under paragraph 9.2(1)(b), the grounds for the withholding continue to exist at the time of expiry or termination of this Agreement.

13.3 Repayment

(1) The FNHA shall, at such times as this Agreement may specify and otherwise upon written demand, repay to Canada, via the Receiver General for Canada, any amount of the Annual Federal Amount which: (i) has not been accounted for by the FNHA in accordance with this Agreement; (ii) is spent by the FNHA for purposes other than those authorized under this Agreement including any amounts which are not Eligible Expenses; or (iii) is an overpayment or any other amount that is repayable by the FNHA under this Agreement. Such amounts are debts due to the Crown.

(2) Interest will be charged on any debts under subsection 13.3(1) subject to and in accordance with the *Interest and Administrative Charges Regulations* and such interest also constitutes a debt due to the Crown.

- (3) Canada may set-off from any payment due under this Agreement:
- (a) any amount that is a debt due to the Crown pursuant to subsections 13.3(1) and 13.3(2);
 - (b) any other amount that is due and payable by the FNHA to the Crown pursuant to this Agreement, any Sub-Agreement or otherwise.
- (4) Without limiting the generality of paragraph 13.3(3)(b), Canada may deduct or set-off from any payment due under this Agreement any sum that is due and payable to Canada by the FNHA under: (i) the *Health Benefits Service Agreements*; or (ii) the *IM IT Service Continuity Agreement* in accordance with any deduction and set-off provisions of these Agreements.

SECTION 14– DISPUTES

14.1 Informal Resolution

- (1) The Parties are committed to working collaboratively to develop harmonious working relationships and to prevent, or alternatively, to minimize disputes about their respective rights or obligations under this Agreement. To that end, the Parties will:
- (a) establish clear lines of communication and articulate their expectations about the interpretation of this Agreement, and
 - (b) seek to address anticipated disputes in the most expeditious and cost-effective manner possible.
- (2) The Parties nevertheless acknowledge that disputes may arise about their respective rights or obligations under this Agreement and agree that they will strive to resolve any such disputes in a non-adversarial, collaborative and informal atmosphere.

14.2 Informal Resolution Process

- (1) If a dispute arises in relation to the respective rights and obligations of any Party, either Party may deliver a written letter or notice of dispute to the other Party. In this case, the Parties shall each nominate a representative who shall promptly and diligently make all reasonable, good faith efforts to resolve the dispute through discussions.
- (2) In the event that a dispute relates to a finding of Default by Canada under subsection 13.1(3), the FNHA must deliver its notice of dispute prior to the expiry of the two (2) week period referred to in that provision. In the event of such a notice, the Parties will:
- (a) follow the processes set out in this provision in relation to that matter; and

(b) Canada shall not take or continue any remedial actions in relation to the Default under section 13.2 for a period of sixty (60) calendar days, or such shorter or longer period of time as both Parties may agree following the delivery of the notice in order to allow the Parties time to attempt to resolve the dispute.

(3) Nothing shall prevent the Parties, at any stage of a dispute, from agreeing to refer the dispute to mediation on such terms as they may agree. In the event that a dispute is referred to mediation, the Parties will share equally in the fees and expenses of the mediator and will otherwise bear their own costs of participation in the mediation.

(4) Unless both Parties agree and subject to paragraph 14.2(2)(b), dispute resolution discussions or processes followed under this section, including mediation and including any processes continued after the expiry of the period referred to in paragraph 14.2(2)(b), will not suspend, delay or prejudice any rights or obligations of a Party, including any rights of Canada to adjust or withhold funding, or to undertake audit, default, remedial or termination steps under this Agreement.

(5) All information exchanged during any dispute resolution discussions or process shall be regarded as "without prejudice" communications for the purpose of settlement negotiations and shall be treated as confidential by the Parties and their representatives, unless otherwise required by law. However, evidence that is independently admissible or discoverable shall not be rendered inadmissible or non-discoverable by virtue of its use during the dispute resolution process.

14.3 Formal Resolution

(1) If any Party to the dispute determines that the dispute cannot be resolved under this section, the dispute may be submitted by that Party to a court of competent jurisdiction.

(2) Unless both Parties agree, or unless a court orders otherwise, submitting a dispute to a court under subsection 14.3(1) will not suspend, delay or prejudice any rights or obligations of a Party, including any rights of Canada to adjust or withhold funding, or to undertake audit, default, remedial or termination steps under this Agreement.

