



Telecom Decision CRTC 2019-382

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Ottawa, 28 November 2019

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Amended and Restated National Contribution Fund Administration Agreement, effective 1 January 2020

*The Commission **approves** an amended and restated National Contribution Fund Administration Agreement, effective **1 January 2020**.*

Background

1. In Decision 2000-745, the Commission introduced a national revenue-based contribution collection mechanism and the corresponding National Contribution Fund (NCF). The Canadian Telecommunications Contribution Consortium Inc. (CTCC)¹ oversees the operation of the NCF.
2. In Order 2001-737, the Commission approved the National Contribution Fund Administration Agreement (NCFAA). In Telecom Decision 2002-64, the Commission approved the French version of the NCFAA.
3. In Telecom Regulatory Policy 2016-496, the Commission established the following universal service objective: Canadians, in urban areas as well as in rural and remote areas, have access to voice services and broadband Internet access services, on both fixed and mobile wireless networks. To help provide Canadians with access to these services and to help attain the universal service objective, the Commission established the Broadband Fund.
4. In Telecom Regulatory Policy 2018-377, the Commission addressed matters related to the Broadband Fund, including directing the CTCC to amend its administrative agreements with contributors to and recipients of funding from the NCF to include provisions related to the funding distribution model of the Broadband Fund.

Application

5. The Commission received an Amended and Restated NCFAA from the CTCC, dated 15 March 2019, to address the amendments and revisions required to implement the Broadband Fund. The CTCC also proposed other updates, including the addition of information on video relay service funding and on how eligible recipients and

¹ The CTCC is responsible for establishing the procedures necessary for the operation of the NCF and for contracting with a company designated by the Commission, in accordance with subsection 46.5(2) of the *Telecommunications Act*, to act as the Central Fund Administrator.

required contributors can withdraw from the NCFAA, and the removal of sections that are no longer necessary.

Commission's analysis and determinations

6. The Commission has reviewed the proposed changes required to implement the Broadband Fund under the NCFAA and considers them appropriate.
7. With respect to the addition of information on how eligible recipients and required contributors can withdraw from the NCFAA, the Commission considers this addition to be substantive in nature; therefore, it should not appear in the Interpretation section. The Commission has instead moved this addition to the General Provisions section with no change to the wording.
8. The Commission considers the other updates to be reasonable. The Commission notes that it has made some minor changes to ensure completeness and consistent wording with the Procedures for the Operation of the National Contribution Fund.
9. In light of the above, the Commission **approves** the Amended and Restated NCFAA set out in the Appendix to this decision, effective **1 January 2020**.

Secretary General

Related documents

- *Development of the Commission's Broadband Fund*, Telecom Regulatory Policy CRTC 2018-377, 27 September 2018
- *Modern telecommunications services – The path forward for Canada's digital economy*, Telecom Regulatory Policy CRTC 2016-496, 21 December 2016
- *Structure and mandate of the video relay service administrator*, Telecom Regulatory Policy CRTC 2014-659, 18 December 2014
- *Video relay service*, Telecom Regulatory Policy CRTC 2014-187, 22 April 2014
- *National Contribution Fund Administration Agreement – French translation*, Telecom Decision CRTC 2002-64, 15 October 2002
- *CRTC approves the National Contribution Fund Administration Agreement*, Order CRTC 2001-737, 21 September 2001
- *Changes to the contribution regime*, Decision CRTC 2000-745, 30 November 2000

Appendix to Telecom Decision CRTC 2019-382

AMENDED AND RESTATED NATIONAL CONTRIBUTION FUND ADMINISTRATION AGREEMENT

This Amended and Restated National Contribution Fund Administration Agreement, dated 1 January 2020, is made

BETWEEN:

CANADIAN TELECOMMUNICATIONS CONTRIBUTION CONSORTIUM INC., a corporation incorporated under the *Canada Business Corporations Act*,

(herein called the “**Consortium**” or the “**CTCC**”),

OF THE FIRST PART

- and -

WELCH FUND ADMINISTRATION SERVICES INC., a corporation incorporated under the *Canada Business Corporations Act*, in its capacity as the administrator of the National Contribution Fund established pursuant to this Agreement,

(herein called the “**CFA**”),

OF THE SECOND PART

- and -

each Person that is a Required Contributor and that shall have become a party to this Agreement through execution and delivery to the CFA of a Required Contributor Accession Agreement in the manner provided in Section 9.14(a),

OF THE THIRD PART

- and -

each Person that is an Eligible Recipient and that shall have become a party to this Agreement through execution and delivery to the CFA of an Eligible Recipient Accession Agreement in the manner provided in Section 9.14(b),

OF THE FOURTH PART

WHEREAS:

- A. Pursuant to Decision CRTC 2000-745, dated November 30, 2000, and subsequent decisions, the CRTC required the creation of a national contribution fund (the “**NCF**” or the “**National Contribution Fund**”) intended to support continuing access by Canadians to basic telecommunications services, and determined the terms and conditions under which **Telecommunications Service Providers** would be required to contribute to the NCF;

- B. The Consortium was formed by industry participants to assist in the administration of the NCF and has oversight over the administration of all aspects of the NCF;
- C. The Central Fund Administrator (CFA) has been selected by the Consortium to administer the National Contribution Fund pursuant to an agreement between the CFA and the Consortium, effective 1 January 2003 and renewed for successive three-year terms. The CRTC then designates the CFA to administer the National Contribution Fund pursuant to subsection 46.5(2) of the *Telecommunications Act* (Canada);
- D. Pursuant to Telecom Regulatory Policy CRTC 2014-187, the CRTC determined that the funding of video relay services (“**VRS**”) would be provided through the NCF by a centralized VRS administrator, and the CRTC subsequently approved the appointment of the Canadian Administrator of VRS (CAV), Inc. (“**CAV**”) as the centralized VRS administrator in Telecom Regulatory Policy CRTC 2014-659;
- E. Pursuant to Telecom Regulatory Policy CRTC 2016-496, dated 21 December 2016, the CRTC established a funding mechanism (the “**Broadband Fund**”) to promote the universal service objective, which is that Canadians, in urban areas as well as in rural and remote areas, have access to voice services and broadband Internet access services, on both fixed and mobile wireless networks. Pursuant to Telecom Regulatory Policy CRTC 2018-377, dated 27 September 2018, the CRTC determined that the Broadband Fund will be part of the NCF;
- F. This Agreement and the Procedures for the Operation of the National Contribution Fund provide for the operation and administration of the National Contribution Fund;
- G. The CRTC has determined that each Required Contributor and Eligible Recipient is required to become a party to this Agreement by entering into a Required Contributor or Eligible Recipient Accession Agreement in the respective forms of Schedule “A” and Schedule “B” hereto, as the case may be, with the CFA and the Consortium;
- H. CAV is not required to become a party to this Agreement since CAV does not contribute to the National Contribution Fund and the CFA provides funds to CAV out of the National Contribution Fund only as directed from time to time by the CRTC; and
- I. It is now appropriate to amend and restate this Agreement.

NOW THEREFORE, in consideration of the covenants and agreements herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by each of the parties hereto, it is agreed as follows:

ARTICLE ONE
INTERPRETATION

1.01 Definitions

In this Agreement, including the recitals hereto, unless something in the subject matter or context is inconsistent therewith:

“**Aggrieved Party**” has the meaning ascribed thereto in Section 9.04;

“**AMP**” has the meaning ascribed thereto in Section 5.02(vi);

“**Auditor**” means Ernst & Young LLP, or such other firm of chartered professional accountants licensed to practice as public accountants in each of the Provinces of Canada as may be appointed by the Consortium from time to time as auditor for the purposes of the National Contribution Fund and the Procedures;

“**Broadband Fund**” has the meaning ascribed thereto in the recitals to this Agreement;

“**Broadband Recipient**” means each Person that has been determined by the CRTC from time to time to be entitled to receive payments out of the Broadband Fund part of the National Contribution Fund;

“**Broadband Recipient Event of Default**” has the meaning ascribed thereto in Section 7.03(b);

“**Business Day**” means any day of the week other than Saturday, Sunday or any other day on which banks operating in the province in which the office of the CFA administering this Agreement is located are authorized by law to close;

“**CAV**” has the meaning ascribed thereto in the recitals to this Agreement;

