PART I – PURPOSE

The Parties enter into this Final Settlement Agreement to reflect their agreement to long-term reform of the FNCFS Program, which is intended to eliminate the discrimination identified by the Tribunal 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 and all subsequent rulings by the Tribunal and to prevent its recurrence. This Final Settlement Agreement details the reforms to be made by Canada.

PART II – PRINCIPLES

The principles guiding the Reformed FNCFS Program to be implemented by way of this Final Settlement Agreement shall include:

(a) the cultural safety and well-being of First Nations children, youth, young adults, and families;
(b) substantive equality;
(c) addressing the needs of First Nations children, youth, young adults, and families;
(d) the best interests of children;
(e) prioritizing keeping children in the home;
(f) holistic and culturally-informed programming, having regard for the current realities of distinct First Nations, including historical and contemporary disadvantage and contextual differences, including remoteness;
(g) recognition of Indigenous legal traditions and principles, if applicable;
(h) addressing the Structural Drivers that place First Nations children, youth, and families at higher risk of involvement with the child welfare system;
(i) respect for the inherent right of self-government, which is recognized and affirmed by section 35 of the Constitution Act, 1982, and which includes jurisdiction, in relation to child and family services;
(j) respect for 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");
(k) 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 the Government of Canada's implementation of the Declaration;
(l) the rights in the Declaration, including the rights of children and youth, and the United Nations Convention on the Rights of the Child, including the right to be free from discrimination;
(m) accountability of FNCFS Service Providers and provincial and Yukon governments to the First Nation governments they serve ; and
(n) guidance from First Nations-led and/or endorsed evidence.

PART III – DEFINITIONS

3. The following definitions apply to this Final Settlement Agreement:

"1965 Agreement" means The Memorandum of Agreement Respecting Welfare Programs for Indians entered into between Ontario and Canada, as amended.

(b) “Adjudication Panel” means a panel of three (3) Adjudicators appointed by the Dispute Resolution Tribunal President for the purpose of adjudicating a Dispute.

(c) "Adjudicator” means an adjudicator selected by the Dispute Resolution Tribunal President and appointed to the Roster of Adjudicators, who serve as adjudicators of all Disputes.

(d) “adjusted for inflation” has the meaning as set out in paragraph 34.

(e) “Administrative Team” means an administrative team consisting of employees of ISC and established by ISC in consultation with the President to support the operation of the Transitional Dispute Resolution Tribunal before the enabling Legislation is brought into force.

(f) “Administrative Tribunals Support Service of Canada” is the portion of the federal public administration established by the Administrative Tribunals Support Service of Canada Act.

(g) “AFN” means the Assembly of First Nations.

(h) “Agreement-in-Principle” means the Agreement-in-Principle on Long- Term Reform of the First Nations Child and Family Services Program and Jordan’s Principle executed between the AFN, Caring Society, Canada, COO and NAN dated December 31, 2021.

(i) “Baseline Funding” means the funding component described in paragraphs 16 and 17.

(j) "Canada” means His Majesty the King in Right of Canada, as represented by the Minister of Indigenous Services.

(k) "Caring Society” means the First Nations Child and Family Caring Society of Canada.

(l) “child” means a First Nations person who, under applicable provincial or territorial law, is under the age at which an individual ceases to be a child.

(m) “Claimant” means a FNCFS Service Provider that commences a Claimant Dispute.

(n) “Claimant Dispute” has the meaning as set out in paragraphs 235 and 236.

(o) “Claimant Dispute Decision” means any decision of an Adjudicator or Adjudication Panel on the substance of a Claimant Dispute submitted to it.

(p) “Claimant Dispute Notice” means the formal, written notice to commence a Claimant Dispute as described at paragraph 329.

(q) "Claimant Dispute Resolution Process” has the meaning given to such term in Part XIX (D).

(r) "COO” means the Chiefs of Ontario.

(s) “Cultural Officer” means the person employed by the Administrative Tribunals Support Service of Canada who is charged with making recommendations to the President, an Adjudicator, or an Adjudication Panel related to aspects of a Claimant Dispute Process with the goal of facilitating the resolution of the Claimant Dispute in a manner that is culturally appropriate, accessible, and in accordance with this Final Settlement Agreement.

(t) “days” means calendar days.

(u) “Departmental Results Framework” means the framework for each federal government department which tracks expected results and indicators related to departmental core responsibilities.

(v) “Departmental Results Report” means the annual report that provides detail on results achieved against each federal government department’s plans, priorities, and expected results.

(w) “Directive on Transfer Payments” means a directive of Canada which establishes mandatory operational requirements for the management of federal transfer payments and transfer payment programs.

(x) “Dispute” means a Parties’ Dispute or a Claimant Dispute.

(y) “Dispute Resolution Process” means the Parties’ Dispute Resolution Process or the Claimant Dispute Resolution Process, as the case may be.

(z) "Dispute Resolution Tribunal” is the entity consisting of the President and Adjudicators as assigned individually or in panels to hear disputes, referred to in paragraphs 240 and 241.

(aa) “Dispute Resolution Tribunal Rules of Procedure” or “Rules of Procedure” means the rules to be established by the President further to paragraph 281 for the Dispute Resolution Tribunal.

(bb) “Eminent First Nations Person” means the person appointed by the Parties to assist in the interim dispute resolution process.

(cc) “enabling Legislation” means legislation to be enacted by Parliament

to establish and enable the Dispute Resolution Tribunal and all supporting mechanisms.

(dd) “Expert Advisory Committee” means the committee described in PART XVII – REFORM OF ISC AND SUCCESSOR DEPARTMENTS.