SECTION 15 – TERMINATION AND EXPIRY

15.1 Termination - General

(1) Notwithstanding any other provision of the Agreement, this Agreement may be terminated prior to expiry upon delivery of written notice by either Party to the other in the following circumstances:

- (a) upon termination of the *Framework Agreement*;
- (b) upon the entry into amended, new or alternative arrangements under subsections 12.1(2) or (3) of the *Framework Agreement* which either

Party feels requires changes to this Agreement and where such changes have not been agreed; or

- (c) if the FNHA: (i) ceases to operate, is cancelled, dissolved, liquidated or wound-up; (ii) becomes bankrupt or a receiver or receiver manager is appointed or put in place with powers over a material part of the business, property or assets of the of the FNHA; or (iii) if the FNHA takes the benefit of any statute from time to time being in force relating to bankrupt or insolvent debtors.

(2) Upon delivery of a notice of termination by either Party under subsection 15.1(1), the Party providing the termination notice shall offer to meet with the other Party or any lawful representative of that Party within two (2) weeks thereof, at which time both Parties will discuss the notice and consider whether there is any basis to continue with this Agreement. If there is no further agreement, this Agreement will terminate at the end of the two (2) week notice period or at such other time as the Parties agree.

(3) The Parties may also terminate this Agreement at any time on written consent.

15.2 Termination or Expiry with no successor agreement

(1) In the event of: (i) termination of this Agreement; or (ii) expiry of this Agreement without a successor agreement having been negotiated, and unless the Parties agree otherwise:

- (a) the FNHA shall make no further commitments in relation to the use of the Annual Federal Amount and shall cancel or otherwise reduce, to the extent possible, the amount of any outstanding commitments in relation thereto;
- (b) any monies owed to the FNHA under this Agreement up to the termination or expiry date of the Agreement, subject to any set-off claims, shall be paid to the FNHA by Canada, unless the Parties agree otherwise in writing;
- (c) the FNHA shall provide Canada with audited financial statements for the final Fiscal Year to the date of termination or expiry within one hundred and twenty (120) calendar days of the date of termination or expiry; and
- (d) any part of Funding which is unexpended at the termination or expiry date of this Agreement shall be repaid to the Receiver General for Canada by the FNHA within one hundred and twenty (120) calendar days of the date of termination or expiry, unless the Parties otherwise agree.

15.3 Termination or expiry with no successor agreement – disposition of

Assets

- (1) Upon termination or expiry of this Agreement with no successor agreement having been negotiated:
- (a) the FNHA shall provide an inventory of its Assets to Canada, and, if so directed by Canada, shall:
 - (i) sell any Acquired Assets at fair market value and apply the proceeds from such sale against the costs of the MYHP or repay the funds realized from such sale to the Receiver General for Canada;
 - (ii) transfer any Acquired Assets to Canada or another person or organization designated or approved by Canada; or
 - (iii) dispose of any Acquired Assets in such other manner as both Parties agree.
 - (b) For the purposes of paragraph (a), where an Asset is partly purchased or acquired without the Funding, and is not readily separable, saleable, transferable or disposable, the FNHA shall:
 - (i) sell, transfer or dispose of the entire Asset in a manner acceptable to both Parties and remit a proportionate share of the proceeds representing the value of the Asset as funded under this Agreement, to Canada or as Canada may direct; or
 - (ii) obtain a fair market appraisal of the portion of the Asset that is acceptable to both Parties and remit an amount representing the value of the Asset as funded under this Agreement, to Canada or as Canada may direct.
- (2) Any amounts payable to Canada under subsection (1) are debts due to the Crown.

SECTION 16– ASSETS

16.1 General

- (1) The FNHA shall:
- (a) use the Acquired Assets, exclusively for the planning, management, design, and delivery or funding of FN Health Programs or for the other activities set out for the FNHA in the *Framework Agreement* or any Sub-Agreement and which are in accordance with the MYHP.
 - (b) not sell, exchange, transfer or dispose of any Acquired Assets except for

fair market value and shall apply the proceeds to other uses or expenses in accordance with the MYHP; or

- (c) unless Canada agrees, not pledge, mortgage, charge or permit the creation of any security interest, claim or lien against any Acquired Assets.

