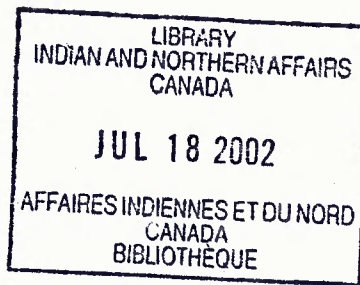


An agreement with respect to Mi'kmaq
education in Nova Scotia

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AN AGREEMENT
WITH RESPECT TO
MI'KMAQ EDUCATION IN NOVA SCOTIA

BETWEEN:

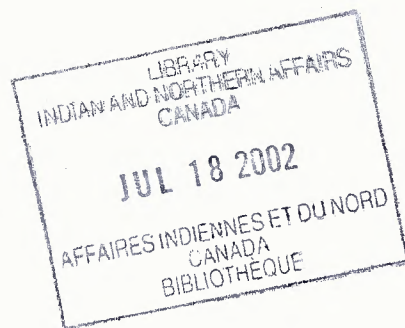
HER MAJESTY THE QUEEN IN RIGHT OF CANADA, as represented by the
Minister of Indian Affairs and Northern Development

(hereinafter referred to as "Canada")

and

MI'KMAQ BANDS IN NOVA SCOTIA, as represented by the Chiefs of the Mi'kmaq
Bands in the Province of Nova Scotia who are participating communities

(hereinafter referred to as the "Mi'kmaq Bands").



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WHEREAS Canada and the Mi'kmaq Nation in Nova Scotia entered into a Political Accord on November 4, 1994 to initiate negotiations to conclude practical agreements respecting the governance of education;

AND WHEREAS Canada and the Mi'kmaq Bands in Nova Scotia enter into this Agreement pursuant to the Political Accord of November 4, 1994;

AND WHEREAS section 91(24) of the *Constitution Act, 1867* states that the Parliament of Canada has exclusive legislative authority to make laws in relation to Indians, and lands reserved for Indians;

AND WHEREAS section 93 of the *Constitution Act, 1867* states that the provincial legislatures have exclusive authority to make laws in relation to education;

AND WHEREAS this Agreement is not intended to limit or define the concept of the inherent right of self-government or the future implementation of the inherent right of self-government;

AND WHEREAS Canada recognizes that this Agreement does not constitute, nor shall be construed as an endorsement by the Mi'kmaq Nation in Nova Scotia of Canada's policy on the implementation of the inherent right of self-government;

AND WHEREAS the Mi'kmaq Nation in Nova Scotia considers education a lifelong learning process which includes but is not limited to early childhood education, elementary, secondary, adult and post-secondary education, vocational training, culture and language as well as labour force training and adjustment;

AND WHEREAS it is the long-term intention of the Mi'kmaq Nation in Nova Scotia to exercise jurisdiction in the broad field of education by way of future agreements;

AND WHEREAS at this time the participating Mi'kmaq communities in Nova Scotia intend to exercise jurisdiction with respect to primary, elementary, secondary education and post-secondary education student support funding for members of the participating communities in Nova Scotia.

NOW, THEREFORE, THE MI'KMAQ BANDS IN NOVA SCOTIA AND HER MAJESTY THE QUEEN IN RIGHT OF CANADA ("THE PARTIES") AGREE AS FOLLOWS:

1.0 INTERPRETATION

1.1 Definitions

In this Agreement, except where the context otherwise indicates:

"**Agreement**" means this Agreement and is referred to in the Funding Agreement as the Final Agreement;

"**band**" means an Indian band as defined in section 2 of the *Indian Act*;

"**band council**" means a band council within the meaning of the *Indian Act*;

"**community education board**" means a body established by a band council pursuant to this Agreement;

"**DIAND**" means the Department of Indian Affairs and Northern Development or its administrative successor;

"**education**" means primary, elementary, and secondary education on reserves, and post-secondary student support;

"**elementary education**" means education programs and services of a nature generally provided to students enrolled in primary and grade levels 1 to 8 in schools in other education systems in Canada;

"**Funding Agreement**" means the agreement that is appended to this Agreement as Schedule A;

"**Implementation Plan**" means the plan that is appended to this Agreement as Schedule B;

"**jurisdiction**" means the power delegated to participating communities pursuant to section 5.1 or 5.5 of this Agreement;

"**member**" means a member of a Band in Nova Scotia who is listed on the Band Registry maintained by Canada or, where a band determines its own membership in accordance with the *Indian Act*, a person on that band's registry;

"**Mi'kmaq Band**" means one of the Bands in Nova Scotia, being Acadia Band, Afton First Nation, Annapolis Valley Band, Bear River Band, Chapel Island Band, Eskasoni Band, Horton Band, Membertou Band, Millbrook First Nation, Pictou Landing First Nation, Shubenacadie First Nation, Wagmatcook Band, or Whycomomagh First Nation;

"**Mi'kmaq Bands**" means the Bands in Nova Scotia who are participating communities pursuant to this Agreement;

"**Mi'kmaw Kina'masuti**" means the body described in section 5.7 of this Agreement;

"**Mi'kmaq Nation in Nova Scotia**" means the thirteen (13) Bands in Nova Scotia and their members collectively;

"**non-participating community**" means a Mi'kmaq Band that has not ratified this Agreement prior to its coming into force, or that has withdrawn from this Agreement in accordance with the provisions contained herein;

"**non-member**" means a person who is a community member of a Band in Nova Scotia but who is not listed on the Band Registry maintained by Canada, or, where a band determines its own membership in accordance with the *Indian Act*, is not listed on that band's registry;

"**participating community**" means one of the Mi'kmaq Bands that has ratified this Agreement prior to its coming into force, or that has chosen to ratify this Agreement in accordance with the provisions contained herein;

"**post-secondary student support**" means the program administered on reserve to provide student financial support with respect to education assistance including counselling provided by Mi'kmaq Bands to members attending post-secondary institutions;

"**primary education**" means education programs and services of a nature generally provided to students enrolled in classes which precede Grade 1 in schools in other education systems in Canada. These programs and services are often referred to as Kindergarten (K4 and K5) in on-reserve education systems;

"**reserve**" means a reserve defined in section 2 of the *Indian Act*, located in the Province of Nova Scotia; and

"**secondary education**" means education programs and services of a nature generally provided to students enrolled in classes in grade levels 9 to 12 in schools in other education systems in Canada.

2.0 OBJECTIVES OF THE AGREEMENT

2.1 Objectives

The objectives of this Agreement are:

2.1.1 To specify the procedures and instruments through which the jurisdiction of the participating communities with respect to education will be realized; and

2.1.2 To determine the specific governance and administrative structures through which the participating communities shall exercise jurisdiction with respect to education.

3.0 REALIZATION OF OBJECTIVES

3.1 Realization

The objectives of this Agreement are to be realized through the:

3.1.1 Enactment of legislation to enable the participating communities through delegated authority to exercise jurisdiction with respect to education;

3.1.2 Exercise of jurisdiction with respect to education by the band councils of participating communities constituted under the provisions contained herein;

- 3.1.3 Establishment of a body corporate, which shall have the capacity to support the delivery of education programs and services by participating communities;
- 3.1.4 Provision of federal funding for education for the Mi'kmaq Bands in Nova Scotia as set out in the Funding Agreement; and
- 3.1.5 Adoption of implementation measures as set out in the Implementation Plan.

3.2 Agreement with Nova Scotia

A separate education agreement attached as Schedule C with respect to the subject matter of this Agreement including the harmonization of federal, provincial and Mi'kmaq laws, among the Mi'kmaq Bands, Canada and the Province of Nova Scotia is being executed at the same time as this Agreement.

4.0 STATUS AND LIMITATIONS

4.1 Non-Merger

Subject only to sections 3.1.1 and 10.3, this Agreement is a contract and the rights flowing from this Agreement do not merge with the provisions of any federal legislation enacted regarding the subject matter of this Agreement.

4.2 Not a Treaty

This Agreement is not a treaty within the meaning of section 35 of the *Constitution Act*, 1982.

