

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

**IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
ROTHMANS, BENSON & HEDGES INC.**

Applicant

**MOTION RECORD
(CCAA PLAN AMENDMENT ORDER #3 (ARTICLE 9))**

July 28, 2026

Cassels Brock & Blackwell LLP
Suite 3200, Bay Adelaide Centre – North Tower
40 Temperance St.
Toronto, On M5H 0B4

R. Shayne Kukulowicz LSO# 30729S
Tel: 416-860-6463
Email: skukulowicz@us.cassels.com

Monique Sassi LSO# 63638L
Tel: 416-860-6886
Email: msassi@cassels.com

Alec Hoy LSO# 85489K
Tel: 416-860-2976
Email: ahoy@cassels.com

*Lawyers for Ernst & Young Inc., in its capacity
as Court-appointed Monitor and CCAA Plan
Administrator of Rothmans, Benson & Hedges
Inc.*

Court File No. CV-19-616779-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
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**IN THE MATTER OF THE *COMPANIES' CREDITORS*
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TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS
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AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
ROTHMANS, BENSON & HEDGES INC.

Applicant

**NOTICE OF MOTION
CCAA PLAN AMENDMENT ORDER #3
(ARTICLE 9)**

Ernst & Young Inc. (“**EY**”), in its capacity as court-appointed monitor (the “**Monitor**”) of Rothmans, Benson & Hedges Inc. (“**RBH**”) pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) and CCAA Plan Administrator will make a motion before the Ontario Superior Court of Justice (Commercial List) on August 7, 2026, at 10:00 am (Eastern Time), or as soon after that time as the motion can be heard, by Zoom video conference.

PROPOSED METHOD OF HEARING: The motion is to be heard by Zoom video conference. Please refer to the Virtual Hearing Protocol attached as **Schedule “A”** for details on attending the motion.

THE MOTION IS FOR:¹

1. An Order (the “**CCAA Plan Amendment Order #3**”), substantially in the form included at Tab 3 of the Motion Record, *inter alia*: (i) approving additions and amendments to

¹ All capitalized terms used but not defined herein have the meanings given to them in the Fourth A&R RBH Plan (defined below), as amended by the proposed Amendments.

Article 9 and certain related provisions of the Fourth A&R RBH Plan (the “**Amendments**”), as described in paragraphs 11 to 26 of the Thirty-Second Report of the Monitor and CCAA Plan Administrator dated July 28, 2026 (the “**Thirty-Second Report**”); (ii) amending and replacing Article 9 of the Fourth A&R RBH Plan with Schedule “A” to the CCAA Plan Amendment Order #3; (iii) adding or revising certain defined terms to the Fourth A&R RBH Plan, as set out in Schedule “B” to the CCAA Plan Amendment Order #3; and (iv) deleting Article 14.4(l) and Schedules “T” & “U” to the Fourth A&R RBH Plan.

2. Such further and other relief as counsel may advise and this CCAA Court may permit.

THE GROUNDS FOR THE MOTION ARE:

Background

1. The Court-Appointed Mediator’s and Monitor’s CCAA Plan of Compromise and Arrangement pursuant to the *Companies’ Creditors Arrangement Act* concerning, affecting and involving RBH dated October 17, 2024 (the “**RBH Plan**”) was accepted for filing by this CCAA Court and was approved by the requisite majorities of voting creditors.
2. Pursuant to Section 20.4(b) of the RBH Plan, the RBH Plan was amended and restated on December 5, 2024 and then further amended and restated on January 27, 2025 (such amended and restated version, the “**Second A&R RBH Plan**”) to make administrative amendments, which in each case were not materially adverse to the financial interests of the Affected Creditors or the Unaffected Creditors.

3. The Second A&R RBH Plan was further amended and restated on February 27, 2025 (such amended and restated version, the “**Third A&R RBH Plan**”) to reflect the terms of certain agreements amongst the stakeholders.
4. On March 6, 2025, pursuant to the Sanction Order, this CCAA Court approved and sanctioned the Third A&R RBH Plan, and appointed EY as the CCAA Plan Administrator pursuant to the CCAA Plan Administrator Appointment Order.
5. On August 27, 2025, this CCAA Court approved certain amendments to the Third A&R RBH Plan, resulting in the Fourth Amended and Restated Plan of Compromise and Arrangement in respect of RBH dated August 27, 2025 (the “**Fourth A&R RBH Plan**”). The Fourth A&R RBH Plan was subsequently implemented on August 29, 2025.

The Proposed Plan Amendments

6. As prefaced in the Monitor’s Twenty-Third Report dated January 15, 2025, there are certain matters related to the Cy-près Foundation that were deferred and not specifically addressed in the Sanction Order or the Fourth A&R RBH Plan.²
7. All stakeholders were aware at the time of the Sanction Hearing that the Monitor would need to seek a further Order to address those deferred matters and the corresponding necessary additions and amendments to Article 9 of the Fourth A&R RBH Plan (Establishment and Administration of the Cy-près Foundation).
8. Pursuant to Section 20.4(a) of the Fourth A&R RBH Plan, the Monitor is permitted to make amendments, restatements, modifications and/or supplementations to the Fourth A&R

² [EY 23rd Report](#) at para. 22.

RBH Plan following the Meeting Order (issued October 31, 2024), with the approval of the CCAA Court and on notice to the Affected Creditors and RBH.

9. The Amendments are described in paragraphs 11 to 26 of the Thirty-Second Report. A blackline of the proposed amended Article 9 as against the current Article 9 of the Fourth A&R RBH Plan is attached to the Thirty-Second Report as Appendix “B”. The Thirty-Second Report will be served upon the Common Service List, including each of the Affected Creditors and RBH.
10. The Amendments (i) address administrative matters; (ii) provide for the establishment of a foundation management team; (iii) establish an independent executive search process to identify candidates for the Foundation Directors (including the Cy-près Foundation Chair) and the Foundation Management Team; (iv) establish the process for selecting the proposals that will receive grants from the Cy-près Fund; (v) address the Cy-près Foundation Chair proposed in the Fourth A&R RBH Plan; and (vi) set out the intended use of the capital of the Cy-près Fund.
11. The Amendments, in each case, are required to better give effect to the implementation of the Fourth A&R RBH Plan and are not adverse to the interests of the Affected Creditors or Unaffected Creditors. They are consistent with the compromise and settlement contemplated in the Fourth A&R RBH Plan, as approved by the voting creditors and sanctioned by this CCAA Court.
12. The Monitor and the CCAA Plan Administrator are requesting that the Amendments be approved by the CCAA Plan Amendment Order #3. If approved, the Amendments will be formally incorporated into an amended and restated version of the Fourth A&R RBH Plan

at a later date, which will also include further relief being sought with respect to other matters.

13. The Monitor and the CCAA Plan Administrator does not anticipate that any Affected Creditors or Unaffected Creditors will be prejudiced by the Amendments.
14. The Impacted Claimants and the Tobacco Companies were consulted with respect to the Amendments.

Additional Grounds and Jurisdiction

15. Section 20.4(a) of the Fourth A&R RBH Plan.
16. Sections 7 and 11 of the CCAA and the inherent and equitable jurisdiction of this CCAA Court.
17. Rules 1.04, 1.05, 2.03, 3.02, 10.01, 16, 37 and 59 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended and the *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended.
18. Such further and other grounds as counsel may advise and this CCAA Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of this motion:

19. The Thirty-Second Report; and
20. Such further and other evidence as counsel may advise and this CCAA Court may permit.

July 28, 2026

Cassels Brock & Blackwell LLP
Suite 3200, Bay Adelaide Centre – North
Tower
40 Temperance St
Toronto, ON, M5H 0B4

R. Shayne Kukulowicz
Tel: 416-860-6463
Email: skukulowicz@us.cassels.com

Monique Sassi
Tel: 416-860-6886
Email: msassi@cassels.com

Alec Hoy
Tel: 416-860-2976
Email: ahoy@cassels.com

*Lawyers for Ernst & Young Inc., in its
capacity as Monitor and CCAA Plan
Administrator*

TO: COMMON SERVICE LIST

Schedule “A”
Virtual Hearing Protocol

PROTOCOL FOR MOTION BY ZOOM VIDEO CONFERENCE

Scheduling and Specific Requirements

1. Any person on the Service List that wishes to appear virtually on the motion(s) (“**Participants**”) must register by 4:00 p.m. on Wednesday, August 5, 2026 for the motion(s) scheduled for Friday, August 7, 2026, by emailing Veritext Litigation Solutions Canada, Inc. (scheduling-on@veritext.com) and copying counsel for each Monitor / CCAA Plan Administrator (nfe-dak@dwpv.com, ehyderman@cassels.com, nancy.thompson@blakes.com). In their email, Participants should provide contact information, including their name, the party they are acting for, their email address and phone number for the counsel slip, along with a statement regarding whether they intend to make submissions.
2. Subject to the Court’s overriding discretion over all matters, counsel for the Monitors / CCAA Plan Administrators will coordinate with Participants and the Court to develop an agenda for the hearing.
3. All material for use on the motion(s) is to be posted on Case Center, as more fully described in Appendix “B”.
4. Participants will appear by video. Veritext will distribute the Zoom link to registered Participants. Participants are not permitted to forward or share the Zoom link. No person should have access to the hearing on Zoom other than Participants. If a Participant is unable to attend by video, they should contact counsel for the Monitors / CCAA Plan Administrators. Participants should carefully review the technical requirements below.
5. Counsel are required to gown for the hearing.
6. For access by the general public, a YouTube link will be posted on each of the Monitors’ websites by 10:00 a.m. not less than two (2) business days prior to the hearing. The YouTube link will allow the general public to view a livestream of the hearing, but not participate in the hearing. For greater clarity, individuals viewing the livestream via YouTube will not be heard or seen by the Court, Judge or Participants.
7. No recording of any part of the hearing (including audio) may be made unless authorized in advance by the Court.
8. For greater certainty, notice and service requirements are set out in the Rules of Civil Procedure and the various orders and endorsements in the proceedings. For ease of reference, we have included paragraphs 58-63 of the Second Amended and Restated Initial Order dated

March 8, 2019 in the JTIM proceedings, attached as Appendix “A”. It should be noted that similar notice and service requirements have been set out in various orders and endorsements in the parallel proceedings of Imperial and RBH. Nothing in this protocol modifies or amends Orders of the Court related to service requirements, the Rules of Civil Procedure, any Commercial List Practice Direction or other applicable rules.

9. Participants will be placed into a virtual waiting room upon entering the Zoom meeting.

Technical Requirements for Zoom Participants

10. Participants will require a device with a working microphone and camera. The device can be a computer (desktop or laptop), tablet or smartphone. The device must be connected to an internet connection that is sufficient to send and receive video and audio.

11. Each Participant is responsible for ensuring that they have suitable equipment to participate in the hearing and that such equipment works properly. Participants must test such equipment well in advance of the scheduled hearing to ensure:

- (a) that they are familiar with how to use such equipment;
- (b) the compatibility and functioning of such equipment; and
- (c) that the remote location has adequate internet bandwidth to support the use of Zoom without interruption.

12. Each Participant is also responsible for ensuring that they are familiar with the features and operation of Zoom. Participants must ensure that they have downloaded any necessary software, and practiced using Zoom, well in advance of the scheduled hearing.

13. Counsel on Zoom should identify their display name in the following format: [First Name] [Last name], for [Client].

14. Participants should log on using the Zoom link provided approximately 30 minutes before the hearing is scheduled to begin. During this time, Participants should speak to each other to determine if there are any audio/visual/connection issues.

15. It is suggested that Participants use the “gallery view” mode, rather than the “active speaker” mode, available on Zoom.

16. It is suggested that only counsel who are making submissions turn on their cameras during the hearing.

17. Should a Participant become disconnected from Zoom or experience technical difficulties during the hearing, they should immediately inform the Court by sending an email to Veritext Litigation Solutions Canada, Inc. (scheduling-on@veritext.com).
18. Further participant information is included in Appendix "B."

APPENDIX "A"

58. **THIS COURT ORDERS** that, subject to paragraph 59, all motions in this proceeding are to be brought on not less than seven (7) calendar days' notice to all persons on the Service List. Each Notice of Motion shall specify a date (the **"Return Date"**) and time for the hearing.

59. **THIS COURT ORDERS** that motions for relief on an urgent basis need not comply with the notice protocol described herein.

60. **THIS COURT ORDERS** that any interested Person wishing to object to the relief sought in a motion must serve responding motion material or, if they do not intend to file material, a notice in all cases stating the objection to the motion and the grounds for such objection in writing (the **"Responding Material"**) to the moving party, the Applicant and the Monitor, with a copy to all Persons on the Service List, no later than 5 p.m. on the date that is four (4) calendar days prior to the Return Date (the **"Objection Deadline"**).

61. **THIS COURT ORDERS** that, if no Responding Materials are served by the Objection Deadline, the judge having carriage of the motion (the **"Presiding Judge"**) may determine:

- (a) whether a hearing is necessary;
- (b) whether such hearing will be in person, by telephone or by written submissions only; and
- (c) the parties from whom submissions are required

(collectively, the **"Hearing Details"**). In the absence of any such determination, a hearing will be held in the ordinary course.

62. **THIS COURT ORDERS** that, if no Responding Materials are served by the Objection Deadline, the Monitor shall communicate with the Presiding Judge regarding whether a determination has been made by the Presiding Judge concerning the Hearing Details. The Monitor shall thereafter advise the Service List of the Hearing Details and the Monitor shall report upon its dissemination of the Hearing Details to the Court in a timely manner, which may be contained in the Monitor's next report in the proceeding.

63. **THIS COURT ORDERS** that if any party objects to the motion proceeding on the Return Date or believes that the Objection Deadline does not provide sufficient time to respond to the motion, such objecting party shall, promptly upon receipt of the Notice of Motion and in any event prior to the Objection Deadline, contact the moving party and the Monitor (together with the objecting party and any other party who has served Responding Materials, the "**Interested Parties**") to advise of such objection and the reasons therefor. If the Interested Parties are unable to resolve the objection to the timing and schedule for the motion following good faith consultations, the Interested Parties may seek a scheduling appointment before the Presiding Judge to be held prior to the Return Date or on such other date as may be mutually agreed by the Interested Parties or as directed by the Presiding Judge to establish a schedule for the motion. At the scheduling appointment, the Presiding Judge may provide directions including a schedule for the delivery of any further materials and the hearing of the contested motion, and may address such other matters, including interim relief, as the Court may see fit. Notwithstanding the foregoing, the Presiding Judge may require the Interested Parties to proceed with the contested motion on the Return Date or on any other date as may be directed by the Presiding Judge or as may be mutually agreed by the Interested Parties, if otherwise satisfactory to the Presiding Judge.

APPENDIX “B”

1. All Participants will have their microphones muted and may only unmute their own microphones when they are addressing the Court. When parties are not muted, they must avoid making extraneous noise (including for example, typing and shuffling papers) as these noises may interfere with the hearing.
2. Participants must ensure that they participate in the Zoom hearing from a well-lit room so that they are easily visible. Participants must also ensure that no filters are active that may distort or otherwise conceal their appearance.
3. Participants must ensure that they participate in the Zoom hearing from a quiet location where they (and the Court) will not be interrupted or disturbed during the hearing.
4. All mobile devices must be turned off or put on silent mode during the hearing.
5. Participants must refrain from speaking over other Participants.
6. Participants should make submissions in accordance with the order set out in the agenda. If there is a need to make submissions out of sequence, Participants should make a request in a manner directed by the Court. The Court may ask Participants to signal when they intend to address the Court by raising their hand (either by physically raising their hand or by using the virtual “raise hand” feature in Zoom).
7. Participants must state their name and who they represent before addressing the Court.
8. Upon entry into the virtual waiting room, each Participant joining by video should identify themselves, including any person off camera that may be viewing the video feed. This also allows any audio or visual issues to be identified. Each Participant is obligated to immediately notify the presiding judge if any additional person joins them in viewing the video feed.
9. If a Participant intends to rely on any documents, the materials you intend to rely on must be served and shared on the relevant Case Center bundle and all references during the hearing should reference the Case Center page numbering associated with such Case Center bundle.
10. If a party wishes to share certain documents during the hearing, the documents should be provided to the Monitors in advance so that it can be added to the agenda and a method for sharing can be set up.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
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ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
PROCEEDING COMMENCED AT TORONTO

NOTICE OF MOTION
CCAA PLAN AMENDMENT ORDER #3
(ARTICLE 9)

Cassels Brock & Blackwell LLP
Suite 3200, Bay Adelaide Centre – North Tower
40 Temperance St
Toronto, ON, M5H 0B4

R. Shayne Kukulowicz
Tel: 416-860-6463
Email: skukulowicz@us.cassels.com

Monique Sassi
Tel: 416-860-6886
Email: msassi@cassels.com

Alec Hoy
Tel: 416-860-2976
Email: ahoy@cassels.com

*Lawyers for Ernst & Young Inc., in its capacity as Monitor
and CCAA Plan Administrator*

TAB 2

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF
ROTHMANS, BENSON & HEDGES INC.

Applicant

THIRTY-SECOND REPORT OF THE MONITOR AND CCAA PLAN
ADMINISTRATOR

July 28, 2026

INTRODUCTION¹

1. On March 22, 2019, Rothmans, Benson & Hedges Inc. ("**RBH**", the "**Company**" or the "**Applicant**") applied for and obtained an initial order (the "**Initial Order**") under the *Companies' Creditors Arrangement Act* that, amongst other things, (i) granted a stay of proceedings in favour of the Applicant and a limited stay of proceedings in favour of members of the PMI Group (as defined in the Initial Order) in relation to certain proceedings, and (ii) appointed Ernst & Young Inc. as monitor ("**EYI**" and in such capacity, the "**Monitor**") of the Applicant in this CCAA proceeding (the "**CCAA Proceeding**").
2. On April 25, 2019, this Court (the "**CCAA Court**") issued a further amended and restated Initial Order (the "**Second Amended and Restated Initial Order**") that, amongst other things, extended a limited stay of proceedings to the Other Defendants (as defined in the Second Amended and Restated Initial Order).
3. Pursuant to Orders dated October 31, 2024, this Court among other things, approved the filing of a plan of compromise or arrangement dated October 17, 2024 (the "**CCAA Plan**") in respect of the Applicant, set the meeting of creditors for December 12, 2024 (the "**RBH**

¹ Capitalized terms used but not otherwise defined have the meanings ascribed to them in the Fourth Amended and Restated Plan of Compromise and Arrangement in respect of the Applicant dated August 22, 2025 (the "**Fourth A&R RBH Plan**").

Meeting”) for affected creditors to vote on the CCAA Plan, and approved a claims procedure to identify affected claims against the Applicant for purposes of voting on the CCAA Plan.

4. On December 5, 2024, the Monitor served the first amended and restated plan of compromise or arrangement in respect of the Applicant (the “**A&R RBH Plan**”) on the Common Service List. The RBH Meeting took place virtually on December 12, 2024 and the A&R RBH Plan was unanimously approved by the Eligible Voting Creditors. The A&R RBH Plan has since been amended and restated twice.
5. On February 27, 2025, the Monitor served the third amended and restated plan of compromise or arrangement in respect of the Applicant (the “**Third A&R RBH Plan**”), on the Common Service List. On March 6, 2025, the CCAA Court issued an Order (the “**Sanction Order**”) and endorsement sanctioning the Third A&R RBH Plan. On the same day, the Court issued an Order appointing EYI as the CCAA Plan Administrator in respect of RBH (the “**CCAA Plan Administrator**”).
6. On August 27, 2025, the CCAA Court issued an Order approving further amendments to the Third A&R RBH Plan (as amended, the “**Fourth A&R RBH Plan**”). The Fourth A&R RBH Plan was implemented on August 29, 2025.

PURPOSE

7. The purpose of this thirty-second report of the Monitor (the “**Thirty-Second Report**”) is to provide information to this Court with respect to certain additions and amendments to Article 9 of the Fourth A&R RBH Plan and certain related provisions (the “**Amendments**”), and the Monitor and CCAA Plan Administrator’s recommendations in respect of the proposed CCAA Plan Amendment Order #3. Paragraphs 11 to 26 of this Report are also set out in the 34th Report of Imperial Monitor and 32nd Report of JTIM Monitor.

TERMS OF REFERENCE

8. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.
9. Copies of the Monitor's prior reports, including a copy of this Thirty-Second Report, and all motion records and Orders in the CCAA Proceeding are available on the Monitor's website at www.ey.com/ca/rbh. The Monitor has also established a toll-free phone number that is referenced on the Monitor's website so that parties may contact the Monitor if they have questions with respect to the CCAA Proceeding.
10. This Report was prepared in coordination with the Monitors and CCAA Plan Administrators of the other Tobacco Companies.

PROPOSED AMENDMENTS TO THE FOURTH A&R RBH PLAN

11. As prefaced in the Monitor's Twenty-Third Report dated January 15, 2025, there are certain matters related to the Cy-près Foundation which were deferred and not specifically addressed in the Sanction Order or the Fourth A&R RBH Plan.
12. The Amendments are attached hereto as Appendix "A" and a blackline of the Amendments as against the relevant provisions of the Fourth A&R RBH Plan is attached hereto as Appendix "B".
13. As further described below, the Amendments: (i) address administrative matters; (ii) provide for the establishment of the Cy-près Foundation management team (the "**Foundation Management Team**"); (iii) establish an independent executive search process to identify candidates for the Foundation Directors (including the Cy-près Foundation Chair) and the Foundation Management Team; (iv) establish the process for selecting the proposals that will receive grants from the Cy-près Fund; (v) address the Cy-près Foundation Chair proposed in the Fourth A&R RBH Plan; and (vi) set out the use of capital and income of the Cy-près Fund.

Administrative Matters

14. In order to address certain administrative and deferred matters, the Amendments, among other things:
- i) name the Cy-près Foundation: “Tobacco Cy-Près Research Foundation of Canada / Fondation canadienne cy-près de recherche sur le tabac”;
 - ii) provide additional detail regarding the purpose and terms of reference of the Cy-près Foundation;
 - iii) provide additional detail on the process for the establishment of the Cy-près Foundation and its approval by the CCAA Court;
 - iv) establish various administrative and day-to-day operational requirements for the Cy-près Foundation; and
 - v) establish the duties of the Cy-près Foundation Board, the Cy-près Foundation Chair and the Cy-près Foundation Chief Executive Officer.

Establishment of the Foundation Management Team

15. Due to certain restrictions on remuneration of directors of not-for-profit corporations, the Amendments provide for the Foundation Management Team to oversee and ensure the effective and efficient management, administration, and operation of the Cy-près Foundation.

Executive Search Process

16. In order to ensure a comprehensive search process which identifies qualified individuals and avoids potential conflicts of interest, the Amendments provide for the retention of an independent executive search firm.
17. The Executive Search Firm will identify potential candidates to serve as the Foundation Directors, including the Cy-près Foundation Chair, and the Foundation Management Team.

The Executive Search Firm will then make recommendations to the PCC Representative Counsel and the CCAA Plan Administrators.

18. The Executive Search Firm has been selected and its engagement will only be finalized if Plan Amendment Order #3 is granted.
19. The Amendments also specifically set out the requirements for the members of the Cy-près Foundation Board who individually or collectively will have certain knowledge, training or experience to govern, administer and manage the Cy-près Foundation and fulfil their primary duty and responsibility to select the research, programs and/or initiatives that will be approved for funding from the Cy-près Fund each year.
20. The Amendments establish that the appointment of all Foundation Directors shall be subject to the approval of the CCAA Court.

Selection Process for Cy-près Fund Grants

21. The Amendments establish a process, to be administered by the Foundation Management Team and overseen by the Foundation Board. Proposals may be submitted to the Cy-près Foundation for funding from the Cy-près Fund and any Proposals received through this process will be reviewed by the Foundation Management Team in accordance with the guiding principles of Rational Connection, Materiality, Proportionality and Conflict of Interest, which are set out in greater detail in the Amendments.
22. The Amendments provide for a process for the recruitment of Peer Reviewers by the Foundation Management Team to review Proposals and submit summaries, assessments and ratings of such Proposals. After the Peer Review process, Proposals will be finally reviewed and selected by the Foundation Board.
23. Details of successful Proposals will be published on the website of the Cy-près Foundation and included in an annual written report to be submitted to the CCAA Plan Administrators and the CCAA Court.

Cy-près Foundation Chair

24. The existing Fourth A&R RBH Plan proposes Dr. Bell as the Chair of the Cy-près Foundation. Given the establishment of the independent search process, it is appropriate for the integrity of that process to include the search for the Chair of the Cy-près Foundation.
25. Accordingly, the Amendments remove the proposal of Dr. Bell as the Cy-près Foundation Chair; however, Dr. Bell will be included as a candidate in the search process.

Cy-près Fund Capital

26. The Amendments establish that Grants are intended to be distributed to Grant Recipients from the income of the Cy-près Fund. However, Grants may be funded from the capital of the Cy-près Fund, provided that the CCAA Court has approved the use of capital in advance.

CONCLUSION AND RECOMMENDATION

27. Pursuant to section 20.4(a) of the Fourth A&R RBH Plan, the Monitor is permitted to make amendments, restatements, modifications, or supplementations to the Fourth A&R RBH Plan following the Meeting Order (issued October 31, 2024) with the approval of this Court and on notice to Affected Creditors and RBH.
28. All stakeholders were provided notice at the time of the Sanction Hearing that the Monitor would need to seek one or more further Orders in the future in respect of Article 9 of the Fourth A&R RBH Plan. The Impacted Claimants and the Tobacco Companies were consulted with respect to the Amendments.
29. The Monitor and CCAA Plan Administrator is not aware of any party which currently intends to oppose the granting of the CCAA Plan Amendment Order #3. In the view of the Monitor and CCAA Plan Administrator, no Affected Creditor will be prejudiced by the Amendments.
30. The Amendments, in each case, are required to implement the Fourth A&R RBH Plan and are consistent with the compromise and settlement contemplated in the Fourth A&R RBH Plan, as approved by the voting creditors and sanctioned by this Court.