SECTION 17– CCCA and SUB-AGREEMENTS

17.1 References to Canada Funding Agreement #1

(1) Subject to subsections (2), (3), (4), (5) and (6), references to “Canada Funding Agreement” in:

- (a) the provisions of the CCCA, a Sub-Agreement and an agreement other than the Canada Funding Agreement #1, entered into prior to the date this Agreement took effect between Canada and the FNHA pursuant to the *Framework Agreement* to effect and support the Transfer of Federal Health Programs, and which provisions were in effect on the date this Agreement took effect, and
- (b) provisions of the CCCA, a Sub-Agreement and an agreement, as described in paragraph (a), other than the Canada Funding Agreement #1, that expired or terminated prior to the date this Agreement took effect and which provisions contain, in whole or in part, rights and obligations of the Parties that remained in effect following the expiry or termination,

shall be deemed to be references to this Agreement.

(2) Subsection (1) does not apply to Schedule “B” of the *Novation of Canada Contribution Agreements Sub-Agreement*, which commenced on or about May 2, 2013.

(3) References to “Canada Funding Agreement” in subsection 1.1(7) and subsection 3(10) of the *Information Sharing Sub-Agreement*, in effect on or about May 2, 2013, shall be deemed to be references to the Canada Funding Agreement #1 and to this Agreement.

(4) References to “section 13 of the Canada Funding Agreement” shall be deemed to be references to section 14 of this Agreement in:

- (a) subsection 8.1(1) of the *Records Transfer Sub-Agreement*, in effect on or about May 2, 2013,
- (b) subsection 7.1(1) of the *Novation of Canada Contribution Agreements Sub-Agreement*, and
- (c) subsection 7.1(1) of the *Information Sharing Sub-Agreement*.

(5) Reference to “section 4.4 of the Canada Funding Agreement” in subsection 5.6(3) of the *Capital Planning Sub-Agreement*, in effect on or about May 21, 2013, shall be deemed to be a reference to section 4.3 of this Agreement.

(6) In the CCCA,

- (a) Reference to “section 5.5 of the Canada Funding Agreement” in section 4.3 of the main body of the CCCA shall be deemed to be a reference to section 5.4 of this Agreement;
- (b) Reference to “section 6.3(1) of the Canada Funding Agreement” in subsection 5.3(1) of the main body of the CCCA shall be deemed to be a reference to subsection 6.3(1) and subsection 6.3(2) of this Agreement;
- (c) Reference to “sections 6.3(1)(a) and (b) of the Canada Funding Agreement” in paragraph 5.3(1)(a) of the main body of the CCCA shall be deemed to be a reference to paragraphs 6.3(1)(a) and (b) and paragraphs 6.3(2)(a) and (b) of this Agreement;
- (d) Reference to “section 6.3(1)(d) of the Canada Funding Agreement” in paragraph 5.3(1)(b) of the main body of the CCCA shall be deemed to be a reference to paragraphs 6.3(1)(d) and 6.3(2)(d) of this Agreement;
- (e) Reference to “sections 6.3(1)(e) of the Canada Funding Agreement” in paragraph 5.3(1)(c) of the main body of the CCCA shall be deemed to be a reference to paragraphs 6.3(1)(e) and 6.3(2)(e) of this Agreement;
- (f) Reference to “Canada Funding Agreement” in paragraph 9.3(3)(b) and in subsection 13.9(2) of the main body of the CCCA, and in Activity Annex 3.4 at subsection 10.1(4), shall be deemed to be a reference to the Canada Funding Agreement #1 and to this Agreement;

17.2 Assets and Software Sub-Agreement - Term

(1) The *Assets and Software Sub-Agreement*, entered into on or about May 21, 2013, is amended as follows:

- (a) Section 2.2 is amended as follows:

Delete:

Effective Date – This Agreement will commence when it is signed by both Parties and will continue in force until the end of the Canada Funding Agreement unless terminated earlier in accordance with section 12.3, save and except for those provisions that expressly or by their nature survive expiration or termination of this Agreement.

Insert:

Effective Date – This Agreement will commence when it is signed by both Parties and will continue in force until Canada ceases to provide contribution funding to the FNHA to support the Transfer of Federal Health Programs under the *Framework Agreement* unless terminated earlier in accordance with section 12.3, save and except for those provisions that expressly or by their nature survive expiration or termination of this Agreement.

- (b) Section 7.8 is amended as follows:

Delete:

Term/Duration: The licenced rights granted under this Agreement shall commence on the Phase 2 Transfer Date and shall continue in force until the end of the Canada Funding Agreement.

Insert:

Term/Duration: The licenced rights granted under this Agreement shall commence on the Phase 2 Transfer Date and shall continue in force until Canada ceases to provide contribution funding to the FNHA to support the Transfer of Federal Health Programs under the *Framework Agreement*.