“**CFA**” means Welch Fund Administration Services Inc., the third-party administrator selected by the Consortium and designated by the Commission as administrator of the National Contribution Fund, and any replacement or successor third-party administrator of the National Contribution Fund selected by the Consortium from time to time and designated as such by the Commission pursuant to the *Telecommunications Act* (Canada);

“**CFA Payment**” means the amount payable to the CFA out of the National Contribution Fund at any time for services performed and expenses incurred by the CFA hereunder, under the Procedures or pursuant to the contract under which the CFA is appointed, as amended from time to time, such amount to be determined as provided in such contract or in the Procedures;

“**Commission**” or “**CRTC**” means the Canadian Radio-television and Telecommunications Commission, and such term shall also include any successor

agency charged with statutory oversight of the Canadian telecommunications industry;

“**Consortium**” or “**CTCC**” means the Canadian Telecommunications Contribution Consortium Inc., a corporation incorporated under the provisions of the *Canada Business Corporations Act*, established, inter alia, to contract with, and oversee the administration of this Agreement and of the Procedures by, the CFA;

“**Consortium Costs**” means costs and expenses incurred by the Consortium in fulfilling its mandate with respect to this Agreement and the Procedures;

“**Contributor/Recipient Confidential Information**” has the meaning ascribed thereto in Section 9.06;

“**Costs and Expenses**” has the meaning ascribed thereto in Section 6.05(c)

“**CRTC Funding Decision**” has the meaning ascribed thereto in Section 5.02;

“**CRTC Default Notice**” has the meaning ascribed thereto in Section 7.03(b)(i);

“**Decision 2000-745**” means *Changes to the contribution regime*, Decision CRTC 2000-745, 30 November 2000, and references in this Agreement or in the Procedures to such decision shall be deemed to include, as appropriate, such decision as varied, amended, refined and/or supplemented by the CRTC in proceedings, decisions, orders or interpretations made or issued thereafter and/or arising therefrom;

“**Default Amount**” has the meaning ascribed thereto in Section 7.03(b)(i);

“**Disclosing Party**” has the meaning ascribed thereto in Section 9.06;

“**Eligible Recipient**” means (i) each Telecommunications Service Provider that has been determined by the CRTC from time to time to be entitled to receive payments of subsidy from time to time out of the National Contribution Fund, and (ii) each Broadband Recipient;

“**Eligible Recipient Accession Agreement**” means a document by which a Person determined by the CRTC to be an Eligible Recipient shall become a party to this Agreement, such agreement to be substantially in the form of Schedule “B”;

“**Eligible Recipient Event of Default**” has the meaning ascribed thereto in Section 7.03(a).

“**Indemnified Parties**” has the meaning ascribed thereto in Section 6.05(c);

“**National Contribution Fund**” or “**NCF**” has the meaning ascribed thereto in the recitals to this Agreement;

“**Order**” has the meaning ascribed thereto in Section 5.02(vi);

“**Person**” has the same meaning as in subsection 2(1) of the *Telecommunications Act* (Canada);

“**Prime Rate**” means the annual rate of interest announced from time to time by the Consortium’s bank (which shall be a Canadian chartered bank listed in Schedule I to the *Bank Act* [Canada] designated by the Consortium from time to time) as the daily rate of interest used by such Bank as a reference rate in setting rates of interest for commercial loans of Canadian dollars and commonly referred to by such bank as its Canadian “prime rate”;

“**Procedures**” means the procedures entitled “Procedures for the Operation of the National Contribution Fund” and most recently approved by the CRTC in Telecom Decision CRTC 2018-60, dated 14 February 2018, as amended from time to time, respecting the operation of the National Contribution Fund;

“**Receiving Party**” has the meaning ascribed thereto in Section 9.06;

“**Required Contributor**” means each Telecommunications Service Provider that has been determined by the CRTC from time to time to be required to contribute to the National Contribution Fund based upon such Telecommunications Service Provider’s Canadian Telecommunications Services Revenues (as defined in Order CRTC 2001-220);

“**Required Contributor Accession Agreement**” means a document by which a Person determined by the CRTC to be a Required Contributor shall become a party to this Agreement, such agreement to be substantially in the form of Schedule “A”;

“**Required Contributor Event of Default**” has the meaning ascribed thereto in Section 7.01;

“**Telecommunications Service Provider**” means a “telecommunications service provider” as defined the *Telecommunications Act* (Canada), as amended from time to time. As outlined in Decision CRTC 2000-745, paragraph 88, Telecommunications Service Providers include incumbent local exchange carriers, alternate providers of long distance services, competitive local exchange carriers, resellers, wireless service providers, international licensees, satellite service providers, Internet service providers, payphone providers, and data and private line service providers;

“**Termination Date**” has the meaning ascribed thereto in Section 1.08;

“**Threshold**” has the meaning ascribed thereto in Section 7.03(b);

“**Total Default Amount**” has the meaning ascribed thereto in Section 7.05(a); and

“**VRS**” has the meaning ascribed thereto in the recitals to this Agreement.

1.02 Headings

The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. In this Agreement, the terms “hereof”, “hereunder” and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof and include any agreement supplemental hereto. Unless something in the subject matter or context is inconsistent with this Agreement, references herein to Articles, Sections and Schedules are to Articles and Sections of and Schedules to this Agreement. In the event of any conflict between the provisions of this Agreement and the provisions of the Procedures, the provisions of the Procedures shall prevail over the provisions of this Agreement to the extent of the inconsistency.

1.03 Extended Meanings

In this Agreement, words importing the singular number also include the plural and vice versa; words importing any gender include all genders; and words importing persons include individuals, partnerships, associations, trusts, unincorporated organizations, corporations and any entities contemplated by Telecom Regulatory Policy CRTC 2018-377. These entities include any Canadian provincial, territorial, or municipal entity, which includes a public-sector body that is established by statute or by regulation or that is wholly owned by a Canadian provincial, territorial, or municipal government, a band council within the meaning of section 2 of the *Indian Act* (Canada), or an Indigenous (First Nations, Inuit, or Métis) government as established by a self-government agreement or a comprehensive land claim agreement.

1.04 Accounting Principles

Wherever in this Agreement reference is made to a calculation to be made or an action to be taken in accordance with generally accepted accounting principles, such reference shall be deemed to be to the generally accepted accounting principles approved for use in Canada from time to time by the Accounting Standards Board of Canada, or any successor entity, applicable as of the date on which such calculation or action is made or taken or required to be made or taken in accordance with generally accepted accounting principles.

1.05 Interest Calculations and Payments

Unless otherwise stated, wherever in this Agreement or in the Procedures reference is made to a rate of interest “per annum” or a similar expression is used, such interest shall be calculated on the basis of a calendar year of 365 days or 366 days, as the case may be, and using the nominal rate method of calculation, and will not be calculated using the effective rate method of calculation or any other basis that gives effect to the

principle of deemed reinvestment of interest. All interest payable hereunder or under the Procedures will be payable both before and after default and/or judgment, if any, until full payment thereof, and interest will accrue on overdue interest, if any, compounded monthly.

1.06 Currency

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

1.07 Schedules

The following are the Schedules annexed hereto and incorporated by reference and deemed to be part hereof:

Schedule "A" - Form of Required Contributor Accession Agreement

Schedule "B" - Form of Eligible Recipient Accession Agreement

1.08 Effective Date and Term of This Agreement

This Agreement shall be effective as of the date first written above. The term of this Agreement shall be from and including that date until such date as shall be determined by the CRTC to be the date upon which operation of the National Contribution Fund contemplated by this Agreement shall terminate (the "**Termination Date**"). This is providing, however, that notwithstanding the foregoing, the term of this Agreement shall be extended (without the requirement of any further action on the part of any of the parties hereto) for such period following the Termination Date as shall be necessary so as to allow each of the parties hereto to perform their respective obligations hereunder and under the Procedures in respect of the last reporting period preceding, or ending on, the Termination Date in accordance with the provisions of this Agreement. Termination of this Agreement shall not affect the liability of any party hereto to perform any obligation of such party hereunder, including, but not limited to, payment of any amount owing by such party, if the obligation relates to a period prior to termination of this Agreement.