31. For the reasons outlined in this Report, the Monitor and CCAA Plan Administrator supports the approval of the Amendments to Article 9 and certain related provisions of the Fourth A&R RBH Plan and the granting of the CCAA Plan Amendment Order #3.
32. The Monitor and CCAA Plan Administrator respectfully submits this Report.

All of which is respectfully submitted this 28th day of July, 2026.

ERNST & YOUNG INC.
In its capacity as Monitor and CCAA Plan Administrator of
Rothmans, Benson & Hedges Inc.

Per:

A handwritten signature in black ink, appearing to be 'MK' or similar initials, written in a cursive style.

Matt Kaplan
Senior Vice President

Appendix “A”

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SCHEDULES

Schedule “T”: **Intentionally deleted**

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ARTICLE 1. INTERPRETATION

1.1 Definitions

In the CCAA Plan, including all Schedules hereto, unless otherwise stated or the context otherwise requires:

“**Board Composition Requirements**” has the meaning given in Article 9, Section 9.5.1.

“**Chair**” means the chair of the Foundation Board.

“**Clinical Trial**” means a research study involving human participants that evaluates the safety and/or effectiveness of one or more interventions on health outcomes.

“**CNFPA**” means the *Canada Not-for-profit Corporations Act*, SC 2009, c 23, as amended.

“**Conflict of Interest**” has the meaning given in Article 9, Section 9.9.4.

“**Executive Search Firm**” has the meaning given in Article 9, Section 9.5.1.

“**Executive Search Process**” means the process whereby the Executive Search Firm, which will be retained by the PCC Representative Counsel, will conduct independent searches to identify:

- (a) qualified Individuals whom the Executive Search Firm will recommend, subject to the approval of the CCAA Court, for appointment to serve as (i) the Foundation Directors, including the Chair, and (ii) the Replacement Foundation Directors, including the Replacement Chair, and
- (b) qualified Individuals whom the Executive Search Firm will recommend for employment by the Cy-près Foundation as the Foundation Management Team.

“**Final Review**” has the meaning given in Article 9, Section 9.13.

“**Foundation Board**” means the board of directors of the Cy-près Foundation.

“**Foundation Chief Executive Officer**” has the meaning given in Article 9, Section 9.6.3.

“**Foundation Directors**” has the meaning given in Article 9, Section 9.4(f).

“**Foundation Management Team**” has the meaning given in Article 9, Section 9.6.3.

“**Grant**” means the sum of money awarded to a Grant Recipient to cover the direct costs associated with undertaking and completing the research, program or initiative proposed in a Proposal that the Foundation Board approves for funding from the Cy-près Fund.

“**Grant Recipient**” means a Proposal Proponent whose Proposal has been approved for funding from the Cy-près Fund and who carries out the activities described in the Proposal.

“Individuals” means all individuals residing in a province or territory of Canada, and **“Individual”** means any one of them.

“Initial Foundation Members” has the meaning given in Article 9, Section 9.4(c).

“Material” has the meaning given in Article 9, Section 9.9.2.

“Mission” has the meaning given in Article 9, Section 9.3.

“Non Tobacco-related Disease” means a disease or other illness or harm that is not caused or contributed to by the use of or exposure (whether directly or indirectly) to a Tobacco Product.

“Peer Review” means the process used to review Proposals for research submitted in response to an RFP that involves the evaluation and ranking of Proposals by a group of Peer Reviewers who individually and/or collectively have the required experience and expertise to assess the quality and potential impact of the proposed research within the context of the Mission of the Cy-près Foundation.

“Peer Reviewers” has the meaning given in Article 9, Section 9.12.

“Preliminary Review” has the meaning given in Article 9, Section 9.10.

“Proportionality” has the meaning given in Article 9, Section 9.9.3.

“Proposal” means the written document submitted to the Cy-près Foundation by a Proposal Proponent that describes the Rational Connection, objectives, methodology, organization and administrative details of a proposed research, program or initiative for which funding is sought from the Cy-près Fund.

“Proposal Proponent” means an Individual, group of Individuals, or institution, organization or entity incorporated and operating in Canada that submits a Proposal to the Cy-près Foundation and, if the Proposal is approved for funding from the Cy-près Fund, will be responsible for coordinating the financial and administrative aspects of the Grant and leading the direction of the proposed activities described in the Proposal.

“Proposal Reviewers” has the meaning given in Article 9, Section 9.6.1(j).

“Rational Connection” has the meaning given in Article 9, Section 9.9.1.

“Replacement Chair” has the meaning given in Article 9, Section 9.5.2.

“Replacement Foundation Directors” has the meaning given in Article 9, Section 9.5.2.

“RFP” means a request for proposals that is published by the Cy-près Foundation soliciting the submission of Proposals from interested Individuals, groups of Individuals, and institutions, organizations and entities incorporated and operating in Canada seeking financing and support for research, programs and initiatives which fall within the scope of the Mission of the Cy-près Foundation and have a Rational Connection.

“**Streamlining Review**” has the meaning given in Article 9, Section 9.11.

“**Tobacco-related Diseases**” means all diseases or other illnesses or harms caused or contributed to by the use of or exposure (whether directly or indirectly) to a Tobacco Product, and “**Tobacco-related Disease**” means any one of them.

“**Tri-Agency Policies**” means the policies, statements and guidelines mandated by the following three federal research funding agencies: the Canadian Institutes of Health Research, the Natural Sciences and Engineering Research Council and the Social Sciences and Humanities Research Council.

“**Unanimous Members’ Agreement**” has the meaning given in Article 9, Section 9.4(f).

....

1.4 Schedules

The following are the Schedules to the CCAA Plan, which are incorporated by reference into the CCAA Plan and form an integral part of it:

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Schedule “T”: **Intentionally deleted**

Schedule “U”: **Intentionally deleted**

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ARTICLE 9. ESTABLISHMENT AND ADMINISTRATION OF THE CY-PRÈS FOUNDATION

9.1 Purpose of the Cy-près Foundation

The Cy-près Fund will be administered by a public charitable foundation (“**Cy-près Foundation**”) to be established as part of the implementation of the CCAA Plan. The Cy-près Foundation shall be independent and free from any influence or interference by any of the Claimants, Tobacco Companies, Tobacco Company Groups, or any potential or actual beneficiary of the Cy-près Foundation. Although it is recognized that the governance of the Cy-près Foundation will be independent and free from any influence or interference, the Cy-près Foundation shall remain under the jurisdiction of the CCAA Court.

Improving outcomes in Tobacco-related Disease, through earlier diagnosis, more effective treatment, and better long-term health, has the potential to confer broad societal benefits. The Cy-près Foundation’s work, therefore, is intended to address the circumstances of Individuals who suffer or may in the future suffer from a Tobacco-related Disease, except those Individuals who receive a direct benefit under the PCC Compensation Plan or the Quebec Administration Plan, by funding research, programs or initiatives that have a Rational Connection to Tobacco-related Disease.

In addition, the Cy-près Foundation will confer a benefit to those members of the public in Canada who contracted disease otherwise than as a result of smoking, and regardless of the fact that this was not an intended purpose of the Cy-près Foundation. The research, programs and initiatives that are funded will have broader application beyond Tobacco-related Diseases by reason of the fact that the products of the research, programs and initiatives are definitionally generic, that is, the outcomes are not limited to disease contracted as a result of the use of or exposure to Tobacco Products. By way of illustration, advances in the diagnosis, treatment and management of diseases such as Lung Cancer arising from such work may benefit all persons suffering from this condition, regardless of whether their disease is attributable to the use of or exposure to Tobacco Products.

The Cy-près Fund is consideration for the full and final settlement and release of all claims and potential claims of PCCs who are not eligible to receive Individual Payments from the PCC Compensation Plan, and *Létourneau* Class Members who are not eligible to receive Compensation Payments from the Quebec Administration Plan, but are intended to be indirectly benefited by falling within the scope of the research, programs and initiatives to be funded by the Cy-près Foundation that will focus on achieving earlier diagnosis, more effective treatment and improved outcomes for Individuals who suffer or may in the future suffer from tobacco-related cancers, Emphysema/COPD and other Tobacco-related Diseases. For clarity, the intention is that the Cy-près Foundation will fund but not create, conduct or administer research, programs or initiatives. The broad group of claimants who are intended to receive benefits from the research, programs and initiatives to be funded by the Cy-près Foundation includes the following Individuals and any of their affected family members or estates:

- (a) Smokers who suffer or may in the future suffer from Lung Cancer or Throat Cancer or Emphysema/COPD (GOLD Grade III or IV) who are outside the PCC Claims Period or

who smoked less than the requisite Twelve Pack-Years or, in the case of Emphysema/COPD, were not classified as GOLD Grade III or IV or the equivalent;

- (b) Smokers who suffer or may in the future suffer from a Tobacco-related Disease other than Lung Cancer or Throat Cancer and Emphysema/COPD (GOLD Grade III or IV) or the equivalent; and
- (c) Individuals who smoke or have smoked Tobacco Products and have not yet or may never develop a Tobacco-related Disease.

In respect of all Proposals which the Foundation Board selects for approval to receive a Grant from the Cy-près Fund, on a case-by-case basis, the Foundation Board must determine that there is some basis in fact to conclude that there is a Rational Connection to Tobacco-related Diseases.

The Cy-près Foundation is intended to confer benefits on the public in Canada. The programs and initiatives to be funded by the Cy-près Foundation are intended to serve and benefit Individuals, and the results of the research to be funded by the Cy-près Foundation are intended to enure to the benefit of Individuals who suffer or may in the future suffer from Tobacco-related Diseases. Grant Recipients will be required to make their research findings and recommendations open to the public by contributing them to the Canadian body of medical knowledge and disseminating them to health care practitioners across Canada through publication in peer-reviewed journals and academic databases and presentations made at medical conferences.

As described in Article 9, Section 9.9.1 herein, the guiding principle for the Cy-près Foundation is that the research, programs and initiatives that it funds must have a Rational Connection to a Tobacco-related Disease in that they will focus on achieving earlier diagnosis, more effective treatment and improved outcomes for Individuals who suffer or may in the future suffer from Tobacco-related Disease. This guiding principle will apply throughout the duration of the Cy-près Foundation's existence to the work product generated by the research and the programs and initiatives funded from the Cy-près Fund.

The payment of the QCAP Cy-près Contribution in the amount of \$131 million shall be the consideration for the full and final settlement and satisfaction of the *Létourneau* Judgment.

The document entitled "Cy-près Fund: Methodology and Analysis" is attached to the CCAA Plan as Schedule "V".

9.2 Funding the Cy-près Foundation

The Cy-près Fund shall be paid in the aggregate amount set out in Article 16 from the Imperial Global Settlement Trust Account, RBH Global Settlement Trust Account and JTIM Global Settlement Trust Account and deposited, respectively, into the Imperial Cy-près Trust Account, RBH Cy-près Trust Account and JTIM Cy-près Trust Account for the benefit of the Cy-près Foundation. The proportionate shares of the Cy-près Fund which the Trustees shall transfer from each of the Imperial Global Settlement Trust Account, RBH Global Settlement Trust Account and JTIM Global Settlement Trust Account into, respectively, the Imperial Cy-près Trust Account, RBH Cy-près Trust Account and JTIM Cy-près Trust Account shall be equal to: (i) on the Plan Implementation Date, the proportionate shares of the Upfront Contributions made by Imperial,

RBH and JTIM; and (ii) in respect of years 2, 3, 4 and 5 following the Plan Implementation Date and any subsequent years until the Cy-près Fund has been paid in full, the proportionate shares of the Annual Contributions made by Imperial, RBH and JTIM in each of those years. The Cy-près Fund shall not be transferred to the Cy-près Foundation until such time as all aspects of the establishment of the Cy-près Foundation as set out in Section 9.4 herein have been given final approval by the CCAA Court, and the Imperial Cy-près Trust Account, RBH Cy-près Trust Account and JTIM Cy-près Trust Account have been duly established in the Bank. Following such time, the Cy-près Fund, including all amounts held in the Imperial Cy-près Trust Account, RBH Cy-près Trust Account and JTIM Cy-près Trust Account will be transferred to, and held by, the Cy-près Foundation. Following the transfer of such amounts to the Cy-près Foundation, any further payments to the Cy-près Foundation to be made by Imperial, RBH and JTIM shall be paid, respectively, from the Imperial Global Settlement Trust Account, the RBH Global Settlement Trust Account and the JTIM Global Settlement Trust Account and deposited to the Cy-près Foundation. The proportionate shares of the Cy-près Fund which the Trustees shall transfer from each of the Imperial Global Settlement Trust Account, the RBH Global Settlement Trust Account and the JTIM Global Settlement Trust Account to the Cy-près Foundation shall be the proportionate shares of the Annual Contributions made by Imperial, RBH and JTIM in each of those years.

9.3 Cy-près Foundation Terms of Reference

The Terms of Reference of the Cy-près Foundation are set out below:

Tobacco Cy-Près Research Foundation of Canada / Fondation canadienne cy-près de recherche sur le tabac

Terms of Reference

Introduction: This document describes the terms of reference for the Cy-près Foundation.

Foundation Name: The corporate name of the Cy-près Foundation shall be “Tobacco Cy-Près Research Foundation of Canada / Fondation canadienne cy-près de recherche sur le tabac” which clearly relates to the purpose of the Cy-près Foundation which is to distribute the Cy-près Fund. This name will be used on the Cy-près Foundation’s website and other presentation materials.

Purpose of the Cy-près Foundation: The Cy-près Foundation’s purpose is to provide an indirect benefit to Individuals who suffer or may in the future suffer from Tobacco-related Disease, except those Individuals who receive a direct benefit under the PCC Compensation Plan or the Quebec Administration Plan by funding research, programs and initiatives focused on achieving earlier diagnosis, more effective treatment and improved outcomes in Tobacco-related Disease. The Cy-près Foundation is intended to indirectly benefit users of Tobacco Products and their affected family members or estates who are not eligible to receive payments of compensation from the Quebec Administration Plan or the PCC Compensation Plan. The Individuals who will be directly compensated through the Quebec Administration Plan and PCC Compensation Plan include Individuals suffering from Lung Cancer, Throat Cancer or Emphysema/COPD (GOLD Grade III or IV) as defined in those plans. While the Cy-près Foundation is not intended to benefit those Individuals who are directly compensated, they may receive an incidental benefit from the

research, programs and initiatives it funds. The Cy-près Foundation will also benefit the Canadian public at large by funding research, programs and initiatives pertaining to Tobacco-related Diseases.

The Cy-près Foundation will not make any monetary payments to Individuals making claims arising from Tobacco-related Diseases. Those Individuals who are eligible to receive monetary compensation may be paid through either the Quebec Administration Plan or the PCC Compensation Plan in accordance with the provisions of those plans.

The users of Tobacco Products in the provinces and territories who suffer or may in the future suffer from Tobacco-related Disease, except those Individuals who receive a direct benefit under the PCC Compensation Plan or the Quebec Administration Plan, include the following Individuals and any of their affected family members or estates:

- i) Smokers suffering from Lung Cancer, Throat Cancer or Emphysema/COPD (GOLD Grade III or IV) who are outside the PCC Claims Period or who smoked less than the requisite Twelve Pack-Years or, in the case of Emphysema/COPD, were not classified as GOLD Grade III or IV or the equivalent;
- ii) Smokers who have a Tobacco-related Disease other than Lung Cancer, Throat Cancer and Emphysema/COPD (GOLD Grade III or IV) or the equivalent; and
- iii) Individuals who smoke or have smoked Tobacco Products and have not yet or may never develop a Tobacco-related Disease.

Vision for the Cy-près Foundation: Canadians in all provinces and territories will experience earlier diagnosis, more effective treatment and improved outcomes for tobacco-related cancers, Emphysema/COPD and other Tobacco-related Diseases.

Mission of the Cy-près Foundation (“Mission”): The Cy-près Foundation will indirectly benefit current, past and future smokers and their families by funding research, programs and initiatives that will focus on achieving earlier diagnosis, more effective treatment and improved outcomes for Individuals who suffer or may in the future suffer from Tobacco-related Diseases.

Values of the Cy-près Foundation: The Cy-près Foundation will focus on: the inherent value of the research, program or initiative from the standpoint of its indirect benefit to Individuals who suffer or may in the future suffer from a Tobacco-related Disease; the need to maintain a Rational Connection between the work funded by the Cy-près Foundation and those Individuals who suffer or may in the future suffer from a Tobacco-related Disease; commitment to principles of best evidence and expert peer review; collaboration to increase the impact of research funding while limiting Cy-près Foundation overhead costs to maximize the indirect benefit to Individuals who fall within the scope of the Cy-près Foundation; and, ensuring that Cy-près Foundation funded research, programs and initiatives reflect the principles of health equity and opportunity for inclusion of First Nations, Metis and Inuit people.

What Will Be Eligible for Consideration for Support by the Cy-près Foundation: Proposals regarding research, programs and initiatives that have a Rational Connection to Tobacco-related Disease will be received by the Cy-près Foundation for consideration of eligibility for financial

support from the Cy-près Foundation. Research regarding and programs and initiatives aimed at reducing or preventing tobacco use in Canada are outside of the scope of the Cy-près Foundation because they fall within the purview of the Provinces and Territories, involving policy issues and advocacy. Accordingly, such programs and initiatives will not be considered for funding from the Cy-près Foundation.

The fact that a Proposal requesting funding for research or a program or initiative is received by the Cy-près Foundation for consideration does not mean that it will necessarily be awarded a Grant. The decision regarding whether to provide funding for a Proposal is within the sole discretion of the Foundation Board and is not reviewable by the CCAA Court or any other court in Canada.

Early works:

- Establish “Tobacco Cy-Près Research Foundation of Canada / Fondation canadienne cy-près de recherche sur le tabac” and apply for registration as a “registered charity”, as that term is defined in the ITA, and a public foundation for the purposes of the ITA.
- Recruit a neutral and independent Foundation Board that will provide oversight of the Cy-près Foundation’s strategy for funding research, programs and initiatives to be funded by the Cy-près Foundation. The Foundation Board will also retain an investment and asset management firm to develop and oversee the financial and investment strategy for the Cy-près Foundation, subject to instructions from the Foundation Board.
- Develop a strategic plan for the implementation of the intended activities of the Cy-près Foundation.

Potential Areas of Cy-près Foundation Financial Support:

- Improving methods for screening, diagnosis and treatment of tobacco-related cancers.
- Establishing best practices for diagnosis and treatment of tobacco-related cancers, Emphysema/COPD and other Tobacco-related Diseases and increasing the likelihood that Canadians can achieve access to best practice care of these diseases.
- Researching the treatment of nicotine addiction and dependence, and tobacco use in Canada.
- Researching the effective treatment and palliation of Tobacco-related Diseases.
- Funding such other program or initiative pertaining to Tobacco-related Diseases as the Foundation Board may approve, provided that it has a Rational Connection and fulfills all other requirements for funding.

Benefit to the Public in Canada:

- The results of the research to be funded by the Cy-près Foundation are intended to enure to the benefit of Individuals who suffer or may in the future suffer from Tobacco-related Diseases. The research findings and recommendations regarding earlier diagnosis and

more effective treatment of Tobacco-related Diseases will be contributed to the Canadian body of medical knowledge and disseminated to health care practitioners across Canada through publication in peer-reviewed journals and academic databases and presentations made at medical conferences.

- In addition to benefiting Canadians who have smoked or may smoke in the future, research to be funded by the Cy-près Foundation may have the potential to determine whether screening of higher risk populations and potentially all Canadians can identify cancers at earlier stages of oncogenesis when treatment is less morbid and potential cure is more likely.
- Expanded learnings from Cy-près Foundation supported research into tobacco-related cancers, Emphysema/COPD and other Tobacco-related Diseases are expected to provide a benefit to members of the Canadian public. In fulfilling the Cy-près Foundation's mandate, it is anticipated that the Canadian population will benefit from the knowledge generated by this work.

9.4 CCAA Court Approval of Establishment of Cy-près Foundation

The establishment of the Cy-près Foundation shall take place after the Sanction Hearing and shall be subject to the final approval of the CCAA Court to be sought in a hearing to be held before the CCAA Court after the Cy-près Foundation has been created and the essential requirements to establish the Cy-près Foundation have been fulfilled, including:

- (a) Drafting the goals, objects and purpose of the Cy-près Foundation;
- (b) Registering “Tobacco Cy-Près Research Foundation of Canada / Fondation canadienne cy-près de recherche sur le tabac” as the name of the Cy-près Foundation;
- (c) Selecting three Individuals to serve as the initial directors and members of the Cy-près Foundation (“**Initial Foundation Members**”);
- (d) Preparing the Articles of Incorporation, including the corporate objects, and any Articles of Amendment which will establish the legal entity that will constitute the Cy-près Foundation in accordance with ITA rules for registered charities and public foundations;
- (e) Establishing and registering the legal entity of the Cy-près Foundation through the filing of the Articles of Incorporation and any Articles of Amendment;
- (f) Preparing and executing a unanimous members’ agreement among the Initial Foundation Members (“**Unanimous Members’ Agreement**”) which shall provide, among other things, for the replacement of the Initial Foundation Members with the Individuals who will be recommended through the Executive Search Process for approval by the CCAA Court to be appointed to serve as the directors who will be responsible for the management and operation of the Cy-près Foundation (“**Foundation Directors**”), including the Chair, who together shall constitute the Foundation Board;

- (g) Pursuant to Article 9, Section 9.5, putting forward the Individuals who will be recommended through the Executive Search Process for approval by the CCAA Court to be appointed to serve as the Foundation Directors. Pursuant to the Unanimous Members' Agreement, the Foundation Directors shall replace the Initial Foundation Members;
- (h) Drafting and adopting By-law No. 1 of the Cy-près Foundation setting out the governance structure for the Cy-près Foundation, including matters relating to quorum, voting, frequency of the meetings of the Foundation Board, and other organizational and governance matters;
- (i) Preparing and passing the organizing resolutions of the Cy-près Foundation authorizing, among other things, the governance and operational matters necessary to give effect to the establishment of the Cy-près Foundation;
- (j) Preparing the proposed budget for the first year of the Cy-près Foundation's operation;
- (k) Preparing and filing an application with the CRA for registration of the Cy-près Foundation as a charity under the ITA;
- (l) Setting up the requisite management controls and system of books and records; and
- (m) Establishing the Imperial Cy-près Trust Account, RBH Cy-près Trust Account and JTIM Cy-près Trust Account in the Bank.

After the CCAA Court has rendered the Sanction Order approving the CCAA Plan, the CCAA Plan Administrators may, on an interim basis and consistent with the Terms of Reference of the Cy-près Foundation, proceed to engage in the work of establishing the Cy-près Foundation, including attending to the completion of the essential requirements set out in subparagraphs (a) to (m) above. The CCAA Plan Administrators shall be empowered to retain the services of such experts as they deem necessary to advise them in regard to the foregoing and in respect of any and all endeavours in connection with the establishment and operation of the Cy-près Foundation.

The CCAA Plan Administrators will be required to seek final approval by the CCAA Court of the Cy-près Foundation once the requisite steps to establish the Cy-près Foundation have been completed. The CCAA Plan Administrators shall supply reports to the CCAA Court affirming the foregoing.

9.5 Appointment of Board of Directors and Chair of Cy-près Foundation

9.5.1 Appointment of Foundation Directors in the period after the Sanction Hearing and prior to Final Approval of the Cy-près Foundation by the CCAA Court

The Foundation Board shall be comprised of a minimum of three and maximum of ten neutral and independent Foundation Directors, including the Chair of the Cy-près Foundation, it being intended that the Foundation Board will ordinarily be comprised of ten Foundation Directors, subject only to temporary vacancies or transitional periods pending appointment. The Foundation Directors, including the Chair of the Cy-près Foundation, shall not, either directly or indirectly, be

a Proposal Proponent and shall be otherwise independent of any Proposal submitted to the Cy-près Foundation. The Foundation Directors shall serve without remuneration. At all times, more than 50% of the Foundation Directors shall deal at arm's length with each other for purposes of the ITA.

The PCC Representative Counsel will retain an executive search firm ("**Executive Search Firm**") to engage in the Executive Search Process to conduct an independent search to identify qualified Individuals whom the Executive Search Firm will recommend, subject to the approval of the CCAA Court, for appointment to serve as the Foundation Directors, including the Chair, of the Cy-près Foundation. The Executive Search Firm will provide recommendations to the PCC Representative Counsel and the CCAA Plan Administrators regarding the structure of the Foundation Board including but not limited to, the term for which the Foundation Directors may hold office, whether the terms of the Foundation Directors should be staggered, and any limit on the number of terms that the Foundation Directors may serve.

In addition to complying with Applicable Law, the requirements for the composition of the Foundation Board ("**Board Composition Requirements**") shall include the following considerations. The Foundation Directors shall be comprised of Individuals who, individually or collectively, have knowledge, training and experience in the following fields so that the Foundation Board is well equipped to govern, administer and manage the Cy-près Foundation so as to fulfill its Mission which includes the primary duty and responsibility to select the research, programs and/or initiatives that will be approved by the Foundation Board for funding from the Cy-près Fund each year:

- (a) Medicine, particularly in the practice specialities of medical oncology, surgical oncology, radiation oncology, respirology, cardiovascular disease, pharmacology, pathology, nicotine addiction/dependence, palliative care and epidemiology;
- (b) The conduct of biomedical research including knowledge regarding medical research, ethics in human clinical research, financial management of research grants, and compliance with reporting requirements regarding research grants;
- (c) The evaluation and assessment of biomedical research grant proposals, including experience in peer review;
- (d) The delivery of public healthcare in Canada;
- (e) Law, particularly in the fields of public charitable foundations, board governance and tax law as it applies to public charitable foundations, as well as familiarity regarding the concepts of cy-près and Rational Connection;
- (f) Board governance, particularly the governance of public charitable foundations in Canada; and
- (g) Finance, including experience in accounting, investment and asset management, and the operation and financial regulatory compliance of public charitable foundations in Canada (for greater certainty, it is understood that the Foundation Board will retain an investment and asset management firm to manage the Cy-près Fund).