The provisions of this subsection (1) are effective immediately upon execution of this Agreement by the Parties.

SECTION 18 - GENERAL PROVISIONS

18.1 The Agreement

- (1) This Agreement is legally binding in accordance with its terms.

18.2 Incorporating terms from *Framework Agreement*

- (1) The following provisions of the *Framework Agreement* will be incorporated in and form part of this Agreement with such modifications as may be required for the context: section 3 - No Prejudice; subsection 13.1(2) - Nature of Agreement; section 13.3 - Amendment; section 13.4 - Waiver; section 13.5 - Governing Laws; section 13.6 - Statutory References; section 13.7 - Interpretation - references to certain organizations; section 13.8 - Other References; section 13.9 - Further Assurances; section 13.10 - Assignment; section 13.11 - Relationship of Parties; section 13.12 - Non-Severability; subsection 13.14(1) – Warranty of Authority.

- (2) Without limiting subsection (1) the following modifications will be deemed to

be in effect for the clauses incorporated into this Agreement by subsection (1):

- (a) all references to the "Agreement" and the "Parties" will be deemed to have the meanings of those terms as set out in this Agreement rather than the *Framework Agreement*; and
- (b) all references to the province of British Columbia as an actor or a Party will be deemed to be inapplicable.

(3) The Parties confirm for greater certainty that the reciprocal accountability clause from section 2.2 of the *Framework Agreement* will operate in accordance with its terms to the implementation of the *Framework Agreement*, which includes this Agreement.

18.3 Effect of Expiry or Termination of this Agreement

(1) The following sections of this Agreement contain, in whole or in part, rights and obligations of the Parties which will or may have effect following expiry or termination of this Agreement unless and until they are fulfilled, or by their nature expire: Section 6 (Annual Report); Section 8 (Use of Funding), Section 9 (Reporting and Audit), Section 10 (Evaluations); Section 11 (Indemnification and Insurance), Section 12 (Privacy and Confidentiality), Section 13 (Default and Remedies), Section 14 (Disputes), Section 15 (Termination and Expiry), Section 16 (Assets), Section 17 (CCCA and Sub-Agreements) and Section 18 (General Provisions).

18.4 Successor Agreement

(1) For greater certainty, and subject to the termination provisions herein, the Parties acknowledge that the process regarding the negotiation of a successor agreement to this Agreement that they will follow is set out in subsection CF 9(b) of Schedule 1 of the *Framework Agreement*. That provision provides for renewal negotiations for this Agreement to commence no later than one year prior to the expiry date of this Agreement.

18.5 Copyright

(1) In this section, "Material" means anything that is created or developed by the FNHA with the Funding including reports, plans, documents, manuals, tools, resources, designs, specifications, photographs, drawings, computer software, surveys, databases and Web sites and anything that is required to be provided to Canada by the FNHA under this Agreement.

(2) Any intellectual property rights in the Material shall belong to the FNHA or third parties that may have helped produce such Materials, in accordance with arrangements between them.

(3) The FNHA hereby grants to Canada a non-exclusive, perpetual, irrevocable, fully-paid and royalty-free license to use, reproduce, translate, modify and adapt the

Material (including any intellectual property rights therein) and communicate to the public (including electronically) for any purpose related to the administration of the *Framework Agreement* or this or any other agreement entered into by the Parties as a result of the *Framework Agreement*, including: (i) for any internal federal government administrative purpose; and (ii) subject to Section 12 (Privacy and Confidentiality) to provide information to the public or to respond to any requests for information by any person or party.

(4) The FNHA shall, in relation to any Material which has been prepared in whole or in part by a third party or parties, obtain a license or such rights from the third party or parties as may be required to permit the licence referred to subsection (3); and

(5) Canada shall, with respect to any Material it provides outside of the federal government under paragraph (3)(ii): (i) acknowledge the FNHA's intellectual property rights and, to the extent it is made aware by the FNHA, any third party's intellectual property rights in such Material; and (ii) shall not remove or alter any copyright notices from such Material.

18.6 Conflict of Interest Regarding Federal Public Officials

The FNHA declares, and shall ensure that:

(1) no current or former public servant or public office holder to whom any of the following legislation or codes applies shall derive any direct benefit from this Agreement unless the provision or receipt of such benefit is: (i) in compliance with this legislation and these codes or (ii) in accordance with the *Human Resources Sub-Agreement* which has been or will be entered into by the Parties under the *Framework Agreement*:

- (a) the *Conflict of Interest Act*;
- (b) the *Conflict of Interest and Post-Employment Code for Public Office Holders*;
- (c) the *Values and Ethics Code for the Public Sector*; or
- (d) the *Directive on Conflict of Interest*.