1.09 Action on Business Day

Whenever pursuant to this Agreement an action is to be taken by a specific date and such specific date is not a Business Day, such action shall be taken on the first Business Day following such specific date.

ARTICLE TWO

ADMINISTRATION OF THE NATIONAL CONTRIBUTION FUND BY THE CFA

2.01 Administration of the National Contribution Fund by the CFA

- (a) The CFA agrees that it shall maintain and administer the National Contribution Fund in accordance with the provisions of this Agreement and of the Procedures and in accordance with any directions given by the CRTC to the CFA from time to time with respect to such administration.
- (b) The CFA hereby declares, acknowledges, covenants and agrees that all amounts received by the CFA from Required Contributors (or from any third party on account of any Required Contributor) in accordance with this Agreement and/or with the Procedures, as well as any interest or other income attributable to the National Contribution Fund, shall be, and are immediately upon receipt thereof, received and held by the CFA in trust, to be dealt with in accordance with the provisions of this Agreement and of the Procedures.

ARTICLE THREE

PAYMENT BY REQUIRED CONTRIBUTORS OF CONTRIBUTION TO THE CFA

3.01 Payment by Required Contributors of Contribution to the CFA

- (a) Each Required Contributor hereby agrees that it shall transfer to the CFA, in trust for credit to the National Contribution Fund, from time to time in accordance with the Procedures and on or before the due date for each such payment, the amounts from time to time notified to such Required Contributor by the CFA pursuant to the applicable provisions of the Procedures in respect of each relevant reporting period. Payment of the amounts due to the CFA from the Required Contributors hereunder or under the Procedures shall be made no later than noon (local time in the time zone in which the CFA's principal office for the purpose of this Agreement is situated) on the relevant due date and shall be effected by electronic transfer of funds from each Required Contributor to the CFA wherever practicable in accordance with electronic transfer instructions provided from time to time to each Required Contributor by the CFA. In the event that payment by electronic transfer of funds is not practicable in the circumstances, each Required Contributor shall deliver to the CFA a certified cheque/bank draft for the required amount no later than noon (local time in the time zone in which the CFA's principal office for the purpose of this Agreement is situated) on the required date for such payment to the CFA.
- (b) The CFA shall deposit funds received hereunder or under the Procedures from the Required Contributors, including all funds relating to VRS and the Broadband Fund, to the credit of the National Contribution Fund in an account maintained by the CFA at a Canadian chartered bank that is a Schedule 1 bank

under the *Bank Act* (Canada). Thereafter, the CFA shall deal with such funds, including payment of CFA Payments and Consortium Costs out of the National Contribution Fund, and payment of funds from time to time standing to the credit of the National Contribution Fund to the Eligible Recipients and CAV following deductions therefrom in respect of CFA Payments and Consortium Costs, all in accordance with the applicable provisions of this Agreement and of the Procedures.

ARTICLE FOUR

FURTHER ADMINISTRATIVE MATTERS

4.01 Provision of Information to the CRTC

The CFA shall file with the CRTC, as and when required by the CRTC, such information respecting the National Contribution Fund as may be required from time to time by the CRTC, including, without limitation, the information to be provided to the CRTC in accordance with the Procedures.

4.02 Appointment of Auditor by the Consortium

The Consortium shall appoint a firm of Chartered Professional Accountants of recognized standing, licensed to practice as public accountants in all the Provinces of Canada, to act as the Auditor hereunder. The terms of payment of the Auditor for services rendered shall be established as provided in the retainer arrangement between the Consortium and the Auditor.

4.03 Investment of Funds by the CFA

Unless otherwise required or permitted by the Procedures, the CFA shall invest funds standing to the credit of the National Contribution Fund from time to time that are not immediately required for the purpose of this Agreement or the Procedures in (i) short-term certificates of deposit or other such instruments issued, or guaranteed, by Canadian chartered banks that are Schedule I banks under the *Bank Act* (Canada), or (ii) short-term treasury bills constituting obligations of the Government of Canada or of the government of a province thereof.

ARTICLE FIVE

REPRESENTATIONS AND WARRANTIES

5.01 Representations and Warranties

The Consortium, the CFA, each Required Contributor that becomes a party to this Agreement through the execution and delivery to the CFA of a Required Contributor Accession Agreement and each Eligible Recipient that becomes a party to this Agreement through the execution and delivery of an Eligible Recipient Accession Agreement, represents and warrants as follows to each other party to this Agreement:

(a) Status

(i) If a corporation, such party is a corporation duly incorporated or continued and is validly existing under the laws of the jurisdiction of its incorporation, and such party has all necessary corporate power and authority to own its properties and carry on its business as presently carried on; or (ii) if not a corporation, such party has been formed and is existing under the laws governing its formation, and such party has all necessary power and authority to own its property and carry on its business as presently carried on; and in the case of Persons described in (i) and (ii) above, is duly licensed, registered or qualified in all jurisdictions where the character of its property owned or leased or the nature of the activities conducted by it makes such licensing, registration or qualification necessary or desirable.

(b) Authority

Such party, (i) if a corporation, has full corporate power and authority; or (ii) if not a corporation, has all necessary power and authority, to enter into this Agreement and to do all acts and execute and deliver all other documents as are required hereunder to be done, observed or performed by it in accordance with their terms.

(c) Valid Authorization

Such party, (i) if a corporation, has taken all necessary corporate action; or (ii) if not a corporation, has taken all necessary action under its constating documents and governing legislation, to authorize the creation, execution, delivery and performance of this Agreement and to observe and perform the provisions of this Agreement and the Procedures in accordance with their respective terms.

(d) Validity of Documents and Enforceability

This Agreement constitutes valid and legally binding obligations of such party, enforceable against it in accordance with their respective terms subject to (i) applicable bankruptcy and insolvency laws and other laws of general application limiting the enforceability of creditors' rights, and (ii) the fact that specific performance is an equitable remedy available only at the discretion of the court. Neither the execution and delivery of this Agreement, nor compliance with the terms and conditions of this Agreement and the Procedures, (i) has resulted or will result in a violation of the articles of the party, if a corporation, or other constating documents if the party is not a corporation; or of the by-laws of the party, if a corporation, or of other governing documents including contracts, memoranda of association, policies, procedures and rules, if the party is not a corporation; or of any resolutions passed by the board of directors of the party, if a corporation (including any committee of the board of directors), or if the party is not a corporation, by those persons exercising discretionary management or governing authority within such party, including any committee thereof, or by the shareholders, if the party is a corporation, or the owners, unitholders, beneficial

owners, partners, stakeholders, beneficiaries or other interested persons of the party, if the party is not a corporation; or of any applicable law, rule, regulation, order, judgment, injunction, award or decree; (ii) has resulted or will result in a breach of, or constitute a default under, any loan agreement, indenture, trust deed or any other agreement or instrument to which such party is a party or by which it is bound; or (iii) requires any approval or consent of any governmental authority or agency having jurisdiction except such as has already been obtained.

(e) Absence of Litigation

There are no actions, suits or proceedings pending or, to the knowledge of such party, threatened against or affecting such party or any of its undertakings and assets, at law, in equity or before any arbitrator or before or by any governmental department, body, commission, board, bureau, agency or instrumentality having jurisdiction in the premises in respect of which there is a reasonable possibility of a determination adverse to such party, and that could, if determined, adversely, materially and adversely affect the ability of such party to perform any of its obligations under this Agreement.

5.02 Representations and Warranties – Broadband Recipients

Each Broadband Recipient represents and warrants to the Consortium, the CFA and the CRTC, at the time it becomes a party to this Agreement and at the time of each payment to it from the Broadband Fund pursuant to the Commission’s decision to award funding from the Broadband Fund to the Broadband Recipient (the “**CRTC Funding Decision**”), that:

- (i) all information that it has provided to the Consortium, the CFA or the CRTC in connection with the CRTC Funding Decision, including all information contained in the application form and in the attached documentation is and remains true, accurate, correct and complete in all respects;
- (ii) it is not in default of any of the conditions or the obligations imposed upon it under or in association with the CRTC Funding Decision;
- (iii) it has fully performed each and every condition or obligation imposed upon it and it is not in breach of any representations and warranties given under or in association with the CRTC Funding Decision;
- (iv) all of its representations and warranties made under or in association with the CRTC Funding Decision remain true and correct;
- (v) it is not aware of any facts or circumstances that could reasonably result in (A) it being found to be in default of any condition or obligation imposed upon it under or in association with the CRTC Funding Decision, or (B) it being found to be in breach of any of its representations and warranties given under or in association with the CRTC Funding Decision; and

- (vi) no administrative monetary penalty or mandatory order has been issued to it by the CRTC pursuant to the *Telecommunications Act* (Canada) [“(AMP”) or (“Order”)] in relation to the conditions of the CRTC Funding Decision, and it is not aware of any facts or circumstances that could reasonably result in any AMP or Order being issued in relation to the CRTC Funding Decision.

