

FUNDING AGREEMENT
Program for the Enrichment of French in Education

BETWEEN:

THE GOVERNMENT OF MANITOBA,
Represented by
MANITOBA EDUCATION
("Manitoba")

-and-

(called the "Recipient")

BACKGROUND:

- A. The Recipient operates the following projects as described in Schedule "A":
- _____
 - _____
- B. The Recipient has requested the support of Manitoba and Manitoba has agreed to provide support on the terms and conditions of this Agreement.

The parties agree as follows:

SECTION 1 – TERM OF AGREEMENT AND PURPOSE

- 1.1 This Agreement comes into effect on July 1, _____ and continues until June 30, _____ unless terminated before that date under Section 11, or extended beyond that date by written agreement between Manitoba and the Recipient.
- 1.2 This Agreement, including the Schedules and the Forms that are attached, as well as any subsequent amendments to them, constitutes the entire agreement between the parties and supersedes all previous documents, negotiations, understandings and undertakings related to its subject matter.
- 1.3 The main purpose of this Agreement is to provide a financial contribution to the Recipient to assist in carrying out the projects listed in Schedule "A".

SECTION 2 – REPRESENTATIONS AND WARRANTIES OF THE RECIPIENT

2. The Recipient represents and warrants that:
- (a) all statements and representations made in connection with the Recipient's request for financial assistance for the projects, are true and accurate;
 - (b) the Recipient possesses all expertise necessary to properly deliver the projects and to perform its obligations under this Agreement;
 - (c) the Recipient will have obtained all permits, licenses, authorizations, approvals and consents which may be required for the projects; and
 - (d) the execution and performance of this Agreement have been properly authorized and the individuals signing this Agreement on behalf of the Recipient have authority to do so.

SECTION 3 – THE RECIPIENT TO OPERATE PROJECTS AND PROVIDE SERVICES

- 3.1 The Recipient must establish and operate the projects described in Schedule “A”.
- 3.2 The Recipient must not use any portion of the funding provided under this Agreement for any purpose other than to operate the projects as described in Schedule “A” and to fulfill its obligations under this Agreement.
- 3.3 The Recipient must not change, alter, or modify the approved allocation of the funding provided under this Agreement without the prior written approval of the Manitoba Government. The approved funding allocation is described in the Grant Approved Budget (attached as Schedule “C” to this Agreement).
- 3.4 The Recipient must not change, alter, or modify the projects without the prior written approval of the Manitoba Government. The Recipient must carry the projects’ activities:
 - (a) using best practices and in an effective, safe, diligent and professional manner;
 - (b) using properly trained and qualified personnel;
 - (c) in a manner which will ensure that the purposes of this Agreement are accomplished.
- 3.5 The Recipient must ensure all cash flow projections, reports, accountings, statements, claims, proposals, documents, plans and other materials are prepared and provided as required or requested under this Agreement in a timely fashion.
- 3.6 The Recipient must comply with:
 - (a) all applicable laws and regulatory requirements, whether federal, provincial or municipal, including (without limitation) all Manitoba employment, human rights and privacy legislation, in operating the projects and in carrying out its obligations under this Agreement; and
 - (b) all directions and requests of Manitoba relating to this Agreement.

SECTION 4 – PROGRAM REPORTING AND EVALUATION

- 4.1 The Recipient must provide Manitoba with all reports for the projects in accordance with Schedule “A”.
- 4.2 The Recipient must develop an evaluation cycle wherein all project components are consistently evaluated.
- 4.3 Manitoba to:
 - (a) ensure project and financial accountability;
 - (b) provide consultative supports as requested by the Recipient to assist in the overall development of content related to schools and school divisions relative to the projects;
 - (c) review/monitor the projects on an on-going basis throughout the term of the Agreement.

SECTION 5 – FUNDING

5.1 Manitoba's commitment to fund the Recipient is subject to:

- (a) the Legislature of the Province of Manitoba duly appropriating the funds payable by Manitoba in the Fiscal Year in which they are required;
- (b) the representations and warranties of the Recipient being true at all times;
- (c) the Recipient strictly complying at all times with all terms and conditions of this Agreement, and fulfilling its obligations and undertakings under this Agreement.

5.2 Manitoba's funding commitment is limited to a maximum of _____ during the term of this Agreement and will not exceed 50% of the actual cost of the project. For the purposes of this Agreement, "Fiscal Year" means the period from April 1 of one year to March 31 of the immediately following year. Payments will be made as per the Schedule of Payments (attached as Schedule "B" to this Agreement). Any over expenditures exceeding this funding commitment cannot be paid for by Manitoba under this Agreement and are subject to the following:

- (a) multi-year funding agreements are subject to the passing of *The Appropriation Act*;
- (b) the appropriation of funds by the Parliament of Canada, to the maintenance of current and forecasted budgetary levels to March 31, _____, for the Development of Official Language Communities Program, Minority Language Education Component, and the Enhancement of Official Languages Program, Second-Language Learning Component, to the undertakings specified in the Protocol, to the commitments made within special agreements or arrangements, and to the terms and conditions of the Canada-Manitoba Agreement on Minority-Language Education and Second-Language Instruction for _____–_____.