(2) no member of the Senate or the House of Commons shall: (i) be employed by or permitted to serve on the FNHA's board of directors; or (ii) 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.

18.7 Lobbyists

(1) The FNHA warrants that it and any person lobbying on its behalf to obtain funding under this Agreement has been, is, and will continue to remain in compliance with the *Lobbying Act*.

(2) The FNHA 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.

18.8 Communications

(1) The FNHA shall acknowledge Canada's financial support in its Annual Report, its summary service plan, its MYHP, its website and promotional material agreed to by the Parties that it provides to the public relating to the activities funded by this Agreement. Such acknowledgment shall be in a form reasonably satisfactory to Canada and shall be withdrawn upon the written request of Canada.

(2) The FNHA shall, in respect of any research study, assessment or report containing opinions of the FNHA that is prepared with the funding in this Agreement, include with the funding recognition statement a disclaimer that the views and opinions expressed therein are solely those of the FNHA and may not reflect the views and opinions of Canada.

(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 if possible, in order to provide the other Party an opportunity to participate in a joint announcement or in the development of joint communications materials. In view of the *Framework Agreement*, the Parties will also notify the province of British Columbia of such matters.

18.9 Administration of the Agreement

(1) The Parties will, within six months of signing this Agreement or at such other times as they may find convenient, establish or -if already established pursuant to the Canada Funding Agreement #1- maintain, working groups, procedures, processes or mechanisms and/or organize regular meetings in order to support the smooth functioning and implementation of this Agreement.

(2) The Parties will utilize the meetings to take place pursuant to subsection 8.1(1) of the *Framework Agreement* for the purposes set out in subsection (1).

18.10 Notices

(1) Any notice or other communication to be given to a Party under this Agreement shall be given in writing, and shall be sufficiently given if delivered personally or if sent by prepaid registered mail or facsimile transmission to such Party as follows:

to the FNHA:

Name: Chief Executive Officer
Address: 100 Park Royal South
West Vancouver, British Columbia
V7T 1A2
Squamish Nation - Capilano Indian Reserve No. 5
Attention: Chief Executive Officer

Facsimile: 604-913-2081

to Canada:

Name: Senior Assistant Deputy Minister, First Nations and Inuit Health Branch,
Indigenous Services Canada

Address:

Attention: Senior Assistant Deputy Minister, First Nations and Inuit Health
Branch, Indigenous Services Canada

Facsimile:

or at such other address as the Party to whom such notice is to be given shall have last notified to the Party giving the same in the manner provided in this section. Any notice personally delivered to a Party shall be deemed to have been given and received on the day it is so delivered at such address.

(2) Any notice mailed to a Party shall be deemed to have been given and received on the fifth Business Day next following the date of its mailing provided no postal strike is then in effect or comes into effect within five Business Days after such mailing.

(3) A facsimile shall be deemed to be delivered to the other Party on the Business Day on which it was transmitted to that Party provided that such transmission took place prior to 4:00 pm (local time for the recipient of the facsimile) of such Business Day. Where a facsimile is received after that time, it shall be deemed to be received by the other Party on that next following Business Day.

SECTION 19- EXECUTION

(1) This Agreement and any Amendment may be executed and delivered by facsimile or by e-mail and in counterparts, each of which when executed and delivered is an original but each of which taken together constitute one and the same instrument.


IN WITNESS WHEREOF, His Majesty the King in Right of Canada has executed this Agreement at the City of Ottawa, in the Province of Ontario, and the FNHA has executed this Agreement at the City of West Vancouver, in the Province of British Columbia, on the dates set out below:

**HIS MAJESTY THE KING IN RIGHT OF CANADA,
as represented by the Minister of Indigenous Services**

By: 


Patrick Boucher, Senior Assistant Deputy Minister,
First Nations and Inuit Health Branch,
Indigenous Services Canada

Date: March 17, 2023

Witness: 

Julien Castonguay
Director General,
Strategic Policy, Planning, and Information
Directorate,
First Nations and Inuit Health Branch
Indigenous Services Canada

FIRST NATIONS HEALTH AUTHORITY

By: 

Colleen Erickson
Board Chair
First Nations Health Authority

Date: March 17, 2023

Witness: 

Richard Jock
CEO, First Nations Health Authority