ARTICLE SIX

COVENANTS

6.01 Affirmative Covenants of Required Contributors

So long as it shall be a party to this Agreement, each Required Contributor covenants and agrees with the CFA and the Consortium that:

(a) Punctual Payment

It shall duly and punctually pay to the CFA all amounts that such Required Contributor is required to pay to the CFA in accordance with the provisions of this Agreement and/or of the Procedures, in the manner and at the times specified hereunder and/or in the Procedures, as the case may be.

(b) Existence and Conduct of Business

It shall maintain, (i) if a corporation, its corporate existence; or (ii) if not a corporation, its existence in good standing; and in the case of Persons described in (i) and (ii) above, itself in good standing and do or cause to be done all things necessary to keep in full force and effect all properties, rights, franchises, licences and qualifications to carry on business (including any authorizations and approvals of the CRTC for such purposes).

(c) Compliance with Legislation

It shall do or cause to be done all acts necessary or desirable to comply with all material applicable federal, provincial and municipal laws, requirements or standards, non-compliance with which would have a material adverse effect upon such Required Contributor’s ability to perform its obligations hereunder and under the Procedures, and to preserve and keep in full force and effect all franchises, licences, rights, privileges and permits necessary to enable it to operate and conduct its businesses in accordance with standard industry practice.

(d) Performance of Obligations

It shall perform each and every obligation imposed upon it in accordance with the provisions of this Agreement and/or of the Procedures.

6.02 Affirmative Covenants of the Consortium

The Consortium covenants and agrees that it shall perform each and every obligation imposed upon it in accordance with the provisions of this Agreement and/or of the Procedures and that it shall use its reasonable efforts to ensure that the Auditor shall perform each and every obligation respecting audits set forth in the Procedures and/or in Section 8.01(b) of this Agreement.

6.03 Affirmative Covenant of the CFA

The CFA covenants and agrees that it shall perform each and every obligation imposed upon it in accordance with the provisions of this Agreement and/or of the Procedures.

6.04 Affirmative Covenants of Eligible Recipients

So long as it shall be a party to this Agreement, each Eligible Recipient covenants and agrees with the Consortium and the CFA that it shall (i) perform each and every condition or obligation imposed upon it in accordance with the provisions of this Agreement and/or of the Procedures, and (ii) if it is an Eligible Recipient other than a Broadband Recipient, remain a shareholder of the Consortium.

6.05 Affirmative Covenants of Broadband Recipients

- (a) Without limiting the provisions of Section 6.04 that apply to all Eligible Recipients including Broadband Recipients, so long as it shall be a party to this Agreement, each Broadband Recipient covenants and agrees with the Consortium, the CFA and the CRTC that it shall (i) perform each and every condition or obligation imposed upon it under or in connection with the CRTC Funding Decision; (ii) ensure that each representation and warranty made by it in connection with the CRTC Funding Decision remains true, accurate, complete and correct; (iii) promptly advise the Consortium, the CFA and the CRTC if it anticipates that it will no longer be able to perform its covenants in this Section 6.05(a); (iv) refrain from taking any action or failing to take any action that could reasonably be expected to result in it failing to perform its covenants in this Section 6.05(a);
- (b) Each Broadband Recipient will deliver to the CFA a true and complete copy of the CRTC Funding Decision applicable to the Broadband Recipient at the time it becomes a party to this Agreement and will deliver to the CFA a true and complete copy of any amendments or additions to such CRTC Funding Decision within ten (10) Business Days of the issuance of any such amendments or additions; and

- (c) Each Broadband Recipient covenants and agrees to indemnify and save harmless the CFA and the Consortium and each of those entities' respective directors, officers, employees, administrators, advisors and shareholders (together, the "**Indemnified Parties**") from and against all costs, charges, fees, expenses, losses, liabilities, damages, fines, penalties, assessments, professional fees, legal fees on a solicitor and client basis, and interest (together, the "**Costs and Expenses**") arising out of or in any way connected with any Broadband Recipient Event of Default by such Broadband Recipient, including the Costs and Expenses of any action, suit, proceeding, demand, assessment, judgment, settlement or compromise and the enforcement of remedies under this Agreement, the Procedures and applicable law.

ARTICLE SEVEN

DEFAULT

7.01 Default by Required Contributor

Each of the following events shall constitute a default (a "**Required Contributor Event of Default**") by a Required Contributor hereunder:

- (a) If a Required Contributor shall be in breach of any of its representations and warranties or covenants hereunder or under the Procedures;
- (b) If a Required Contributor shall fail to comply with any of its payment obligations hereunder or under the Procedures on the relevant due date or within two (2) Business Days thereafter;
- (c) If a Required Contributor becomes a Defaulting Contributor, as defined in the Procedures;
- (d) If a Required Contributor shall fail to provide information required to be submitted to the CFA pursuant to the provisions of this Agreement and/or the Procedures within two (2) Business Days of the due date for submission of such information to the CFA;
- (e) If a Required Contributor shall fail to perform any of its obligations hereunder or under the Procedures, other than any such obligation that involves the payment of money to the CFA, or the provision of information to the CFA pursuant to the provisions of this Agreement and/or of the Procedures, and such failure shall continue for a period of more than ten (10) days after notice of such failure shall have been given to such Required Contributor by the CFA;
- (f) If a Required Contributor shall submit false, inaccurate, misleading or incomplete information to the CFA or the Auditor pursuant to the provisions of this Agreement and/or of the Procedures; or

- (g) If a Required Contributor shall fail to respond fully, accurately and completely to any communication from the CFA in a timely manner, which shall mean within five (5) Business Days after the CFA communication shall have been given to such Required Contributor by the CFA.

7.02 Remedies for Default by a Required Contributor

Upon the occurrence of a Required Contributor Event of Default, the CFA may, in addition to any other legal or equitable remedies otherwise available to the CFA under this Agreement, the Procedures and applicable law, including and without limitation the institution of legal proceedings against the defaulting Required Contributor:

- (a) enter into discussions with the defaulting Required Contributor with a view to resolving the default in an expeditious manner;
- (b) require that the Required Contributor execute a promise to pay and a consent to judgment in favour of the CFA;
- (c) notify each other party to this Agreement and the CRTC of the nature of the Required Contributor Event of Default;
- (d) if such Required Contributor is also an Eligible Recipient, immediately suspend and continue to suspend, for so long as such Required Contributor Event of Default shall continue, the right of the defaulting Required Contributor in its capacity as an Eligible Recipient to receive payments from the CFA hereunder or under the Procedures; or
- (e) refer the matter to the CRTC for such action as the CRTC may deem appropriate.