4.3 No Abrogation or Derogation

4.3.1 Nothing in this Agreement shall be construed so as to abrogate or derogate from the fiduciary relationship which exists between Canada and the Mi'kmaq Nation in Nova Scotia.

4.3.2 Nothing in this Agreement shall be construed so as to abrogate or derogate from any Aboriginal, treaty, or other rights and freedoms that pertain to the Mi'kmaq Nation in Nova Scotia.

4.3.3 In the event that this Agreement is terminated, neither the fact that the Parties entered into this Agreement, nor anything contained herein shall be construed so as to abrogate or derogate from the fiduciary relationship between Canada and the Mi'kmaq Nation in Nova Scotia.

4.3.4 In the event that this Agreement is terminated, nothing in this Agreement shall be construed so as to abrogate or derogate from any fiduciary duty that may be determined to exist requiring Canada to provide education programs and services to the Mi'kmaq Bands in Nova Scotia.

4.3.5 Except for jurisdiction with respect to education, nothing in this Agreement shall affect the application of those laws of general application which otherwise may be determined to apply.

4.3.6 Nothing in this Agreement will prevent the participating communities from maintaining and promoting the Mi'kmaq view that education is a lifelong learning process in further negotiations with Canada in relation to education and other matters.

4.3.7 Nothing in this Agreement obliges the participating communities to provide educational programs and services to members beyond the scope of those education programs and services provided for in this Agreement.

4.4 No Restriction

For greater certainty, nothing in this Agreement restricts the participating communities from entering into:

4.4.1 Other agreements with Canada or the Province of Nova Scotia with respect to any matter, including education; or

4.4.2 Treaties, within the meaning of section 35 of the *Constitution Act*, 1982, with respect to any matter, including education.

5.0 MI'KMAQ JURISDICTION

5.1 Primary, Elementary and Secondary Levels

5.1.1 The participating communities shall have the power to make and administer laws with respect to primary, elementary, and secondary education on reserve respecting members resident on reserves in Nova Scotia subject to sections 8.1.3 and 13.2.2.

5.1.2 The participating communities shall have the power to enter into agreements with respect to the provision of primary, elementary, and secondary education respecting members resident on reserves in Nova Scotia subject to sections 8.1.3 and 13.2.2.

5.1.2 For greater certainty, section 5.1.1 refers only to primary education, elementary education, and secondary education.

5.2 Exercise of Jurisdiction by Participating Communities

5.2.1 The jurisdiction of participating communities with respect to education shall be exercised by the band council of that community following adoption of a constitution consistent with the principles set out in Schedule D.

5.2.2 For greater certainty, a band council, when exercising jurisdiction with respect to education, is not an agent of Canada.

5.3 Community Education Boards

5.3.1 Where the band council of a participating community undertakes to exercise jurisdiction in accordance with section 5.2.1, it may establish a community education board, responsible to the band council, to exercise jurisdiction with respect to education on its behalf.

5.3.2 The powers, duties, functions and composition of a community education board shall be determined by the band council of a participating community, and shall be exercised by the community education board pursuant to the direction of the band council in accordance with the constitution adopted by the participating community pursuant to section 5.2.1.

5.4 Education Standard

The participating communities shall provide primary, elementary and secondary education programs and services comparable to those provided by other education systems in Canada, so as to permit the transfer of students between education systems without academic penalty, to the same extent as the transfer of students is effected between education systems in Canada.

5.5 Post-Secondary Student Support

5.5.1 The participating communities shall have jurisdiction with respect to post-secondary student support for members, whether or not resident on reserve to the same extent as would otherwise have been exercised by Canada.

5.5.2 For greater certainty, the participating communities shall not have jurisdiction with respect to post-secondary education, other than with respect to the provision of post-secondary student support.

5.6 Access to Services

5.6.1 The participating communities shall provide, or make provision for, primary, elementary, and secondary education services for members living on reserve.

5.6.2 Where there are non-members living on reserve:

5.6.2.1 Funding for primary, elementary and secondary education programs and services for non-members living on reserve shall be provided by Canada in accordance with an administrative arrangement among Canada, Nova Scotia, and the Mi'kmaq Bands at the equivalent rate provided for members as set out in the Funding Agreement. Such amounts shall be adjusted annually in accordance with provisions of the Funding Agreement. In no event shall the Province of Nova Scotia be responsible for the education costs of non-members living on reserve by way of these administrative arrangements; and

5.6.2.2 Nothing in this Agreement shall be construed so as to grant to non-members any rights which are similar to or analogous to the rights of members, or to establish any entitlement of non-members to any services from the participating communities other than the provision of elementary and secondary education, funded under this Agreement. The provision of funding for and services to non-members is for purposes of delivery of education services under this Agreement only.

5.6.3 Subject to section 5.6.2, participating communities shall provide primary, elementary and secondary education programs and services to non-members living on reserves on the same basis as provided for members living on reserves.

5.6.4 For greater certainty, the participating communities have no obligation to provide education in relation to:

5.6.4.1 Members not resident on reserves, other than with respect to the provision of post-secondary student support; or

5.6.4.2 Non-members wherever resident, with respect to the provision of post-secondary support.

5.6.5 Following the implementation of the Final Agreement, members resident on reserve shall not require nor generally be eligible for education programs or services from DIAND in areas provided for in the Final Agreement for which funding is provided pursuant to the Final Agreement. This exclusion does not apply to incremental programs or services not included in a Funding Agreement.

5.7 Mi'kmaw Kina'masuti

5.7.1 Upon the date on which federal legislation enacted pursuant to this Agreement as set out in section 9.2 comes into force, a body corporate shall come into existence, having as its objective the support of the delivery of education programs and services by participating communities.

5.7.2 Membership in this body corporate shall consist of the participating communities while they are party to this Agreement.

5.7.3 The body corporate shall be governed by a Constitution which shall be in accordance with the principles outlined in Schedule D.

5.7.4 The body corporate established pursuant to this section shall have the capacity of a natural person.

5.7.5 For greater certainty, the body corporate established pursuant to this section is not an agent of Canada.

6.0 DISPUTE RESOLUTION

6.1 Process

In the event of a dispute between one or more of the participating communities and Canada, as to the interpretation or implementation of any provision of this Agreement, the Parties involved in the dispute shall, unless agreed upon otherwise, make use of the following process to address the dispute:

6.1.1 The matter in dispute shall be set out in a notice of dispute and served on the other Party and the Mi'kmaw Kina'masuti;

6.1.2 Upon the serving of the notice of dispute, the provisions for continuity in education programs and services as set out in section 6.2 shall come into effect;

6.1.3 Within 15 (fifteen) days of the serving of a notice of dispute, the Parties shall meet and make best efforts to resolve the dispute;

6.1.4 If the Parties fail to resolve the dispute within ninety (90) days of the serving of a notice of dispute, the Parties shall make best efforts to appoint a mediator to assist in the resolution of the dispute; and

6.1.5 In the event that the Parties are unable to agree upon a mediator within fifteen (15) days, or in the event that a mediator is appointed, and the Parties are unable to resolve the dispute within ninety (90) days of the appointment of a mediator:

6.1.5.1 The dispute may, if the Parties agree, be resolved through binding arbitration, relying on an arbitrator and arbitration procedures acceptable to the Parties; or

6.1.5.2 Either Party may commence legal proceedings in a court of competent jurisdiction.

6.2 Continuity in Education Programs and Services

6.2.1 In the event of a dispute between one or more of the participating communities and Canada, the Parties to the dispute shall make best efforts to ensure the continuation of education programs and services.

6.2.2 In the event that, despite their best efforts, the Parties to the dispute cannot agree on the conditions under which education programs and services will continue, the Parties to the dispute shall refer the matter to binding arbitration.

6.2.3 In the event the matter is referred to binding arbitration, the Parties to the dispute agree to appoint an arbitrator within seven (7) days of notice of desire for binding arbitration being served. In the event that the Parties to the dispute cannot agree on an arbitrator, then after the expiry of such a seven (7) day period, a Party to the dispute may make application to a court of competent jurisdiction to appoint an arbitrator to hear the binding arbitration.

