TRILATERAL AGREEMENT
IN RESPECT OF REFORMING THE 1965 AGREEMENT

among

HIS MAJESTY THE KING IN RIGHT OF CANADA

As represented by the Minister of Indigenous Services

(hereinafter "Canada")

and

CHIEFS OF ONTARIO

(hereinafter "COO")

and

NISHNAWBE ASKI NATION

(hereinafter "NAN")

RECITALS

WHEREAS, in 1965, Canada and the Government of Ontario entered into *The Memorandum of Agreement Respecting Welfare Programs for Indians* pursuant to which Canada agreed to reimburse the Government of Ontario for a percentage of the costs of certain provincial social services for First Nations people residing on reserve in Ontario;

AND WHEREAS, in 2016 CHRT 2, the Canadian Human Rights Tribunal found that the 1965 Agreement resulted in discrimination in the provision of child and family services to First Nations people residing on reserve and ordered Canada to cease its discriminatory practices and reform *The Memorandum of Agreement Respecting Welfare Programs for Indians* to reflect the findings in that decision;

AND WHEREAS Canada, COO and NAN have determined that it is desirable to enter into discussions with the Government of Ontario on comprehensive reform of *The Memorandum of Agreement Respecting Welfare Programs for Indians*;

NOW THEREFORE, in consideration of the mutual agreements, covenants, and undertakings set out herein, the Parties agree as follows:

ARTICLE 1 – INTERPRETATION

1.01 Definitions

(1) The following definitions apply to this Trilateral Agreement:

(a) "**1965 Agreement**" means *The Memorandum of Agreement Respecting Welfare Programs for Indians entered into between Ontario and Canada*, as amended. For clarity, this definition of the 1965 Agreement and any commitments made under this Trilateral Agreement in relation to the 1965 Agreement do not include the *Administrative Arrangement Pursuant to the Canada-Ontario 1965 Agreement between Canada and Ontario*, as amended, renamed, or replaced.

(b) "**Days**" means calendar days.

(c) "**Effective Date**" means the date on which this Trilateral Agreement is effective, as set out in paragraph 5(1) of this Trilateral Agreement.

(d) "**Final Agreement**" means the Final Agreement on Long-Term Reform of the First Nations Child and Family Services Program in Ontario.

(e) "**First Nation**" means a "band" as defined in subsection 2(1) of the *Indian Act*, RSC, 1985, C I-5, as amended, and located in Ontario.

(f) “**First Nation Representative Services**” (sometimes referred to as Band Representative Services) means the services delivered by a First Nation Representative, which are advocates for First Nations in matters relating to the delivery of services to their citizens by a child welfare agency.

(g) “**Fiscal Year**” means Canada’s fiscal year, being a 12-month period beginning on April 1 of one (1) year and ending on March 31 of the following year.

(h) “**ISC**” means Indigenous Services Canada and any successor department thereto.

(i) “**Notice to Arbitrate**” means a written request for arbitration provided by the Party desiring arbitration to every other Party.

(j) “**Ontario**” means the province of Ontario.

(k) “**Parties**” means Canada, COO, and NAN.

(l) “**Reformed 1965 Agreement**” means, as a result of the process set out in section 2.02 of this Trilateral Agreement:

(i) an amended 1965 Agreement, or

(ii) an agreement between the Government of Ontario and the Government of Canada that replaces the 1965 Agreement.

(m) “**Trilateral Agreement**” means this trilateral agreement between Canada, COO, and NAN in respect of reforming the 1965 Agreement.

ARTICLE 2– REFORMING THE 1965 AGREEMENT

2.01 Commitment by Canada

(1) Canada will engage in preliminary discussions with COO, NAN and the Government of Ontario on comprehensive reform of the 1965 Agreement. If COO, NAN, the Government of Ontario, and Canada agree that reform of the 1965 Agreement is required, each of the Parties will engage with their respective internal processes, as necessary, to seek a mandate to support reforms to the 1965 Agreement.

2.02 Process for Reforming the 1965 Agreement

(1) COO, NAN, and Canada agree to work together as soon as reasonably practicable after the Effective Date of this Trilateral Agreement and in good faith to engage with the Government of Ontario in preliminary discussions on reforming the 1965 Agreement. These discussions will include an approach to reform which further responds to the Canadian Human Rights Tribunal’s findings in *First Nations Child and Family Caring*

Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada), 2016 CHRT 2 regarding the 1965 Agreement, and also addresses other updates as COO, NAN, Canada, and the Government of Ontario may agree.