7.03 Default by Eligible Recipient

- (a) Each of the following events shall constitute a default (an “**Eligible Recipient Event of Default**”) by an Eligible Recipient hereunder:
 - (i) If an Eligible Recipient shall be in breach of any of its representations and warranties or covenants hereunder or under the Procedures;
 - (ii) If an Eligible Recipient shall fail to comply with any of its payment obligations hereunder or under the Procedures on the relevant due date or within two (2) Business Days thereafter;
 - (iii) If an Eligible Recipient shall fail to provide information required to be submitted to the CFA pursuant to the provisions of this Agreement and/or of the Procedures within two (2) Business Days of the due date for submission of such information to the CFA;
 - (iv) If an Eligible Recipient shall fail to perform any of its obligations hereunder or under the Procedures, other than any such obligation that

involves the payment of money to the CFA or the provision of information to the CFA pursuant to the provisions of this Agreement and/or of the Procedures, and such failure shall continue for a period of more than ten (10) days after notice of such failure shall have been given to such Eligible Recipient by the CFA;

- (v) If an Eligible Recipient shall submit false, inaccurate, misleading or incomplete information to the CFA or the Auditor pursuant to the provisions of this Agreement and/or of the Procedures; or
 - (vi) If an Eligible Recipient shall fail to respond fully, accurately and completely to any communication from the CFA in a timely manner, which shall mean within five (5) Business Days after the CFA communication shall have been given to such Eligible Recipient by the CFA.
- (b) Without limiting the provisions of Section 7.03(a), which apply to all Eligible Recipients including Broadband Recipients, it shall be a Broadband Recipient Event of Default (a “**Broadband Recipient Event of Default**”) if the CRTC or the CFA, as the case may be, takes the following action as a result of a Broadband Recipient being in default of one or more of the conditions or obligations of the Broadband Recipient under the CRTC Funding Decision:
- (i) If the CRTC provides to the CFA a copy of a notice to a Broadband Recipient indicating that the Broadband Recipient is in default of one or more of the conditions or obligations of the Broadband Recipient under the CRTC Funding Decision and specifying the amount (the “Default Amount”) that is to be returned to the National Contribution Fund as a consequence of such default (each, a “CRTC Default Notice”); or
 - (ii) If the CFA determines, upon reasonable grounds, and without the benefit of receipt of a CRTC Default Notice, that the Broadband Recipient is in default of one or more of the conditions or obligations of the Broadband Recipient under the CRTC Funding Decision and that a specific amount (also, the “Default Amount”) is to be returned to the National Contribution Fund as a consequence of such default, and such determination by the CFA is confirmed by resolution of the directors of the Consortium;

provided that the foregoing provisions of this Section 7.03(b) shall apply only (A) to a Broadband Recipient in connection with a CRTC Funding Decision until such time as the CRTC releases any final holdback amounts withheld by it in connection with that CRTC Funding Decision, and (B) where the Default Amount as a consequence of the default in question involves an amount equal to or more than the lower of (x) a dollar amount equal to one percent (1%) of the aggregate amount of funding contemplated by the CRTC Funding Decision, or (y) \$50,000 (the “Threshold”). For greater

certainty, once the Threshold is achieved, all portions of the Default Amount shall become payable hereunder, including the amount determined to be the Threshold amount. For greater certainty, nothing herein shall prevent the CFA from pursuing amounts from a Broadband Recipient that are lower than the Threshold amount pursuant to other applicable provisions of this Agreement, including Sections 7.03(a), 7.04 and 7.06.

7.04 Remedies for Default by an Eligible Recipient

Upon the occurrence of an Eligible Recipient Event of Default, the CFA may, in addition to any other legal or equitable remedies otherwise available to the CFA under this Agreement, the Procedures and applicable law, including and without limitation the institution of legal proceedings against the defaulting Eligible Recipient:

- (a) enter into discussions with the defaulting Eligible Recipient with a view to resolving the default in an expeditious manner;
- (b) require that the Eligible Recipient execute a promise to pay and a consent to judgment in favour of the CFA;
- (c) notify each other party to this Agreement and the CRTC of the nature of the Eligible Recipient Event of Default;
- (d) immediately suspend, and continue to suspend, for so long as such Eligible Recipient Event of Default shall continue, the right of the defaulting Eligible Recipient to receive payments from the CFA hereunder or under the Procedures; or
- (e) refer the matter to the CRTC for such action as the CRTC may deem appropriate.

7.05 Remedies for Default by a Broadband Recipient

Without limiting the provisions of Section 7.04, which apply to all Eligible Recipients including Broadband Recipients, upon the occurrence of a Broadband Recipient Event of Default, the CFA may, in addition to any other legal or equitable remedies otherwise available to the CFA under this Agreement, the Procedures and applicable law, including and without limitation the institution of legal proceedings against the defaulting Broadband Recipient:

- (a) demand immediate repayment by the Broadband Recipient of the Default Amount. The Broadband Recipient shall thereupon have the obligation to reimburse the CFA for the account of the National Contribution Fund the Default Amount together with all Costs and Expenses (referred to as the “**Total Default Amount**”). The Total Default Amount shall bear interest at the rate of the Prime Rate plus 5% per annum from the date of such demand for repayment by the CFA. The parties agree that the Total Default Amount shall be deemed to be liquidated damages, being a genuine and

reasonable pre-estimate of the damages incurred in connection with the Broadband Recipient's default under one or more of the conditions or obligations set out in the CRTC Funding Decision and not a penalty, and that such amount of liquidated damages shall not be subject to any set-off, counterclaim or defence. Each Broadband Recipient agrees that it is and shall be estopped from alleging that any liquidated damages set out in this Section 7.05(a) are a penalty and not liquidated damages, or that they are otherwise unenforceable for any reason, including that such damages were not incurred. Each Broadband Recipient agrees that the CFA, the Consortium and the CRTC shall have no obligation to mitigate the damages referenced in this Section 7.05(a). Each Broadband Recipient agrees that it is and shall be estopped from claiming that the CFA does not have standing to pursue any of the remedies contemplated by this Agreement. Interest charges as contemplated herein shall continue to be incurred notwithstanding any litigation including any appeal, administrative review to the CRTC, judicial review or other proceeding;

- (b) notify the Consortium and the CRTC of the nature of the Broadband Recipient Event of Default and of the action taken by the CFA as a consequence thereof; or
- (c) immediately suspend, and continue to suspend, for so long as such Broadband Recipient Event of Default shall continue, the right of the defaulting Broadband Recipient to receive payments from the CFA hereunder or under the Procedures in connection with the relevant CRTC Funding Decision.

7.06 Remedies not exclusive

The remedies of the CFA set forth in Sections 7.02, 7.04 and 7.05 shall not be exclusive. The CFA shall not be obliged to exercise such remedies in any particular order, and the exercise by the CFA of any remedy shall not preclude the CFA from exercising any other remedy, whether concurrently or sequentially. Further, the failure of the CFA to exercise any remedy upon the occurrence of a Required Contributor Event of Default, an Eligible Recipient Event of Default, and/or a Broadband Recipient Event of Default shall not constitute a waiver of such event of default or preclude the CFA from subsequently pursuing its remedies for that or any other event of default hereunder. To the extent feasible, the CFA shall coordinate with the CRTC regarding any exercise of remedies by the CFA hereunder.

ARTICLE EIGHT
CONCERNING THE CONSORTIUM

8.01 The Consortium

- (a) The Consortium has been formed as a body corporate representative of the telecommunications industry in Canada to assist in the administration of the National Contribution Fund, and in particular to oversee the administration of the National Contribution Fund by the CFA hereunder and under the Procedures.
- (b) The Consortium will oversee the CFA's performance of its duties as contribution fund administrator hereunder and under the Procedures, as follows:
- receive and review an annual report from the CFA as to its administration of the National Contribution Fund. The report shall be prepared by the CFA and filed with the Consortium within ninety (90) days of the end of each year of operation of the National Contribution Fund;
 - appoint, from time to time, the Auditor. The Auditor shall conduct an audit, on an annual basis, in such detail and in such manner as the Auditor shall in its professional judgment deem necessary, of the administration by the CFA of the National Contribution Fund and of this Agreement. The Auditor shall also conduct an audit, on an annual basis, in such detail and in such manner as the Auditor shall in its professional judgment deem necessary, of the National Contribution Fund on an annual basis. A copy of the report of the Auditor in connection with each such audit shall be filed with the Consortium, the CFA and the CRTC. The cost of such annual audits shall be borne by the National Contribution Fund;
 - receive the two above-mentioned audit reports from the Auditor referred to in this Section 8.01;
 - hear and resolve disputes between the CFA and Required Contributors and/or Eligible Recipients, including Broadband Recipients, as to the CFA's performance of its duties hereunder and/or under the Procedures;
 - hear and determine all disputes regarding the interpretation of this Agreement and/or the Procedures and/or the contract between the Consortium and the CFA relating to the appointment of the CFA as administrator hereunder. In the event any such dispute is not resolved, the questions at issue may be referred to the CRTC for resolution by any party to such dispute. In the event of resolution of the dispute, the Consortium or the CFA shall refer the matter and the resolution reached to the CRTC for approval;

- establish and oversee an annual budget for the CFA to perform its functions, including its verification and enforcement functions hereunder and/or under the Procedures;
- develop the Procedures and, in consultation with the CFA, any revisions thereof as may be necessary from time to time and submit the Procedures and any revisions thereof to the CRTC for approval in a timely manner;
- arrange, from time to time, for appropriate insurance coverages relating to the Consortium, the CFA and the National Contribution Fund; and
- generally assist the CFA in administering this Agreement, the Procedures and the National Contribution Fund as from time to time agreed to by the Consortium and the CFA.