6.2.4 With the exception of the determination of funding levels as provided for in this Agreement, the arbitrator shall have jurisdiction to order the Parties to make provision for the continuation of education upon such terms and conditions as the arbitrator deems advisable including the imposition of new obligations on the Parties. The arbitrator shall not be bound by the terms of this Agreement, except with respect to section 6.2.

6.2.5 Only the decision arrived at by the arbitrator with respect to the continuity of education shall be binding upon the parties to the binding arbitration. No appeal to a decision with respect to the continuity of education shall lie therefrom.

6.2.6 The binding arbitration shall be conducted in accordance with the provisions of the *Commercial Arbitration Act* unless the Parties agree to opt out, in whole or in part, of such legislation.

6.2.7 The joint costs of the binding arbitration shall be borne equally by the Parties to the dispute, but each party shall be responsible for its own costs.

6.3 Paramountcy

Education laws of the participating communities with respect to jurisdiction, set out in section 5.0, shall have paramountcy over federal and provincial education laws.

6.4 Invalidity

In the event that any provision of this Agreement is found to be invalid by a court of competent jurisdiction, the Parties undertake to make best efforts to amend this Agreement to remedy the invalidity or replace the invalid provision.

6.5 No Waiver

No breach of this Agreement by a Party is waived by the other Party except as evidenced by written consent.

7.0 RATIFICATION

7.1 Ratification by Mi'kmaq

7.1.1 A participating community shall have ratified this Agreement prior to signing this Agreement, by adopting a Band Council Resolution substantially in the form appended hereto as Schedule E.

7.1.2 This Agreement shall not apply to any Mi'kmaq Band unless it has been ratified by that community.

7.2 Ratification by Canada

Canada shall be considered to have ratified this Agreement when the Minister of DIAND has signed this Agreement. Canada shall confirm, in writing, its approval of this Agreement to the Mi'kmaq Bands in Nova Scotia.

7.3 Legislation

7.3.1 Canada shall consult closely with participating communities that ratified this Agreement prior to the time it comes into force and with the Province of Nova Scotia, in the preparation of any federal legislation regarding the jurisdiction of the participating communities with respect to education.

7.3.2 Canada undertakes to introduce a bill in Parliament with respect to the subject matter of this Agreement.

8.0 PARTICIPATION IN THIS AGREEMENT

8.1 Change in Status of Communities as Participating or Non-Participating

8.1.1 In the event that the federal legislation enacted regarding the subject matter of this Agreement is not substantively in accordance with this Agreement, a participating community may change its status to that of a non-participating community by notifying the Mi'kmaw Kina'masuti and Canada of its intent to change its status within thirty (30) days of the Royal Proclamation of that legislation.

8.1.2 Prior to the Royal Proclamation of enabling legislation regarding the subject matter of this Agreement, in the event that the administrative agreement reached among the Parties with respect to payment for non-members resident on reserve is not satisfactory to a participating community, that participating community may change its status to that of a non-participating community by giving thirty (30) days notice to Mi'kmaw Kina'masuti and Canada of its intent to change its status.

8.1.3 A community may change its status as a participating community or a non-participating community by:

8.1.3.1 Notifying the Mi'kmaw Kina'masuti and Canada of its intent to change its status by June 30 of a given year. The change in status shall become effective on April 1 of the following year; and

8.1.3.2 Providing evidence to Canada that the community has approved the change in status in accordance with the ratification process pursuant to section 7.1.

8.1.4 In the event that a participating community changes its status to that of a non-participating community Canada shall have responsibility for education with respect to that non-participating community on the same basis as if it had not entered the Agreement.

8.2 Confirmation

Confirmation of a change in status shall be through the issuance by Canada of an order in council.

9.0 COMING INTO FORCE

9.1 Force on Signing

This Agreement comes into force when it is signed by the Parties.

9.2 Legislative Timetable

Canada undertakes to make best efforts to encourage Parliament to enact legislation by September 1, 1997, or as soon thereafter as feasible, with respect to the subject matter of this Agreement.

9.3 Effective Date of Legislation

The effective date for the exercise of jurisdiction with respect to the subject matter of this Agreement shall be as set out in the federal and provincial legislation passed pursuant to this Agreement.

10.0 ONE AND ENTIRE AGREEMENT

10.1 Agreement Components

This Agreement consists of the provisions contained herein, and related schedules which are Schedule A - Funding Agreement, Schedule B - Implementation Plan, Schedule C - Tripartite Agreement Nova Scotia, Schedule D - Principles of the Constitutions, Schedule E - Band Council Resolution for Ratification Purposes.

10.2 Entire Agreement

This Agreement constitutes the entire Agreement between the Parties and there is no representation, indemnity, condition, or agreement, or collateral representation, indemnity, condition or agreement, applicable to, binding upon, or enforceable against, one Party by the other save for those expressed in this Agreement.

10.3 Implementation Plan

With respect to the Implementation Plan appended hereto as Schedule B, only the financial provisions of that Schedule shall be considered a contract.

11.0 INDEMNIFICATION

11.1 Powers, Duties and Functions

Participating communities, Mi'kmaw Kina'masuti and their officers, employees and agents, in exercising their powers, duties and functions with respect to the subject matter of this Agreement shall:

11.1.1 Exercise the care, diligence and skill that a prudent person would exercise in comparable circumstances; and

11.1.2 Carry out in good faith their responsibilities with respect to the subject matter of this Agreement.

11.2 Claims, Liabilities and Demands

Canada shall, from time to time and at all times, be indemnified and saved harmless from and against, claims, liabilities and demands arising directly and indirectly from the acts or omissions of the participating communities, Mi'kmaw Kina'masuti, and their officers, agents and employees in the exercise of their powers, duties and functions with respect to the subject matter of this Agreement.

12.0 AMENDMENTS

12.1 This Agreement may be amended in writing from time to time as agreed to by the Parties.

13.0 TERM

13.1 Indeterminate

Subject to the provisions of section 13.2, the term of this Agreement is indeterminate.

13.2 Expiration

13.2.1 Notwithstanding section 6.0, in the event that the Funding Agreement expires, this Agreement shall also expire on the same day.

13.2.2 In the absence of a Funding Agreement Canada shall have responsibility for the education of the Mi'kmaq communities in Nova Scotia.

13.3 Termination

This Agreement may be terminated by:

13.3.1 The Mi'kmaq Bands in Nova Scotia in accordance with section 8.0 of this Agreement;

13.3.2 Canada, on notice to the Mi'kmaq Bands in Nova Scotia, of at least one fiscal year;

13.3.3 Either Party, in the event of a fundamental breach of this Agreement, section 6.2 shall then apply to the Parties, during which time the Parties shall attempt to conclude a satisfactory, long-term education agreement; or

13.3.4 Written agreement of the Parties.

14.0 SAVINGS

14.1 Savings

For greater certainty, this Agreement does not create any enforceable rights, privileges, benefits, powers, duties or liabilities until it has been ratified by the Parties and comes into force.

15.0 MEMBERS OF THE HOUSE OF COMMONS AND SENATE

15.1 No Benefit

No member of the House of Commons or Senate shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.

16.0 INTERPRETATION

16.1 This Agreement will be governed by and construed in accordance with the laws in force in the Province of Nova Scotia.

16.2 In this Agreement wherever the singular or neuter is used it will be construed as if the plural or masculine or feminine, as the case may be, had been used where the context so requires.

16.3 In this Agreement the heading or captions are inserted for convenience only, and no way define, limit, alter or enlarge the scope or meaning of and provisions of this Agreement.

17.0 SERVICE OF NOTICE

17.1 On the Mi'kmaq Bands in Nova Scotia

Service of any notice, claim, consent, waiver or any other document, and the tendering of any payment related to this Agreement, may be effected on the Mi'kmaq Bands in Nova Scotia by Canada by delivery by hand or by registered mail at the office of the Chairperson of the Mi'kmaq Kina'masuti and to the Chief of each participating community.

17.2 On Canada

Service of any notice, claim, consent, waiver or any other document, and the tendering of any payment related to this Agreement, may be effected on Canada by the Mi'kmaq Bands in Nova Scotia and by any Mi'kmaq educational authority by delivery by hand or by registered mail at the office of the Regional Director General, Atlantic Region, Department of Indian Affairs and Northern Development.