5.3 Manitoba does not bear any financial or legal responsibility for any costs or expenditures incurred by the Recipient other than those noted and approved in this Agreement.

5.4 The Recipient agrees that:

- (a) any overpayment by Manitoba;
- (b) any funds paid by Manitoba which are not expended in accordance with this Agreement; and
- (c) any funds paid by Manitoba which are not required by the Recipient for the operation of the projects in accordance with this Agreement;

are a debt due and owing by the Recipient to Manitoba, payable on demand. Manitoba may, in its absolute discretion, set off any debt against any amounts payable by Manitoba to the Recipient.

5.5 Any interest earned on any funds provided under this Agreement must be used for the same purposes outlined in subsection 3.1.

5.6 Nothing in this Agreement creates any undertaking, commitment or obligation on the part of Manitoba respecting future or ongoing funding beyond the term of this Agreement.

SECTION 6 – ACCOUNTING SYSTEM, REPORTS AND FINANCIAL STATEMENTS

6.1 During the term of this Agreement and for a further period of seven (7) years, the Recipient must maintain such accounting and other records (including proper and accurate accounts and records of all costs incurred and funds received by the organization

and supporting documents) as are necessary for the proper financial management of the projects.

- 6.2 During the term of this Agreement and for a further period of seven (7) years, the Recipient, if requested by the Minister, must permit any authorized representative of the Minister or Manitoba, or auditors engaged by the Minister, or the Auditors General for Manitoba or Canada, reasonable access to inspect and audit all accounts and records, financial documents and other records relating to the organization or this Agreement, and to make copies of them and to take extracts from them. The Recipient must cooperate fully in any inspection or audit of these records.

SECTION 7 – INSPECTION

7. Manitoba may inspect the organization at any reasonable time and the Recipient must fully cooperate with Manitoba.

SECTION 8 – MANITOBA NOT LIABLE FOR INJURY, ETC.

- 8.1 The Recipient must use due care in the performance of its obligations under this Agreement to ensure that no person is injured, no property is damaged or lost and no rights are infringed.
- 8.2 Manitoba's responsibility under this Agreement is limited solely to providing financial assistance in accordance with the terms and conditions set out herein.
- 8.3 Without limiting subsection 8.2, Manitoba is not liable for:
- (a) any injury to the Recipient volunteers, or to any person employed by the Recipient (including death);
 - (b) any economic loss, damage or loss of property incurred by the Recipient or any person employed by the Recipient;
 - (c) any failure by the Recipient to comply with applicable laws, including employment laws; and
 - (d) any failure by the Recipient to make any necessary deductions or remittances.

SECTION 9 – INDEMNIFICATION BY THE RECIPIENT

- 9.1 The Recipient is solely responsible for those matters set out in subsection 8.3 and for any omission, wrongful or negligent act of the Recipient or any person employed by the Recipient.
- 9.2 The Recipient must hold harmless and indemnify Manitoba and its Ministers, officers, employees and agents, from and against all claims, liabilities and demands of any kind for personal injury, property damage or loss, economic loss, consequential damages or infringement of rights caused by or arising from:
- (a) the operating of the projects;
 - (b) the performance or breach of this Agreement by the Recipient or its members, directors, officers, employees, agents or contractors; or
 - (c) any wrongful act or negligent act or failure to act by the Recipient or its members, directors, officers, employees, agents or contractors.

SECTION 10 – LIABILITY INSURANCE

- 10.1 The Recipient must purchase and maintain liability insurance covering all operations related to the performance of this Agreement with limits of coverage satisfactory to Manitoba but generally not less than TWO MILLION DOLLARS (\$2,000,000.00) for the term of this Agreement.
- 10.2 Without limiting the generality of subsection 10.1, such insurance shall contain a clause which states that the insurers will not cancel, materially alter or cause the policy to lapse without giving a minimum of thirty (30) days prior written notice to Manitoba.
- 10.3 The Recipient must provide a Certificate of Insurance to confirm that it has purchased this liability insurance coverage before any funds are advanced under this Agreement.