ARTICLE NINE

GENERAL PROVISIONS AND CONFIDENTIALITY

9.01 Nature of Obligations under this Agreement

- (a) There are several obligations of the Consortium, of each Required Contributor, of each Eligible Recipient and of the CFA under this Agreement and the Procedures.
- (b) This Agreement does not constitute a partnership or joint venture between or among any of the parties to this Agreement or make any party an agent of any other party.

9.02 Notices

- (a) Any demand, notice or other communication to be made or given hereunder and/or under the Procedures must be made or given in writing by personal delivery or by electronic means of communication addressed to the recipient (i) at the address set forth in the applicable Required Contributor Accession Agreement in the case of a Required Contributor, (ii) at the address set forth in the applicable Eligible Recipient Accession Agreement in the case of an Eligible Recipient, and (iii) at the respective addresses set forth on the signature pages of this Agreement in the case of the Consortium and the CFA, or to such other address, individual or electronic communication number as any party may from time to time notify the others in accordance with this Section 9.02(a) Any demand, notice or other communication made or given by (i) personal delivery shall be conclusively deemed to have been made or given on the day of actual delivery thereof, or (ii) electronic means of communication shall be conclusively deemed to have been made or given on the day of transmittal thereof if made or given before 3:00 p.m. (local time in the time zone of the intended recipient) on a Business Day, or on the first Business Day

following the transmittal thereof if not made or given before 3:00 p.m. (local time in the time zone of the intended recipient) on a Business Day, unless there are reasonable grounds for believing that the intended recipient of the demand, notice or other communication did not receive the demand, notice or other communication at that time or at all.

- (b) Notwithstanding the provisions of Section 9.02(a), any demand, notice or other communication to be made or given by the CFA or the Consortium hereunder and/or under the Procedures may be made or given hereunder and/or under the Procedures by use of Internet or intranet websites adopted by the CFA and/or the Consortium for the purposes of storing and disseminating documents to the other parties hereto, provided such sites enable the recipient to view and retain a copy of any communications received thereby. Unless applicable law otherwise prescribes, demands, notices or communications posted to such Internet or intranet websites shall be deemed to be received upon the earlier of (i) the date of deemed receipt (in accordance with Section 9.02(a)) by the intended recipient at its e-mail address of notification that such demand, notice or communication is available and identifying the website address therefor, or (ii) five (5) Business Days after the demand, notice or other communication is posted to the site designated by the CFA and/or the Consortium for such demands, notices or communications and to which the recipient has been granted access.

9.03 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

9.04 Resolution of Disputes

Should any dispute or disagreement arise at any time with respect to (i) the interpretation or application of this Agreement or of the Procedures, or (ii) the operation of the National Contribution Fund, the parties agree that good faith negotiations shall take place between the party or parties aggrieved (herein called the “**Aggrieved Party**”) and the Consortium, with the objective of resolving such dispute or disagreement. Either party to any such dispute or disagreement may request the assistance of the CRTC in resolving such dispute or disagreement. If such good faith negotiations have not resolved the dispute or disagreement within a reasonable period of time, either the Aggrieved Party or the Consortium may refer the matter in dispute or the disagreement to the CRTC for resolution. In the event such good faith negotiations shall resolve such dispute or disagreement to the satisfaction of the parties to the dispute or disagreement, the CFA or the Consortium shall refer the resolution of such dispute or disagreement to the CRTC for approval.

The parties agree that good faith negotiations and recourse to the CRTC shall all be without recourse to the courts. The decision of the CRTC on any matter in dispute or on any disagreement shall be final and binding, except as otherwise provided in the *Telecommunications Act (Canada)* with respect to decisions of the CRTC.

The provisions of this Section 9.04 shall be without prejudice, however, to the right of the CFA to institute and prosecute legal proceedings before any court of competent jurisdiction against any Required Contributor or Eligible Recipient, including any Broadband Recipient, in accordance with the provisions of this Agreement and/or of the Procedures.

9.05 Benefit of the Agreement

This Agreement shall ensure the benefit of and be binding upon the parties hereto and their respective successors and assigns, provided, however, that (i) any assignment by a Required Contributor or an Eligible Recipient, including a Broadband Recipient, of all or any portion of its rights or obligations hereunder or under the Procedures shall require the prior written consent of the CFA and of the Consortium, and such consent is not to be unreasonably withheld or delayed, together with the written agreement of the proposed assignee to be responsible for the performance of all obligations hereunder and under the Procedures of the proposed assignor; and (ii) in the event that, at any time, the Consortium shall appoint another person as CFA hereunder, in place of the person then acting as CFA hereunder, the retiring CFA shall assign all of its rights and obligations hereunder, as well as under or pursuant to any security from time to time held by the retiring CFA, to the new CFA, and such assignment by the retiring CFA shall not require any consent on the part of any other party hereto. This Agreement is not intended to, and does not, confer any rights or remedies on any Person other than the parties, and their respective successors and permitted assigns, and the Indemnified Parties, to the extent not parties, and the CRTC. The parties reserve their right to vary or rescind, at any time and in any way, the rights, if any, granted by or under this Agreement to any person who is not a party, other than the CRTC, without notice to or the consent of that Person.

9.06 Confidentiality of Information

- (a) The CFA agrees to hold in confidence all information regarding the customers, services, facilities, equipment, installations and current or future business plans and strategies of a Required Contributor or an Eligible Recipient provided to the CFA by such Required Contributor or by such Eligible Recipient, as the case may be, pursuant to this Agreement or to the Procedures (“**Contributor/Recipient Confidential Information**”), except as expressly set out in this Agreement or in the Procedures, and to use such information solely for the purpose of facilitating the administration of the National Contribution Fund and administering this Agreement and the Procedures. For greater certainty, the CFA will not use or disseminate, or permit the dissemination of, any Contributor/Recipient Confidential Information to any of its affiliates, subsidiaries or beneficial owners. It is acknowledged that the Auditor shall have access to information in the possession of the CFA, including

Contributor/Recipient Confidential Information, from time to time in the performance of its duties as Auditor hereunder and under the Procedures. The Auditor, at the time of its appointment hereunder, shall acknowledge its obligation to be bound by confidentiality provisions substantially similar to those contained in this Section 9.06 with respect to Contributor/Recipient Confidential Information. It is acknowledged that the chief financial officer of the Consortium shall have access to information, including Contributor/Recipient Confidential Information, in the possession of the CFA from time to time in the performance of his/her duties as chief financial officer hereunder and under the Procedures. The chief financial officer, at the time of his/her appointment, from time to time, hereunder, shall acknowledge his/her obligation to be bound by confidentiality provisions substantially similar to those contained in this Section 9.06 with respect to Contributor/Recipient Confidential Information.

- (b) Information provided by a party to this Agreement (the “**Disclosing Party**”) to any other party to this Agreement (the “**Receiving Party**”) shall not be subject to the obligations specified in (a) above, where such information:
- (i) was already known to the Receiving Party free of any obligation to keep the information confidential;
 - (ii) enters or entered the public domain by a means other than unauthorized disclosure;
 - (iii) was subsequently lawfully obtained by the Receiving Party from a third party not obligated to hold such information in confidence;
 - (iv) is used, released or disclosed by the Receiving Party with the Disclosing Party’s prior express written approval;
 - (v) is required to be disclosed in a proceeding of or before any court or regulatory agency of competent jurisdiction (including the CRTC) provided that, in such instance, such information shall be provided subject to a request that it be treated in confidence by such court or regulatory agency;
 - (vi) is independently developed by the Receiving Party; or
 - (vii) forms part of any report by the CFA as contemplated by the Procedures.