17.3 On Nova Scotia

In the event of service of notice pursuant to sections 17.1 or 17.2, copy of any such notice, claim, consent, waiver or any other document related to this Agreement shall be delivered by hand or by registered mail at the office of the Deputy Minister responsible for Aboriginal Affairs, Province of Nova Scotia.

IN WITNESS WHEREOF this Agreement has been executed by the Chiefs of the participating communities on behalf of the Mi'kmaq Bands in Nova Scotia and by the Minister of Indian Affairs and Northern Development on behalf of Canada.

SIGNED on behalf of the Government of Canada this ____ day of _____ 1997.

Ronald A. Irwin, P.C., M.P.
Minister, Indian Affairs
and Northern Development

Signed in the presence of:
David C. Dingwall, P.C., M.P.
Minister, Health Canada

SIGNED on behalf of the Mi'kmaq Bands in Nova Scotia this ____ day of _____ 1997.

Chief Deborah Robinson
Acadia Band

Chief Lawrence Toney
Annapolis Valley Band

Chief Lindsay Marshall
Chapel Island Band

Chief Allison Bernard
Eskasoni Band

Chief Terrance Paul
Membertou Band

Chief Albert W. Denny
Pictou Landing First Nation

Chief Regional Maloney
Shubenacadie First Nation

Chief Mary Louise Bernard
Wagmatcook Band

Chief Morley Googoo
Whycocomagh First Nation

Signed in the presence of:
Ben Sylliboy
Grand Chief of the Mi'kmaq Nation

Schedule A

AN AGREEMENT
WITH RESPECT TO FUNDING FOR
MI'KMAQ EDUCATION IN NOVA SCOTIA

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA, as represented by the
Minister of Indian Affairs and Northern Development

(hereinafter referred to as "Canada")

and

THE MI'KMAQ BANDS IN NOVA SCOTIA as represented by the Chiefs of the
Mi'kmaq Bands in the Province of Nova Scotia who are participating communities

(hereinafter referred to as the "Mi'kmaq Bands").

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THE PARTIES AGREE AS FOLLOWS:

1.0 INTERPRETATION OF THE AGREEMENT

1.1 Funding Agreement

The Funding Agreement forms part of the Final Agreement and the provisions thereof apply to this agreement unless the context of the Funding Agreement otherwise requires.

1.2 Definitions

In this agreement, except where the context otherwise indicates:

"A-Base" means the amount which is subject to the adjustment provisions contained in this agreement, payable by Canada to the participating communities and the Mi'kmaw Kina'masuti through an Annual Grant in each year of this agreement;

"Annual Grant" means the amount payable by Canada to the participating communities and the Mi'kmaw Kina'masuti in respect of a specific fiscal year under the Funding Agreement.

"Base Year" means the fiscal year beginning April 1, 1997 and ending March 31, 1998.

"Cash Management Policy" means the Cash Management Policy of the Government of Canada, as defined in the **Guide on Financial Administration** as of April 1, 1996.

"Fiscal Year" means a twelve-month period beginning on and including April 1 of a year and ending on and including March 31 of the immediately following calendar year.

"Funding Agreement" means this agreement which shall accompany the Final Agreement.

"Funding Schedules" mean the annual allocations inclusive of the budget and cash flow requirements for the Mi'kmaw Kina'masuti and each of the participating communities.

"Implementation Period" means that period from the date of signing of this agreement through the date on which the federal and provincial legislation with respect to the Final Agreement comes into force.

"Indian Studies Support Program" means a DIAND program component of the post-secondary student support program which provides for financial support to institutional projects.

2.0 DURATION

2.1 In Effect

This agreement shall be in effect until the 31st day of March 2002.

3.0 SERVICE POPULATION

3.1 Service Population

The service population for whom funding is being transferred is:

- 3.1.1 Primary, elementary and secondary - all members resident on reserves.
- 3.1.2 Post-Secondary - all members whether or not resident on reserves.
- 3.1.3 Subject to section 5.3.6, primary, elementary and secondary - all non-members resident on reserve.

4.0 METHOD AND CONDITIONS OF PAYMENTS

4.1 Subject to Annual Appropriation

Subject to an annual appropriation by Parliament of monies for the purposes set out herein, Canada shall provide to the participating communities and the Mi'kmaw Kina'masuti an Annual Grant equal to the amount set out in section 5.0 in each fiscal year of this agreement.

4.2 Funding Schedules

- 4.2.1 The Annual Grant shall be paid to the participating communities and the Mi'kmaw Kina'masuti in accordance with the submitted Funding Schedules insofar as they are consistent with the Cash Management Policy.
- 4.2.2 Funding Schedules will be prepared by Mi'kmaw Kina'masuti by June 30, 1997 for each community eligible to become a participating community. The amounts indicated in the initial Funding Schedules will constitute the base budget for each eligible community. However, eligibility for funding under this agreement in accordance with the Funding Schedules is restricted to participating communities.
- 4.2.3 The Funding Schedules for participating communities shall be updated annually and submitted by the Mi'kmaw Kina'masuti to DIAND on or before February 1 of each year.
- 4.2.4 The Funding Schedules may be adjusted from time to time to reflect the budget allocation regime as agreed to by the participating communities.

4.3 Payments

Each eligible community upon becoming a participating community will provide written direction to Canada with respect to the payments pursuant to this agreement. Participating communities may opt for one of the following methodologies:

- 4.3.1 Payments with respect to a participating community may be forwarded by Canada directly to the participating community; or,
- 4.3.2 Payments with respect to a participating community may be directed to the Mi'kmaw Kina'masuti; or,

4.3.3 Funding consistent with the Funding Schedule for a participating community may be provided through another funding methodology agreed to between Canada and that participating community.

4.4 Funding for Implementation Period

Funding for education for the Mi'kmaq Bands until legislation comes into force shall continue to be provided by Canada through existing funding arrangements. Funding for Mi'kmaq Kina'masuti during each month of the implementation period will be calculated on the basis of the monthly equivalent of the annual governance allocation.

5.0 ANNUAL GRANT

5.1 Term

Canada shall provide to the participating communities and the Mi'kmaq Kina'masuti an Annual Grant regarding the programs and services set out in section 6.1, from the date that federal and provincial legislation with respect to the Final Agreement comes into force, to March 31, 2002.

5.2 Base

Canada shall pay to the participating communities and the Mi'kmaq Kina'masuti the fiscal 1997-1998 A-Base amount of \$ 26,707,418 in each year of this agreement which amount will be adjusted annually in accordance with the adjustment provisions of this agreement including section 5.3.

5.3 Adjustment to the Base

5.3.1 The A-Base amount will be adjusted to reflect the number of participating communities from time to time.

5.3.2 Funding in the first year of this agreement will be adjusted to reflect the term established in section 5.1 by deducting any funds with respect to areas included in the Final Agreement transferred to participating communities and the Mi'kmaq Kina'masuti from April 1, 1997 to the commencement of the term established in section 5.1.

5.3.3 Chapel Island School

5.3.3.1 Funding allocated to the Chapel Island School Project in the fiscal year during which the Final Agreement comes into force will be added to the A-Base for that fiscal year only. Similarly, any funds allocated to complete the Chapel Island School Project in subsequent fiscal years will be added to the A-Base of the appropriate fiscal years only. In no event will the total amount allocated pursuant to this clause, inclusive of adjustment factors, exceed that required and approved for the completion of the Chapel Island School project.

5.3.3.2 Following construction, the A-Base with respect to the remaining fiscal years of this agreement will be adjusted to reflect the provision of a capital allocation for classroom equipment, renovation, maintenance and replacement of the new school.

5.3.3.3 Funding in the first fiscal year of this agreement will be adjusted to reflect funding, if any, provided to Chapel Island during that fiscal year prior to the date on which the Final Agreement came into force.

5.3.4 In respect of each fiscal year of this agreement, subsequent to the Base Year, Canada shall pay to the participating communities and the Mi'kmaw Kina'masuti an Annual Grant equal to the A-Base amount as adjusted by the annual adjustment factors provided for in section 9.0.

