TRILATERAL AGREEMENT
IN RESPECT OF REFORMING THE 1965 AGREEMENT AND OTHER MATTERS

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.

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

(c) "**Effective Date**" means the date on which this Trilateral Agreement is effective, as set out in section 5.01 of this Trilateral Agreement.

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

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

(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) "**FNCFS Program**" means the First Nations Child and Family Services Program, provided by the Minister of Indigenous Services as authorized by s. 6(2) of the *Department of Indigenous Services Act*, S.C. 2019, c. 29, s. 336 and which provides funding for and direction in the delivery of child and family services to support the safety and well-being of First Nations children, youth, and families, ordinarily resident of a reserve, or any successor federal program or policy.

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

(i) "**Notice of Request to Arbitrate**" means a written request for arbitration provided by the Party desiring arbitration to every other Party and to the ADR Institute of Canada, as described in Rule 2.1.1 of the ADRIC Arbitration Rules.

(j) "**Notice of Request to Mediate**" means a written request for mediation provided by the Party desiring mediation to every other Party and to the ADR Institute of Canada.

(k) "**Ontario**" means the province of Ontario.

(l) "**Parties**" means Canada, COO, and NAN.

(m) "**Reformed 1965 Agreement**" means, as a result of the process set out in paragraph 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.

(n) "**Trilateral Agreement**" means this trilateral agreement between Canada, COO, and NAN in respect of reforming the 1965 Agreement and other matters.

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 June 30, 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 June 30, 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 that allow for regular review and adjustment of a Reformed 1965 Agreement or its implementation;

(vii) 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;

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

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

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

(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* 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 – OFF-RESERVE FIRST NATION REPRESENTATIVE SERVICES

3.01 Funding for Off-Reserve First Nation Representative Services

(1) COO, NAN, and Canada recognize the value and importance of First Nation Representative Services and the need for funding for these services off-reserve in Ontario. The Parties further acknowledge that the long-term approach to funding for First Nation Representative Services off-reserve in Ontario should involve the Government of Ontario. COO, NAN, and Canada shall approach the Government of Ontario together to seek provincial funding for First Nation Representative Services off-reserve and will use the opportunity of discussions on reforming the 1965 Agreement to raise First Nation Representative Services funding as a significant priority.

(2) COO, NAN, and Canada will discuss funding for First Nation Representative Services off-reserve in Ontario in the context of or in parallel with the upcoming discussions on long-term reform of Jordan's Principle.

(3) Outside of the FNCFS Program, Canada shall fund First Nations in Ontario for the provision of First Nation Representative Services to First Nations children and families residing off-reserve at least until March 31, 2029, or an earlier date on which:

(a) the Government of Ontario commits to funding First Nation Representative Services for First Nations children and families residing off-reserve; or

(b) an agreement in respect of off-reserve First Nation Representative Services is reached by Canada, COO, and NAN.

(4) The Parties shall make best efforts to determine a long-term approach agreeable to the Parties for the funding of First Nation Representative Services off-reserve by March 31, 2029.

(5) While the funding committed in paragraph 3.01(3) will not be part of the FNCFS Program, all FNCFS Program requirements, including the FNCFS Program's terms and conditions, for First Nation Representative Services on-reserve will also apply to First Nation Representative Services off-reserve, except the requirement that the recipient of services reside on-reserve. Funding requests for First Nation Representative Services off-

reserve in Ontario will be processed similarly to how claims for the actual costs of First Nation Representative Services on-reserve in Ontario were processed pursuant to 2018 CHRT 4, as amended. ISC will assess funding claims within 21 days of receiving a complete application.

(6) Funding under paragraph 3.01(3) will be:

(a) needs-based and consistent with the principle of substantive equality in order to secure long-term positive outcomes for First Nations children, families, and communities; and

(b) responsive to the role of First Nation Representative Services as defined by federal and provincial child and family services legislation and by First Nations.

(7) COO, NAN, and Canada may agree to alter or amend the process set out in paragraph 3.01(5) for funding requests for First Nation Representative Services off-reserve.

ARTICLE 4 – WORK PLAN, TECHNICAL AND ENGAGEMENT FUNDING

4.01 Funding for the Work Plan

(1) The Work Plan will include a budget for the reasonable costs, including the reasonable legal costs, of COO's and NAN's participation in discussions to reform the 1965 Agreement with the Government of Ontario. The first fiscal year of the budget will be 2025-2026.

(2) Following approval by COO, NAN and Canada of the Work Plan, Canada shall provide funding to COO and NAN according to that budget, subject to the continuation of discussions to reform the 1965 Agreement with the Government of Ontario.

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

4.02 Funding for the Ontario Technical Table

(1) Canada will maintain existing funding for COO for the Ontario Technical Table for Child, Youth and Family Well-Being in the amount of $130,000 annually, for a period of five years, which started April 1, 2022.

4.03 Funding for COO in 2024-2025

(1) In 2024-2025, Canada will provide $540,632 to COO for activities related to reform of the 1965 Agreement and implementation of reforms to the FNCFS Program.

4.04 Proposals for Additional Funding

(1) 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 5– TERM

5.01 This Trilateral Agreement is effective as of **[month][day]**, 2024 and shall terminate on March 31, 2034, unless the Parties either agree to terminate the Trilateral Agreement sooner or agree to extend the term.

ARTICLE 6 – FUNDING COMMITMENT

6.01 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.

ARTICLE 7 – ACCESS TO INFORMATION

7.01 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.

ARTICLE 8 – GOVERNING LAW

8.01 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.

ARTICLE 9 – DISPUTE RESOLUTION

9.01 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.

9.02 To initiate mediation, a Party desiring to commence mediation will provide every other Party a Notice of Request to Mediate. 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”) dated

August 3, 2012. The place of mediation shall be Toronto, Ontario. The language of the mediation shall be English.

9.03 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 a Notice of Request to Mediate having been provided to every other Party by the Party desiring mediation. If the Parties are unable to agree on the selection of a mediator with thirty (30) days of a Notice of Request to Mediate having been provided to every other Party, then the Parties will make use of the selection process set out in Rule 5.2 of the National Mediation Rules.

9.04 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 of Request to Arbitrate. The arbitration shall be governed by the ADRIC Arbitration Rules of the ADR Institute of Canada, Inc., dated December 1, 2026. The place of arbitration will be Toronto, Ontario. The language of the arbitration will be English.

9.05 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 of Request 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 of Request 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.

9.06 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.

9.07 In the instance of either mediation or arbitration, the Parties agree to consider appointing a person who serves, or has served, as an adjudicator at the Dispute Resolution Tribunal established under the Final Agreement.

ARTICLE 10– MISCELLANEOUS

10.01 Amendments

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

10.02 Construction and Interpretation

(1) 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.

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

10.03 Contractual Obligations

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

10.04 Counterparts

(1) 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.

[Remainder of page intentionally left blank; signature page follows]