The appointment of all Foundation Directors, including the Chair, to the Foundation Board shall be subject to the approval of the CCAA Court.

9.5.2 Appointment of Replacement Foundation Directors from Time to Time after Final Approval of the Cy-près Foundation by the CCAA Court

Where the terms of Foundation Directors end or Foundation Directors resign, are removed from office, are declared to be incapable by a Court, become bankrupt or otherwise cease to fulfill their duties and responsibilities as Foundation Directors, through the Executive Search Process qualified Individuals who fulfill the Board Composition Requirements will be identified and recommended for appointment to serve as replacement Foundation Directors (“**Replacement Foundation Directors**”), including the replacement Chair (“**Replacement Chair**”).

The appointment of all Replacement Foundation Directors, including the Chair, to the Foundation Board shall be subject to the approval of the CCAA Court.

9.6 Administration, Governance and Operations of the Cy-près Foundation

9.6.1 Duties and Responsibilities of the Foundation Board

Subject to the provisions of the CNFPA, the duties and responsibilities of the Foundation Board shall include:

- (a) Overseeing and ensuring the effective and efficient governance, management, administration, and operation of the Cy-près Foundation;
- (b) Ensuring that the Cy-près Foundation complies with Applicable Law regarding the investment and financial management of the Cy-près Fund and the continuance of its status as a public charitable foundation;
- (c) Approving the appointment of the Foundation Chief Executive Officer and the employment of the Foundation Management Team;
- (d) Appointing an independent public accountant for the Cy-près Foundation;
- (e) Approving the guidelines that shall govern the investment of the Cy-près Fund prepared by the investment and asset management firm that is retained to manage the Cy-près Fund;
- (f) Reviewing and approving the Cy-près Foundation’s quarterly financial statements, audited annual financial statements, schedule of expenditures that constitute qualifying disbursements for the purpose of the ITA, list of debts, if any, incurred by the Cy-près Foundation, and disbursement quota for the purpose of the ITA;
- (g) Reviewing and approving for publication the RFPs, application forms and associated documents to be completed by Proposal Proponents that are to be prepared by the Foundation Management Team;

- (h) Applying the guiding principles of Rational Connection, Materiality, Proportionality and Conflict of Interest explained in Article 9, Sections 9.9.1 to 9.9.4 herein, to assess Proposals during the Final Review and select the Proposals that will be approved by the Foundation Board each year for funding from the Cy-près Fund;
- (i) Attending meetings of the Foundation Board subject to reasonable absences;
- (j) From time to time as reasonably necessary and required, approving the engagement on a part-time or full-time basis, of (i) any suitably qualified Individuals (“**Proposal Reviewers**”) to conduct the Preliminary Review of Proposals, and (ii) any advisors, including legal, financial, investment, information technology, public relations or other advisors, to advise and assist with the carrying out of the respective duties and responsibilities of the Foundation Board and the Foundation Management Team;
- (k) Reviewing the Peer Review and ranking of each Proposal seeking funding for research that has passed the Preliminary Review and the Streamlining Review and deciding whether the Foundation Board approves the Proposal for funding from the Cy-près Fund;
- (l) Reviewing each Proposal seeking funding for any other program or initiative pertaining to Tobacco-related Diseases and having a Rational Connection that has passed the Preliminary Review and the Streamlining Review, and deciding whether the Foundation Board approves the Proposal for funding from the Cy-près Fund;
- (m) Reviewing financial reports, progress reports and final reports periodically submitted to the Cy-près Foundation by Grant Recipients;
- (n) Reviewing the reports regarding the financial affairs of the Cy-près Foundation that are submitted to the Foundation Board by the Cy-près Foundation’s chief financial officer monthly, quarterly, annually, and *ad hoc* as may be requested by the Chair of the Foundation Board;
- (o) Not less frequently than annually, preparing a written report that will be submitted on an information basis to the CCAA Plan Administrators, and thereafter filed with the CCAA Court by the CCAA Plan Administrators, that includes reports on the financial status of the Cy-près Foundation (including capital, interest earned, distributions made to Grant Recipients, expenses, compensation, professional advisor fees and administrative costs) and the activities of the Cy-près Foundation for the period covered by the report; and
- (p) Performing such other duties as may be required or incidental to the duties enumerated in subparagraphs (a) to (o) herein, or as the Chair of the Foundation Board may specify.

9.6.2 Duties and Responsibilities of the Chair of the Foundation Board

In addition to the duties and responsibilities set forth in Article 9, Section 9.6.1 herein, the duties and responsibilities of the Chair of the Foundation Board shall include:

- (a) Overseeing and ensuring the effective and efficient governance, management, administration, and operation of the Cy-près Foundation;

- (b) Identifying the topics for discussion and developing the agenda for each Foundation Board meeting;
- (c) Chairing all Foundation Board meetings;
- (d) Communicating on behalf of the Foundation Board with the CCAA Plan Administrators;
- (e) Not less frequently than annually, in collaboration with the Foundation Board, preparing a written report on an information basis for submission to the CCAA Plan Administrators and thereafter for filing with the CCAA Court that includes reports on:
 - (i) the financial status of the Cy-près Foundation (including capital, interest earned, distributions made to Grant Recipients, expenses, compensation, professional advisor fees and administrative costs);
 - (ii) the activities of the Cy-près Foundation for the period covered by the report including the following particulars of all Proposals submitted in response to an RFP that are approved for funding from the Cy-près Fund: description of Grant Recipient; abstract; amount of Grant; term of Grant; and the Rational Connection of the approved Proposal; and
 - (iii) the impact of the research, programs and initiatives funded by the Cy-près Foundation on the outcomes of Individuals who suffer or may in the future suffer from Tobacco-related Diseases and the corollary impact on the health of Canadians; and
- (f) Performing such other duties as may be required or incidental to the duties enumerated in subparagraphs (a) to (e) herein, or as the Foundation Board may specify.

9.6.3 Management of Operations and Administration of Cy-près Foundation

The PCC Representative Counsel will retain the Executive Search Firm to engage in the Executive Search Process to identify an individual whom the Executive Search Firm will recommend for engagement to serve as the chief executive officer of the Cy-près Foundation (“**Foundation Chief Executive Officer**”) who will, among other things, oversee and ensure the effective and efficient governance, management, administration, and operation of the Cy-près Foundation.

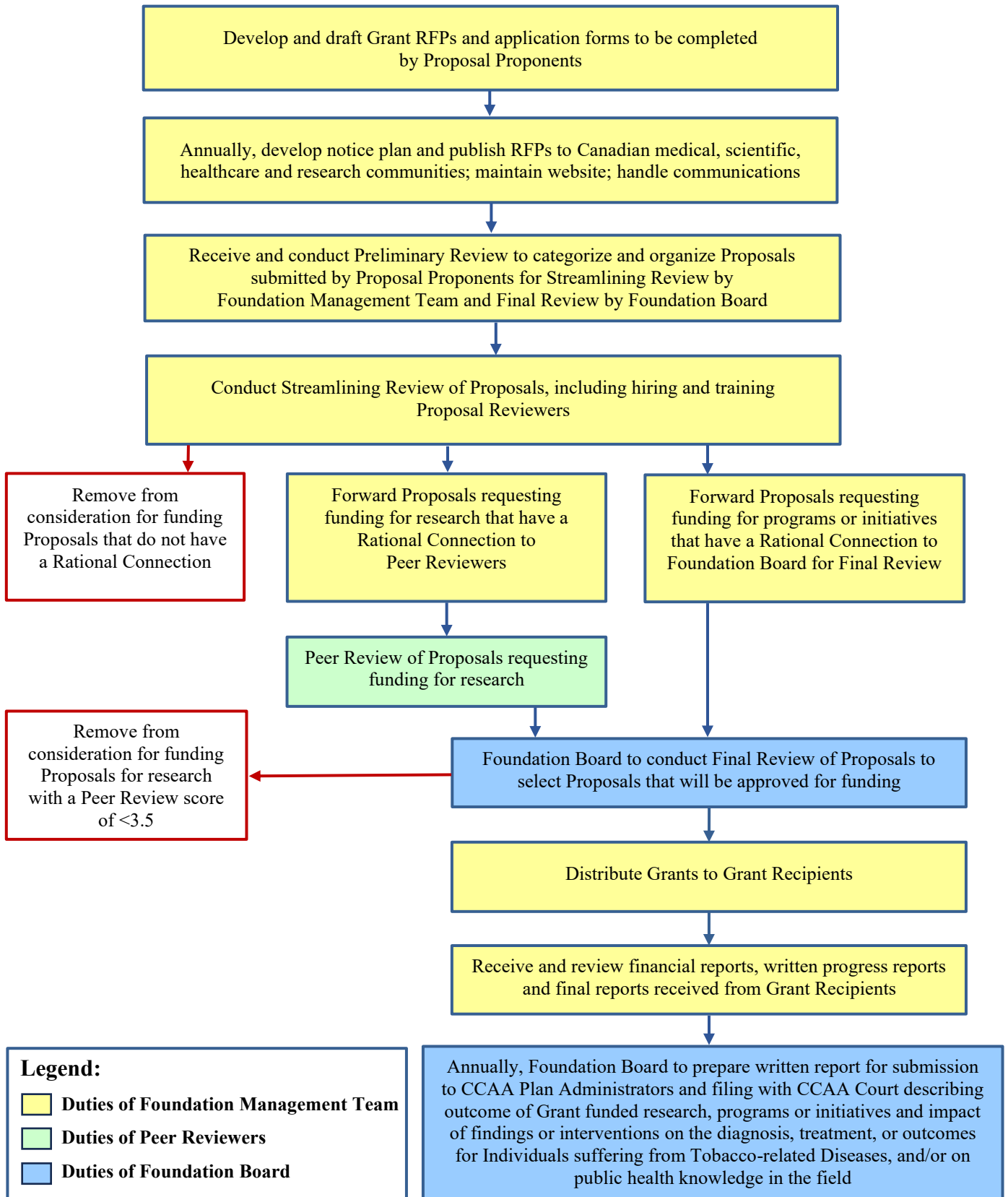
Through the Executive Search Process, qualified Individuals will be identified and recommended for employment by the Cy-près Foundation as a management team of professional staff (collectively, “**Foundation Management Team**”) to manage the day-to-day operations and administrative tasks of the Cy-près Foundation to ensure that it fulfills its Mission in accordance with the terms of the CCAA Plans. The Foundation Management Team may be comprised of a chief financial officer, general manager of operations, assistant to the general manager of operations, IT specialist and office administrator.

9.7 Process for Selection of Proposals to receive Grants from Cy-près Fund

The diagram below provides an overview of the process by which the Cy-près Foundation will solicit, review and select the Proposals that will be approved to receive a Grant from the Cy-près Fund. The Grant selection process is described in further detail in Article 9, Sections 9.8 to 9.13 herein:

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Process for Selection of Proposals to receive Grants from Cy-près Fund



9.8 Requests for Proposals

9.8.1 Publication of Requests for Proposals

Annually, the Foundation Management Team shall develop, draft and publish or cause to be published an RFP soliciting the submission of Proposals from interested Individuals, groups of Individuals, and institutions, organizations or entities incorporated and operating in Canada requesting funding for (i) research which falls within the scope of the Mission of the Cy-près Foundation, or (ii) such other program or initiative that pertains to Tobacco-related Diseases and the Foundation Board may approve for funding from the Cy-près Fund, provided that such research, program or initiative has a Rational Connection. All RFPs shall be widely and publicly published and disseminated in a manner which is consistent with the customs and standards applicable to biomedical research and healthcare so that they come to the notice and attention of prospective Proposal Proponents within the Canadian medical, scientific, healthcare and research communities. The Foundation Management Team shall develop a notice plan for the RFPs which may, in the discretion of the Foundation Management Team, include publication of the RFPs on the website of the Cy-près Foundation, in postings on the internal research websites and in research offices of universities, hospitals and other research centres in Canada, and distribution to an email list of interested researchers and healthcare practitioners. The content and plan for providing Notice of the RFPs must be effective in reaching potential Proposal Proponents who are engaged in or have the expertise and capacity to engage in research or complete a program or initiative that has a Rational Connection to Tobacco-related Diseases. The notice plan shall include the details regarding on how to submit a Proposal, eligibility for funding from the Cy-près Foundation, and deadlines for submission of Proposals.

9.8.2 Specifications for Requests for Proposals

In the discretion of the Foundation Management Team, the RFPs may specify that Proposal Proponents will be required to comply with Tri-Agency Policies as applicable in whole or in part, or as otherwise adapted for use by the Cy-près Foundation, in respect of the specifications for the Proposals for research submitted in response to an RFP. In circumstances where the Tri-Agency Policies may not be applicable, the Foundation Management Team may, in their discretion, develop and draft an RFP that specifies that a Proposal should include, among other things:

- (a) Background information regarding the organization, institution or entity incorporated and operating in Canada seeking funding, including its history, mission statement, research mandate, research administrative resources, strategic plan, goals and objectives;
- (b) The curriculum vitae of the researcher or project manager as applicable to the research, program or initiative for which funding from the Cy-près Fund is sought to establish that they have the appropriate qualifications and expertise to undertake the research, program or initiative;
- (c) A declaration by the Proposal Proponent that there is no Conflict of Interest between the Proposal Proponent's interest in the research, program or initiative and the Proposal Proponent's personal, professional and/or business interests;

- (d) A statement of how the research, program or initiative has a Rational Connection and is aligned with the Mission of the Cy-près Foundation;
- (e) A scientific abstract or other description of the research, program or initiative, including methodology and analysis and the expected product or result of the work of the research, program or initiative, together with the expected indirect benefit of the work to Individuals who suffer or may in the future suffer from a Tobacco-related Disease;
- (f) The term (in months/years) for which funding is sought and the proposed start date and end date of the research, program or initiative;
- (g) The amount of funding requested;
- (h) The budget for the expenditure of the funding; and
- (i) Disclosure of the financial accountability policies, administrative systems, procedures and controls in place to ensure that the Grant is used appropriately in accordance with the highest ethical and financial standards.

9.9 Guiding Principles to be applied in Streamlining Review and Final Review of Proposals

In the Streamlining Review of Proposals conducted by the Foundation Management Team, assisted as required by Proposal Reviewers, and in the Final Review of Proposals conducted by the Foundation Board, the guiding principles of Rational Connection, Materiality, Proportionality and Conflict of Interest shall be taken into consideration.

9.9.1 Rational Connection

The PCCs are Individuals who have asserted or may be entitled to assert a Claim resulting from their use of or exposure to Tobacco Products of the Tobacco Companies. The payment of the \$1.0 billion Cy-près Fund to the Cy-près Foundation is the consideration provided by the Tobacco Companies for the full and final settlement and release of all Claims and potential Claims of PCCs who are not eligible to receive Individual Payments from the PCC Compensation Plan and *Létourneau* Class Members who are not eligible to receive Compensation Payments from the Quebec Administration Plan. Such PCCs and *Létourneau* Class Members will benefit indirectly from the research, programs and initiatives that will focus on achieving earlier diagnosis, more effective treatment and improved outcomes for Individuals who suffer or may in the future suffer from Tobacco-related Diseases that the Foundation Board selects for funding from the Cy-près Fund. It is the Mission of the Cy-près Foundation to achieve earlier diagnosis, more effective treatment and improved outcomes for Individuals suffering from Tobacco-related Diseases.

To achieve this objective, it is a requirement that each Proposal must have a rational connection to a Tobacco-related Disease (“**Rational Connection**”). The Rational Connection requirement means that the subject of the research, program, or initiative must have a clear and reasonable link to a Tobacco-related Disease that is not irrational or too remote. Each Proposal must demonstrate a reasonable evidence-based causal link between prolonged smoking and the particular disease or

condition which is the subject of a Proposal submitted by a Proposal Proponent; however, the basis of the assessment of whether a Rational Connection is present is not the legal standard of causation.

Stated otherwise, research, programs and initiatives that may have a Rational Connection sufficient to qualify for funding from the Cy-près Foundation are not limited to Lung Cancer, Throat Cancer and Emphysema/COPD (GOLD Grade III or IV), but may also pertain to Tobacco-related Diseases that are made sufficiently common by prolonged smoking of Tobacco Products so as to be considered to have a Rational Connection.

Whether the subject matter of a Proposal has a Rational Connection shall be assessed and decided on a case-by-case basis considering various factors including:

- (i) The nature and purpose(s) of the Proposal;
- (ii) The type of disease(s) involved;
- (iii) The intended beneficiaries of the research, program or initiative; and
- (iv) The extent to which the Proposal is likely to result in tangible and objectively measurable improvements in Tobacco-related Disease diagnosis, treatment, and/or outcomes.

Proposals found to have a Rational Connection may proceed forward in the Proposal review process to Peer Review if they are Proposals for research and Final Review if they are the Proposals for other programs or initiatives pertaining to Tobacco-related Diseases. Proposals found to not have a Rational Connection will be withdrawn from further consideration for funding by the Cy-près Foundation.

To provide guidance, below is a non-exhaustive list of factors which would be indicative of the absence of the requisite Rational Connection and warrant the withdrawal of the Proposal from further consideration for funding:

- (a) the Proposal requests funding for research, or a program or initiative relating to a Non Tobacco-related Disease;
- (b) the Proposal requests funding for research, or a program or initiative relating to a disease that is not more common among smokers than non-smokers;
- (c) the Proposal requests funding for research, or a program or initiative relating to a disease for which smoking has not been identified as a risk factor; or
- (d) the Proposal requests funding for programs and initiatives aimed at reducing or preventing tobacco use in Canada.

9.9.2 Materiality

The Foundation Management Team, assisted as required by Proposal Reviewers, and the Foundation Board shall assess whether each Proposal is material to the scope of the Mission of the Cy-près Foundation (“**Material**”). A Proposal will be Material if the magnitude, impact or

inherent value of the benefit that it will provide is significant enough to advance the Cy-près Foundation's Mission.

9.9.3 Proportionality

When making its final decision regarding which Proposals will be approved for funding from the Cy-près Fund, the Foundation Board shall consider the relative proportionality (“**Proportionality**”) of the Proposals under consideration from the standpoint of the following factors, as applicable:

- (a) the magnitude of the budget requested in each Proposal in the context of the total amount of the Grants available for distribution in any given year;
- (b) the magnitude of the anticipated benefit to be gained from each Proposal;
- (c) the nature of the anticipated benefit to be gained from each Proposal;
- (d) the relative burdens of disease imposed by different Tobacco-related Diseases;
- (e) the prevalence of different Tobacco-related Diseases in Canada;
- (f) the level of priority that ought to be given to research that will benefit Individuals suffering from Tobacco-related Diseases who are more severely impacted by their disease;
- (g) the risks, as identified during the Peer Review, to which Clinical Trial participants in the proposed research may be exposed;
- (h) the inherent value of each Proposal; and
- (i) any other proportionality considerations having regard to the nature of each Proposal.

9.9.4 Conflict of Interest

A real, perceived or potential conflict of interest (“**Conflict of Interest**”) may arise in circumstances where the Proposal Proponent:

- (a) is a Foundation Director, including the Chair;
- (b) is part of the Foundation Management Team;
- (c) is a relative or close friend of, has a personal relationship with, or has a close professional or business affiliation with, a Foundation Director, including the Chair; and/or
- (d) is otherwise in a position to bias or influence, directly or indirectly, the Proposal review process to the benefit of their Proposal.

9.10 Preliminary Review of Proposals

Because a finite amount of funds will be available for each RFP published by the Cy-près Foundation, it is important that the Foundation Board be able to focus its consideration on the most meritorious and competitive Proposals. The Foundation Management Team, assisted as required by Proposal Reviewers, shall conduct a preliminary review (“**Preliminary Review**”) of all Proposals submitted to the Cy-près Foundation in response to an RFP. The Proposals shall be categorized into two groups:

1. Proposals requesting funding for research, and
2. Proposals requesting funding for other programs or initiatives pertaining to Tobacco-related Diseases.

The Foundation Management Team, assisted as required by Proposal Reviewers, will withdraw Proposals from further consideration for funding that:

- (a) are incomplete;
- (b) do not comply with the RFP requirements for a Proposal;
- (c) clearly do not have a Rational Connection or are otherwise outside the scope of the Mission of the Cy-près Foundation;
- (d) are identical or essentially identical to a Proposal previously accepted for funding from the Cy-près Fund; or
- (e) have a Conflict of Interest.

9.11 Streamlining Review of Proposals

The Foundation Management Team, assisted as required by Proposal Reviewers, shall conduct a review (“**Streamlining Review**”) of all Proposals which have passed the Preliminary Review to determine (i) which Proposals requesting funding for research will be submitted for Peer Review before they are assessed by the Foundation Board, and (ii) which Proposals requesting funding for other programs or initiatives pertaining to Tobacco-related Diseases will proceed directly to be assessed by the Foundation Board to determine whether they will be approved for funding from the Cy-près Fund.

The Foundation Management Team, assisted as required by Proposal Reviewers, will withdraw from further consideration for funding Proposals that:

- (a) do not have a Rational Connection;
- (b) have a Conflict of Interest; or
- (c) have some merit but many limitations and require major revisions such that they are not ready to be funded.

9.12 Peer Review

The Foundation Management Team will recruit from the Canadian research and academic communities independent third party peer reviewers (“**Peer Reviewers**”) with the appropriate expertise who will serve on a volunteer basis on peer review panels which will undertake the Peer Review of Proposals for research that have passed the Preliminary Review. For this purpose, the Foundation Management Team may consider consulting with pan-Canadian institutions with experience in the development and support of peer review panels. The Peer Reviewers shall:

- (a) Have expertise and experience in the field(s) pertaining to the research proposed in the Proposal; and
- (b) Have no Conflict of Interest between the Proposal Proponent and the private, professional, business or public interests of the Peer Reviewer.

The Peer Reviewers will conduct the Peer Review of the Proposals for research in accordance with the customs, standards, practices, policies and guidelines adhered to in the Canadian research and academic communities in order to conduct consistent, fair and high quality Peer Review.

The Peer Reviewers will prepare and submit to the Foundation Board a Peer Review of each Proposal which includes:

- (a) A written summary of the research;
- (b) An assessment of the strengths and weaknesses of the Proposal;
- (c) The consensus rating of the Proposal based on the rating scale of 0 to 4.9 to one decimal place (4.5-4.9: Outstanding; 4.0-4.4: Excellent; 3.5-3.9: Good; 3.0-3.4: Fair; and 0.0-2.9: Poor); and
- (d) A recommendation regarding the budget and term during which the Cy-près Foundation should support the research.

The Peer Reviewers will not make the final decision or provide a recommendation to the Foundation Board regarding whether a Proposal should be approved to receive funding from the Cy-près Fund.

Proposals with a Peer Review score of <3.5 will be withdrawn from further consideration for funding.

9.13 Final Review of Proposals by Foundation Board

Applying the guiding principles of Rational Connection, Materiality, Proportionality and Conflict of Interest, the Foundation Board shall conduct a final review (“**Final Review**”) of (i) the Proposals for research that have undergone Peer Review and (ii) the Proposals for other programs or initiatives pertaining to Tobacco-related Diseases that have passed the Preliminary Review and the Streamlining Review, and select the Proposals that will be approved by the Foundation Board each year for funding from the Cy-près Fund.

For greater certainty, it is intended that the Cy-près Foundation will fund a range of research, programs and initiatives over time, having regard to the objective of conferring indirect benefits on Individuals who suffer or may in the future suffer from a Tobacco-related Disease, and not to concentrate funding in a single project or a limited number of projects.

In regard to each Proposal approved, the Foundation Board shall consider the priority, timing, amount of the Grant, term required to complete the approved research, program or initiative, any oversight required, reporting requirements, any conditions which should attach to the Grant, and any other pertinent considerations.

After the Final Review has been completed, the Foundation Management Team shall notify the Proposal Proponents whether their Proposal has been approved for funding from the Cy-près Fund. The Cy-près Foundation has no duty to grant, nor shall there be any expectation on the part of a Proposal Proponent that they will receive, any financial or other support for any research, program or initiative which is sought from the Cy-près Foundation. The decision regarding whether to provide funding for a Proposal is within the sole discretion of the Foundation Board and is not reviewable by the CCAA Court or any other court in Canada.

The particulars of the Proposals which are approved by the Foundation Board shall be published on the website of the Cy-près Foundation and included in the written report which the Foundation Board shall prepare, not less frequently than annually, and submit to the CCAA Plan Administrators and thereafter file with the CCAA Court for informational purposes.

The Foundation Management Team shall provide to the PCC Representative Counsel copies of (i) all approved Proposals together with supporting materials, and (ii) all reports that the Foundation Board provides to the CCAA Plan Administrators and the CCAA Court.

9.14 Administration of Research, Programs and Initiatives by Grant Recipients

In the discretion of the Foundation Board, Grant Recipients may be required to comply with Tri-Agency Policies as applicable, or as adapted for use by the Cy-près Foundation, in respect of the administration of any Proposal for research, a program or an initiative that the Board selects for funding from the Cy-près Fund.