5.3.5 The Annual Grant during fiscal 1997-1998 will be provided as an accountable contribution. Funding in the fiscal year following the passage of legislation giving force to this agreement will be provided as a grant.

5.3.6 In respect of each fiscal year of this agreement, inclusive of the Base Year, in the event that an administrative agreement among Canada, Nova Scotia, and the Mi'kmaq Bands results in payments to Mi'kmaw Kina'masuti or Mi'kmaq Bands from the Province of Nova Scotia with respect to non-members resident on reserve, the Annual Grant will be reduced in an amount equivalent to such payments received by the Mi'kmaw Kina'masuti or the Mi'kmaq Bands.

6.0 FUNDING UNDER THIS AGREEMENT

6.1 Scope

Funding under this agreement is provided to the participating communities and the Mi'kmaw Kina'masuti for the support of the governance and delivery of education programs and services as set out in section 5.0 of the Final Agreement, including:

6.1.1 Operations and maintenance funding with respect to elementary and secondary education, post-secondary support, education facilities, education-related band support and tribal council support and band employee benefits;

6.1.2 Capital funding with respect to major maintenance, replacement and construction of assets and classroom equipment for existing facilities in participating communities as of the effective date of this agreement; and

6.1.3 Governance funding with respect to the operation of the Mi'kmaw Kina'masuti and the education governance activities of participating communities.

7.0 EDUCATION FACILITIES

7.1 Existing Facilities

With respect to education facilities and any subsequent modifications or replacement of those facilities in participating communities as of the effective date of this agreement:

7.1.1 The capital and operation and maintenance programs adopted by the participating communities and the Mi'kmaw Kina'masuti shall ensure the protection of the current investment in education facilities, as it may exist from time to time;

7.1.2 Funding for participating communities, as set out in the Funding Schedules will reflect amounts required to meet the projected repair, renovation, growth, and replacement requirements of existing facilities; and

7.1.3 Participating communities shall be responsible for the disposition of the capital funding provided for education facilities in accordance with this agreement.

8.0 CHANGE IN PARTICIPATION

8.1 Participating to Non-Participating

In the event a community is initially or subsequently becomes a non-participating community to this agreement pursuant to section 8.0 of the Final Agreement, funding in that year and subsequent years will be decreased as follows:

8.1.1 Operating - amounts specified in the Funding Schedules in effect at the time that notice is given;

8.1.2 Governance - amounts specified in the Funding Schedules in effect at the time that notice is given. In the event that there is a significant change in the number of participating communities, the Mi'kmaw Kina'masuti Funding Schedule may be adjusted in a manner agreed to by the Parties;

8.1.3 Capital - Participating Communities - amounts specified in the Funding Schedules in effect at the time that notice is given; and

8.1.4 Capital - Mi'kmaw Kina'masuti - In the event that there is a significant change in the number of participating communities in this agreement, the Funding Schedule for capital provided to Mi'kmaw Kina'masuti may be adjusted in a manner agreed to by the Parties. Projects identified by a capital plan, prepared by and on behalf of the Mi'kmaw Kina'masuti as of the date of notification of the change in number of participating communities, will be accommodated in any revised capital funding allocation.

8.2 Capital Funds

Any capital funds transferred to a participating community pursuant to this agreement and used for purposes other than those specified in the Final Agreement become a receivable to Canada. Subject to the Parties agreeing in writing, such receivable may be recovered as an off-set to funding required for future educational capital projects of that community.

8.3 Non-Participating to Participating

In the event that there is a non-participating community which becomes a participating community pursuant to section 8.0 of the Final Agreement, funding to that community, in that year and subsequent years during which it remains a participating community, will be increased as follows:

8.3.1 Operating and Capital - amounts will be calculated in accordance with the methodology applied to calculate the funding included for participating communities at the time of the signing of this agreement as adjusted from time to time in accordance with the provisions contained herein; and

8.3.2 Governance - amounts as calculated for the Funding Schedule of a participating community in effect at the time notice is given. Governance funding for the Mi'kmaw Kina'masuti may be adjusted in the event of a change in the number of participating communities, but in no circumstances will that adjustment result in a total governance budget which would exceed a \$1.2 million maximum, as adjusted from time to time in accordance with the provisions contained herein.

9.0 ANNUAL ADJUSTMENTS

9.1 Provisions for Annual Adjustments

The Annual Grant for the period April 1, 1997 to March 31, 2002 shall be adjusted annually for price and volume. Each year the Annual Grant will be adjusted by the year-over-year change to the on-reserve registered Indian population of the participating communities based on the population census date of August 1 and by a price factor, if any, as announced annually by DIAND with respect to education. Subject to the annual appropriation of funds by Parliament and subject to the annual calculation specified in Appendix 1 and section 5.2, funding provided in each year of this agreement will be equal to or greater than that which was provided in the preceding fiscal year.

10.0 REPORTING REQUIREMENTS

10.1 Annual Report

The participating communities and the Mi'kmaw Kina'masuti shall provide to community members an annual report on the previous fiscal year operations of the Mi'kmaw Kina'masuti and that of the participating communities' education programs and services. This annual report is not to be inconsistent with information published by other education systems in Canada and will be made available to Canada by June 30 of each year.

10.2 Audit

The participating communities and the Mi'kmaw Kina'masuti shall provide to community members annual audited financial statements encompassing the complete operation of the respective participating community and the Mi'kmaw Kina'masuti with respect to funding provided pursuant to this agreement. These statements are to be prepared in accordance with generally accepted accounting principles as prescribed by the Canadian Institute of Chartered Accountants and will be made available to Canada by June 30 of each year.

11.0 NEW OR ENHANCED PROGRAMS

11.1 Incremental Funding

The participating communities and the Mi'kmaw Kina'masuti will be eligible for incremental funding in the event of new policy approvals resulting in supplementary funding being received by DIAND provided that those approvals result in departmental allocations which are incremental to the overall departmental education program budget.

12.0 HEALTH AND SAFETY

12.1 Education Facilities

For education-related facilities, participating communities and the Mi'kmaw Kina'masuti shall provide for the preservation of public health and safety and the environment through adherence to applicable laws and regulations.

13.0 UNFORESEEN EVENTS

13.1 Emergency Situations

When the Parties agree that circumstances causing unforeseen expenses pursuant to the funding provided under this agreement have occurred, the Mi'kmaq Bands may seek adjustments to the Annual Grant. This clause is envisioned as dealing with an emergency situation, which could in no way have been predicted at the time that this agreement was executed.

14.0 EXISTING AGREEMENTS

14.1 Other Funding Agreements

The Parties agree that it is necessary to make adjustments through amendments to existing funding agreements with Canada with respect to the funding of education. The total amount of funding for education provided to a participating community pursuant to this agreement will be that set out in the Funding Schedule for that community regardless of which funding agreement is used to flow the monies to that community further to section 4.3.

14.2 Internal Funding Allocation Methodology

Canada acknowledges that, as evidence in a Board Resolution passed December 12, 1996, the Mi'kmaw Kina'masuti has agreed to the following internal allocation methodology for participating communities during the term of this Funding Agreement:

- 14.2.1 That no participating community should receive less funding, in total, than it would have received had that community not entered into this agreement;
- 14.2.2 That the base budget established for each participating band for elementary, secondary and post-secondary education during the first year of this agreement will not be reduced over the duration of this agreement;
- 14.2.3 That the internal funding allocation for the funding of the post-secondary student support program will be based on the principle that the level of post-secondary funding in existing multi-year agreements with DIAND will be honoured in each year of this agreement;
- 14.2.4 That participating communities which, during the fiscal year 1996-1997, received post-secondary funding based on the application of DIAND formula through annual agreements, shall at their option, be able to negotiate a five-year allocation based upon current DIAND criteria during the implementation period. DIAND agrees to participate in such negotiations if requested by a participating community;
- 14.2.5 That increases to Base Year funding amounts of participating communities will be based on demonstrated need by applying DIAND criteria and will be resourced from annual price and volume increases to the Annual Grant based on the availability of resources;

- 14.2.6 That further to section 14.2.5, any incremental funding required with respect to demonstrated need for the post-secondary student support program shall be funded from annual adjustments to the Annual Grant with respect to the post-secondary student support program, from reallocation of Indian Studies Support Program funding, and if necessary, from the elementary/secondary reserve initially established at \$500,000.00; and
- 14.2.7 That the price and volume increases with respect to governance and capital budgets will be applied to those areas exclusively.