9.07 Severability

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall not invalidate the remaining provisions hereof and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

9.08 Whole Agreement

This Agreement, together with the Procedures, constitute the whole and entire agreement between the parties hereto with respect to the subject matter of this Agreement and the Procedures, and cancel and supersede any prior agreements, undertakings, declarations, commitments, representations, written or oral, in respect thereof.

9.09 Amendments and Waivers

- (a) Any provision of this Agreement may be amended, including, for greater certainty, any amendment and restatement, only if the Consortium and the CFA so agree in writing and such amendment is approved by the CRTC pursuant to the *Telecommunications Act* (Canada). For greater certainty, each Required Contributor and Eligible Recipient shall be bound by this Agreement as so amended in accordance with the preceding provisions of this Section 9.09(a). In consultation with the CFA, the Consortium shall from time to time prepare such amendments to this Agreement and/or the Procedures as shall be necessary or advisable to reflect decisions and/or directions of the CRTC respecting the establishment, operation and/or administration of the National Contribution Fund. The Consortium, in consultation with the CFA, may from time to time make application to the CRTC to amend the Procedures with a view to improving the operation and administration of the National Contribution Fund. For greater certainty, all Required Contributors and Eligible Recipients who were parties to this Agreement prior to its amendment and restatement dated as of **28 November 2019** shall remain parties to this Agreement as amended and restated. The CFA will provide all such Required Contributors and Eligible Recipients with a copy of this Agreement following its amendment and restatement. Notwithstanding the foregoing, it is understood that the CRTC may from time to time amend the provisions of Appendix 1 to the Procedures.
- (b) The failure of any party to insist upon the performance by any other party of any of the terms, covenants and conditions of this Agreement in any one or more instances will not be construed as a waiver or relinquishment of any such terms, covenants or conditions, but the same will be and remain in full force and effect.
- (c) No consent or waiver, expressed or implied by a party, to or of any breach or default by any other party of any or all of its obligations under this Agreement will:
 - (i) be valid unless it is in writing and stated to be a consent or waiver pursuant to this Section 9.09;
 - (ii) be relied upon as a consent or waiver to or of any other breach or default of the same or any other obligations;
 - (iii) constitute a general waiver under this Agreement; or
 - (iv) eliminate or modify the need for a specific consent or waiver pursuant to this Section 9.09 in any other or subsequent instance.

9.10 Further Assurances

Each party shall promptly cure any default by it in the execution and delivery of this Agreement or of any other of the agreements provided for hereunder to which it is a party.

9.11 Time of the Essence

Time shall be of the essence of this Agreement.

9.12 Counterparts and Delivery

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart. The parties agree that the execution of this Agreement, a Required Contributor Accession Agreement, an Eligible Recipient Accession Agreement, or any amendment to any such agreements, by any party, may be effected by facsimile, e-mail or functionally equivalent electronic transmission. Any signature of a party on a counterpart of any such agreement or any such amendment transmitted by facsimile, e-mail or functionally equivalent electronic transmission shall be treated as an original signature. Delivery of this Agreement, a Required Contributor Accession Agreement or an Eligible Recipient Accession Agreement by facsimile, email or other functionally equivalent electronic means of transmission constitutes valid and effective delivery.

9.13 Language

The Parties declare that they have requested the present Agreement to be drawn up in the English language.

As a matter of convenience only, a translation of this Agreement and the Procedures in the French language has been provided to those parties requesting the same. In the event of any conflict, however, between the English language version of this Agreement or of the Procedures and the French language version of this Agreement or of the Procedures, the English language version shall prevail.

9.14 Required Contributors and Eligible Recipients becoming parties to this Agreement

- (a) Upon a Telecommunications Service Provider having been determined by the CRTC to be a Required Contributor, such Required Contributor shall become a party to this Agreement in the manner hereinafter provided in this Section 9.14(a). Each such Required Contributor shall execute and deliver to the CFA, within thirty (30) days of the date of such determination by the CRTC, a Required Contributor Accession Agreement to be countersigned by the CFA. Such Required Contributor shall be considered a party to this Agreement as of the date such Telecommunications Service Provider was determined to be a Required Contributor by the CRTC, and such Required Contributor shall be entitled to all of the benefits set forth in this Agreement and/or in the

Procedures, which are for the benefit of Required Contributors hereunder and thereunder, and shall be subject to all the obligations of a Required Contributor as set forth in this Agreement and/or in the Procedures, all without any further action or requirement on the part of any other party to this Agreement.

- (b) Upon an Eligible Recipient having been determined by the CRTC to be an Eligible Recipient, such Eligible Recipient shall become a party to this Agreement in the manner hereinafter provided in this Section 9.14(b). Each such Eligible Recipient shall execute and deliver to the CFA, within thirty (30) days of the date of such determination by the CRTC, an Eligible Recipient Accession Agreement to be countersigned by the CFA. Such Eligible Recipient shall be considered a party to this Agreement as of the date of the relevant Eligible Recipient Accession Agreement, and such Eligible Recipient shall be entitled to all the benefits set forth in this Agreement and/or in the Procedures, which are for the benefit of Eligible Recipients hereunder and thereunder, and shall be subject to all the obligations of an Eligible Recipient as set forth in this Agreement and/or in the Procedures, all without any further action or requirement on the part of any other party to this Agreement.
- (c) An Eligible Recipient, including a Broadband Recipient, or a Required Contributor may withdraw from this Agreement on ninety (90) days' prior written notice to the Consortium and to the CFA once they are no longer required to be a party hereto or are determined not to be an Eligible Recipient, including a Broadband Recipient, or a Required Contributor, in accordance with a decision or a determination of the CRTC, provided that such withdrawal will not relieve the party of any obligations incurred by the party while they were a party to this Agreement.

9.15 Force Majeure

Timely performance by a party of its obligations hereunder and under the Procedures will be excused to the extent that such non-timely performance is directly attributable to governmental orders, civil commotion, acts of God or other circumstances beyond the reasonable control of such party (including strikes, lock-outs or other labour or industrial disturbances, accidents, fires, explosions, delays in transportation, wars, riots or sabotage, but specifically not including financial difficulty), but the requirement to perform such obligations in a timely manner shall be reinstated upon termination or cessation of such event or circumstance.

ARTICLE TEN

CONCERNING THE CFA

10.01 Duties and Obligations

The CFA shall perform those duties and obligations to be performed by the CFA hereunder and under the Procedures, and the CFA shall comply with any action directed by the Consortium to be taken by the CFA hereunder or under the Procedures, provided

that such action is neither contrary to any direction or order of the CRTC nor inconsistent with the provisions of this Agreement or of the Procedures.

Neither the CFA nor any of its directors, officers, agents or employees (for the purposes hereof, the CFA shall be deemed to be contracting as agent and trustee for and on behalf of such persons) shall be liable for any action taken or omitted to be taken by it or them under or in connection with this Agreement or the Procedures except for its or their own gross negligence or willful misconduct. Without limiting the generality of the foregoing, the CFA:

- (a) may assume that there has been no assignment or transfer by any means by any of the parties to this Agreement of their rights hereunder, unless and until the CFA receives written notice of the assignment thereof from such party and the written agreement of the assignee that such assignee is bound hereby, as it would have been if it had been an original party hereto in place of the assigning party, in each case in a form that is satisfactory to the CFA;
- (b) may consult with legal counsel selected by it (including counsel who may also act as counsel to any other party hereto), and/or independent public accountants and other experts selected by it. The CFA shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts;
- (c) shall incur no liability under or in respect of this Agreement or the Procedures by acting upon any (i) notice, consent, certificate or other instrument or writing (which may be effected by facsimile, e-mail or functionally equivalent electronic transmission) believed by it to be genuine and signed or sent by the proper party or parties, or (ii) representation or warranty of any party made or deemed to be made hereunder;
- (d) may assume that no Required Contributor Event of Default, Eligible Recipient Event of Default or Broadband Recipient Event of Default has occurred and is continuing unless it has actual knowledge to the contrary;
- (e) may rely on any matters of fact that might reasonably be expected to be within the knowledge of any person upon a certificate signed by or on behalf of such person;
- (f) shall not have any duty to ascertain or to enquire as to the performance or observance of any of the terms, covenants or conditions of this Agreement or of the Procedures on the part of any party to this Agreement, except as specifically required pursuant to this Agreement or to the Procedures; and
- (g) shall not be responsible to any party to this Agreement for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or of any instrument or document furnished pursuant hereto.