9.15 Reporting by Grant Recipients to Cy-près Foundation

Grant Recipients will be required to, among other things:

- (a) Periodically submit financial reports to the Cy-près Foundation regarding the receipts and expenditures on the research, program or initiative;
- (b) Periodically submit written progress reports to the Cy-près Foundation providing details of the progress on the research, program or initiative and future work plans;
- (c) Submit a written final report to the Cy-près Foundation, which shall include:
 - (i) A description of the outcome of the Grant funded research, program or initiative, as well as the impact of the findings or interventions on the diagnosis, treatment, or

outcomes for Individuals who suffer or may in the future suffer from Tobacco-related Diseases, and/or on public health knowledge in the field that was the subject of the research, program or initiative funded; and

- (ii) Details of any dissemination efforts, such as through publications, conference presentations, reports, or other means of communicating the outcomes of the Grant funded research, program or initiative; and
- (d) At the end of the term of the research, program or initiative, return any unexpended funds from the Grant to the Cy-près Foundation.

In the discretion of the Foundation Board, Grant Recipients may be required to comply with Tri-Agency Policies as applicable, or as adapted for use by the Cy-près Foundation, in respect of their reporting to the Cy-près Foundation regarding their Grants.

9.16 Reporting by Cy-près Foundation to CCAA Plan Administrators and CCAA Court

Not less frequently than annually, the Chair of the Cy-près Foundation shall prepare a written report for submission to the CCAA Plan Administrators and thereafter for filing with the CCAA Court that includes reports on the financial status of the Cy-près Foundation (including capital, interest earned, distributions made to Grant Recipients, expenses, compensation, professional advisor fees and administrative costs) and the activities of the Cy-près Foundation for the period covered by the report. Copies of all such reports shall be provided to the PCC Representative Counsel.

9.17 Role of the CCAA Plan Administrators and the CCAA Court

The CCAA Court is responsible for the ultimate supervision of the Cy-près Foundation pursuant to the terms of the CCAA Plan.

The CCAA Plan Administrators will function as the intermediaries relative to the supervisory role of the CCAA Court. The Chair of the Foundation Board shall communicate with the CCAA Plan Administrators who will facilitate the filing with the CCAA Court of the Cy-près Foundation's reports that were prepared pursuant to Article 9, Section 9.16 herein.

All reports provided by the Chair of the Foundation Board to the CCAA Plan Administrators and all reports filed by the CCAA Plan Administrators with the CCAA Court in relation to the Cy-près Foundation shall be provided to the PCC Representative Counsel.

9.18 Duration of the Cy-près Foundation

Subject to compliance with Applicable Law, including the disbursement quota requirements pursuant to the ITA, the intention is that, annually, the Grants distributed to Grant Recipients by the Cy-près Foundation shall be paid from the income of the Cy-près Fund.

If deemed to be necessary and appropriate in the circumstances, in making Grants to Grant Recipients in any given year, the Cy-près Foundation may encroach upon the capital in the Cy-

près Fund provided, however, that the CCAA Court has approved such encroachment on the capital in advance of the Cy-près Foundation making any such encroachment.

As the Mission of the Cy-près Foundation reaches maturity, it may be desirable for the Cy-près Foundation to encroach upon the capital of the Cy-près Fund. The Cy-près Foundation shall continue to carry out its intended activities until such time as its Mission has been substantially accomplished. The Cy-près Foundation shall not be dissolved, nor shall its work be terminated until such time as specified by further Order of the CCAA Court.

In the event of the winding up and dissolution of the Cy-près Foundation, subject to the approval of the CCAA Court, all of the remaining assets of the Cy-près Foundation after payment of its liabilities shall be distributed to one or more recognized registered charities in Canada, which are “qualified donees”, as that term is defined in the ITA, having similar objects to the Cy-près Foundation.

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14.4 Duties and Responsibilities of CCAA Plan Administrators

In implementing the administration of the CCAA Plans during the Contribution Period, the duties and responsibilities of the CCAA Plan Administrators shall be as set out below provided, however, that the CCAA Plan Administrators shall incur no liability of any kind whatsoever to the Provinces, Territories, any Impacted Claimants or any other Person in respect of their performance of such duties and responsibilities and shall be held harmless in this regard:

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(1) **Intentionally deleted;**

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Appendix “B”

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SCHEDULES

Schedule “T”: ~~Resume of Dr. Robert Bell~~ Intentionally deleted

Schedule “U”: ~~Curriculum vitae of Dr. Robert Bell~~ Intentionally deleted

ARTICLE 1. INTERPRETATION

1.1 Definitions

In the CCAA Plan, including all Schedules hereto, unless otherwise stated or the context otherwise requires:

“Board Composition Requirements” has the meaning given in Article 9, Section 9.5.1.

“Chair” means the chair of the Foundation Board.

“Clinical Trial” means a research study involving human participants that evaluates the safety and/or effectiveness of one or more interventions on health outcomes.

“CNFPA” means the *Canada Not-for-profit Corporations Act*, SC 2009, c 23, as amended.

“Conflict of Interest” has the meaning given in Article 9, Section 9.9.4.

“Executive Search Firm” has the meaning given in Article 9, Section 9.5.1.

“Executive Search Process” means the process whereby the Executive Search Firm, which will be retained by the PCC Representative Counsel, will conduct independent searches to identify:

- (a) qualified Individuals whom the Executive Search Firm will recommend, subject to the approval of the CCAA Court, for appointment to serve as (i) the Foundation Directors, including the Chair, and (ii) the Replacement Foundation Directors, including the Replacement Chair, and
- (b) qualified Individuals whom the Executive Search Firm will recommend for employment by the Cy-près Foundation as the Foundation Management Team.

“Final Review” has the meaning given in Article 9, Section 9.13.

“Foundation Board” means the board of directors of the Cy-près Foundation.

“Foundation Chief Executive Officer” has the meaning given in Article 9, Section 9.6.3.

“Foundation Directors” has the meaning given in Article 9, Section 9.4(f).

“Foundation Management Team” has the meaning given in Article 9, Section 9.6.3.

“Grant” means the sum of money awarded to a Grant Recipient to cover the direct costs associated with undertaking and completing the research, program or initiative proposed in a Proposal that the Foundation Board approves for funding from the Cy-près Fund.

“Grant Recipient” means a Proposal Proponent whose Proposal has been approved for funding from the Cy-près Fund and who carries out the activities described in the Proposal.

“**Individuals**” means all individuals residing in a ~~Province or Territory~~province or territory of Canada, and “**Individual**” means any one of them.

“**Initial Foundation Members**” has the meaning given in Article 9, Section 9.4(c).

“**Material**” has the meaning given in Article 9, Section 9.9.2.

“**Mission**” has the meaning given in Article 9, Section 9.3.

“**Non Tobacco-related Disease**” means a disease or other illness or harm that is not caused or contributed to by the use of or exposure (whether directly or indirectly) to a Tobacco Product.

“**Peer Review**” means the process used to review Proposals for research submitted in response to an RFP that involves the evaluation and ranking of Proposals by a group of Peer Reviewers who individually and/or collectively have the required experience and expertise to assess the quality and potential impact of the proposed research within the context of the Mission of the Cy-près Foundation.

“**Peer Reviewers**” has the meaning given in Article 9, Section 9.12.

“**Preliminary Review**” has the meaning given in Article 9, Section 9.10.

“**Proportionality**” has the meaning given in Article 9, Section 9.9.3.

“**Proposal**” means the written document submitted to the Cy-près Foundation by a Proposal Proponent that describes the Rational Connection, objectives, methodology, organization and administrative details of a proposed research, program or initiative for which funding is sought from the Cy-près Fund.

“**Proposal Proponent**” means an Individual, group of Individuals, or institution, organization or entity incorporated and operating in Canada that submits a Proposal to the Cy-près Foundation and, if the Proposal is approved for funding from the Cy-près Fund, will be responsible for coordinating the financial and administrative aspects of the Grant and leading the direction of the proposed activities described in the Proposal.

“**Proposal Reviewers**” has the meaning given in Article 9, Section 9.6.1(j).

“**Rational Connection**” has the meaning given in Article 9, Section 9.9.1.

“**Replacement Chair**” has the meaning given in Article 9, Section 9.5.2.

“**Replacement Foundation Directors**” has the meaning given in Article 9, Section 9.5.2.

“**RFP**” means a request for proposals that is published by the Cy-près Foundation soliciting the submission of Proposals from interested Individuals, groups of Individuals, and institutions, organizations and entities incorporated and operating in Canada seeking financing and support for research, programs and initiatives which fall within the scope of the Mission of the Cy-près Foundation and have a Rational Connection.

“Streamlining Review” has the meaning given in Article 9, Section 9.11.

“Tobacco-related Diseases” means all diseases or other illnesses or harms caused or contributed to by the use of or exposure (whether directly or indirectly) to a Tobacco Product, and “Tobacco-related Disease” means any one of them.

“Tri-Agency Policies” means the policies, statements and guidelines mandated by the following three federal research funding agencies: the Canadian Institutes of Health Research, the Natural Sciences and Engineering Research Council and the Social Sciences and Humanities Research Council.

“Unanimous Members’ Agreement” has the meaning given in Article 9, Section 9.4(f).

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1.4 Schedules

The following are the Schedules to the CCAA Plan, which are incorporated by reference into the CCAA Plan and form an integral part of it:

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Schedule “T”: ~~Resume of Dr. Robert Bell~~Intentionally deleted

Schedule “U”: ~~Curriculum vitae of Dr. Robert Bell~~Intentionally deleted

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ARTICLE 9. ESTABLISHMENT AND ADMINISTRATION OF THE CY-PRÈS FOUNDATION

9.1 Purpose of the Cy-près Foundation

The Cy-près Fund will be administered by a public charitable foundation (“**Cy-près Foundation**”) to be established as part of the implementation of the CCAA Plan. The Cy-près Foundation shall be independent and free from any influence or interference by any of the Claimants, Tobacco Companies, Tobacco Company Groups, or any potential or actual beneficiary of the Cy-près Foundation. Although it is recognized that the governance of the Cy-près Foundation will be independent and free from any influence or interference, the Cy-près Foundation shall remain under the jurisdiction of the CCAA Court.

Improving outcomes in Tobacco-related Disease, through earlier diagnosis, more effective treatment, and better long-term health, has the potential to confer broad societal benefits. The Cy-près Foundation’s work, therefore, is intended to address the circumstances of Individuals who suffer or may in the future suffer from a Tobacco-related Disease, except those Individuals who receive a direct benefit under the PCC Compensation Plan or the Quebec Administration Plan, by funding research, programs or initiatives that have a Rational Connection to Tobacco-related Disease.

In addition, the Cy-près Foundation will confer a benefit to those members of the public in Canada who contracted disease otherwise than as a result of smoking, and regardless of the fact that this was not an intended purpose of the Cy-près Foundation. The research, programs and initiatives that are funded will have broader application beyond Tobacco-related Diseases by reason of the fact that the products of the research, programs and initiatives are definitionally generic, that is, the outcomes are not limited to disease contracted as a result of the use of or exposure to Tobacco Products. By way of illustration, advances in the diagnosis, treatment and management of diseases such as Lung Cancer arising from such work may benefit all persons suffering from this condition, regardless of whether their disease is attributable to the use of or exposure to Tobacco Products.

The Cy-près Fund ~~will provide~~is consideration for the full and final settlement and release of all claims and potential claims of PCCs who are not ~~receiving direct compensation payments~~eligible to receive Individual Payments from the PCC Compensation Plan, and *Létourneau* Class Members who are not ~~receiving direct compensation payments~~eligible to receive Compensation Payments from the Quebec Administration Plan, but ~~will~~are intended to be indirectly benefited by falling within the scope of the research, programs and initiatives to be funded by the Cy-près Foundation: ~~This~~ that will focus on achieving earlier diagnosis, more effective treatment and improved outcomes for Individuals who suffer or may in the future suffer from tobacco-related cancers, Emphysema/COPD and other Tobacco-related Diseases. For clarity, the intention is that the Cy-près Foundation will fund but not create, conduct or administer research, programs or initiatives. The broad group of claimants who are intended to receive benefits from the research, programs and initiatives to be funded by the Cy-près Foundation includes the following ~~Persons~~Individuals and any of their affected family members or estates:

- (a) Smokers ~~suffering~~who suffer or may in the future suffer from Lung Cancer or Throat Cancer or Emphysema/COPD (GOLD Grade III or IV) who are outside the ~~claims~~

~~period~~PCC Claims Period or who smoked less than the requisite Twelve Pack-Years or, in the case of Emphysema/COPD, were not classified as GOLD Grade III or IV or the equivalent;

- (b) Smokers who ~~have tobacco-related harms~~suffer or may in the future suffer from a Tobacco-related Disease other than Lung Cancer or Throat Cancer and Emphysema/COPD (GOLD Grade III or IV) or the equivalent; and
- (c) ~~Persons~~Individuals who smoke or have smoked Tobacco Products ~~who~~and have not yet or may never develop a ~~tobacco-related harm~~Tobacco-related Disease.

In respect of all Proposals which the Foundation Board selects for approval to receive a Grant from the Cy-près Fund, on a case-by-case basis, the Foundation Board must determine that there is some basis in fact to conclude that there is a Rational Connection to Tobacco-related Diseases.

The Cy-près Foundation is intended to confer benefits on the public in Canada. The programs and initiatives to be funded by the Cy-près Foundation are intended to serve and benefit Individuals, and the results of the research to be funded by the Cy-près Foundation are intended to enure to the benefit of Individuals who suffer or may in the future suffer from Tobacco-related Diseases. Grant Recipients will be required to make their research findings and recommendations open to the public by contributing them to the Canadian body of medical knowledge and disseminating them to health care practitioners across Canada through publication in peer-reviewed journals and academic databases and presentations made at medical conferences.

~~The~~As described in Article 9, Section 9.9.1 herein, the guiding principle ~~is that the Cy-près Foundation must maintain a rational connection between the varying circumstances of the diverse group of PCCs and Létourneau Class Members covered by the Cy-près Fund and the Cy-près Foundation's purpose which is to fund~~for the Cy-près Foundation is that the research, programs and initiatives ~~focused on improving outcomes in tobacco-related diseases that will provide indirect benefits to such Persons~~that it funds must have a Rational Connection to a Tobacco-related Disease in that they will focus on achieving earlier diagnosis, more effective treatment and improved outcomes for Individuals who suffer or may in the future suffer from Tobacco-related Disease. This guiding principle will apply throughout the duration of the Cy-près Foundation's existence to the work product generated by the research and the programs and initiatives funded ~~by~~from the Cy-près ~~Foundation~~Fund.

The payment of the QCAP Cy-près Contribution in the amount of \$131 million shall be the consideration for the full and final settlement and satisfaction of the *Létourneau* Judgment.

~~Upon the recommendation of the PCC Representative Counsel, the Court Appointed Mediator and the Monitors and subject to the approval of the CCAA Court, Dr. Robert Bell, MDCM, MSc, FRCSC, FACS, FRCSE (Hon), may be appointed by the CCAA Court to serve as the initial Chair of the Cy-près Foundation. Dr. Bell's resume and curriculum vitae are attached to the CCAA Plan as Schedule "T" and Schedule "U" respectively. Should Dr. Bell decline to have his name put forward such other designate as the PCC Representative Counsel, the Court Appointed Mediator and the Monitors may see fit to recommend will be advanced for consideration by the CCAA Court.~~

The document entitled “Cy-près Fund: Methodology and Analysis” is attached to the CCAA Plan as Schedule “V”.

9.2 Funding the Cy-près Foundation

The Cy-près Fund shall be paid in the aggregate amount set out in Article 16 from the Imperial Global Settlement Trust Account, RBH Global Settlement Trust Account and JTIM Global Settlement Trust Account and deposited, respectively, into the Imperial Cy-près Trust Account, RBH Cy-près Trust Account and JTIM Cy-près Trust Account for the benefit of the Cy-près Foundation. The proportionate shares of the Cy-près Fund which the Trustees shall transfer from each of the Imperial Global Settlement Trust Account, RBH Global Settlement Trust Account and JTIM Global Settlement Trust Account into, respectively, the Imperial Cy-près Trust Account, RBH Cy-près Trust Account and JTIM Cy-près Trust Account shall be equal to: (i) on the Plan Implementation Date, the proportionate shares of the Upfront Contributions made by Imperial, RBH and JTIM; and (ii) in respect of years 2, 3, 4 and 5 following the Plan Implementation Date and any subsequent years until the Cy-près Fund has been paid in full, the proportionate shares of the Annual Contributions made by Imperial, RBH and JTIM in each of those years. The Cy-près Fund shall not be transferred to the Cy-près Foundation until such time as all aspects of the establishment of the Cy-près Foundation as set out in Section 9.4 herein have been given final approval by the CCAA Court, and the Imperial Cy-près Trust Account, RBH Cy-près Trust Account and JTIM Cy-près Trust Account have been duly established in the Bank. Following such time, the Cy-près Fund, including all amounts held in the Imperial Cy-près Trust Account, RBH Cy-près Trust Account and JTIM Cy-près Trust Account will be transferred to, and held by, the Cy-près Foundation. Following the transfer of such amounts to the Cy-près Foundation, any further payments to the Cy-près Foundation to be made by Imperial, RBH and JTIM shall be paid, respectively, from the Imperial Global Settlement Trust Account, the RBH Global Settlement Trust Account and the JTIM Global Settlement Trust Account and deposited to the Cy-près Foundation. The proportionate shares of the Cy-près Fund which the Trustees shall transfer from each of the Imperial Global Settlement Trust Account, the RBH Global Settlement Trust Account and the JTIM Global Settlement Trust Account to the Cy-près Foundation shall be the proportionate shares of the Annual Contributions made by Imperial, RBH and JTIM in each of those years.

9.3 Cy-près Foundation Terms of Reference

The Terms of Reference of the Cy-près Foundation are set out below:

~~“The Foundation for Improved Outcomes in Tobacco-Related Disease” (FIORD)~~

[Tobacco Cy-Près Research Foundation of Canada /](#)
[Fondation canadienne cy-près de recherche sur le tabac](#)

Terms of Reference

Introduction: This document describes the terms of reference for the Cy-près Foundation.

Foundation Name: The corporate name of the Cy-près Foundation ~~must relate~~ shall be “Tobacco Cy-Près Research Foundation of Canada / Fondation canadienne cy-près de recherche sur le tabac”

which clearly relates to the purpose of the Cy-près. ~~The name “The~~ Foundation **for Improved Outcomes in Tobacco-Related Disease**” ~~will serve as the corporate name along with the acronym “FIORD”~~which is to distribute the Cy-près Fund. This name will be used on the Cy-près Foundation’s website and other presentation materials.

Purpose of the Cy-près Foundation: The Cy-près Foundation’s purpose is to ~~fund~~provide an indirect benefit to Individuals who suffer or may in the future suffer from Tobacco-related Disease, except those Individuals who receive a direct benefit under the PCC Compensation Plan or the Quebec Administration Plan by funding research, programs and initiatives focused on ~~improving~~achieving earlier diagnosis, more effective treatment and improved outcomes in ~~tobacco-related diseases~~Tobacco-related Disease. The Cy-près Foundation ~~will~~is intended to indirectly benefit users of Tobacco Products and their affected family members or estates who are not eligible to receive payments of compensation from the Quebec Administration Plan or the PCC Compensation Plan. The Individuals who will be directly compensated through the Quebec Administration Plan ~~or PCC Compensation Plan. The smokers who are directly compensated (through the Quebec Administration Plan and PCC Compensation Plan)~~ include ~~individuals~~Individuals suffering from Lung Cancer, Throat Cancer or Emphysema/COPD (GOLD Grade III or IV) as defined in those plans. While the Cy-près Foundation is not intended to benefit those Individuals who are directly compensated, they may receive an incidental benefit from the research, programs and initiatives it funds. The Cy-près Foundation will also benefit the Canadian public at large by funding research, programs and initiatives pertaining to Tobacco-related Diseases.

The Cy-près Foundation will not make any monetary payments to ~~individuals~~Individuals making claims ~~for tobacco-related harms. Those individuals who are~~arising from Tobacco-related Diseases. Those Individuals who are eligible to receive monetary compensation ~~will do so~~may be paid through either the Quebec Administration Plan or the PCC Compensation Plan in accordance with the provisions of those plans.

~~The tobacco users who are not directly compensated but will be indirectly benefited by falling within the scope of the Cy-près include the following Persons and any affected family members or estates:~~

The users of Tobacco Products in the provinces and territories who suffer or may in the future suffer from Tobacco-related Disease, except those Individuals who receive a direct benefit under the PCC Compensation Plan or the Quebec Administration Plan, include the following Individuals and any of their affected family members or estates:

- i) Smokers suffering from Lung Cancer, Throat Cancer or Emphysema/COPD (GOLD Grade III or IV) who are outside the ~~claims period~~PCC Claims Period or who smoked less than the requisite Twelve Pack-Years or, in the case of Emphysema/COPD, were not classified as GOLD Grade III or IV or the equivalent-;
- ii) Smokers who have ~~tobacco-related harms~~a Tobacco-related Disease other than Lung Cancer, Throat Cancer and Emphysema/COPD (GOLD Grade III or IV) or the equivalent-; and

- iii) ~~Persons~~Individuals who smoke or have smoked Tobacco Products and have not yet or may never develop a ~~tobacco-related harm~~Tobacco-related Disease.

Vision for the Cy-près Foundation: Canadians in all provinces and territories will experience ~~improved~~earlier diagnosis, more effective treatment and improved outcomes for tobacco-related cancers, Emphysema/COPD and other ~~tobacco-related harms~~Tobacco-related Diseases.

Mission of the Cy-près Foundation (“Mission”): The Cy-près Foundation will indirectly benefit current, past and future smokers and their families by funding research, programs and initiatives ~~regarding tobacco-related cancers, Emphysema/COPD and other illnesses and conditions which are reasonably and rationally connected to tobacco-related harms. The research, programs and initiatives that are funded by the Cy-près Foundation will achieve~~that will focus on achieving earlier diagnosis, ~~better~~more effective treatment and improved outcomes for ~~Persons suffering from these diseases~~Individuals who suffer or may in the future suffer from Tobacco-related Diseases.

Values of the Cy-près Foundation: The Cy-près Foundation will focus on: the inherent value of the research, program or initiative from the standpoint of its indirect benefit to ~~Persons covered by the Cy-près and Canadians at large; awareness of~~Individuals who suffer or may in the future suffer from a Tobacco-related Disease; the need to maintain a ~~“rational connection”~~Rational Connection between the work ~~supported~~funded by the Cy-près Foundation and ~~the individuals benefitting from the Cy-près; devotion~~those Individuals who suffer or may in the future suffer from a Tobacco-related Disease; commitment to principles of best evidence and expert peer review; ~~emphasis on~~ collaboration to increase the impact of research funding while limiting Cy-près Foundation overhead costs to maximize the indirect benefit to ~~individuals~~Individuals who fall within the scope of the Cy-près Foundation; and, ~~insistence~~ensuring that Cy-près Foundation funded research, programs and initiatives reflect the principles of health equity and opportunity for inclusion of First Nations, Metis and Inuit people.

What Will Be Eligible for Consideration for Support by the Cy-près Foundation: Proposals regarding research, programs and initiatives ~~falling within the scope of the Cy-près that have a~~Rational Connection to Tobacco-related Disease will be received by the ~~board of directors of the~~ Cy-près Foundation (~~“Foundation Board”~~) for consideration of eligibility for financial ~~or other~~ support from the Cy-près Foundation. ~~Programs~~Research regarding and programs and initiatives aimed at reducing or preventing tobacco use in Canada are outside of the scope of the Cy-près Foundation because they fall within the purview of the Provinces and Territories, involving policy issues and advocacy. Accordingly, such programs and initiatives will not be considered for funding ~~or other support~~ from the Cy-près Foundation.

The fact that a ~~proposal~~Proposal requesting funding for research or a program or initiative is received by the Cy-près Foundation for consideration does not mean that it will necessarily be awarded a ~~grant of funding or other support~~Grant. The decision regarding whether to provide funding for a ~~proposal~~Proposal is within the sole discretion of the ~~Cy-près~~ Foundation Board and is not reviewable ~~once it has received approval~~ by the CCAA Court or any other court in Canada.

Early works:

- Establish “~~The Tobacco Cy-Près Research~~ Foundation ~~for Improved Outcomes in Tobacco-related Disease~~” as a tax-exempt charitable of Canada / Fondation canadienne cy-près de recherche sur le tabac” and apply for registration as a “registered charity”, as that term is defined in the ITA, and a public foundation for the purposes of the ITA.
- Recruit a neutral and independent ~~board~~ Foundation Board that will provide oversight of the Cy-près Foundation’s strategy for funding research, programs and initiatives ~~supported to be funded~~ by the Cy-près Foundation. The Foundation Board will also retain an investment and asset management firm to develop and oversee the financial and investment strategy for the Cy-près Foundation, subject to instructions from the Foundation Board.
- ~~Undertake a process of consultation with interested parties and members of the public across Canada led by the Chair of the Cy-près Foundation to better understand their concerns and gather suggestions for improving the present structure for diagnosis, treatment and palliation of Persons suffering from tobacco-related cancers, Emphysema/COPD and other tobacco-related harms.~~
- Develop a strategic plan for the implementation of the intended activities of the Cy-près Foundation.

Potential Areas of Cy-près Foundation Financial Support:

- Improving methods for screening ~~and~~, diagnosis and treatment of tobacco-related cancers.
- Establishing best practices for diagnosis and treatment of tobacco-related cancers, Emphysema/COPD and other ~~tobacco-related harms~~ Tobacco-related Diseases and increasing the likelihood that Canadians can achieve access to best practice care of these diseases.
- Researching the treatment of nicotine addiction and dependence, and tobacco use in Canada.
- Researching the effective treatment and palliation of ~~tobacco-related diseases~~ Tobacco-related Diseases.
- ~~Services and supportive health care to reduce the burden on and enhance the health and quality of life of Canadians living with tobacco-related diseases and their families.~~
- Funding such other program or initiative pertaining to Tobacco-related Diseases as the Foundation Board may approve, provided that it has a Rational Connection and fulfills all other requirements for funding.