15.0 RENEWAL

15.1 New Funding Agreement

Canada and the Mi'kmaq Bands shall meet at least one year prior to the expiration of this agreement for the purpose of negotiating a successor Funding Agreement.

IN WITNESS WHEREOF this Agreement has been executed by the Chiefs of the participating communities on behalf of the Mi'kmaq Bands in Nova Scotia and by the Minister of Indian Affairs and Northern Development on behalf of Canada.

SIGNED on behalf of the Government of Canada this ____ day of _____ 1997.

Ronald A. Irwin, P.C., M.P.
Minister, Indian Affairs
and Northern Development

Signed in the presence of:
David C. Dingwall, P.C., M.P.
Minister, Health Canada

SIGNED on behalf of the Mi'kmaq Bands in Nova Scotia this ____ day of _____ 1997.

Chief Deborah Robinson
Acadia Band

Chief Lawrence Toney
Annapolis Valley Band

Chief Lindsay Marshall
Chapel Island Band

Chief Allison Bernard
Eskasoni Band

Chief Terrance Paul
Membertou Band

Chief Albert W. Denny
Pictou Landing First Nation

Chief Regional Maloney
Shubenacadie First Nation

Chief Mary Louise Bernard
Wagmatcook Band

Chief Morley Googoo
Whycocomagh First Nation

Signed in the presence of:
Ben Sylliboy
Grand Chief of the Mi'kmaq Nation

CALCULATION OF ANNUAL ADJUSTMENTSSAMPLE CALCULATION DESCRIPTION

For purposes of demonstrating how the annual adjustment factors would be applied, the "on-reserve population" volume adjustment and estimated, announced price have been used.

Annual Calculation

The "Annual Grant" in any fiscal year, following the "base" year, for the life of the Final Agreement, will be calculated using the price and volume adjustment factors as follows:

- STEP 1* Establish the "Base Year Funding" (or the "Prior Year funding base amount adjusted in accordance with the provisions of this agreement").
- STEP 2* Derive the percentage increase for population by dividing the year-over-year increase in the Nova Scotia First Nation on-reserve population by the population in the year prior to the most recent year, using August 1 as the reference point.
- STEP 3* Multiply the percentage increase in population calculated above by the prior year funding base amount obtained in Step 1 to arrive at the volume adjustment.
- STEP 4* The above volume adjustment is then added to the "prior year funding base" amount to give the adjusted funding base amount **BEFORE** the price adjustment.
- STEP 5* Multiply the percentage increase for announced price by the adjusted funding base after volume indexation calculated in Step 4.
- STEP 6* Add the above price adjustment as calculated to the adjusted funding base amount as calculated in Step 4 to obtain the amount of the upcoming year funding base.
- STEP 7* The amount determined in the above steps constitutes the amount of the funding amount or Annual Grant for the upcoming year.

An example of the calculation follows

SAMPLE CALCULATION

<i>STEP 1</i>	Base Year Funding	\$22,000,000 (illustration only)	
<i>STEP 2</i>	Volume Adjustment		
	On-Reserve Population		
	1995	10,646 (illustration	
	1996	10,887 only)	
	$\frac{(10,887-10,646)}{10,646} =$	$\frac{241}{10,646}$	= 0.02264
<i>STEP 3</i>	$\$22,000,000 \times 0.02264$		= 498,080
<i>STEP 4</i>	Base Adjusted for Volume (\$22,000,000 + 498,080 vol.)		= 22,498,080
	Announced Price Equals 1%		
<i>STEP 5</i>	$\$22,498,080 \times 0.01$		= 224,980
<i>STEP 6</i>	Base Adjusted for Price/Volume (\$22,498,080 + \$224,478)		\$22,723,060
<i>STEP 7</i>	Adjusted Funding "Base"		<u>\$22,723,060</u>

**IMPLEMENTATION PLAN
FOR THE AGREEMENT WITH RESPECT TO
MI'KMAQ EDUCATION IN NOVA SCOTIA**

1.0 INTERPRETATION OF THE IMPLEMENTATION PLAN

- 1.1 Nothing in this Implementation Plan shall be considered in amendment to, modification of, or derogation of the Final Agreement.
- 1.2 Where there is any inconsistency or conflict between the provisions of the Implementation Plan and the provisions of the Final Agreement, the provisions of the Final Agreement shall prevail to the extent of the inconsistency or conflict.

2.0 DEFINITIONS

In this Implementation Plan, except where the context otherwise indicates:

FA means the Final Agreement;
PC means the Participating Communities;
MK means the Mi'kmaw Kina'masuti;
IP means this Implementation Plan; and
Parties mean Canada, Mi'kmaw Kina'masuti, and the Mi'kmaq Bands.

3.0 IMPLEMENTATION PLAN MONITORING

Within thirty (30) days after the coming into force of the FA, each of the Parties shall identify a representative to act on its behalf, who shall use best efforts to resolve any issue which may arise in relation to the implementation of the IP.

4.0 IMPLEMENTATION PLAN REVIEW

Unless the Parties otherwise agree, prior to September 1, 1997, MK shall complete a review of the IP to determine the adequacy of the provisions and to report on progress with respect to activities outlined in the IP.

5.0 AMENDMENT

The Parties, by agreement, may amend the IP at any time, and any amendment to the IP shall be made in writing by the Parties. The Parties shall consider whether to amend the Plan as a result of any recommendation from representatives of the Parties or any recommendation arising from a review conducted pursuant to section 4.0 of the IP.

6.0 EFFECTIVE DATE OF THE IMPLEMENTATION PLAN

This IP shall take effect on the same day as the Final Agreement.

7.0 ACTIVITY GROUP I

LEGISLATION section from the Final Agreement

7.3 Legislation

7.3.1 Canada shall consult closely with participating communities that ratified this Agreement prior to the time it comes into force and with the Province of Nova Scotia, in the preparation of any federal legislation regarding the jurisdiction of the participating communities with respect to education.

7.3.2 Canada undertakes to introduce a bill in Parliament with respect to the subject matter of this Agreement.

<u>RESPONSIBILITY</u>	<u>ACTIVITIES</u>	<u>TIMING</u>
Canada, PC	Establish process with respect to the preparation of federal legislation.	January, 1997
PC, Canada, Nova Scotia	Establish process with respect to the preparation of provincial legislation	January, 1997
Canada	Introduce a bill in Parliament with respect to the subject matter of this agreement	Within a reasonable time period
Nova Scotia	Introduce a bill at the Legislature with respect to the subject matter of this agreement	Within a reasonable time period

ASSUMPTIONS:

1. This is a contingent activity.

8.0 ACTIVITY GROUP II

AMENDMENTS section from the Final Agreement

12.1 This Agreement may be amended in writing from time to time as agreed to by the Parties.

<u>RESPONSIBILITY</u>	<u>ACTIVITIES</u>	<u>TIMING</u>
PC, MK, Canada	Negotiate and draft amendment	As required
PC, Canada	Consent to amendment in writing	As required
PC, MK	Notify members	After consent by all Parties

ASSUMPTIONS:

1. This is a contingent activity.

9.0 ACTIVITY GROUP III

TERM section from the Final Agreement

13.1 Indeterminate

Subject to the provisions of section 13.2, the term of this agreement is indeterminate.

13.2 Expiration

13.2.1 Notwithstanding section 6.0, in the event that the Funding Agreement expires, this agreement shall also expire on the same day.

13.2.2 In the absence of a Funding Agreement Canada shall have responsibility for education for the Mi'kmaq communities in Nova Scotia.