(2) Canada shall not amend, replace or terminate the 1965 Agreement or enter into a Reformed 1965 Agreement without consultation with COO and NAN. For clarity, this commitment to consultation is not to be interpreted in a way that prevents fulfillment of Canada's existing legal obligations, including, if applicable, the duty to consult with First Nations pursuant to section 35 of the *Constitution Act, 1982*.

(3) Canada shall use best efforts to reach agreement on a Reformed 1965 Agreement with the Government of Ontario by March 31, 2027 and shall execute and implement a Reformed 1965 Agreement as soon as reasonably possible thereafter. For clarity, this commitment does not bind Canada in any position it may take in regard to its discussions with the Government of Ontario.

(4) In its discussions with the Government of Ontario, Canada will take the position that COO and NAN be given the opportunity to fully participate in discussions with Canada and the Government of Ontario in respect of reforming the 1965 Agreement. In the event that the Government of Ontario does not agree to COO and NAN's full participation, Canada will discuss next steps with COO and NAN prior to further discussions with the Government of Ontario. Such discussions will consider alternative proposals that could be made to the Government of Ontario for COO and NAN's direct involvement.

(5) If, during the course of preliminary discussions on reforming the 1965 Agreement, COO or NAN determine they would like to be a party to a Reformed 1965 Agreement, Canada shall support a request to that effect.

(6) If an agreement on a Reformed 1965 Agreement cannot be reached by March 31, 2027, the Parties agree to meet to discuss next steps, including consideration of alternative mechanisms for reform and/or the termination of the 1965 Agreement. Canada, COO and NAN may invite the Government of Ontario to discussions of next steps.

2.03 Work Plan

(1) For the purpose of advancing reform of the 1965 Agreement, within 60 days of the Effective Date of this Trilateral Agreement, COO, NAN, and Canada will meet to develop a work plan outlining steps for outreach to the Government of Ontario and identifying substantive subjects for discussion with the Government of Ontario (the "**Work Plan**"), as well as a confidentiality agreement in relation to discussions on reforming the 1965 Agreement.

(2) COO, NAN, and Canada will make best efforts to agree to a Work Plan within 90 days of the meeting described in paragraph 2.03(1). The Work Plan may include the substantive subjects listed directly below.

(a) Identifying:

(i) any deficiencies, gaps, or issues in program areas in the 1965 Agreement;

(ii) First Nations-led and evidence-informed solutions to improving service delivery and advancing substantive equality for those program areas in a Reformed 1965 Agreement;

(iii) language in the 1965 Agreement that requires updating to reflect modern terminology;

(iv) legislative references in the 1965 Agreement that need to be updated and mechanisms to do so; and

(v) a method for consolidating prior amendments to the 1965 Agreement.

(b) Considering:

(i) processes to update a Reformed 1965 Agreement to account for future amendments to provincial or federal legislation;

(ii) community needs assessments for a Reformed 1965 Agreement, including indicators, outcomes and data collection;

(iii) differences among First Nations in Ontario, including differences arising out of geography, treaty, or historical context;

(iv) mechanisms to streamline administrative and financial reporting, including data collection;

(v) the capital needs of First Nations in Ontario in the program areas covered by the 1965 Agreement;

(vi) mechanisms to identify and manage possible overlap of funding where both Canada and the Government of Ontario provide funding directly to First Nations or other service providers in relation to a program area covered by the 1965 Agreement;

(vii) mechanisms that allow for regular review and adjustment of a Reformed 1965 Agreement or its implementation;

(viii) mechanisms that allow for the involvement of First Nations in discussions between Canada and the Government of Ontario on implementation of the Reformed 1965 Agreement, including in discussions related to funding;

(ix) conditions and processes for First Nations to opt out of the 1965 Agreement;

(x) mechanisms for dispute resolution under a Reformed 1965 Agreement which include First Nations in Ontario; and

(xi) mechanisms for continued dialogue on reforming the 1965 Agreement between Canada, COO and NAN following conclusion of a Reformed 1965 Agreement.

(c) Discussing proposals for reforming the 1965 Agreement that are consistent with this Trilateral Agreement.

(3) The Work Plan may be amended by unanimous agreement of COO, NAN, and Canada in writing.

2.04 Principles for Preliminary Discussions on Reforming the 1965 Agreement

(1) In discussing aspects of a Reformed 1965 Agreement related to child and family services, Canada, COO and NAN shall be guided in their positions by the principles in Part II of the Final Agreement.