Benefit to ~~all Canadians~~ the Public in Canada:

- The results of the research to be funded by the Cy-près Foundation are intended to enure to the benefit of Individuals who suffer or may in the future suffer from Tobacco-related Diseases. The research findings and recommendations regarding earlier diagnosis and more effective treatment of Tobacco-related Diseases will be contributed to the Canadian body of medical knowledge and disseminated to health care practitioners across Canada through publication in peer-reviewed journals and academic databases and presentations made at medical conferences.
- In addition to benefiting Canadians who have smoked or may smoke in the future, research to be funded by the Cy-près Foundation ~~has~~may have the potential to determine whether screening of higher risk populations and potentially all Canadians can identify cancers at earlier stages of oncogenesis when treatment is less morbid and potential cure is more likely.
- Expanded learnings from Cy-près Foundation supported research into tobacco-related cancers, Emphysema/COPD and ~~tobacco-related diseases, as well as areas yet to be identified, will provide a collateral~~ other Tobacco-related Diseases are expected to provide a benefit to members of the ~~broader~~ Canadian public. In fulfilling the Cy-près Foundation's mandate, it is anticipated that the ~~broader~~ Canadian population will benefit from the knowledge generated by this work.

9.4 CCAA Court Approval of Establishment of Cy-près Foundation ~~(in the period after the Sanction Hearing and prior to Final Approval of the Cy-près Foundation)~~

~~The establishment of the Cy-près Foundation will take place in two phases as set forth herein: the first occurring at the Sanction Hearing, and the second occurring at the hearing for the final approval by the CCAA Court of the Cy-près Foundation, so as to permit the finalization of the administrative aspects of the Cy-près Foundation.~~

The establishment of the Cy-près Foundation ~~will~~shall take place after the Sanction Hearing and shall be subject to the final approval of the CCAA Court to be sought in a hearing to be held before the CCAA Court after the Cy-près Foundation has been created and the essential requirements to establish the Cy-près Foundation have been fulfilled, including:

- (a) Drafting the goals, objects and purpose of the Cy-près Foundation;
- (b) Registering “Tobacco Cy-Près Research Foundation of Canada / Fondation canadienne cy-près de recherche sur le tabac” as the name of the Cy-près Foundation;
- (c) Selecting three Individuals to serve as the initial directors and members of the Cy-près Foundation (“Initial Foundation Members”);
- (d) ~~(b)~~ Preparing the governing documents Articles of Incorporation, including the corporate objects, and any Articles of Amendment which will establish the legal entity that will constitute the Cy-près Foundation in accordance with ~~CRA~~ITA rules for registered charities and public foundations;

- (e) ~~(e)~~ Establishing and registering the legal entity of the Cy-près Foundation through the filing of the Articles of Incorporation and any Articles of Amendment;
- (f) Preparing and executing a unanimous members' agreement among the Initial Foundation Members ("Unanimous Members' Agreement") which shall provide, among other things, for the replacement of the Initial Foundation Members with the Individuals who will be recommended through the Executive Search Process for approval by the CCAA Court to be appointed to serve as the directors who will be responsible for the management and operation of the Cy-près Foundation ("Foundation Directors"), including the Chair, who together shall constitute the Foundation Board;
- (g) Pursuant to Article 9, Section 9.5, putting forward the Individuals who will be recommended through the Executive Search Process for approval by the CCAA Court to be appointed to serve as the Foundation Directors. Pursuant to the Unanimous Members' Agreement, the Foundation Directors shall replace the Initial Foundation Members;
- (h) ~~(d)~~ Drafting and adopting By-law No. 1 of the Cy-près Foundation setting out the governance structure for the Cy-près Foundation, including matters relating to quorum, voting, frequency of the meetings of the Foundation Board, and other organizational and governance matters ~~including whether and, if so, to what extent the capital can be encroached upon~~;
- ~~(e) Pursuant to Article 9, Section 9.5, appointing the requisite Persons who will be responsible for the management and operation of the Cy-près Foundation which, for the sake of ease of reference, shall be referred to herein as the directors, including the Chair, of the Cy-près Foundation, who together shall constitute the Foundation Board~~;
- (i) Preparing and passing the organizing resolutions of the Cy-près Foundation authorizing, among other things, the governance and operational matters necessary to give effect to the establishment of the Cy-près Foundation;
- (j) Preparing the proposed budget for the first year of the Cy-près Foundation's operation;
- (k) ~~(f) Applying for and acquiring from~~ Preparing and filing an application with the CRA ~~status~~ for registration of the Cy-près Foundation as a ~~registered~~ charity under the ITA;
- (l) ~~(g)~~ Setting up the requisite management controls and system of books and records; and
- (m) ~~(h)~~ Establishing the Imperial Cy-près Trust Account, RBH Cy-près Trust Account and JTIM Cy-près Trust Account in the Bank.

~~Once the Sanction Order has been granted, the Cy-près Foundation shall be compliant with all legal, technical and other requirements to enable the establishment of the Cy-près Fund and the registration and operation of the Cy-près Foundation as a charitable public foundation.~~

~~It is understood that, after~~ After the CCAA Court has rendered the Sanction Order approving the CCAA Plan, the CCAA Plan Administrators may, on an interim basis and consistent with the Terms of Reference of the Cy-près Foundation, proceed to engage in the work of establishing the

Cy-près Foundation, including attending to the completion of the essential requirements set out in subparagraphs (a) to (h) above.

The CCAA Plan Administrators ~~will seek an Interim Maintenance Order pertaining to the operation and financial support of the putative~~ shall be empowered to retain the services of such experts as they deem necessary to advise them in regard to the foregoing and in respect of any and all endeavours in connection with the establishment and operation of the Cy-près Foundation ~~pending fulfillment of the above requirements and approval by the CCAA Court.~~

The CCAA Plan Administrators will be required to seek final approval by the CCAA Court of the Cy-près Foundation once the requisite steps to establish the Cy-près Foundation have been completed. The CCAA Plan Administrators shall supply reports to the CCAA Court affirming the foregoing.

9.5 Appointment of Board of Directors and Chair of Cy-près Foundation (

9.5.1 Appointment of Foundation Directors in the period after the Sanction Hearing and prior to Final Approval of the Cy-près Foundation) by the CCAA Court

The Foundation Board shall be comprised of a minimum of three and maximum of ten neutral and independent ~~directors~~ Foundation Directors, including the Chair of the Cy-près Foundation. ~~The directors shall be,~~ it being intended that the Foundation Board will ordinarily be comprised of ten Foundation Directors, subject only to temporary vacancies or transitional periods pending appointment. The Foundation Directors, including the Chair of the Cy-près Foundation, shall not, either directly or indirectly, be a Proposal Proponent and shall be otherwise independent of any proposal submitted to the Cy-près Foundation. In order to provide meaningful representation of the PCCs, the PCC Representative Counsel, in consultation with the Court Appointed Mediator and the CCAA Plan Administrators, shall nominate five directors (and fill any requisite vacancies thereof) to serve on the Foundation Board. The Chair of the Cy-près Foundation, in consultation with the Court Appointed Mediator and the CCAA Plan Administrators, shall nominate four directors to serve on the Foundation Board. The appointment of the ten directors, including the Chair, to the Foundation Board shall be ratified by the CCAA Plan Administrators and be subject to the approval of the CCAA Court. Foundation Board members shall serve a term of two years as to be further described in the bylaws of the Cy-près Foundation. The Foundation Directors shall serve without remuneration. At all times, more than 50% of the Foundation Directors shall deal at arm's length with each other for purposes of the ITA.

The PCC Representative Counsel will retain an executive search firm ("Executive Search Firm") to engage in the Executive Search Process to conduct an independent search to identify qualified Individuals whom the Executive Search Firm will recommend, subject to the approval of the CCAA Court, for appointment to serve as the Foundation Directors, including the Chair, of the Cy-près Foundation. The Executive Search Firm will provide recommendations to the PCC Representative Counsel and the CCAA Plan Administrators regarding the structure of the Foundation Board including but not limited to, the term for which the Foundation Directors may

hold office, whether the terms of the Foundation Directors should be staggered, and any limit on the number of terms that the Foundation Directors may serve.

In addition to complying with Applicable Law, the requirements for the composition of the Foundation Board (“**Board Composition Requirements**”) shall include the following considerations. The Foundation Directors shall be comprised of Individuals who, individually or collectively, have knowledge, training and experience in the following fields so that the Foundation Board is well equipped to govern, administer and manage the Cy-près Foundation so as to fulfill its Mission which includes the primary duty and responsibility to select the research, programs and/or initiatives that will be approved by the Foundation Board for funding from the Cy-près Fund each year:

- (a) Medicine, particularly in the practice specialties of medical oncology, surgical oncology, radiation oncology, respirology, cardiovascular disease, pharmacology, pathology, nicotine addiction/dependence, palliative care and epidemiology;
- (b) The conduct of biomedical research including knowledge regarding medical research, ethics in human clinical research, financial management of research grants, and compliance with reporting requirements regarding research grants;
- (c) The evaluation and assessment of biomedical research grant proposals, including experience in peer review;
- (d) The delivery of public healthcare in Canada;
- (e) Law, particularly in the fields of public charitable foundations, board governance and tax law as it applies to public charitable foundations, as well as familiarity regarding the concepts of cy-près and Rational Connection;
- (f) Board governance, particularly the governance of public charitable foundations in Canada; and
- (g) Finance, including experience in accounting, investment and asset management, and the operation and financial regulatory compliance of public charitable foundations in Canada (for greater certainty, it is understood that the Foundation Board will retain an investment and asset management firm to manage the Cy-près Fund).

The appointment of all Foundation Directors, including the Chair, to the Foundation Board shall be subject to the approval of the CCAA Court.

9.5.2 Appointment of Replacement Foundation Directors from Time to Time after Final Approval of the Cy-près Foundation by the CCAA Court

Where the terms of Foundation Directors end or Foundation Directors resign, are removed from office, are declared to be incapable by a Court, become bankrupt or otherwise cease to fulfill their duties and responsibilities as Foundation Directors, through the Executive Search Process qualified Individuals who fulfill the Board Composition Requirements will be identified and recommended

for appointment to serve as replacement Foundation Directors (“**Replacement Foundation Directors**”), including the replacement Chair (“**Replacement Chair**”).

The appointment of all Replacement Foundation Directors, including the Chair, to the Foundation Board shall be subject to the approval of the CCAA Court.

9.6 ~~Process for soliciting and selecting proposals for funding by~~ Administration, Governance and Operations of the Cy-près Foundation

9.6.1 Duties and Responsibilities of the Foundation Board

Subject to the provisions of the CNFPA, the duties and responsibilities of the Foundation Board shall include:

- (a) Overseeing and ensuring the effective and efficient governance, management, administration, and operation of the Cy-près Foundation;
- (b) Ensuring that the Cy-près Foundation complies with Applicable Law regarding the investment and financial management of the Cy-près Fund and the continuance of its status as a public charitable foundation;
- (c) Approving the appointment of the Foundation Chief Executive Officer and the employment of the Foundation Management Team;
- (d) Appointing an independent public accountant for the Cy-près Foundation;
- (e) Approving the guidelines that shall govern the investment of the Cy-près Fund prepared by the investment and asset management firm that is retained to manage the Cy-près Fund;
- (f) Reviewing and approving the Cy-près Foundation’s quarterly financial statements, audited annual financial statements, schedule of expenditures that constitute qualifying disbursements for the purpose of the ITA, list of debts, if any, incurred by the Cy-près Foundation, and disbursement quota for the purpose of the ITA;
- (g) Reviewing and approving for publication the RFPs, application forms and associated documents to be completed by Proposal Proponents that are to be prepared by the Foundation Management Team;
- (h) Applying the guiding principles of Rational Connection, Materiality, Proportionality and Conflict of Interest explained in Article 9, Sections 9.9.1 to 9.9.4 herein, to assess Proposals during the Final Review and select the Proposals that will be approved by the Foundation Board each year for funding from the Cy-près Fund;
- (i) Attending meetings of the Foundation Board subject to reasonable absences;
- (j) From time to time as reasonably necessary and required, approving the engagement on a part-time or full-time basis, of (i) any suitably qualified Individuals (“**Proposal Reviewers**”) to conduct the Preliminary Review of Proposals, and (ii) any advisors,

including legal, financial, investment, information technology, public relations or other advisors, to advise and assist with the carrying out of the respective duties and responsibilities of the Foundation Board and the Foundation Management Team;

- (k) Reviewing the Peer Review and ranking of each Proposal seeking funding for research that has passed the Preliminary Review and the Streamlining Review and deciding whether the Foundation Board approves the Proposal for funding from the Cy-près Fund;
- (l) Reviewing each Proposal seeking funding for any other program or initiative pertaining to Tobacco-related Diseases and having a Rational Connection that has passed the Preliminary Review and the Streamlining Review, and deciding whether the Foundation Board approves the Proposal for funding from the Cy-près Fund;
- (m) Reviewing financial reports, progress reports and final reports periodically submitted to the Cy-près Foundation by Grant Recipients;
- (n) Reviewing the reports regarding the financial affairs of the Cy-près Foundation that are submitted to the Foundation Board by the Cy-près Foundation's chief financial officer monthly, quarterly, annually, and *ad hoc* as may be requested by the Chair of the Foundation Board;
- (o) Not less frequently than annually, preparing a written report that will be submitted on an information basis to the CCAA Plan Administrators, and thereafter filed with the CCAA Court by the CCAA Plan Administrators, that includes reports on the financial status of the Cy-près Foundation (including capital, interest earned, distributions made to Grant Recipients, expenses, compensation, professional advisor fees and administrative costs) and the activities of the Cy-près Foundation for the period covered by the report; and
- (p) Performing such other duties as may be required or incidental to the duties enumerated in subparagraphs (a) to (o) herein, or as the Chair of the Foundation Board may specify.

9.6.2 Duties and Responsibilities of the Chair of the Foundation Board

In addition to the duties and responsibilities set forth in Article 9, Section 9.6.1 herein, the duties and responsibilities of the Chair of the Foundation Board shall include:

- (a) Overseeing and ensuring the effective and efficient governance, management, administration, and operation of the Cy-près Foundation;
- (b) Identifying the topics for discussion and developing the agenda for each Foundation Board meeting;
- (c) Chairing all Foundation Board meetings;
- (d) Communicating on behalf of the Foundation Board with the CCAA Plan Administrators;

- (e) Not less frequently than annually, in collaboration with the Foundation Board, preparing a written report on an information basis for submission to the CCAA Plan Administrators and thereafter for filing with the CCAA Court that includes reports on:
 - (i) the financial status of the Cy-près Foundation (including capital, interest earned, distributions made to Grant Recipients, expenses, compensation, professional advisor fees and administrative costs);
 - (ii) the activities of the Cy-près Foundation for the period covered by the report including the following particulars of all Proposals submitted in response to an RFP that are approved for funding from the Cy-près Fund: description of Grant Recipient; abstract; amount of Grant; term of Grant; and the Rational Connection of the approved Proposal; and
 - (iii) the impact of the research, programs and initiatives funded by the Cy-près Foundation on the outcomes of Individuals who suffer or may in the future suffer from Tobacco-related Diseases and the corollary impact on the health of Canadians; and
- (f) Performing such other duties as may be required or incidental to the duties enumerated in subparagraphs (a) to (e) herein, or as the Foundation Board may specify.

9.6.3 Management of Operations and Administration of Cy-près Foundation

The PCC Representative Counsel will retain the Executive Search Firm to engage in the Executive Search Process to identify an individual whom the Executive Search Firm will recommend for engagement to serve as the chief executive officer of the Cy-près Foundation (“**Foundation Chief Executive Officer**”) who will, among other things, oversee and ensure the effective and efficient governance, management, administration, and operation of the Cy-près Foundation.

Through the Executive Search Process, qualified Individuals will be identified and recommended for employment by the Cy-près Foundation as a management team of professional staff (collectively, “**Foundation Management Team**”) to manage the day-to-day operations and administrative tasks of the Cy-près Foundation to ensure that it fulfills its Mission in accordance with the terms of the CCAA Plans. The Foundation Management Team may be comprised of a chief financial officer, general manager of operations, assistant to the general manager of operations, IT specialist and office administrator.

9.7 Process for Selection of Proposals to receive Grants from Cy-près Fund

The diagram below provides an overview of the process by which the Cy-près Foundation will solicit, review and select the Proposals that will be approved to receive a Grant from the Cy-près Fund. The Grant selection process is described in further detail in Article 9, Sections 9.8 to 9.13 herein:

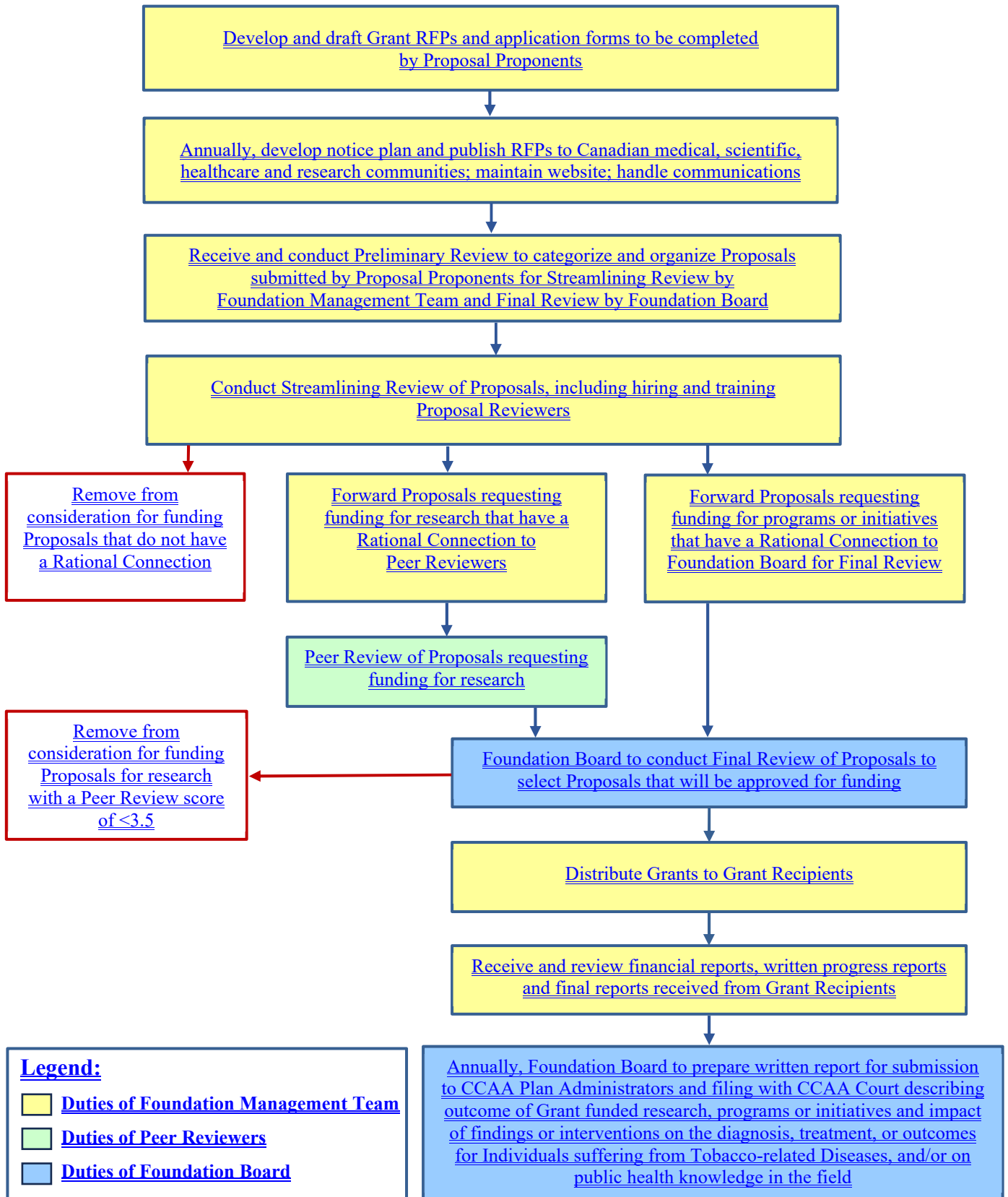
~~The Foundation Board shall establish a secretariat and direct its activities to facilitate the effective and efficient governance, administration and operation of the Cy-près Foundation which will~~

~~include the solicitation, receipt, review and evaluation of the merits of proposals submitted by individuals and organizations seeking distributions from the Cy prèr Fund.~~

~~The Foundation Board shall establish the criteria, reflective of the mission of the Cy prèr Foundation, for applicants to qualify to receive distributions from the Cy prèr Fund. The Foundation Board shall publish requests for proposals soliciting the submission of proposals from interested individuals and organizations seeking financing and support for research, programs and initiatives which fall within the scope of the mission of the Cy prèr Foundation. The requests for proposals will specify that a proposal should include, among other things:~~

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Process for Selection of Proposals to receive Grants from Cy-près Fund



9.8 Requests for Proposals

9.8.1 Publication of Requests for Proposals

Annually, the Foundation Management Team shall develop, draft and publish or cause to be published an RFP soliciting the submission of Proposals from interested Individuals, groups of Individuals, and institutions, organizations or entities incorporated and operating in Canada requesting funding for (i) research which falls within the scope of the Mission of the Cy-près Foundation, or (ii) such other program or initiative that pertains to Tobacco-related Diseases and the Foundation Board may approve for funding from the Cy-près Fund, provided that such research, program or initiative has a Rational Connection. All RFPs shall be widely and publicly published and disseminated in a manner which is consistent with the customs and standards applicable to biomedical research and healthcare so that they come to the notice and attention of prospective Proposal Proponents within the Canadian medical, scientific, healthcare and research communities. The Foundation Management Team shall develop a notice plan for the RFPs which may, in the discretion of the Foundation Management Team, include publication of the RFPs on the website of the Cy-près Foundation, in postings on the internal research websites and in research offices of universities, hospitals and other research centres in Canada, and distribution to an email list of interested researchers and healthcare practitioners. The content and plan for providing Notice of the RFPs must be effective in reaching potential Proposal Proponents who are engaged in or have the expertise and capacity to engage in research or complete a program or initiative that has a Rational Connection to Tobacco-related Diseases. The notice plan shall include the details regarding on how to submit a Proposal, eligibility for funding from the Cy-près Foundation, and deadlines for submission of Proposals.

9.8.2 Specifications for Requests for Proposals

In the discretion of the Foundation Management Team, the RFPs may specify that Proposal Proponents will be required to comply with Tri-Agency Policies as applicable in whole or in part, or as otherwise adapted for use by the Cy-près Foundation, in respect of the specifications for the Proposals for research submitted in response to an RFP. In circumstances where the Tri-Agency Policies may not be applicable, the Foundation Management Team may, in their discretion, develop and draft an RFP that specifies that a Proposal should include, among other things:

- (a) Background information regarding the organization~~-or~~, institution or entity incorporated and operating in Canada seeking funding, including its history, mission statement, research mandate, research administrative resources, strategic plan, goals and objectives;
- (b) The curriculum vitae of the researcher or project manager as applicable to the research, program or initiative for which funding from the Cy-près Fund is sought to establish that they have the appropriate qualifications and expertise to undertake the research, program or initiative;
- (c) A declaration by the ~~applicant~~Proposal Proponent that there is no ~~real or perceived conflict of interest~~Conflict of Interest between the ~~applicant's~~Proposal Proponent's interest in the research, program or initiative and the ~~applicant's private~~Proposal Proponent's personal, professional,~~-business~~ and/or ~~public~~business interests;

- (d) A statement of how the research, program or initiative has a Rational Connection and is aligned with the ~~mission~~Mission of the Cy-près Foundation;
- (e) A scientific abstract or other description of the research, program or initiative, including methodology and analysis and the expected product or result of the work of the research, program or initiative, together with the expected indirect benefit of the work to ~~the individuals falling within the scope of the Cy-près and Canadians at large~~Individuals who suffer or may in the future suffer from a Tobacco-related Disease;
- (f) The term (in months/years) for which funding is sought and the proposed start date and end date of the research, program or initiative;
- (g) The amount of funding requested;
- (h) The budget for the expenditure of the funding; and
- (i) Disclosure of the financial accountability policies, administrative systems, procedures and controls in place to ensure that the ~~funds distributed from the Cy-près Fund are~~Grant is used appropriately in accordance with the highest ethical and financial standards.

~~Once proposals are received by the secretariat, the Foundation Board will submit the proposals which it clears to go forward as having met the preliminary requirements to an independent organization for peer review to enable the Foundation Board to determine whether each proposal is sufficiently meritorious to be further advanced in the process for approval. Once cleared through the peer review process, the Foundation Board will ascertain which proposals it wishes to advance, the priority, timing, amounts to be allocated to each successful proposal, and duration or term of a successful proposal to completion, as well as any other pertinent questions. This will include oversight and reporting requirements as well as other conditions attached to a successful grant of funds. The Cy-près Foundation has no duty to grant, nor shall there be any expectation to receive, any financial or other support for any research, program or initiative which is sought from the Cy-près Foundation.~~

~~Once a proposal is accepted by the Foundation Board, it will be submitted together with supporting materials to the CCAA Plan Administrators for review. The Foundation Board will also provide a copy of the proposal together with supporting materials to the PCC Representative Counsel. If accepted by the CCAA Plan Administrators, the proposal will be submitted with or without a recommendation by the CCAA Plan Administrators to the CCAA Court for approval. Until such time as the final CCAA Court approval is finalized, a proposal shall not be deemed to have been approved.~~

~~The grants submitted by the Foundation Board through the CCAA Plan Administrators for approval by the CCAA Court will be conducted annually. The list of grants shall be prioritized, supported by a strategic plan, a budget and the peer reviews.~~

~~The CCAA Plan Administrators shall be empowered to retain the services of such experts as they deem necessary to advise them in regard to the foregoing and in respect of any and all endeavours in connection with the establishment and operation of the Cy-près Foundation.~~

9.9 Guiding Principles to be applied in Streamlining Review and Final Review of Proposals

In the Streamlining Review of Proposals conducted by the Foundation Management Team, assisted as required by Proposal Reviewers, and in the Final Review of Proposals conducted by the Foundation Board, the guiding principles of Rational Connection, Materiality, Proportionality and Conflict of Interest shall be taken into consideration.