10.02 Replacement of the CFA

The Consortium shall have the right, from time to time, to replace the person acting as CFA hereunder with another person appointed by the Consortium hereunder (provided the person so appointed shall have been designated as the CFA by the CRTC if such designation is required by the *Telecommunications Act* (Canada)), and references in this Agreement and/or in the Procedures to the CFA shall include any such replacement person so appointed.

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

**CANADIAN TELECOMMUNICATIONS
CONTRIBUTION CONSORTIUM INC.**

By: _____

Name: [●] _____

Title: [●] _____

By: _____

Name: [●] _____

Title: [●] _____

WELCH FUND ADMINISTRATION SERVICES INC.

in its capacity as CFA

By: _____

Name: [●] _____

Title: [●] _____

Addresses for Notices:

For the Consortium:

Canadian Telecommunications Contribution Consortium Inc.
c/o Fasken
Barristers & Solicitors
Suite 1300
55 Metcalfe Street
Ottawa ON K1P 6L5

Attention: Stephen P. Whitehead,
Secretary

Facsimile No: 613-230-6423

For the CFA:

Welch Fund Administration Services Inc.
c/o Welch LLP
123 Slater Street, 3rd Floor
Ottawa ON K1P 5H2

Attention: Garth Steele
[●]

Facsimile No: 613-236-8258

SCHEDULE "A"

Form of Required Contributor Accession Agreement

Required Contributor Accession Agreement

To: [Name and address of CFA]

as Central Fund Administrator (CFA) of the National Contribution Fund (as defined in the National Contribution Fund Administration Agreement referred to below)

We refer to the National Contribution Fund Administration Agreement dated as of January 1, 2001 (such agreement, as amended from time to time, being called the "**Agreement**") between the Canadian Telecommunications Contribution Consortium Inc., of the First Part, Welch Fund Administration Services Inc., in its capacity as CFA for the National Contribution Fund established pursuant to the Agreement (the "**National Contribution Fund**"), of the Second Part, such persons as shall have been determined by the Canadian Radio-television and Telecommunications Commission ("**CRTC**") to be Required Contributors to the National Contribution Fund, of the Third Part, and such persons as shall be determined by the CRTC from time to time to be Eligible Recipients of funds standing to the credit of the National Contribution Fund from time to time, of the Fourth Part.

Terms with initial capital letters used in this Required Contributor Accession Agreement that are defined in the Agreement and not otherwise defined herein are used herein with the meanings ascribed to such terms in the Agreement.

We hereby notify you that we were determined by the CRTC to be a Required Contributor as of the _____ day of _____, 20XX____ (the "**Effective Date**"), and that we are required to become a party to the Agreement as a Required Contributor as of the Effective Date.

We hereby undertake that with effect from the Effective Date, we shall be bound by all the provisions of the Agreement applicable to Required Contributors and agree to perform each and every covenant and obligation thereunder applicable to us as a Required Contributor including, without limitation, compliance with the Procedures as amended from time to time.

Each of the representations and warranties contained in Article Five of the Agreement are deemed to have been made by us as of the Effective Date.

Our address for notices for the purpose of Section 9.02 of the Agreement is as follows:

[Name, address, postal code, attention, telephone number, facsimile number and email address]

We hereby represent and warrant that we have full power and authority to become a party to the Agreement and that our becoming a party thereto and agreeing to be bound by all the provisions thereof applicable to Required Contributors have been duly authorized by all necessary corporate action, if we are a corporation, and other action, if

we are not a corporation, and that the Agreement constitutes a legal, valid and binding obligation of the undersigned.

In witness whereof, this Required Contributor Accession Agreement has been duly executed as of this _____ day of _____, 20XX.

[Name of Required Contributor]

By: _____

Name: [●] _____

Title: [●] _____

In witness whereof, _____, as CFA under the Agreement, has executed this Required Contributor Accession Agreement to evidence that _____ will become a party to the Agreement as a Required Contributor as of the Effective Date above provided.

[Name of CFA]

By: _____

Name: [●] _____

Title: [●] _____

SCHEDULE “B”

Form of Eligible Recipient Accession Agreement

Eligible Recipient Accession Agreement

To: [Name and address of CFA]

as Central Fund Administrator (CFA) of the National Contribution Fund (as defined in the National Contribution Fund Administration Agreement referred to below)

We refer to the National Contribution Fund Administration Agreement dated as of January 1, 2001 (such agreement, as amended from time to time, being called the “**Agreement**”) between the Canadian Telecommunications Contribution Consortium Inc., of the First Part, Welch Fund Administration Services Inc., in its capacity as CFA for the National Contribution Fund established pursuant to the Agreement (the “**National Contribution Fund**”), of the Second Part, such persons as shall have been determined by the Canadian Radio-television and Telecommunications Commission (“**CRTC**”) to be Required Contributors to the National Contribution Fund, of the Third Part, and such persons as shall be determined by the CRTC from time to time to be Eligible Recipients of funds standing to the credit of the National Contribution Fund from time to time, of the Fourth Part.

Terms with initial capital letters used in this Eligible Recipient Accession Agreement that are defined in the Agreement and not otherwise defined herein are used herein with the meanings ascribed to such terms in the Agreement.

We hereby notify you that we were determined by the CRTC to be an Eligible Recipient as of the _____ day of _____, 20____ (the “**Effective Date**”).

We hereby undertake that with effect from the Effective Date, we shall be bound by all the provisions of the Agreement applicable to Eligible Recipients and agree to perform each and every covenant and obligation thereunder applicable to us as an Eligible Recipient including, without limitation, compliance with the Procedures as amended from time to time.

[CFA to include the following paragraph in each Eligible Recipient Accession Agreement with an entity identified by the CRTC as a Broadband Recipient.]

[We confirm that we are a Broadband Recipient within the meaning of the Agreement and undertake that with effect from the Effective Date, we shall be bound by all the provisions of the Agreement applicable to Broadband Recipients and agree to perform each and every covenant and obligation thereunder applicable to us as a Broadband Recipient, including, without limitation, compliance with the Procedures as amended from time to time. In the event that the CFA makes a demand for payment of a Total Default Amount from us pursuant to the Agreement and is obliged to bring any proceeding relating to that demand, we hereby consent to judgment in favour of the CFA for an amount equal to the Total Default Amount.]

Each of the representations and warranties contained in Article Five of the Agreement are deemed to have been made by us as of the Effective Date.

Our address for notices for the purpose of Section 9.02 of the Agreement is as follows:

[Name, address, postal code, attention, telephone number, facsimile number and email address]

We hereby represent and warrant that we have full power and authority to become a party to the Agreement and that our becoming a party thereto and agreeing to be bound by all the provisions thereof applicable to Eligible Recipients and, if applicable, Broadband Recipients have been duly authorized by all necessary corporate action, if we are a corporation, and other action, if we are not a corporation, and that the Agreement constitutes a legal, valid and binding obligation of the undersigned.

In witness whereof, this Eligible Recipient Accession Agreement has been duly executed as of this _____ day of _____, 20XX.

[Name of Eligible Recipient]

By: _____

Name: [●] _____

Title: [●] _____

In witness whereof, _____, as CFA under the Agreement, has executed this Eligible Recipient Accession Agreement to evidence that _____ will become a party to the Agreement as an Eligible Recipient as of the Effective Date above provided.

[Name of CFA]

By: _____

Name: [●] _____

Title: [●] _____

AMENDED AND RESTATED NATIONAL CONTRIBUTION FUND
ADMINISTRATION AGREEMENT

BETWEEN:

CANADIAN TELECOMMUNICATIONS CONTRIBUTION CONSORTIUM INC.

- and -

WELCH FUND ADMINISTRATION SERVICES INC., in its capacity as the
administrator of the National Contribution Fund established pursuant to this Agreement

- and -

each person that is a Required Contributor and that shall have become a party to this
Agreement through the execution and delivery to the CFA of a Required Contributor
Accession Agreement in the manner provided in Section 9.14(a),

- and -

each person that is an Eligible Recipient and that shall have become a party to this
Agreement through the execution and delivery to the CFA of an Eligible Recipient
Accession Agreement in the manner provided in Section 9.14(b),

Dated as of [●]

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