(2) In discussing the whole of a Reformed 1965 Agreement, Canada, COO and NAN shall be guided in their positions by the following principles:

(a) services to First Nations people on-reserve should:

(i) be available at a level at least comparable to that of services to non-First Nations people and to First Nations people living off-reserve;

(ii) be delivered in a manner at least comparable to service delivery to non-First Nations people and to First Nations people living off-reserve, including consideration of such factors as remoteness;

(iii) take into account the history, systems and structures of colonialism and their effects on First Nations, including the effects of residential schools, day schools, child welfare systems, and inter-generational trauma;

(iv) be flexible, considering the unique history and present reality of each First Nation;

(v) be culturally appropriate; and

(vi) advance substantive equality of First Nations people.

(b) the Government of Ontario's funding levels and formulas for programs within the scope of the 1965 Agreement should be reviewed regularly, including with respect to funding for remoteness, for the purpose of advancing the principles set out in paragraph 2.04(2)(a);

(c) flexibility should be afforded to First Nations in the delivery of services, recognizing that First Nations are best placed to identify their needs and respond to those needs;

(d) the Government of Ontario should:

(i) take measures to ensure the accountability of service providers to the First Nations they serve;

(ii) require service providers to collaborate with the First Nations they serve in planning and reporting on services; and

(iii) consider delivery of services by First Nations where a First Nation has indicated its desire to deliver a service.

(e) in relation to child and family services, the importance of First Nation Representative Services to children and families should be recognized and taken into account;

(f) accurate and timely data should be provided by First Nations, other service providers, the Government of Ontario and Canada to support administration of the Reformed 1965 Agreement and the tracking of outcomes;

(g) taking into account paragraph 2.04(2)(f), administrative burdens on First Nations and other service providers should be minimized; and

(h) the Reformed 1965 Agreement should be made available to First Nations and the public.

(3) In addition to the principles in paragraphs 2.04(1) and 2.04(2), Canada affirms:

(a) the right to self-determination of Indigenous peoples, which is a right recognized and affirmed in the *United Nations Declaration on the Rights of Indigenous Peoples* ("the Declaration");

(b) that the *United Nations Declaration on the Rights of Indigenous Peoples Act*, S.C. 2021, c. 14 affirms the Declaration as a universal international human rights instrument with application in Canadian law and also provides a framework for Canada's implementation of the Declaration; and

(c) that the inherent right of self-government recognized and affirmed by section 35 of the *Constitution Act, 1982* includes jurisdiction in relation to child and family services, as affirmed in *An Act respecting First Nation, Inuit and Métis children, youth and families*, S.C. 2019, c. 24.

ARTICLE 3– WORK PLAN FUNDING

(1) Canada shall provide funding in the total amounts of $3.71 million to COO and $3.92 million to NAN over the five (5) Fiscal Years from 2025-2026 to 2029-30 to carry out the activities set out in the Work Plan, subject to the continuation of discussions to reform the 1965 Agreement with the Government of Ontario. This funding includes amounts to support:

(a) First Nation engagements;

(b) Research related to the reform of the 1965 Agreement;

(c) Costs of a Special Chiefs Assembly on the reform of the 1965 Agreement; and

(d) Legal fees.

(2) In relation to the funding set out in paragraph 3(1), COO and NAN shall provide work plans at the beginning of each fiscal year and shall report at the end of the fiscal year on funding spent in that year relative to the year's work plan. Per the terms of their funding agreements, COO and NAN will be able to carry forward unexpended funds for use in the following Fiscal Year, upon ISC's approval of an unexpended funding plan and provided that the Fiscal Year is within the term of COO's or NAN's funding agreement. If necessary to expend unexpended funds and upon ISC's approval of an unexpended funding plan, ISC shall extend the term of COO's or NAN's funding agreement. ISC may adjust funding for a particular Fiscal Year to reflect the expected costs of planned activities or to account for unexpended funds that are carried forward.

(3) Upon request of any Party, COO, NAN and Canada shall review the funding in paragraph 3(1) and may agree to modify it.

(4) Canada will consider proposals from COO or NAN for additional funding that may be required to support engagement with First Nations in relation to reform of the 1965 Agreement. Such proposals may include funding for other regional representatives of First Nations, such as political-territorial organizations, to support engagement with First Nations in relation to reform of the 1965 Agreement.

ARTICLE 4– DISPUTE RESOLUTION

(1) In the event of a dispute arising out of or in connection with this Trilateral Agreement, the Parties agree to resolve such disputes by mediation, and if mediation does not result in a resolution, by arbitration.