SECTION 11 – TERMINATION

- 11.1 Manitoba may terminate this Agreement at any time by giving sixty (60) days notice in writing to the Recipient.
- 11.2 In addition to the rights under subsection 11.1 and without restricting any other remedies available, Manitoba may, at its sole option, immediately terminate this Agreement by notice in writing if:
 - (a) the Recipient becomes, or is about to become, bankrupt or insolvent, goes into receivership or takes the benefit of any statute relating to bankrupt or insolvent debtors; or
 - (b) an order is made or resolution is passed for the dissolution or winding-up of the Recipient, or if the Recipient is otherwise likely to lose its corporate status; or
 - (c) the Recipient ceases to operate or is about to cease to operate; or
 - (d) any representation, warranty or statement made or any information provided by or on behalf of the Recipient is false or misleading; or
 - (e) Manitoba is of the opinion that
 - (i) the Recipient is not fulfilling its mandate in a manner acceptable to Manitoba or in accordance with the terms and conditions of this Agreement; or
 - (ii) the Recipient has failed to comply with, or is about to fail to comply with, any of its obligations or undertakings under this Agreement; or
 - (iii) the outcome of a review, evaluation or audit is unsatisfactory.
- 11.3 If the Recipient is in breach of or in default under this Agreement, in addition to any other rights Manitoba may have under this Agreement or otherwise, Manitoba may undertake one or more of the following:
 - (a) suspend or withhold any payments due under this Agreement, or any part of any payment or payments due, until the Recipient has remedied the breach, default or failure to the satisfaction of Manitoba;
 - (b) reduce all or any of the payments under this Agreement;
 - (c) immediately terminate this Agreement, and any financial obligation of Manitoba under this Agreement, by giving notice in writing, effective immediately or on the date set out in the notice;

- (d) by notice in writing, demand that the Recipient repay to Manitoba any funds provided under this Agreement which have not been expended in accordance with this Agreement, which amount shall be a debt due and owing by the Recipient to Manitoba and payable on demand.

11.4 Upon notice of termination of this Agreement being provided under subsection 11.1 or subsection 11.2, the Recipient must:

- (a) provide to Manitoba all reports, statements and documents required or requested by Manitoba upon termination; and
- (b) repay to Manitoba any funds which are unexpended or uncommitted as of the date of termination, which funds shall be a debt due and owing to Manitoba, payable on demand.

11.5 Upon termination of this Agreement, Manitoba is under no obligation to the Recipient, other than to pay such amounts as may be outstanding from within the approved funding level for that year for the Recipient under subsection 5.2 of this Agreement up to the date of termination.

11.6 If the Recipient breaches a term or condition of this Agreement, Manitoba may overlook or waive the breach, but by doing so Manitoba does not waive any later breach of the same or any other term or condition. A consent or approval by Manitoba to any act by the Recipient is not a consent or approval to any later similar act by the Recipient.

SECTION 12 – NO EMPLOYMENT

12.1 This Agreement is an agreement for the financial contribution only. It does not create the relationship of employer and employee or of principal and agent, between Manitoba and the Recipient or between Manitoba and any person employed by the Recipient.

12.2 The Recipient must not incur any expenses or debts on behalf of, or make any commitment for, Manitoba.

SECTION 13 – NOTICE

13. Any written notice required by this Agreement must be delivered personally or by registered mail to:

- (a) the Recipient at the office of:

- (b) Manitoba at the office of:

Bureau de l'éducation française
509 – 1181 Portage Avenue
Winnipeg MB R3G 0T3

SECTION 14 – GENERAL

- 14.1 This Agreement may be extended by written agreement between Manitoba and the Recipient.
- 14.2 The Recipient must not assign or transfer this Agreement or any of the rights or obligations under this Agreement, or subcontract any of its obligations under this Agreement.
- 14.3 Sections 8 and 9 continue after this Agreement ends.
- 14.4 No amendment or change to, or modification of, this Agreement is valid unless it is in writing and signed by both parties.
- 14.5 This document contains the entire Agreement between the parties.
- 14.6 This Agreement must be interpreted in accordance with the laws of Manitoba.
- 14.7 This Agreement rescinds all previous agreements between the parties which relate to the projects.
- 14.8 Under the Access to Information Act, the public may request and obtain information contained in federal and provincial government files. In the event that an application for information concerning this application for funding is received, the department will consult the organization before any information is released. It is important to point out, however, that only personal information and some confidential financial information concerning a third party may be withheld. Once funding has been approved, the amount, the purpose for which it is granted and the name of the organization can be released to the public.

This Agreement has been executed by Manitoba Education on behalf of the Government of Manitoba and by the authorized signing officers of the Recipient on the dates noted below.

Signed in the presence of:

FOR THE GOVERNMENT OF MANITOBA

Witness

Minister of Education or Designate

Print Name

Date: _____

Signed in the presence of:

FOR _____

Witness

Superintendent, President or Designate

Print Name and Office Held

Date: _____