9.9.1 Rational Connection

The PCCs are Individuals who have asserted or may be entitled to assert a Claim resulting from their use of or exposure to Tobacco Products of the Tobacco Companies. The payment of the \$1.0 billion Cy-près Fund to the Cy-près Foundation is the consideration provided by the Tobacco Companies for the full and final settlement and release of all Claims and potential Claims of PCCs who are not eligible to receive Individual Payments from the PCC Compensation Plan and *Létourneau* Class Members who are not eligible to receive Compensation Payments from the Quebec Administration Plan. Such PCCs and *Létourneau* Class Members will benefit indirectly from the research, programs and initiatives that will focus on achieving earlier diagnosis, more effective treatment and improved outcomes for Individuals who suffer or may in the future suffer from Tobacco-related Diseases that the Foundation Board selects for funding from the Cy-près Fund. It is the Mission of the Cy-près Foundation to achieve earlier diagnosis, more effective treatment and improved outcomes for Individuals suffering from Tobacco-related Diseases.

To achieve this objective, it is a requirement that each Proposal must have a rational connection to a Tobacco-related Disease (“**Rational Connection**”). The Rational Connection requirement means that the subject of the research, program, or initiative must have a clear and reasonable link to a Tobacco-related Disease that is not irrational or too remote. Each Proposal must demonstrate a reasonable evidence-based causal link between prolonged smoking and the particular disease or condition which is the subject of a Proposal submitted by a Proposal Proponent; however, the basis of the assessment of whether a Rational Connection is present is not the legal standard of causation.

Stated otherwise, research, programs and initiatives that may have a Rational Connection sufficient to qualify for funding from the Cy-près Foundation are not limited to Lung Cancer, Throat Cancer and Emphysema/COPD (GOLD Grade III or IV), but may also pertain to Tobacco-related Diseases that are made sufficiently common by prolonged smoking of Tobacco Products so as to be considered to have a Rational Connection.

Whether the subject matter of a Proposal has a Rational Connection shall be assessed and decided on a case-by-case basis considering various factors including:

- (i) The nature and purpose(s) of the Proposal;
- (ii) The type of disease(s) involved;
- (iii) The intended beneficiaries of the research, program or initiative; and
- (iv) The extent to which the Proposal is likely to result in tangible and objectively measurable improvements in Tobacco-related Disease diagnosis, treatment, and/or outcomes.

Proposals found to have a Rational Connection may proceed forward in the Proposal review process to Peer Review if they are Proposals for research and Final Review if they are the Proposals for other programs or initiatives pertaining to Tobacco-related Diseases. Proposals found to not have a Rational Connection will be withdrawn from further consideration for funding by the Cy-près Foundation.

To provide guidance, below is a non-exhaustive list of factors which would be indicative of the absence of the requisite Rational Connection and warrant the withdrawal of the Proposal from further consideration for funding:

- (a) the Proposal requests funding for research, or a program or initiative relating to a Non Tobacco-related Disease;
- (b) the Proposal requests funding for research, or a program or initiative relating to a disease that is not more common among smokers than non-smokers;
- (c) the Proposal requests funding for research, or a program or initiative relating to a disease for which smoking has not been identified as a risk factor; or
- (d) the Proposal requests funding for programs and initiatives aimed at reducing or preventing tobacco use in Canada.

9.9.2 Materiality

The Foundation Management Team, assisted as required by Proposal Reviewers, and the Foundation Board shall assess whether each Proposal is material to the scope of the Mission of the Cy-près Foundation (“**Material**”). A Proposal will be Material if the magnitude, impact or inherent value of the benefit that it will provide is significant enough to advance the Cy-près Foundation’s Mission.

9.9.3 Proportionality

When making its final decision regarding which Proposals will be approved for funding from the Cy-près Fund, the Foundation Board shall consider the relative proportionality (“**Proportionality**”) of the Proposals under consideration from the standpoint of the following factors, as applicable:

- (a) the magnitude of the budget requested in each Proposal in the context of the total amount of the Grants available for distribution in any given year;
- (b) the magnitude of the anticipated benefit to be gained from each Proposal;
- (c) the nature of the anticipated benefit to be gained from each Proposal;
- (d) the relative burdens of disease imposed by different Tobacco-related Diseases;
- (e) the prevalence of different Tobacco-related Diseases in Canada;

- (f) the level of priority that ought to be given to research that will benefit Individuals suffering from Tobacco-related Diseases who are more severely impacted by their disease;
- (g) the risks, as identified during the Peer Review, to which Clinical Trial participants in the proposed research may be exposed;
- (h) the inherent value of each Proposal; and
- (i) any other proportionality considerations having regard to the nature of each Proposal.

9.9.4 Conflict of Interest

A real, perceived or potential conflict of interest (“**Conflict of Interest**”) may arise in circumstances where the Proposal Proponent:

- (a) is a Foundation Director, including the Chair;
- (b) is part of the Foundation Management Team;
- (c) is a relative or close friend of, has a personal relationship with, or has a close professional or business affiliation with, a Foundation Director, including the Chair; and/or
- (d) is otherwise in a position to bias or influence, directly or indirectly, the Proposal review process to the benefit of their Proposal.

9.10 Preliminary Review of Proposals

Because a finite amount of funds will be available for each RFP published by the Cy-près Foundation, it is important that the Foundation Board be able to focus its consideration on the most meritorious and competitive Proposals. The Foundation Management Team, assisted as required by Proposal Reviewers, shall conduct a preliminary review (“**Preliminary Review**”) of all Proposals submitted to the Cy-près Foundation in response to an RFP. The Proposals shall be categorized into two groups:

1. Proposals requesting funding for research, and
2. Proposals requesting funding for other programs or initiatives pertaining to Tobacco-related Diseases.

The Foundation Management Team, assisted as required by Proposal Reviewers, will withdraw Proposals from further consideration for funding that:

- (a) are incomplete;
- (b) do not comply with the RFP requirements for a Proposal;
- (c) clearly do not have a Rational Connection or are otherwise outside the scope of the Mission of the Cy-près Foundation;

- (d) are identical or essentially identical to a Proposal previously accepted for funding from the Cy-près Fund; or
- (e) have a Conflict of Interest.

9.11 Streamlining Review of Proposals

The Foundation Management Team, assisted as required by Proposal Reviewers, shall conduct a review (“**Streamlining Review**”) of all Proposals which have passed the Preliminary Review to determine (i) which Proposals requesting funding for research will be submitted for Peer Review before they are assessed by the Foundation Board, and (ii) which Proposals requesting funding for other programs or initiatives pertaining to Tobacco-related Diseases will proceed directly to be assessed by the Foundation Board to determine whether they will be approved for funding from the Cy-près Fund.

The Foundation Management Team, assisted as required by Proposal Reviewers, will withdraw from further consideration for funding Proposals that:

- (a) do not have a Rational Connection;
- (b) have a Conflict of Interest; or
- (c) have some merit but many limitations and require major revisions such that they are not ready to be funded.

9.12 Peer Review

The Foundation Management Team will recruit from the Canadian research and academic communities independent third party peer reviewers (“**Peer Reviewers**”) with the appropriate expertise who will serve on a volunteer basis on peer review panels which will undertake the Peer Review of Proposals for research that have passed the Preliminary Review. For this purpose, the Foundation Management Team may consider consulting with pan-Canadian institutions with experience in the development and support of peer review panels. The Peer Reviewers shall:

- (a) Have expertise and experience in the field(s) pertaining to the research proposed in the Proposal; and
- (b) Have no Conflict of Interest between the Proposal Proponent and the private, professional, business or public interests of the Peer Reviewer.

The Peer Reviewers will conduct the Peer Review of the Proposals for research in accordance with the customs, standards, practices, policies and guidelines adhered to in the Canadian research and academic communities in order to conduct consistent, fair and high quality Peer Review.

The Peer Reviewers will prepare and submit to the Foundation Board a Peer Review of each Proposal which includes:

- (a) A written summary of the research;

- (b) An assessment of the strengths and weaknesses of the Proposal;
- (c) The consensus rating of the Proposal based on the rating scale of 0 to 4.9 to one decimal place (4.5-4.9: Outstanding; 4.0-4.4: Excellent; 3.5-3.9: Good; 3.0-3.4: Fair; and 0.0-2.9: Poor); and
- (d) A recommendation regarding the budget and term during which the Cy-près Foundation should support the research.

The Peer Reviewers will not make the final decision or provide a recommendation to the Foundation Board regarding whether a Proposal should be approved to receive funding from the Cy-près Fund.

Proposals with a Peer Review score of <3.5 will be withdrawn from further consideration for funding.

9.13 Final Review of Proposals by Foundation Board

Applying the guiding principles of Rational Connection, Materiality, Proportionality and Conflict of Interest, the Foundation Board shall conduct a final review (“**Final Review**”) of (i) the Proposals for research that have undergone Peer Review and (ii) the Proposals for other programs or initiatives pertaining to Tobacco-related Diseases that have passed the Preliminary Review and the Streamlining Review, and select the Proposals that will be approved by the Foundation Board each year for funding from the Cy-près Fund.

For greater certainty, it is intended that the Cy-près Foundation will fund a range of research, programs and initiatives over time, having regard to the objective of conferring indirect benefits on Individuals who suffer or may in the future suffer from a Tobacco-related Disease, and not to concentrate funding in a single project or a limited number of projects.

In regard to each Proposal approved, the Foundation Board shall consider the priority, timing, amount of the Grant, term required to complete the approved research, program or initiative, any oversight required, reporting requirements, any conditions which should attach to the Grant, and any other pertinent considerations.

After the Final Review has been completed, the Foundation Management Team shall notify the Proposal Proponents whether their Proposal has been approved for funding from the Cy-près Fund. The Cy-près Foundation has no duty to grant, nor shall there be any expectation on the part of a Proposal Proponent that they will receive, any financial or other support for any research, program or initiative which is sought from the Cy-près Foundation. The decision regarding whether to provide funding for a Proposal is within the sole discretion of the Foundation Board and is not reviewable by the CCAA Court or any other court in Canada.

The particulars of the Proposals which are approved by the Foundation Board shall be published on the website of the Cy-près Foundation and included in the written report which the Foundation Board shall prepare, not less frequently than annually, and submit to the CCAA Plan Administrators and thereafter file with the CCAA Court for informational purposes.

The Foundation Management Team shall provide to the PCC Representative Counsel copies of (i) all approved Proposals together with supporting materials, and (ii) all reports that the Foundation Board provides to the CCAA Plan Administrators and the CCAA Court.

9.14 Administration of Research, Programs and Initiatives by Grant Recipients

In the discretion of the Foundation Board, Grant Recipients may be required to comply with Tri-Agency Policies as applicable, or as adapted for use by the Cy-près Foundation, in respect of the administration of any Proposal for research, a program or an initiative that the Board selects for funding from the Cy-près Fund.

9.15 9.7-Reporting by ~~approved recipients of distributions from the~~ Grant Recipients to Cy-près ~~Fund~~ Foundation

~~The approved recipients of distributions from the Cy-près Fund~~ Grant Recipients will be required to, among other things:

- (a) Periodically submit financial reports to the Cy-près Foundation regarding the receipts and expenditures on the research, program or initiative;
- (b) Periodically submit written progress reports to the Cy-près Foundation providing details of the progress on the research, program or initiative and future work plans;
- (c) Submit a written final report to the Cy-près Foundation; ~~and~~, which shall include:
 - (i) A description of the outcome of the Grant funded research, program or initiative, as well as the impact of the findings or interventions on the diagnosis, treatment, or outcomes for Individuals who suffer or may in the future suffer from Tobacco-related Diseases, and/or on public health knowledge in the field that was the subject of the research, program or initiative funded; and
 - (ii) Details of any dissemination efforts, such as through publications, conference presentations, reports, or other means of communicating the outcomes of the Grant funded research, program or initiative; and
- (d) At the end of the term of the research, program or initiative, ~~will~~ return any unexpended funds from the Grant to the Cy-près Foundation.

In the discretion of the Foundation Board, Grant Recipients may be required to comply with Tri-Agency Policies as applicable, or as adapted for use by the Cy-près Foundation, in respect of their reporting to the Cy-près Foundation regarding their Grants.

9.16 9.8-Reporting by Cy-près Foundation to CCAA Plan Administrators and CCAA Court

Not less frequently than annually, the Chair of the Cy-près Foundation shall prepare a written report for submission to the CCAA Plan Administrators and thereafter for filing with the CCAA Court that includes reports on the financial status of the Cy-près Foundation (including capital,

interest earned, distributions made, ~~etc. to Grant Recipients, expenses, compensation, professional advisor fees and administrative costs~~) and the activities of the Cy-près Foundation for the period covered by the report. ~~A copy of this report~~ Copies of all such reports shall be provided to the PCC Representative Counsel.

9.17 ~~9.9~~ Role of the CCAA Plan Administrators and the CCAA Court

The CCAA Court is responsible for the ultimate supervision of the Cy-près Foundation pursuant to the terms of the CCAA Plan.

The CCAA Plan Administrators ~~are designated in the CCAA Plan to be the overseers of the Cy-près Foundation and~~ will function as the intermediaries relative to the supervisory role of the CCAA Court. ~~In this capacity, the CCAA Plan Administrators will gather the data and information concerning the Cy-près Foundation that will be of significance to the CCAA Court when it approves various functions of the Cy-près Foundation as it will be required to do from time to time.~~

The ~~CCAA Plan Administrators will report to the CCAA Court regarding the activities of the Cy-près Foundation annually, or more frequently as they deem necessary. Accordingly, the~~ Chair of the Foundation Board shall communicate with the CCAA Plan Administrators ~~when~~ who will facilitate the filing with the CCAA Court of the Cy-près Foundation's reports ~~are put forward for approval by the CCAA Court. Similarly, this process will be adhered to when the Cy-près Foundation seeks the approval of the CCAA Court in advance of proceeding with matters, other than purely administrative matters, which entail financial expenditures or commitments. that were prepared pursuant to Article 9, Section 9.16 herein.~~

All reports provided by the Chair of the Foundation Board to the CCAA Plan Administrators and all reports ~~provided~~ filed by the CCAA Plan Administrators ~~to~~ with the CCAA Court in relation to the Cy-près Foundation shall be provided to the PCC Representative Counsel.

9.18 ~~9.10 Term of Operation of~~ Duration of the Cy-près Foundation

Subject to compliance with Applicable Law, including the disbursement quota requirements pursuant to the ITA, the intention is that, annually, the Grants distributed to Grant Recipients by the Cy-près Foundation shall be paid from the income of the Cy-près Fund.

If deemed to be necessary and appropriate in the circumstances, in making Grants to Grant Recipients in any given year, the Cy-près Foundation may encroach upon the capital in the Cy-près Fund provided, however, that the CCAA Court has approved such encroachment on the capital in advance of the Cy-près Foundation making any such encroachment.

As the Mission of the Cy-près Foundation reaches maturity, it may be desirable for the Cy-près Foundation to encroach upon the capital of the Cy-près Fund. The Cy-près Foundation shall continue to carry out its intended activities until such time as its Mission has been substantially accomplished. The Cy-près Foundation shall not be dissolved, nor shall its work be terminated until such time as specified by further Order of the CCAA Court.

In the event of the winding up and dissolution of the Cy-près Foundation, subject to the approval of the CCAA Court, all of the remaining assets of the Cy-près Foundation after payment of its liabilities shall be distributed to one or more recognized registered charities in Canada, which are “qualified donees”, as that term is defined in the ITA, having similar objects to the Cy-près Foundation.

~~The Cy-près Foundation shall not be dissolved, nor shall its work be terminated until such time as specified by the CCAA Court in the Sanction Order or such further Order of the CCAA Court.~~

....

14.4 Duties and Responsibilities of CCAA Plan Administrators

In implementing the administration of the CCAA Plans during the Contribution Period, the duties and responsibilities of the CCAA Plan Administrators shall be as set out below provided, however, that the CCAA Plan Administrators shall incur no liability of any kind whatsoever to the Provinces, Territories, any Impacted Claimants or any other Person in respect of their performance of such duties and responsibilities and shall be held harmless in this regard:

....

- (1) ~~Certain oversight activities regarding the Cy-près Foundation~~Intentionally deleted;

....

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF ROTHMANS, BENSON & HEDGES INC.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
PROCEEDING COMMENCED AT TORONTO

**THIRTY-SECOND REPORT OF ERNST & YOUNG
INC.**

Cassels Brock & Blackwell LLP
SUITE 3200, BAY ADELAIDE CENTRE – NORTH
TOWER
40 TEMPERANCE STREET
TORONTO, ON M5H 0B4

R. Shayne Kukulowicz
Tel: 416-860-6463
Email: skukulowicz@us.cassels.com

Monique Sassi
Tel: 416-860-6886
Email: msassi@cassels.com

Alec Hoy
Tel: 416-860-2967
Email: ahoy@cassels.com

Lawyers for the Monitor and CCAA Plan Administrator

TAB 3

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE	)	FRIDAY, THE 7 th
	)	
JUSTICE KIMMEL	)	DAY OF AUGUST, 2026

IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, C. c-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
ROTHMANS, BENSON & HEDGES INC.

Applicant

**CCAA PLAN AMENDMENT ORDER #3
(ARTICLE 9)**

THIS MOTION, made by Ernst & Young Inc. in its capacity as court-appointed Monitor (the “**Monitor**”) of Rothmans, Benson & Hedges Inc. (“**RBH**”) pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) and CCAA Plan Administrator, for an Order approving additions and amendments to Article 9 and certain related provisions (the “**Amendments**”) of the Fourth Amended and Restated Court-appointed Mediator’s and Monitor’s Plan of Compromise and Arrangement concerning, affecting and involving RBH dated August 27, 2025, including the schedules thereto (the “**Fourth A&R RBH Plan**”), was heard virtually on this day in Toronto, Ontario.

ON READING the Motion Record of the Monitor and CCAA Plan Administrator dated July 28, 2026, including the Thirty-Second Report of the Monitor and CCAA Plan Administrator

dated July 28, 2026, filed, and **ON HEARING** the submissions of counsel to the Monitor and CCAA Plan Administrator, counsel to RBH, and those other parties listed on the Participant Information Form, no one appearing for any other person on the Common Service List, although properly served with the Motion Record, as appears from the Lawyer's Certificate of Service of Alec Hoy, dated July 28, 2026, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and that further service thereof is hereby dispensed with.

INTERPRETATION

2. **THIS COURT ORDERS** that capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Fourth A&R RBH Plan, as amended by the Amendments.

APPROVAL OF THE AMENDMENTS

3. **THIS COURT ORDERS** that (i) the Amendments are hereby authorized and approved; (ii) Article 9 of the Fourth A&R RBH Plan is amended and replaced with Schedule A attached; (iii) the definitions set out in Schedule B attached are revised or added to the Fourth A&R RBH Plan; and (iv) Article 14.4(l) and Schedules "T" & "U" to the Fourth A&R RBH Plan are deleted.

GENERAL PROVISIONS

4. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada, outside Canada, and against all Persons against whom it may be enforceable.

5. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory, or administrative body having jurisdiction in Canada, the United States, or abroad, including but not limited to the courts in respect of the Pending Litigation and the Quebec Class Actions, to give effect to this Order and to assist RBH, the Monitor and the CCAA Plan Administrator, and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory, and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to RBH, the Monitor and the CCAA Plan Administrator, each as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist RBH, the Monitor and the CCAA Plan Administrator, and their respective agents, in carrying out the terms of this Order.

6. **THIS COURT ORDERS** that RBH, the Monitor and the CCAA Plan Administrator shall be at liberty and are hereby authorized and empowered to apply to any court of competent jurisdiction, tribunal, regulatory, or administrative body, wherever located, for the recognition of this Order, for assistance in carrying out the terms of this Order, and to confirm this Order as binding and effective in any appropriate foreign jurisdiction.

7. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. on the date hereof and is enforceable without further need for entry or filing or further order of this Court.

Justice Kimmel

Schedule “A”

Article 9

ARTICLE 9.	ESTABLISHMENT AND ADMINISTRATION OF THE CY-PRÈS FOUNDATION.....
9.1	Purpose of the Cy-près Foundation.....
9.2	Funding the Cy-près Foundation.....
9.3	Cy-près Foundation Terms of Reference.....
9.4	CCAA Court Approval of Establishment of Cy-près Foundation.....
9.5	Appointment of Board of Directors and Chair of Cy-près Foundation.....
9.5.1	Appointment of Foundation Directors in the period after the Sanction Hearing and prior to Final Approval of the Cy-près Foundation by the CCAA Court.....
9.5.2	Appointment of Replacement Foundation Directors from Time to Time after Final Approval of the Cy-près Foundation by the CCAA Court.....
9.6	Administration, Governance and Operations of the Cy-près Foundation.....
9.6.1	Duties and Responsibilities of the Foundation Board.....
9.6.2	Duties and Responsibilities of the Chair of the Foundation Board.....
9.6.3	Management of Operations and Administration of Cy-près Foundation.....
9.7	Process for Selection of Proposals to receive Grants from Cy-près Fund.....
9.8	Requests for Proposals.....
9.8.1	Publication of Requests for Proposals.....
9.8.2	Specifications for Requests for Proposals.....
9.9	Guiding Principles to be applied in Streamlining Review and Final Review of Proposals.....
9.9.1	Rational Connection.....
9.9.2	Materiality.....
9.9.3	Proportionality.....
9.9.4	Conflict of Interest.....
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ARTICLE 9. ESTABLISHMENT AND ADMINISTRATION OF THE CY-PRÈS FOUNDATION

9.1 Purpose of the Cy-près Foundation

The Cy-près Fund will be administered by a public charitable foundation (“**Cy-près Foundation**”) to be established as part of the implementation of the CCAA Plan. The Cy-près Foundation shall be independent and free from any influence or interference by any of the Claimants, Tobacco Companies, Tobacco Company Groups, or any potential or actual beneficiary of the Cy-près Foundation. Although it is recognized that the governance of the Cy-près Foundation will be independent and free from any influence or interference, the Cy-près Foundation shall remain under the jurisdiction of the CCAA Court.

Improving outcomes in Tobacco-related Disease, through earlier diagnosis, more effective treatment, and better long-term health, has the potential to confer broad societal benefits. The Cy-près Foundation’s work, therefore, is intended to address the circumstances of Individuals who suffer or may in the future suffer from a Tobacco-related Disease, except those Individuals who receive a direct benefit under the PCC Compensation Plan or the Quebec Administration Plan, by funding research, programs or initiatives that have a Rational Connection to Tobacco-related Disease.

In addition, the Cy-près Foundation will confer a benefit to those members of the public in Canada who contracted disease otherwise than as a result of smoking, and regardless of the fact that this was not an intended purpose of the Cy-près Foundation. The research, programs and initiatives that are funded will have broader application beyond Tobacco-related Diseases by reason of the fact that the products of the research, programs and initiatives are definitionally generic, that is, the outcomes are not limited to disease contracted as a result of the use of or exposure to Tobacco Products. By way of illustration, advances in the diagnosis, treatment and management of diseases such as Lung Cancer arising from such work may benefit all persons suffering from this condition, regardless of whether their disease is attributable to the use of or exposure to Tobacco Products.

The Cy-près Fund is consideration for the full and final settlement and release of all claims and potential claims of PCCs who are not eligible to receive Individual Payments from the PCC Compensation Plan, and *Létourneau* Class Members who are not eligible to receive Compensation Payments from the Quebec Administration Plan, but are intended to be indirectly benefited by falling within the scope of the research, programs and initiatives to be funded by the Cy-près Foundation that will focus on achieving earlier diagnosis, more effective treatment and improved outcomes for Individuals who suffer or may in the future suffer from tobacco-related cancers, Emphysema/COPD and other Tobacco-related Diseases. For clarity, the intention is that the Cy-près Foundation will fund but not create, conduct or administer research, programs or initiatives. The broad group of claimants who are intended to receive benefits from the research, programs and initiatives to be funded by the Cy-près Foundation includes the following Individuals and any of their affected family members or estates:

- (a) Smokers who suffer or may in the future suffer from Lung Cancer or Throat Cancer or Emphysema/COPD (GOLD Grade III or IV) who are outside the PCC Claims Period or who smoked less than the requisite Twelve Pack-Years or, in the case of Emphysema/COPD, were not classified as GOLD Grade III or IV or the equivalent;
- (b) Smokers who suffer or may in the future suffer from a Tobacco-related Disease other than Lung Cancer or Throat Cancer and Emphysema/COPD (GOLD Grade III or IV) or the equivalent; and
- (c) Individuals who smoke or have smoked Tobacco Products and have not yet or may never develop a Tobacco-related Disease.

In respect of all Proposals which the Foundation Board selects for approval to receive a Grant from the Cy-près Fund, on a case-by-case basis, the Foundation Board must determine that there is some basis in fact to conclude that there is a Rational Connection to Tobacco-related Diseases.