(2) To initiate mediation, a Party desiring to commence mediation will notify every other Party of its desire to mediate by a written request. All disputes arising out of or in connection with this Trilateral Agreement shall be mediated pursuant to the National Mediation Rules of the ADR Institute of Canada, Inc ("ADRIC") that are in force at the time that the dispute arises. The place of mediation shall be Toronto, Ontario. The language of the mediation shall be English.

(3) The mediation process will be led by a neutral mediator selected by agreement of all Parties. The mediator will be selected by agreement of all Parties within thirty (30) days of delivery of the written request specified in paragraph 4(2). If the Parties are unable to agree on the selection of a mediator within thirty (30) days, then the Parties will make use of the selection process set out in Rule 5.2 of the National Mediation Rules.

(4) Should mediation fail to resolve the dispute and the Party continues to desire resolution of the dispute, the Party will provide every other Party a Notice to Arbitrate. The arbitration shall be governed by the ADRIC Arbitration Rules of the ADR Institute of Canada, Inc that are in force at the time that the dispute arises. The place of arbitration will be Toronto, Ontario. The language of the arbitration will be English.

(5) The arbitration process will be led by a neutral, single arbitrator selected on agreement of all Parties. The arbitrator will be selected within twenty-one (21) days of a Notice to Arbitrate having been provided to every other Party by the Party desiring arbitration. If the Parties are unable to agree on the selection of an arbitrator within twenty-one (21) days of a Notice to Arbitrate having been provided to every other Party, then the Parties will make use of the selection process set out in Rule 3.1.3 of the ADRIC Arbitration Rules.

(6) Pursuant to Rule 5.4.7 of the ADRIC Arbitration Rules, the Parties agree that a decision of the arbitrator may be appealed to a court on a question of law or a question of mixed fact and law.

(7) In the instance of either mediation or arbitration, the Parties agree to consider appointing a person who serves, or has served, on the Roster of Arbitrators established under the Final Agreement.

ARTICLE 5– TERM

(1) This Trilateral Agreement is effective as of April 1, 2025 and shall terminate on March 31, 2030, unless the Parties agree to another date.

ARTICLE 6– GENERAL

(1) The Trilateral Agreement is not intended to and shall not be interpreted to require ISC to provide funding in addition to the funding commitments made in the Final Agreement.

(2) Any funding commitment made by Canada under this Trilateral Agreement is subject to the terms of the funding agreement through which the funding is provided.

(3) Any and all funding commitments by Canada or amendments agreed to by the Parties in this Trilateral Agreement remain subject to annual appropriation by the Parliament of Canada, as required, or other necessary approval processes required by the Government of Canada.

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

(5) Save as may otherwise be agreed between the Parties, the Parties shall keep confidential the discussions and all communications, whether written or oral, made in and surrounding the negotiations leading to this Trilateral Agreement.

(6) The Parties acknowledge that documents, communications, and records relating to the Trilateral Agreement may be subject to the *Access to Information Act* (R.S.C., 1985, c. A-1) and the *Privacy Act* (R.S.C., 1985, c. P-21) as amended from time to time or other related legislation or legal obligations.

(7) The provisions of this Trilateral Agreement will be governed by, and be interpreted in accordance with, the laws of Ontario and the laws of Canada.

(8) This Trilateral Agreement, including all appendices, constitutes the entire agreement between the Parties with respect to the subject matter hereof and cancels and supersedes any prior or other understandings, commitments and agreements between the Parties. There are no representations, warranties, terms, conditions, undertakings, covenants, or collateral agreements, express, implied, or statutory between the Parties with respect to the subject matter hereof other than as expressly set forth or referred to in this Trilateral Agreement.

(9) The Parties may only amend the terms of this Trilateral Agreement upon unanimous consent in writing.

(10) Where the context or construction requires, all words applied in the plural shall be deemed to have been used in the singular, and vice versa.

(11) The division of this Trilateral Agreement into articles, sections, and paragraphs, and the insertion of headings and a table of contents are for reference only and shall not affect the interpretation of this Trilateral Agreement.

(12) Nothing in this Trilateral Agreement is intended to prevent any Party from fulfilling any contractual obligations to a non-Party.

(13) This Trilateral Agreement may be signed in identical counterparts, each of which constitutes an original, and such counterparts taken together will constitute one agreement. The signatures of the Parties need not appear on the same counterpart, and executed counterparts may be delivered by facsimile or in electronically scanned form by electronic mail.

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