<u>RESPONSIBILITY</u>	<u>ACTIVITIES</u>	<u>TIMING</u>
PC, MK, Canada	Shall review the FA to ensure it has been implemented in accordance with the IP	Annually
PC, Canada	Shall determine that financial resources are provided consistent with Schedule A	Annually
PC, Canada	Will establish negotiations process for a new financial arrangement one year prior to the expiry of financial agreements	Year Four 2001

10.0 ACTIVITY GROUP IV

MI'KMAW JURISDICTION section of the Final Agreement

5.0 Mi'kmaq Jurisdiction

Inclusive of 5.1 through 5.7

<u>RESPONSIBILITY</u>	<u>ACTIVITIES</u>	<u>TIMING</u>
PC	Band Councils, under section 5.2.1, adopt constitutions consistent to Schedule D	Sept. 1, 1997
PC, MK	Provide education services consistent with section 5.4 of FA	Ongoing
PC, MK	Establish a process of post-secondary student support for members	Ongoing
PC, MK	Ensure access to education services consistent with section 5.6 of FA	Ongoing

PC, MK	Establish an administrative organization (body corporate) to support the delivery of education programs and services to PC with a constitution consistent with the principles set out in Schedule D	April 1, 1997
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11.0 ACTIVITY GROUP V

PARAMOUNTCY section of the of the Final Agreement

6.3 Education laws of the participating communities with respect to jurisdiction, set out in section 5.0, shall have paramouncy over federal and provincial education laws.

RESPONSIBILITY	ACTIVITIES	TIMING
PC, Canada, Nova Scotia	Establish a process prior to the implementation of federal legislation	Ongoing

12.0 ACTIVITY GROUP VI

BASE section of the Funding Agreement (Schedule A)

5.2 Base

Canada shall pay to the participating communities and the Mi'kmaw Kina'masuti the fiscal 1997-1998 A-Base amount of \$ 26,707,418 in each year of this agreement which amount will be adjusted annually in accordance with the adjustment provisions of this agreement including section 5.3.

RESPONSIBILITY	ACTIVITIES	TIMING
Canada	Canada shall provide an annual grant as set out in section 5.0 and consistent with the <i>Financial Administration Act</i> and section 10.0 of Schedule A	April 1 of each fiscal year
MK, PC	Shall provide to Canada and annual report as outlined in section 10.0 or Schedule A	Ongoing
MK	Shall establish annual budgets and cash flow statement consistent with section 4.0 of Schedule A	Annually
PC, Canada	Will establish a negotiation process with respect to establishment of a new five-year Funding Agreement	April 1, 2001
MK	Develop a Capital Plan	Ongoing

12.0 ACTIVITY GROUP VII

EDUCATION FACILITIES section of the Funding Agreement (Schedule A)

7.1 Existing Facilities

With respect to education facilities and any subsequent modifications or replacement of those facilities in participating communities as of the effective date of this agreement:

- 7.1.1 The capital and operation and maintenance programs adopted by the participating communities and the Mi'kmaw Kina'masuti shall ensure the protection of the current investment in education facilities, as it may exist from time to time;
- 7.1.2 Funding for participating communities, as set out in the Funding Schedules will reflect amounts required to meet the projected repair, renovation, growth, and replacement requirements of existing facilities; and
- 7.1.3 Participating communities shall be responsible for the disposition of the capital funding provided for education facilities in accordance with this agreement.

RESPONSIBILITY	ACTIVITIES	TIMING
Canada	Provide funding for O&M, renovation and replacement of existing on-reserve education facilities	April 1, 1997
MK, PC	Establish a regular inspection and maintenance program with respect to education facilities consistent with section 7.0 of Schedule A	Ongoing
MK, PC	Establish an inspection process with respect to public health, safety and environment consistent with current or existing federal and provincial standards	Ongoing

12.0 ACTIVITY GROUP VIII

PAYMENT FOR NON-MEMBERS section of the Funding Agreement (Schedule A)

- 5.3.6 In respect of each fiscal year of this agreement, inclusive of the Base Year, in the event that an administrative agreement among Canada, Nova Scotia, and the Mi'kmaq Bands results in payments to Mi'kmaw Kina'masuti or Mi'kmaq Bands from the Province of Nova Scotia with respect to non-members resident on reserve, the Annual Grant will be reduced in an amount equivalent to such payments received by the Mi'kmaw Kina'masuti or the Mi'kmaq Bands.

RESPONSIBILITY	ACTIVITIES	TIMING
Canada, PC	The Parties will enter negotiations involving the Province of Nova Scotia as appropriate to conclude an Administrative Arrangement with respect to payment of education services for non-members on reserve.	August 1, 1997

A TRIPARTITE AGREEMENT
WITH RESPECT TO
MI'KMAQ EDUCATION IN NOVA SCOTIA

BETWEEN:

THE MI'KMAQ BANDS IN NOVA SCOTIA, as represented by the Chiefs of the
Mi'kmaq Bands in the Province of Nova Scotia,

(hereinafter referred to as the "Mi'kmaq Nation")

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA, as represented by the
Minister of Indian Affairs and Northern Development,

(hereinafter referred to as "Canada")

and

HER MAJESTY THE QUEEN IN RIGHT OF NOVA SCOTIA, as represented
by the Minister responsible for Aboriginal Affairs,

(hereinafter referred to as "Nova Scotia").

WHEREAS section 91(24) of the *Constitution Act, 1867* states that the Parliament of Canada has exclusive legislative authority to make laws in relation to Indians, and lands reserved for Indians;

AND WHEREAS section 93 of the *Constitution Act, 1867* states that the provincial legislatures have exclusive authority to make laws in relation to education;

AND WHEREAS Canada and the Mi'kmaq Nation have signed an Agreement-in-Principle with the intent of entering into a Final Agreement for the purpose of specifying the procedures and institutions and the specific governance and administrative structures through which the Mi'kmaq Bands will exercise their jurisdiction with respect to education;

AND WHEREAS the Parties recognize that it is desirable that for the term of the Final Agreement, the jurisdiction of the Mi'kmaq Bands to enact laws with respect to education be unequivocal;

AND WHEREAS the Parties recognize that an appropriate interim approach in pursuing the implementation of the inherent right of self-government is through federal and provincial legislation enabling the Mi'kmaq Nation in Nova Scotia to exercise jurisdiction with respect to education in accordance with the Final Agreement;

NOW THEREFORE, THE MI'KMAQ BANDS IN NOVA SCOTIA, HER MAJESTY THE QUEEN IN RIGHT OF CANADA AND HER MAJESTY THE QUEEN IN RIGHT OF NOVA SCOTIA ("THE PARTIES") AGREE AS FOLLOWS:

1. In this agreement, except where the context otherwise indicates, terms shall have the meaning as defined in the Final Agreement.
2. Nova Scotia undertakes to make best efforts to encourage its legislature by September 1, 1997, or as soon thereafter as feasible, to enable the Mi'kmaq Bands to exercise jurisdiction with respect to education in accordance with the Final Agreement.
3. A Mi'kmaq Band may enact a law with regard to education provided on the reserve, which law shall have paramountcy over provincial and federal education laws.
4. Except for laws with regard to education, federal and provincial laws of general application shall continue to apply to the Mi'kmaq Nation in Nova Scotia to the same extent that such laws would have applied in the absence of the Final Agreement.
5. Nothing in this agreement or the Final Agreement shall obligate Nova Scotia to provide funding for the development, implementation or administration of primary, elementary and secondary education programs or services whether for members or non-members, resident on reserves in Nova Scotia. Funding for primary, elementary, and secondary education for non-members living on reserve will be provided by Canada in accordance with the Final Agreement.
6. Nova Scotia shall treat students of participating communities for purposes of transferability, in the same manner, and on the same basis that it treats students of other education systems in Canada. The final determination for student placement is the responsibility of the receiving education system.
7. Canada and Nova Scotia undertake to consult with each other and the Mi'kmaq Bands in the preparation of any legislation regarding the jurisdiction of the Mi'kmaq Bands with respect to education provided on reserves.
8. Nova Scotia undertakes to introduce a bill in the Legislative Assembly which shall enable the Mi'kmaq Bands to exercise jurisdiction with respect to education.
9. Nova Scotia shall, from time to time and at all times, be indemnified and saved harmless from and against, claims, liabilities and demands arising directly and indirectly from the acts or omissions of the Mi'kmaq Bands, Mi'kmaw Kina'masuti, and their officers, agents and employees in the exercise of their powers, duties and functions with respect to the subject matter of the Final Agreement.
10. This agreement comes into force when it is signed by the Parties.
11. This agreement is co-terminate with the Final Agreement, and in the event that the Final Agreement expires, this agreement expires on the same day that the Final Agreement expires.
12. No member of the House of Commons or Senate shall be admitted to any share or part of this agreement or to any benefit arising therefrom.
13. This agreement may be amended in writing from time to time as agreed to by the Parties.