The Cy-près Foundation is intended to confer benefits on the public in Canada. The programs and initiatives to be funded by the Cy-près Foundation are intended to serve and benefit Individuals, and the results of the research to be funded by the Cy-près Foundation are intended to enure to the benefit of Individuals who suffer or may in the future suffer from Tobacco-related Diseases. Grant Recipients will be required to make their research findings and recommendations open to the public by contributing them to the Canadian body of medical knowledge and disseminating them to health care practitioners across Canada through publication in peer-reviewed journals and academic databases and presentations made at medical conferences.

As described in Article 9, Section 9.9.1 herein, the guiding principle for the Cy-près Foundation is that the research, programs and initiatives that it funds must have a Rational Connection to a Tobacco-related Disease in that they will focus on achieving earlier diagnosis, more effective treatment and improved outcomes for Individuals who suffer or may in the future suffer from Tobacco-related Disease. This guiding principle will apply throughout the duration of the Cy-près Foundation's existence to the work product generated by the research and the programs and initiatives funded from the Cy-près Fund.

The payment of the QCAP Cy-près Contribution in the amount of \$131 million shall be the consideration for the full and final settlement and satisfaction of the *Létourneau* Judgment.

The document entitled "Cy-près Fund: Methodology and Analysis" is attached to the CCAA Plan as Schedule "V".

9.2 Funding the Cy-près Foundation

The Cy-près Fund shall be paid in the aggregate amount set out in Article 16 from the Imperial Global Settlement Trust Account, RBH Global Settlement Trust Account and JTIM Global Settlement Trust Account and deposited, respectively, into the Imperial Cy-près Trust Account, RBH Cy-près Trust Account and JTIM Cy-près Trust Account for the benefit of the Cy-près Foundation. The proportionate shares of the Cy-près Fund which the Trustees shall transfer from each of the Imperial Global Settlement Trust Account, RBH Global Settlement Trust Account and JTIM Global Settlement Trust Account into, respectively, the Imperial Cy-près Trust Account,

RBH Cy-près Trust Account and JTIM Cy-près Trust Account shall be equal to: (i) on the Plan Implementation Date, the proportionate shares of the Upfront Contributions made by Imperial, RBH and JTIM; and (ii) in respect of years 2, 3, 4 and 5 following the Plan Implementation Date and any subsequent years until the Cy-près Fund has been paid in full, the proportionate shares of the Annual Contributions made by Imperial, RBH and JTIM in each of those years. The Cy-près Fund shall not be transferred to the Cy-près Foundation until such time as all aspects of the establishment of the Cy-près Foundation as set out in Section 9.4 herein have been given final approval by the CCAA Court, and the Imperial Cy-près Trust Account, RBH Cy-près Trust Account and JTIM Cy-près Trust Account have been duly established in the Bank. Following such time, the Cy-près Fund, including all amounts held in the Imperial Cy-près Trust Account, RBH Cy-près Trust Account and JTIM Cy-près Trust Account will be transferred to, and held by, the Cy-près Foundation. Following the transfer of such amounts to the Cy-près Foundation, any further payments to the Cy-près Foundation to be made by Imperial, RBH and JTIM shall be paid, respectively, from the Imperial Global Settlement Trust Account, the RBH Global Settlement Trust Account and the JTIM Global Settlement Trust Account and deposited to the Cy-près Foundation. The proportionate shares of the Cy-près Fund which the Trustees shall transfer from each of the Imperial Global Settlement Trust Account, the RBH Global Settlement Trust Account and the JTIM Global Settlement Trust Account to the Cy-près Foundation shall be the proportionate shares of the Annual Contributions made by Imperial, RBH and JTIM in each of those years.

9.3 Cy-près Foundation Terms of Reference

The Terms of Reference of the Cy-près Foundation are set out below:

Tobacco Cy-Près Research Foundation of Canada / Fondation canadienne cy-près de recherche sur le tabac

Terms of Reference

Introduction: This document describes the terms of reference for the Cy-près Foundation.

Foundation Name: The corporate name of the Cy-près Foundation shall be “Tobacco Cy-Près Research Foundation of Canada / Fondation canadienne cy-près de recherche sur le tabac” which clearly relates to the purpose of the Cy-près Foundation which is to distribute the Cy-près Fund. This name will be used on the Cy-près Foundation’s website and other presentation materials.

Purpose of the Cy-près Foundation: The Cy-près Foundation’s purpose is to provide an indirect benefit to Individuals who suffer or may in the future suffer from Tobacco-related Disease, except those Individuals who receive a direct benefit under the PCC Compensation Plan or the Quebec Administration Plan by funding research, programs and initiatives focused on achieving earlier diagnosis, more effective treatment and improved outcomes in Tobacco-related Disease. The Cy-près Foundation is intended to indirectly benefit users of Tobacco Products and their affected family members or estates who are not eligible to receive payments of compensation from the Quebec Administration Plan or the PCC Compensation Plan. The Individuals who will be directly compensated through the Quebec Administration Plan and PCC Compensation Plan include Individuals suffering from Lung Cancer, Throat Cancer or Emphysema/COPD (GOLD Grade III

or IV) as defined in those plans. While the Cy-près Foundation is not intended to benefit those Individuals who are directly compensated, they may receive an incidental benefit from the research, programs and initiatives it funds. The Cy-près Foundation will also benefit the Canadian public at large by funding research, programs and initiatives pertaining to Tobacco-related Diseases.

The Cy-près Foundation will not make any monetary payments to Individuals making claims arising from Tobacco-related Diseases. Those Individuals who are eligible to receive monetary compensation may be paid through either the Quebec Administration Plan or the PCC Compensation Plan in accordance with the provisions of those plans.

The users of Tobacco Products in the provinces and territories who suffer or may in the future suffer from Tobacco-related Disease, except those Individuals who receive a direct benefit under the PCC Compensation Plan or the Quebec Administration Plan, include the following Individuals and any of their affected family members or estates:

- i) Smokers suffering from Lung Cancer, Throat Cancer or Emphysema/COPD (GOLD Grade III or IV) who are outside the PCC Claims Period or who smoked less than the requisite Twelve Pack-Years or, in the case of Emphysema/COPD, were not classified as GOLD Grade III or IV or the equivalent;
- ii) Smokers who have a Tobacco-related Disease other than Lung Cancer, Throat Cancer and Emphysema/COPD (GOLD Grade III or IV) or the equivalent; and
- iii) Individuals who smoke or have smoked Tobacco Products and have not yet or may never develop a Tobacco-related Disease.

Vision for the Cy-près Foundation: Canadians in all provinces and territories will experience earlier diagnosis, more effective treatment and improved outcomes for tobacco-related cancers, Emphysema/COPD and other Tobacco-related Diseases.

Mission of the Cy-près Foundation (“Mission”): The Cy-près Foundation will indirectly benefit current, past and future smokers and their families by funding research, programs and initiatives that will focus on achieving earlier diagnosis, more effective treatment and improved outcomes for Individuals who suffer or may in the future suffer from Tobacco-related Diseases.

Values of the Cy-près Foundation: The Cy-près Foundation will focus on: the inherent value of the research, program or initiative from the standpoint of its indirect benefit to Individuals who suffer or may in the future suffer from a Tobacco-related Disease; the need to maintain a Rational Connection between the work funded by the Cy-près Foundation and those Individuals who suffer or may in the future suffer from a Tobacco-related Disease; commitment to principles of best evidence and expert peer review; collaboration to increase the impact of research funding while limiting Cy-près Foundation overhead costs to maximize the indirect benefit to Individuals who fall within the scope of the Cy-près Foundation; and, ensuring that Cy-près Foundation funded research, programs and initiatives reflect the principles of health equity and opportunity for inclusion of First Nations, Metis and Inuit people.

What Will Be Eligible for Consideration for Support by the Cy-près Foundation: Proposals regarding research, programs and initiatives that have a Rational Connection to Tobacco-related

Disease will be received by the Cy-près Foundation for consideration of eligibility for financial support from the Cy-près Foundation. Research regarding and programs and initiatives aimed at reducing or preventing tobacco use in Canada are outside of the scope of the Cy-près Foundation because they fall within the purview of the Provinces and Territories, involving policy issues and advocacy. Accordingly, such programs and initiatives will not be considered for funding from the Cy-près Foundation.

The fact that a Proposal requesting funding for research or a program or initiative is received by the Cy-près Foundation for consideration does not mean that it will necessarily be awarded a Grant. The decision regarding whether to provide funding for a Proposal is within the sole discretion of the Foundation Board and is not reviewable by the CCAA Court or any other court in Canada.

Early works:

- Establish “Tobacco Cy-Près Research Foundation of Canada / Fondation canadienne cy-près de recherche sur le tabac” and apply for registration as a “registered charity”, as that term is defined in the ITA, and a public foundation for the purposes of the ITA.
- Recruit a neutral and independent Foundation Board that will provide oversight of the Cy-près Foundation’s strategy for funding research, programs and initiatives to be funded by the Cy-près Foundation. The Foundation Board will also retain an investment and asset management firm to develop and oversee the financial and investment strategy for the Cy-près Foundation, subject to instructions from the Foundation Board.
- Develop a strategic plan for the implementation of the intended activities of the Cy-près Foundation.

Potential Areas of Cy-près Foundation Financial Support:

- Improving methods for screening, diagnosis and treatment of tobacco-related cancers.
- Establishing best practices for diagnosis and treatment of tobacco-related cancers, Emphysema/COPD and other Tobacco-related Diseases and increasing the likelihood that Canadians can achieve access to best practice care of these diseases.
- Researching the treatment of nicotine addiction and dependence, and tobacco use in Canada.
- Researching the effective treatment and palliation of Tobacco-related Diseases.
- Funding such other program or initiative pertaining to Tobacco-related Diseases as the Foundation Board may approve, provided that it has a Rational Connection and fulfills all other requirements for funding.

Benefit to the Public in Canada:

- The results of the research to be funded by the Cy-près Foundation are intended to enure to the benefit of Individuals who suffer or may in the future suffer from Tobacco-related Diseases. The research findings and recommendations regarding earlier diagnosis and more effective treatment of Tobacco-related Diseases will be contributed to the Canadian body of medical knowledge and disseminated to health care practitioners across Canada through publication in peer-reviewed journals and academic databases and presentations made at medical conferences.

- In addition to benefiting Canadians who have smoked or may smoke in the future, research to be funded by the Cy-près Foundation may have the potential to determine whether screening of higher risk populations and potentially all Canadians can identify cancers at earlier stages of oncogenesis when treatment is less morbid and potential cure is more likely.
- Expanded learnings from Cy-près Foundation supported research into tobacco-related cancers, Emphysema/COPD and other Tobacco-related Diseases are expected to provide a benefit to members of the Canadian public. In fulfilling the Cy-près Foundation's mandate, it is anticipated that the Canadian population will benefit from the knowledge generated by this work.

9.4 CCAA Court Approval of Establishment of Cy-près Foundation

The establishment of the Cy-près Foundation shall take place after the Sanction Hearing and shall be subject to the final approval of the CCAA Court to be sought in a hearing to be held before the CCAA Court after the Cy-près Foundation has been created and the essential requirements to establish the Cy-près Foundation have been fulfilled, including:

- (a) Drafting the goals, objects and purpose of the Cy-près Foundation;
- (b) Registering “Tobacco Cy-Près Research Foundation of Canada / Fondation canadienne cy-près de recherche sur le tabac” as the name of the Cy-près Foundation;
- (c) Selecting three Individuals to serve as the initial directors and members of the Cy-près Foundation (“**Initial Foundation Members**”);
- (d) Preparing the Articles of Incorporation, including the corporate objects, and any Articles of Amendment which will establish the legal entity that will constitute the Cy-près Foundation in accordance with ITA rules for registered charities and public foundations;
- (e) Establishing and registering the legal entity of the Cy-près Foundation through the filing of the Articles of Incorporation and any Articles of Amendment;
- (f) Preparing and executing a unanimous members’ agreement among the Initial Foundation Members (“**Unanimous Members’ Agreement**”) which shall provide, among other things, for the replacement of the Initial Foundation Members with the Individuals who will be recommended through the Executive Search Process for approval by the CCAA Court to be appointed to serve as the directors who will be responsible for the management and operation of the Cy-près Foundation (“**Foundation Directors**”), including the Chair, who together shall constitute the Foundation Board;
- (g) Pursuant to Article 9, Section 9.5, putting forward the Individuals who will be recommended through the Executive Search Process for approval by the CCAA Court to be appointed to serve as the Foundation Directors. Pursuant to the Unanimous Members’ Agreement, the Foundation Directors shall replace the Initial Foundation Members;
- (h) Drafting and adopting By-law No. 1 of the Cy-près Foundation setting out the governance structure for the Cy-près Foundation, including matters relating to quorum, voting,

frequency of the meetings of the Foundation Board, and other organizational and governance matters;

- (i) Preparing and passing the organizing resolutions of the Cy-près Foundation authorizing, among other things, the governance and operational matters necessary to give effect to the establishment of the Cy-près Foundation;
- (j) Preparing the proposed budget for the first year of the Cy-près Foundation's operation;
- (k) Preparing and filing an application with the CRA for registration of the Cy-près Foundation as a charity under the ITA;
- (l) Setting up the requisite management controls and system of books and records; and
- (m) Establishing the Imperial Cy-près Trust Account, RBH Cy-près Trust Account and JTIM Cy-près Trust Account in the Bank.

After the CCAA Court has rendered the Sanction Order approving the CCAA Plan, the CCAA Plan Administrators may, on an interim basis and consistent with the Terms of Reference of the Cy-près Foundation, proceed to engage in the work of establishing the Cy-près Foundation, including attending to the completion of the essential requirements set out in subparagraphs (a) to (m) above. The CCAA Plan Administrators shall be empowered to retain the services of such experts as they deem necessary to advise them in regard to the foregoing and in respect of any and all endeavours in connection with the establishment and operation of the Cy-près Foundation.

The CCAA Plan Administrators will be required to seek final approval by the CCAA Court of the Cy-près Foundation once the requisite steps to establish the Cy-près Foundation have been completed. The CCAA Plan Administrators shall supply reports to the CCAA Court affirming the foregoing.

9.5 Appointment of Board of Directors and Chair of Cy-près Foundation

9.5.1 Appointment of Foundation Directors in the period after the Sanction Hearing and prior to Final Approval of the Cy-près Foundation by the CCAA Court

The Foundation Board shall be comprised of a minimum of three and maximum of ten neutral and independent Foundation Directors, including the Chair of the Cy-près Foundation, it being intended that the Foundation Board will ordinarily be comprised of ten Foundation Directors, subject only to temporary vacancies or transitional periods pending appointment. The Foundation Directors, including the Chair of the Cy-près Foundation, shall not, either directly or indirectly, be a Proposal Proponent and shall be otherwise independent of any Proposal submitted to the Cy-près Foundation. The Foundation Directors shall serve without remuneration. At all times, more than 50% of the Foundation Directors shall deal at arm's length with each other for purposes of the ITA.

The PCC Representative Counsel will retain an executive search firm ("**Executive Search Firm**") to engage in the Executive Search Process to conduct an independent search to identify qualified

Individuals whom the Executive Search Firm will recommend, subject to the approval of the CCAA Court, for appointment to serve as the Foundation Directors, including the Chair, of the Cy-près Foundation. The Executive Search Firm will provide recommendations to the PCC Representative Counsel and the CCAA Plan Administrators regarding the structure of the Foundation Board including but not limited to, the term for which the Foundation Directors may hold office, whether the terms of the Foundation Directors should be staggered, and any limit on the number of terms that the Foundation Directors may serve.

In addition to complying with Applicable Law, the requirements for the composition of the Foundation Board (“**Board Composition Requirements**”) shall include the following considerations. The Foundation Directors shall be comprised of Individuals who, individually or collectively, have knowledge, training and experience in the following fields so that the Foundation Board is well equipped to govern, administer and manage the Cy-près Foundation so as to fulfill its Mission which includes the primary duty and responsibility to select the research, programs and/or initiatives that will be approved by the Foundation Board for funding from the Cy-près Fund each year:

- (a) Medicine, particularly in the practice specialities of medical oncology, surgical oncology, radiation oncology, respirology, cardiovascular disease, pharmacology, pathology, nicotine addiction/dependence, palliative care and epidemiology;
- (b) The conduct of biomedical research including knowledge regarding medical research, ethics in human clinical research, financial management of research grants, and compliance with reporting requirements regarding research grants;
- (c) The evaluation and assessment of biomedical research grant proposals, including experience in peer review;
- (d) The delivery of public healthcare in Canada;
- (e) Law, particularly in the fields of public charitable foundations, board governance and tax law as it applies to public charitable foundations, as well as familiarity regarding the concepts of cy-près and Rational Connection;
- (f) Board governance, particularly the governance of public charitable foundations in Canada; and
- (g) Finance, including experience in accounting, investment and asset management, and the operation and financial regulatory compliance of public charitable foundations in Canada (for greater certainty, it is understood that the Foundation Board will retain an investment and asset management firm to manage the Cy-près Fund).

The appointment of all Foundation Directors, including the Chair, to the Foundation Board shall be subject to the approval of the CCAA Court.

9.5.2 Appointment of Replacement Foundation Directors from Time to Time after Final Approval of the Cy-près Foundation by the CCAA Court

Where the terms of Foundation Directors end or Foundation Directors resign, are removed from office, are declared to be incapable by a Court, become bankrupt or otherwise cease to fulfill their duties and responsibilities as Foundation Directors, through the Executive Search Process qualified Individuals who fulfill the Board Composition Requirements will be identified and recommended for appointment to serve as replacement Foundation Directors (“**Replacement Foundation Directors**”), including the replacement Chair (“**Replacement Chair**”).

The appointment of all Replacement Foundation Directors, including the Chair, to the Foundation Board shall be subject to the approval of the CCAA Court.

9.6 Administration, Governance and Operations of the Cy-près Foundation

9.6.1 Duties and Responsibilities of the Foundation Board

Subject to the provisions of the CNFPA, the duties and responsibilities of the Foundation Board shall include:

- (a) Overseeing and ensuring the effective and efficient governance, management, administration, and operation of the Cy-près Foundation;
- (b) Ensuring that the Cy-près Foundation complies with Applicable Law regarding the investment and financial management of the Cy-près Fund and the continuance of its status as a public charitable foundation;
- (c) Approving the appointment of the Foundation Chief Executive Officer and the employment of the Foundation Management Team;
- (d) Appointing an independent public accountant for the Cy-près Foundation;
- (e) Approving the guidelines that shall govern the investment of the Cy-près Fund prepared by the investment and asset management firm that is retained to manage the Cy-près Fund;
- (f) Reviewing and approving the Cy-près Foundation’s quarterly financial statements, audited annual financial statements, schedule of expenditures that constitute qualifying disbursements for the purpose of the ITA, list of debts, if any, incurred by the Cy-près Foundation, and disbursement quota for the purpose of the ITA;
- (g) Reviewing and approving for publication the RFPs, application forms and associated documents to be completed by Proposal Proponents that are to be prepared by the Foundation Management Team;
- (h) Applying the guiding principles of Rational Connection, Materiality, Proportionality and Conflict of Interest explained in Article 9, Sections 9.9.1 to 9.9.4 herein, to assess Proposals during the Final Review and select the Proposals that will be approved by the Foundation Board each year for funding from the Cy-près Fund;

- (i) Attending meetings of the Foundation Board subject to reasonable absences;
- (j) From time to time as reasonably necessary and required, approving the engagement on a part-time or full-time basis, of (i) any suitably qualified Individuals (“**Proposal Reviewers**”) to conduct the Preliminary Review of Proposals, and (ii) any advisors, including legal, financial, investment, information technology, public relations or other advisors, to advise and assist with the carrying out of the respective duties and responsibilities of the Foundation Board and the Foundation Management Team;
- (k) Reviewing the Peer Review and ranking of each Proposal seeking funding for research that has passed the Preliminary Review and the Streamlining Review and deciding whether the Foundation Board approves the Proposal for funding from the Cy-près Fund;
- (l) Reviewing each Proposal seeking funding for any other program or initiative pertaining to Tobacco-related Diseases and having a Rational Connection that has passed the Preliminary Review and the Streamlining Review, and deciding whether the Foundation Board approves the Proposal for funding from the Cy-près Fund;
- (m) Reviewing financial reports, progress reports and final reports periodically submitted to the Cy-près Foundation by Grant Recipients;
- (n) Reviewing the reports regarding the financial affairs of the Cy-près Foundation that are submitted to the Foundation Board by the Cy-près Foundation’s chief financial officer monthly, quarterly, annually, and *ad hoc* as may be requested by the Chair of the Foundation Board;
- (o) Not less frequently than annually, preparing a written report that will be submitted on an information basis to the CCAA Plan Administrators, and thereafter filed with the CCAA Court by the CCAA Plan Administrators, that includes reports on the financial status of the Cy-près Foundation (including capital, interest earned, distributions made to Grant Recipients, expenses, compensation, professional advisor fees and administrative costs) and the activities of the Cy-près Foundation for the period covered by the report; and
- (p) Performing such other duties as may be required or incidental to the duties enumerated in subparagraphs (a) to (o) herein, or as the Chair of the Foundation Board may specify.

9.6.2 Duties and Responsibilities of the Chair of the Foundation Board

In addition to the duties and responsibilities set forth in Article 9, Section 9.6.1 herein, the duties and responsibilities of the Chair of the Foundation Board shall include:

- (a) Overseeing and ensuring the effective and efficient governance, management, administration, and operation of the Cy-près Foundation;
- (b) Identifying the topics for discussion and developing the agenda for each Foundation Board meeting;
- (c) Chairing all Foundation Board meetings;

- (d) Communicating on behalf of the Foundation Board with the CCAA Plan Administrators;
- (e) Not less frequently than annually, in collaboration with the Foundation Board, preparing a written report on an information basis for submission to the CCAA Plan Administrators and thereafter for filing with the CCAA Court that includes reports on:
 - (i) the financial status of the Cy-près Foundation (including capital, interest earned, distributions made to Grant Recipients, expenses, compensation, professional advisor fees and administrative costs);
 - (ii) the activities of the Cy-près Foundation for the period covered by the report including the following particulars of all Proposals submitted in response to an RFP that are approved for funding from the Cy-près Fund: description of Grant Recipient; abstract; amount of Grant; term of Grant; and the Rational Connection of the approved Proposal; and
 - (iii) the impact of the research, programs and initiatives funded by the Cy-près Foundation on the outcomes of Individuals who suffer or may in the future suffer from Tobacco-related Diseases and the corollary impact on the health of Canadians; and
- (f) Performing such other duties as may be required or incidental to the duties enumerated in subparagraphs (a) to (e) herein, or as the Foundation Board may specify.

9.6.3 Management of Operations and Administration of Cy-près Foundation

The PCC Representative Counsel will retain the Executive Search Firm to engage in the Executive Search Process to identify an individual whom the Executive Search Firm will recommend for engagement to serve as the chief executive officer of the Cy-près Foundation (“**Foundation Chief Executive Officer**”) who will, among other things, oversee and ensure the effective and efficient governance, management, administration, and operation of the Cy-près Foundation.

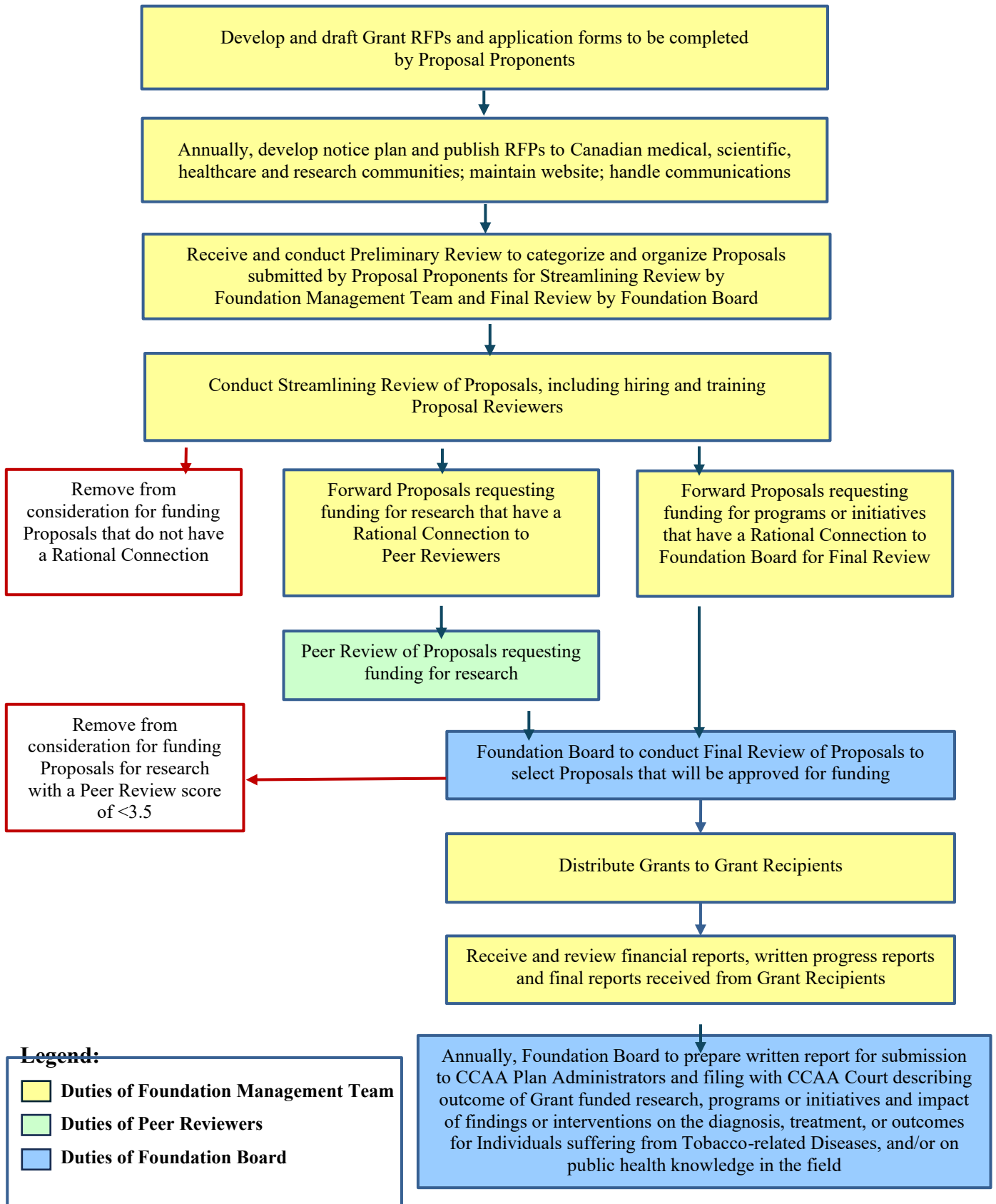
Through the Executive Search Process, qualified Individuals will be identified and recommended for employment by the Cy-près Foundation as a management team of professional staff (collectively, “**Foundation Management Team**”) to manage the day-to-day operations and administrative tasks of the Cy-près Foundation to ensure that it fulfills its Mission in accordance with the terms of the CCAA Plans. The Foundation Management Team may be comprised of a chief financial officer, general manager of operations, assistant to the general manager of operations, IT specialist and office administrator.