14.0 Service of Notice

14.1 On the Mi'kmaq Bands in Nova Scotia

Service of any notice, claim, consent, waiver or any other document, and the tendering of any payment related to this agreement, may be effected on the Mi'kmaq Bands in Nova Scotia by Canada or by the Province of Nova Scotia, by delivery by hand or by registered mail at the office of the Chairperson of the Mi'kmaw Kina'masuti and to the Chief of each participating community.

14.2 On Canada

Service of any notice, claim, consent, waiver or any other document, and the tendering of any payment related to this agreement, may be effected on Canada by the Mi'kmaq Bands in Nova Scotia, by any Mi'kmaq educational authority and by the Province of Nova Scotia, by delivery by hand or by registered mail at the office of the Regional Director General, Atlantic Region, Department of Indian Affairs and Northern Development.

14.3 On Nova Scotia

Service of any notice, claim, consent, waiver or any other document, and the tendering of any payment related to this agreement, may be effected on Nova Scotia by the Mi'kmaq Bands in Nova Scotia, by any Mi'kmaq educational authority and by Canada, by delivery by hand or by registered mail at the office of the Deputy Minister Responsible for Aboriginal Affairs, Province of Nova Scotia.

IN WITNESS WHEREOF this agreement has been executed by the Chiefs of the participating communities on behalf of the Mi'kmaq Nation in Nova Scotia, by the Minister of Indian Affairs and Northern Development on behalf of Canada and by the Minister responsible for Aboriginal Affairs, Province of Nova Scotia..

SIGNED on behalf of the Government of Canada this ____ day of _____ 1997.

Ronald A. Irwin, P.C., M.P.
Minister of Indian Affairs
and Northern Development

Signed in the presence of:
David C. Dingwall, P.C., M.P.
Minister, Health Canada

SIGNED on behalf of the Province of Nova Scotia this ____ day of _____ 1997.

John Savage
Premier, Province of Nova Scotia
Minister responsible for Aboriginal Affairs

Signed in the presence of:
Richard W. Mann
Minster, Economic Renewal Agency
Province of Nova Scotia

SIGNED on behalf of the Mi'kmaq Bands in Nova Scotia this ____ day of _____ 1997.

Chief Deborah Robinson
Acadia Band

Chief Lawrence Toney
Annapolis Valley Band

Chief Lindsay Marshall
Chapel Island Band

Chief Allison Bernard
Eskasoni Band

Chief Terrance Paul
Membertou Band

Chief Albert W. Denny
Pictou Landing First Nation

Chief Regional Maloney
Shubenacadie First Nation

Chief Mary Louise Bernard
Wagmatcook Band

Chief Morley Googoo
Whycocomagh First Nation

Signed in the presence of:
Ben Sylliboy
Grand Chief of the Mi'kmaq Nation

PRINCIPLES OF THE CONSTITUTIONS

1. The Community Constitutions will establish fair, open and transparent processes which shall not be inconsistent with the standards, generally in place, governing the processes for legislation, regulation and administration of education by authorities having jurisdiction with respect to education in other education systems in Canada and which reflect Mi'kmaq traditions, values and culture including provisions for:
 - (a) passage, administration and publication of laws;
 - (b) rights of appeal and redress for all served;
 - (c) maintenance and inspection of books, records and accounts;
 - (d) conflict of interest for elected and non-elected officials; and
 - (e) meetings, including frequency, attendance, minutes, retention of minutes and disclosure of minutes.

2. Where the jurisdiction with respect to education is not exercised by the Chief and Band Councillors, the Constitution of the organization, in addition to those provisions set out in paragraph 1, shall also have provisions with respect to:
 - (a) the composition of membership;
 - (b) the election of membership;
 - (c) attendance of members at meetings;
 - (d) vacancies;
 - (e) disqualification of members; and
 - (f) quorum of meetings.

3. A community constitution may set out a list of powers of the Community Education Board which the Community Education Board may exercise as part of its jurisdiction with respect to education. That list may include the power to make laws with respect to the following enumerated matters but shall not be limited to those matters:
 - (a) terms and conditions of employment of teachers;
 - (b) maintenance and operation of school buildings and facilities;
 - (c) conveyance of students to and from school;
 - (d) payment of tuition for students attending schools off reserve
 - (e) additional education services;
 - (f) agreements with other school boards or band councils with respect to the delivery of education services;
 - (g) maintenance of books, records and accounts of the Community Education Board;
 - (h) discipline of students;
 - (i) school attendance;
 - (j) conflict of interest;
 - (k) drug policies;
 - (l) conflict of interest policies for elected and non-elected officials;
 - (m) maintenance of student records;
 - (n) passage, administration and publication of laws;
 - (o) appeal processes;
 - (p) the holding of meetings; and
 - (q) penalties to be imposed and the method of enforcement of laws passed by the Community Education Board.

4. Nothing in the constitutions adopted pursuant to the Final Agreement by Mi'kmaq Kina'masuti, the Mi'kmaq Bands or Community Education Boards, shall be construed so as to grant to non-members any rights which are similar to or analogous to the rights of members, or to establish any entitlement of non-members to any services other than the provision of elementary and secondary education funded under the Final Agreement, from the participating communities. The provision of funding for and services to non-members is for purposes of delivery of education services under the Final Agreement only.

Schedule E

BAND COUNCIL RESOLUTION FOR RATIFICATION PURPOSES

WHEREAS the Band Council of _____ has determined that it would be in the best interests of the Band to enter into an Agreement with Canada regarding the exercise of education jurisdiction;

AND WHEREAS the Band Council has been satisfied that the process of community consultation has been undertaken whereby the Band members have been properly and adequately informed regarding the purpose and consequences of the Agreement with Canada with respect to education;

AND WHEREAS the Band Council and its members have been advised of the legal and financial consequences of the Agreement;

AND WHEREAS information has been provided to members by various methods, including community meetings and distribution of written material;

AND WHEREAS members have been asked the specific question, "Do you want the Band Council to sign the education agreement with Canada?";

AND WHEREAS that question has been publicized by posting it in public places, or by publication in a newspaper or newsletter circulated in the Band;

AND WHEREAS the question has been publicized for at least thirty (30) days;

AND WHEREAS members have been given various options to express their opinions, including calling the Band Council, writing the Band Council, speaking to a member of the Band Council, speaking directly to the Chief, or speaking at any public meeting, expressing their disapproval of the Band Council's signing of the education agreement;

AND WHEREAS the Chief and Band Council have determined, based upon the response of the members to the question, that a community consensus exists in favour of signing the education agreement and that any negative responses to the question represents the view of the minority of Band members, which is not of a significant enough size to effect the conclusion that a community consensus exists.

AND WHEREAS the Band Council is aware of the provisions contained in Section 8 of the Final Agreement, whereby the band may opt out of the Final Agreement in the event that federal legislation enacted is not substantively in accordance with the Final Agreement, or in the event that the administrative agreement reached among the parties with respect to payment for non-members resident on reserve is not satisfactory to the Band, or by notifying the Mi'kmaq Kina'masuti and Canada of its intent to change its status by June 30 of a given year to have effect on April 1 of the following year;

AND WHEREAS the signing of this Band Council Resolution and nothing in this Band Council Resolution shall abrogate or derogate from any Treaty or Aboriginal right, nor will it in any way affect Canada's fiduciary relationship with the Mi'kmaq Nation, nor will it in any way signify any acceptance whatsoever of Canada's "inherent right policy".

THEREFORE BE IT RESOLVED that the Band Council authorizes the Chief to sign the "Final Agreement" being an Agreement with respect to Mi'kmaq education between the Mi'kmaq Bands in Nova Scotia and Canada; and

AND FURTHER BE IT RESOLVED that the Band Council authorizes the Chief to sign the Funding Agreement to be attached to the Final Agreement.