9.7 Process for Selection of Proposals to receive Grants from Cy-près Fund

The diagram below provides an overview of the process by which the Cy-près Foundation will solicit, review and select the Proposals that will be approved to receive a Grant from the Cy-près Fund. The Grant selection process is described in further detail in Article 9, Sections 9.8 to 9.13 herein:

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Process for Selection of Proposals to receive Grants from Cy-près Fund



9.8 Requests for Proposals

9.8.1 Publication of Requests for Proposals

Annually, the Foundation Management Team shall develop, draft and publish or cause to be published an RFP soliciting the submission of Proposals from interested Individuals, groups of Individuals, and institutions, organizations or entities incorporated and operating in Canada requesting funding for (i) research which falls within the scope of the Mission of the Cy-près Foundation, or (ii) such other program or initiative that pertains to Tobacco-related Diseases and the Foundation Board may approve for funding from the Cy-près Fund, provided that such research, program or initiative has a Rational Connection. All RFPs shall be widely and publicly published and disseminated in a manner which is consistent with the customs and standards applicable to biomedical research and healthcare so that they come to the notice and attention of prospective Proposal Proponents within the Canadian medical, scientific, healthcare and research communities. The Foundation Management Team shall develop a notice plan for the RFPs which may, in the discretion of the Foundation Management Team, include publication of the RFPs on the website of the Cy-près Foundation, in postings on the internal research websites and in research offices of universities, hospitals and other research centres in Canada, and distribution to an email list of interested researchers and healthcare practitioners. The content and plan for providing Notice of the RFPs must be effective in reaching potential Proposal Proponents who are engaged in or have the expertise and capacity to engage in research or complete a program or initiative that has a Rational Connection to Tobacco-related Diseases. The notice plan shall include the details regarding on how to submit a Proposal, eligibility for funding from the Cy-près Foundation, and deadlines for submission of Proposals.

9.8.2 Specifications for Requests for Proposals

In the discretion of the Foundation Management Team, the RFPs may specify that Proposal Proponents will be required to comply with Tri-Agency Policies as applicable in whole or in part, or as otherwise adapted for use by the Cy-près Foundation, in respect of the specifications for the Proposals for research submitted in response to an RFP. In circumstances where the Tri-Agency Policies may not be applicable, the Foundation Management Team may, in their discretion, develop and draft an RFP that specifies that a Proposal should include, among other things:

- (a) Background information regarding the organization, institution or entity incorporated and operating in Canada seeking funding, including its history, mission statement, research mandate, research administrative resources, strategic plan, goals and objectives;
- (b) The curriculum vitae of the researcher or project manager as applicable to the research, program or initiative for which funding from the Cy-près Fund is sought to establish that they have the appropriate qualifications and expertise to undertake the research, program or initiative;
- (c) A declaration by the Proposal Proponent that there is no Conflict of Interest between the Proposal Proponent's interest in the research, program or initiative and the Proposal Proponent's personal, professional and/or business interests;
- (d) A statement of how the research, program or initiative has a Rational Connection and is aligned with the Mission of the Cy-près Foundation;

- (e) A scientific abstract or other description of the research, program or initiative, including methodology and analysis and the expected product or result of the work of the research, program or initiative, together with the expected indirect benefit of the work to Individuals who suffer or may in the future suffer from a Tobacco-related Disease;
- (f) The term (in months/years) for which funding is sought and the proposed start date and end date of the research, program or initiative;
- (g) The amount of funding requested;
- (h) The budget for the expenditure of the funding; and
- (i) Disclosure of the financial accountability policies, administrative systems, procedures and controls in place to ensure that the Grant is used appropriately in accordance with the highest ethical and financial standards.

9.9 Guiding Principles to be applied in Streamlining Review and Final Review of Proposals

In the Streamlining Review of Proposals conducted by the Foundation Management Team, assisted as required by Proposal Reviewers, and in the Final Review of Proposals conducted by the Foundation Board, the guiding principles of Rational Connection, Materiality, Proportionality and Conflict of Interest shall be taken into consideration.

9.9.1 Rational Connection

The PCCs are Individuals who have asserted or may be entitled to assert a Claim resulting from their use of or exposure to Tobacco Products of the Tobacco Companies. The payment of the \$1.0 billion Cy-près Fund to the Cy-près Foundation is the consideration provided by the Tobacco Companies for the full and final settlement and release of all Claims and potential Claims of PCCs who are not eligible to receive Individual Payments from the PCC Compensation Plan and *Létourneau* Class Members who are not eligible to receive Compensation Payments from the Quebec Administration Plan. Such PCCs and *Létourneau* Class Members will benefit indirectly from the research, programs and initiatives that will focus on achieving earlier diagnosis, more effective treatment and improved outcomes for Individuals who suffer or may in the future suffer from Tobacco-related Diseases that the Foundation Board selects for funding from the Cy-près Fund. It is the Mission of the Cy-près Foundation to achieve earlier diagnosis, more effective treatment and improved outcomes for Individuals suffering from Tobacco-related Diseases.

To achieve this objective, it is a requirement that each Proposal must have a rational connection to a Tobacco-related Disease (“**Rational Connection**”). The Rational Connection requirement means that the subject of the research, program, or initiative must have a clear and reasonable link to a Tobacco-related Disease that is not irrational or too remote. Each Proposal must demonstrate a reasonable evidence-based causal link between prolonged smoking and the particular disease or condition which is the subject of a Proposal submitted by a Proposal Proponent; however, the basis of the assessment of whether a Rational Connection is present is not the legal standard of causation.

Stated otherwise, research, programs and initiatives that may have a Rational Connection sufficient to qualify for funding from the Cy-près Foundation are not limited to Lung Cancer, Throat Cancer and Emphysema/COPD (GOLD Grade III or IV), but may also pertain to Tobacco-related Diseases

that are made sufficiently common by prolonged smoking of Tobacco Products so as to be considered to have a Rational Connection.

Whether the subject matter of a Proposal has a Rational Connection shall be assessed and decided on a case-by-case basis considering various factors including:

- (i) The nature and purpose(s) of the Proposal;
- (ii) The type of disease(s) involved;
- (iii) The intended beneficiaries of the research, program or initiative; and
- (iv) The extent to which the Proposal is likely to result in tangible and objectively measurable improvements in Tobacco-related Disease diagnosis, treatment, and/or outcomes.

Proposals found to have a Rational Connection may proceed forward in the Proposal review process to Peer Review if they are Proposals for research and Final Review if they are the Proposals for other programs or initiatives pertaining to Tobacco-related Diseases. Proposals found to not have a Rational Connection will be withdrawn from further consideration for funding by the Cy-près Foundation.

To provide guidance, below is a non-exhaustive list of factors which would be indicative of the absence of the requisite Rational Connection and warrant the withdrawal of the Proposal from further consideration for funding:

- (a) the Proposal requests funding for research, or a program or initiative relating to a Non Tobacco-related Disease;
- (b) the Proposal requests funding for research, or a program or initiative relating to a disease that is not more common among smokers than non-smokers;
- (c) the Proposal requests funding for research, or a program or initiative relating to a disease for which smoking has not been identified as a risk factor; or
- (d) the Proposal requests funding for programs and initiatives aimed at reducing or preventing tobacco use in Canada.

9.9.2 Materiality

The Foundation Management Team, assisted as required by Proposal Reviewers, and the Foundation Board shall assess whether each Proposal is material to the scope of the Mission of the Cy-près Foundation (“**Material**”). A Proposal will be Material if the magnitude, impact or inherent value of the benefit that it will provide is significant enough to advance the Cy-près Foundation’s Mission.

9.9.3 Proportionality

When making its final decision regarding which Proposals will be approved for funding from the Cy-près Fund, the Foundation Board shall consider the relative proportionality (“**Proportionality**”) of the Proposals under consideration from the standpoint of the following factors, as applicable:

- (a) the magnitude of the budget requested in each Proposal in the context of the total amount of the Grants available for distribution in any given year;
- (b) the magnitude of the anticipated benefit to be gained from each Proposal;
- (c) the nature of the anticipated benefit to be gained from each Proposal;
- (d) the relative burdens of disease imposed by different Tobacco-related Diseases;
- (e) the prevalence of different Tobacco-related Diseases in Canada;
- (f) the level of priority that ought to be given to research that will benefit Individuals suffering from Tobacco-related Diseases who are more severely impacted by their disease;
- (g) the risks, as identified during the Peer Review, to which Clinical Trial participants in the proposed research may be exposed;
- (h) the inherent value of each Proposal; and
- (i) any other proportionality considerations having regard to the nature of each Proposal.

9.9.4 Conflict of Interest

A real, perceived or potential conflict of interest (“**Conflict of Interest**”) may arise in circumstances where the Proposal Proponent:

- (a) is a Foundation Director, including the Chair;
- (b) is part of the Foundation Management Team;
- (c) is a relative or close friend of, has a personal relationship with, or has a close professional or business affiliation with, a Foundation Director, including the Chair; and/or
- (d) is otherwise in a position to bias or influence, directly or indirectly, the Proposal review process to the benefit of their Proposal.

9.10 Preliminary Review of Proposals

Because a finite amount of funds will be available for each RFP published by the Cy-près Foundation, it is important that the Foundation Board be able to focus its consideration on the most meritorious and competitive Proposals. The Foundation Management Team, assisted as required by Proposal Reviewers, shall conduct a preliminary review (“**Preliminary Review**”) of all

Proposals submitted to the Cy-près Foundation in response to an RFP. The Proposals shall be categorized into two groups:

1. Proposals requesting funding for research, and
2. Proposals requesting funding for other programs or initiatives pertaining to Tobacco-related Diseases.

The Foundation Management Team, assisted as required by Proposal Reviewers, will withdraw Proposals from further consideration for funding that:

- (a) are incomplete;
- (b) do not comply with the RFP requirements for a Proposal;
- (c) clearly do not have a Rational Connection or are otherwise outside the scope of the Mission of the Cy-près Foundation;
- (d) are identical or essentially identical to a Proposal previously accepted for funding from the Cy-près Fund; or
- (e) have a Conflict of Interest.

9.11 Streamlining Review of Proposals

The Foundation Management Team, assisted as required by Proposal Reviewers, shall conduct a review (“**Streamlining Review**”) of all Proposals which have passed the Preliminary Review to determine (i) which Proposals requesting funding for research will be submitted for Peer Review before they are assessed by the Foundation Board, and (ii) which Proposals requesting funding for other programs or initiatives pertaining to Tobacco-related Diseases will proceed directly to be assessed by the Foundation Board to determine whether they will be approved for funding from the Cy-près Fund.

The Foundation Management Team, assisted as required by Proposal Reviewers, will withdraw from further consideration for funding Proposals that:

- (a) do not have a Rational Connection;
- (b) have a Conflict of Interest; or
- (c) have some merit but many limitations and require major revisions such that they are not ready to be funded.

9.12 Peer Review

The Foundation Management Team will recruit from the Canadian research and academic communities independent third party peer reviewers (“**Peer Reviewers**”) with the appropriate expertise who will serve on a volunteer basis on peer review panels which will undertake the Peer Review of Proposals for research that have passed the Preliminary Review. For this purpose, the

Foundation Management Team may consider consulting with pan-Canadian institutions with experience in the development and support of peer review panels. The Peer Reviewers shall:

- (a) Have expertise and experience in the field(s) pertaining to the research proposed in the Proposal; and
- (b) Have no Conflict of Interest between the Proposal Proponent and the private, professional, business or public interests of the Peer Reviewer.

The Peer Reviewers will conduct the Peer Review of the Proposals for research in accordance with the customs, standards, practices, policies and guidelines adhered to in the Canadian research and academic communities in order to conduct consistent, fair and high quality Peer Review.

The Peer Reviewers will prepare and submit to the Foundation Board a Peer Review of each Proposal which includes:

- (a) A written summary of the research;
- (b) An assessment of the strengths and weaknesses of the Proposal;
- (c) The consensus rating of the Proposal based on the rating scale of 0 to 4.9 to one decimal place (4.5-4.9: Outstanding; 4.0-4.4: Excellent; 3.5-3.9: Good; 3.0-3.4: Fair; and 0.0-2.9: Poor); and
- (d) A recommendation regarding the budget and term during which the Cy-près Foundation should support the research.

The Peer Reviewers will not make the final decision or provide a recommendation to the Foundation Board regarding whether a Proposal should be approved to receive funding from the Cy-près Fund.

Proposals with a Peer Review score of <3.5 will be withdrawn from further consideration for funding.

9.13 Final Review of Proposals by Foundation Board

Applying the guiding principles of Rational Connection, Materiality, Proportionality and Conflict of Interest, the Foundation Board shall conduct a final review (“**Final Review**”) of (i) the Proposals for research that have undergone Peer Review and (ii) the Proposals for other programs or initiatives pertaining to Tobacco-related Diseases that have passed the Preliminary Review and the Streamlining Review, and select the Proposals that will be approved by the Foundation Board each year for funding from the Cy-près Fund.

For greater certainty, it is intended that the Cy-près Foundation will fund a range of research, programs and initiatives over time, having regard to the objective of conferring indirect benefits on Individuals who suffer or may in the future suffer from a Tobacco-related Disease, and not to concentrate funding in a single project or a limited number of projects.

In regard to each Proposal approved, the Foundation Board shall consider the priority, timing, amount of the Grant, term required to complete the approved research, program or initiative, any oversight required, reporting requirements, any conditions which should attach to the Grant, and any other pertinent considerations.

After the Final Review has been completed, the Foundation Management Team shall notify the Proposal Proponents whether their Proposal has been approved for funding from the Cy-près Fund. The Cy-près Foundation has no duty to grant, nor shall there be any expectation on the part of a Proposal Proponent that they will receive, any financial or other support for any research, program or initiative which is sought from the Cy-près Foundation. The decision regarding whether to provide funding for a Proposal is within the sole discretion of the Foundation Board and is not reviewable by the CCAA Court or any other court in Canada.

The particulars of the Proposals which are approved by the Foundation Board shall be published on the website of the Cy-près Foundation and included in the written report which the Foundation Board shall prepare, not less frequently than annually, and submit to the CCAA Plan Administrators and thereafter file with the CCAA Court for informational purposes.

The Foundation Management Team shall provide to the PCC Representative Counsel copies of (i) all approved Proposals together with supporting materials, and (ii) all reports that the Foundation Board provides to the CCAA Plan Administrators and the CCAA Court.

9.14 Administration of Research, Programs and Initiatives by Grant Recipients

In the discretion of the Foundation Board, Grant Recipients may be required to comply with Tri-Agency Policies as applicable, or as adapted for use by the Cy-près Foundation, in respect of the administration of any Proposal for research, a program or an initiative that the Board selects for funding from the Cy-près Fund.

9.15 Reporting by Grant Recipients to Cy-près Foundation

Grant Recipients will be required to, among other things:

- (a) Periodically submit financial reports to the Cy-près Foundation regarding the receipts and expenditures on the research, program or initiative;
- (b) Periodically submit written progress reports to the Cy-près Foundation providing details of the progress on the research, program or initiative and future work plans;
- (c) Submit a written final report to the Cy-près Foundation, which shall include:
 - (i) A description of the outcome of the Grant funded research, program or initiative, as well as the impact of the findings or interventions on the diagnosis, treatment, or outcomes for Individuals who suffer or may in the future suffer from Tobacco-related Diseases, and/or on public health knowledge in the field that was the subject of the research, program or initiative funded; and
 - (ii) Details of any dissemination efforts, such as through publications, conference presentations, reports, or other means of communicating the outcomes of the Grant funded research, program or initiative; and

- (d) At the end of the term of the research, program or initiative, return any unexpended funds from the Grant to the Cy-près Foundation.

In the discretion of the Foundation Board, Grant Recipients may be required to comply with Tri-Agency Policies as applicable, or as adapted for use by the Cy-près Foundation, in respect of their reporting to the Cy-près Foundation regarding their Grants.

9.16 Reporting by Cy-près Foundation to CCAA Plan Administrators and CCAA Court

Not less frequently than annually, the Chair of the Cy-près Foundation shall prepare a written report for submission to the CCAA Plan Administrators and thereafter for filing with the CCAA Court that includes reports on the financial status of the Cy-près Foundation (including capital, interest earned, distributions made to Grant Recipients, expenses, compensation, professional advisor fees and administrative costs) and the activities of the Cy-près Foundation for the period covered by the report. Copies of all such reports shall be provided to the PCC Representative Counsel.

9.17 Role of the CCAA Plan Administrators and the CCAA Court

The CCAA Court is responsible for the ultimate supervision of the Cy-près Foundation pursuant to the terms of the CCAA Plan.

The CCAA Plan Administrators will function as the intermediaries relative to the supervisory role of the CCAA Court. The Chair of the Foundation Board shall communicate with the CCAA Plan Administrators who will facilitate the filing with the CCAA Court of the Cy-près Foundation's reports that were prepared pursuant to Article 9, Section 9.16 herein.

All reports provided by the Chair of the Foundation Board to the CCAA Plan Administrators and all reports filed by the CCAA Plan Administrators with the CCAA Court in relation to the Cy-près Foundation shall be provided to the PCC Representative Counsel.

9.18 Duration of the Cy-près Foundation

Subject to compliance with Applicable Law, including the disbursement quota requirements pursuant to the ITA, the intention is that, annually, the Grants distributed to Grant Recipients by the Cy-près Foundation shall be paid from the income of the Cy-près Fund.

If deemed to be necessary and appropriate in the circumstances, in making Grants to Grant Recipients in any given year, the Cy-près Foundation may encroach upon the capital in the Cy-près Fund provided, however, that the CCAA Court has approved such encroachment on the capital in advance of the Cy-près Foundation making any such encroachment.

As the Mission of the Cy-près Foundation reaches maturity, it may be desirable for the Cy-près Foundation to encroach upon the capital of the Cy-près Fund. **The** Cy-près Foundation shall continue to carry out its intended activities until such time as its Mission has been substantially accomplished. The Cy-près Foundation shall not be dissolved, nor shall its work be terminated until such time as specified by further Order of the CCAA Court.

In the event of the winding up and dissolution of the Cy-près Foundation, subject to the approval of the CCAA Court, all of the remaining assets of the Cy-près Foundation after payment of its liabilities shall be distributed to one or more recognized registered charities in Canada, which are “qualified donees”, as that term is defined in the ITA, having similar objects to the Cy-près Foundation.

“Schedule “B”

Added/ Revised Definitions

Definitions

In the CCAA Plan, including all Schedules hereto, unless otherwise stated or the context otherwise requires:

“**Board Composition Requirements**” has the meaning given in Article 9, Section 9.5.1.

“**Chair**” means the chair of the Foundation Board.

“**Clinical Trial**” means a research study involving human participants that evaluates the safety and/or effectiveness of one or more interventions on health outcomes.

“**CNFPA**” means the *Canada Not-for-profit Corporations Act*, SC 2009, c 23, as amended.

“**Conflict of Interest**” has the meaning given in Article 9, Section 9.9.4.

“**Executive Search Firm**” has the meaning given in Article 9, Section 9.5.1.

“**Executive Search Process**” means the process whereby the Executive Search Firm, which will be retained by the PCC Representative Counsel, will conduct independent searches to identify:

- (a) qualified Individuals whom the Executive Search Firm will recommend, subject to the approval of the CCAA Court, for appointment to serve as (i) the Foundation Directors, including the Chair, and (ii) the Replacement Foundation Directors, including the Replacement Chair, and
- (b) qualified Individuals whom the Executive Search Firm will recommend for employment by the Cy-près Foundation as the Foundation Management Team.

“**Final Review**” has the meaning given in Article 9, Section 9.13.

“**Foundation Board**” means the board of directors of the Cy-près Foundation.

“**Foundation Chief Executive Officer**” has the meaning given in Article 9, Section 9.6.3.

“**Foundation Directors**” has the meaning given in Article 9, Section 9.4(f).

“**Foundation Management Team**” has the meaning given in Article 9, Section 9.6.3.

“**Grant**” means the sum of money awarded to a Grant Recipient to cover the direct costs associated with undertaking and completing the research, program or initiative proposed in a Proposal that the Foundation Board approves for funding from the Cy-près Fund.

“**Grant Recipient**” means a Proposal Proponent whose Proposal has been approved for funding from the Cy-près Fund and who carries out the activities described in the Proposal.

“**Individuals**” means all individuals residing in a province or territory of Canada, and
“**Individual**” means any one of them.

“Initial Foundation Members” has the meaning given in Article 9, Section 9.4(c).

“Material” has the meaning given in Article 9, Section 9.9.2.

“Mission” has the meaning given in Article 9, Section 9.3.

“Non Tobacco-related Disease” means a disease or other illness or harm that is not caused or contributed to by the use of or exposure (whether directly or indirectly) to a Tobacco Product.

“Peer Review” means the process used to review Proposals for research submitted in response to an RFP that involves the evaluation and ranking of Proposals by a group of Peer Reviewers who individually and/or collectively have the required experience and expertise to assess the quality and potential impact of the proposed research within the context of the Mission of the Cy-près Foundation.

“Peer Reviewers” has the meaning given in Article 9, Section 9.12.

“Preliminary Review” has the meaning given in Article 9, Section 9.10.

“Proportionality” has the meaning given in Article 9, Section 9.9.3.

“Proposal” means the written document submitted to the Cy-près Foundation by a Proposal Proponent that describes the Rational Connection, objectives, methodology, organization and administrative details of a proposed research, program or initiative for which funding is sought from the Cy-près Fund.

“Proposal Proponent” means an Individual, group of Individuals, or institution, organization or entity incorporated and operating in Canada that submits a Proposal to the Cy-près Foundation and, if the Proposal is approved for funding from the Cy-près Fund, will be responsible for coordinating the financial and administrative aspects of the Grant and leading the direction of the proposed activities described in the Proposal.

“Proposal Reviewers” has the meaning given in Article 9, Section 9.6.1(j).

“Rational Connection” has the meaning given in Article 9, Section 9.9.1.

“Replacement Chair” has the meaning given in Article 9, Section 9.5.2.

“Replacement Foundation Directors” has the meaning given in Article 9, Section 9.5.2.

“RFP” means a request for proposals that is published by the Cy-près Foundation soliciting the submission of Proposals from interested Individuals, groups of Individuals, and institutions, organizations and entities incorporated and operating in Canada seeking financing and support for research, programs and initiatives which fall within the scope of the Mission of the Cy-près Foundation and have a Rational Connection.

“Streamlining Review” has the meaning given in Article 9, Section 9.11.

“Tobacco-related Diseases” means all diseases or other illnesses or harms caused or contributed to by the use of or exposure (whether directly or indirectly) to a Tobacco Product, and **“Tobacco-related Disease”** means any one of them.

“Tri-Agency Policies” means the policies, statements and guidelines mandated by the following three federal research funding agencies: the Canadian Institutes of Health Research, the Natural Sciences and Engineering Research Council and the Social Sciences and Humanities Research Council.

“Unanimous Members’ Agreement” has the meaning given in Article 9, Section 9.4(f).

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF ROTHMANS, BENSON & HEDGES INC.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
PROCEEDING COMMENCED AT TORONTO

CCAA PLAN AMENDMENT ORDER #3
(ARTICLE 9)

Cassels Brock & Blackwell LLP
Suite 3200, Bay Adelaide Centre – North Tower
40 Temperance St
Toronto, ON, M5H 0B4

R. Shayne Kukulowicz
Tel: 416-860-6463
Email: skukulowicz@us.cassels.com

Monique Sassi
Tel: 416-860-6886
Email: msassi@cassels.com

Alec Hoy
Tel: 416-860-2976
Email: ahoy@cassels.com

*Lawyers for Ernst & Young Inc., in its capacity as Monitor
and CCAA Plan Administrator*

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF ROTHMANS, BENSON & HEDGES INC.

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**MOTION RECORD
(CCAA PLAN AMENDMENT ORDER #3 (ARTICLE 9))**

Cassels Brock & Blackwell LLP

Suite 3200, Bay Adelaide Centre – North Tower
40 Temperance St.
Toronto, On M5H 0B4

R. Shayne Kukulowicz LSO# 30729S

Tel: 416-860-6463
Email: skukulowicz@us.cassels.com

Monique Sassi LSO# 63638L

Tel: 416-860-6886
Email: msassi@cassels.com

Alec Hoy LSO# 85489K

Tel: 416-860-2976
Email: ahoy@cassels.com

*Lawyers for Ernst & Young Inc., in its capacity as Court-appointed
Monitor and CCAA Plan Administrator of Rothmans, Benson &
Hedges Inc.*