(ee) “Final Settlement Agreement” means this Final Agreement on Long- Term Reform of the First Nations Child and Family Services Program.

(ff) “First Nation” means a “band” as defined in subsection 2(1) of the Indian Act, RSC, 1985, C I-5, as amended, and which is delivering services and receives funding under the Reformed FNCFS Program. .

(gg) “First Nations Information Governance Centre” means the national not-for-profit corporation working in the field of First Nations data sovereignty.

(hh) “First Nation Representatives” (sometimes referred to as Band Representatives in Ontario) are advocates for First Nations in matters relating to the delivery of services to their citizens by a child welfare agency, as further described in paragraph 24.

(ii) “First Nation Representative Services” (sometimes referred to as Band Representative Services in Ontario) means the services delivered by a First Nation Representative, which have been funded by the FNCFS Program in Ontario since 2018 and in all provinces and Yukon since 2022.

(jj) “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.

(kk) “FNCFS” means First Nations child and family services.

(ll) “FNCFS Agency” means an agency established by and affiliated with one or more First Nations and delegated or authorized pursuant to provincial or other authorities to provide legislated child welfare services.

(mm) “FNCFS Funding Mechanism” means the manner in which ISC shall provide FNCFS Service Providers with multi-year funding, as further described in Part V (E).

(nn) “FNCFS Program” means the First Nations Child and Family Services Program, provided by the Minister as authorized by the Department of Indigenous Services Act, SC 2019, c 29, or any successor legislation, 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.

(oo) “FNCFS Service Provider” means a First Nation, an FNCFS Agency, or an entity authorized by a First Nation to deliver services and to receive funding under the Reformed FNCFS Program. For clarity, provincial and Yukon governments are not FNCFS Service Providers.

(pp) “Index of Remoteness” means the Statistics Canada Index of Remoteness that quantifies a community’s remoteness according to:

(1) the proximity to all population centers within a given radius that permits daily accessibility; and (2) the population size of each population center, used as a proxy of service availability.

(qq) “Indian Registration System” means the system maintained by Canada that contains the list of persons registered as Indians under the Indian Act, RSC, 1985, C I-5, as amended.

(rr) “Initial Five-Year Funding Period” means the period of five (5) fiscal years, beginning on April 1, 2024 and ending on March 31, 2029.

(ss) “Initial Program Assessment” means the process outlined in PART V – REFORMED FNCFS PROGRAM ASSESSMENTS.

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

(uu) “least disruptive measures” (sometimes referred to as least intrusive measures or family enhancement services) means actions or services mandated in provincial or Yukon legislation that seek to prevent the separation of children from their families or reunify children with their families and ensure that supports are in place to mitigate risk of child maltreatment or harm.

(vv) “Measuring to Thrive Framework” means the set of indicators developed by the Institute of Fiscal Studies and Democracy (“IFSD”) that is intended to capture child, family, and community well-being in First Nations, and introduced by the IFSD in Funding First Nations child and family services (FNCFS): A performance budget approach to wellbeing dated July 2020.

(ww) "NAN” means Nishnawbe Aski Nation.

(xx) “NAN-Canada Remoteness Quotient Table” means the body jointly constituted by NAN and Canada to address remoteness issues, including developing a First Nations-sighted, evidence-based, statistical method to estimate the increased costs associated with remoteness in the funding and provision of child and family services to First Nations.

(yy) “NARC” means the National Assembly of Remote Communities, as established and structured by regional organizations, including NAN, that represent and serve remote communities and that have executed the NARC Mission Statement.

(zz) “NARC-Canada Remoteness Table” means a body to be jointly constituted by NARC and Canada to address remoteness issues, including accounting for the increased costs associated with remoteness, at a national level.

(aaa) “National Secretariat” means the National First Nations Child and Family Services Secretariat, being the First Nations-led, apolitical, not for- profit corporation established by the Parties for the purpose of data collection, synthesis, and best practice development.

(bbb) “Non-Agency First Nation” means a First Nation not affiliated with an FNCFS Agency.

(ccc) “Participating Parties” means the parties to a Parties’ Dispute.

(ddd) “Parties” means the AFN, Canada, COO, and NAN.

(eee) “Parties’ Dispute” has the meaning as set out in paragraphs 230 and 231.

(fff) “Parties’ Dispute Decision” means any decision of an Adjudication Panel on the substance of a Parties’ Dispute.

(ggg) “Parties’ Dispute Notice” means the formal, written notice to commence a Parties’ Dispute as described in paragraphs 286 and 288.

(hhh) Parties’ Dispute Resolution Process” has the meaning given to such term in Part XIX (C).

(iii) “President” means the Dispute Resolution Tribunal President, being the person appointed by the Governor in Council who has supervision over and direction of the work of the Transitional Dispute Resolution Tribunal and Dispute Resolution Tribunal.

(jjj) “Program Assessment(s)” means the process outlined in PART XV – REFORMED FNCFS PROGRAM ASSESSMENTS and includes the Initial Program Assessment and Second Program Assessment.

(kkk) “Program Assessment Organization” means the organization(s)

selected by the AFN to conduct the Program Assessments by way of separate requests for proposals pursuant to paragraph 167.

(lll) “Program Assessment Reports” means the reports outlined in Part XV (G).

(mmm) “Reform Implementation Committee” means the committee composed of representatives from the Parties to oversee the implementation of the Reformed FNCFS Program, as further described in Part XIV (A).

(nnn) “Program Assessment Opinions” has the meaning given to such term in paragraph 185 and includes the “Initial Program Assessment Opinion” and the “Second Program Assessment Opinion”.

(ooo) “Reformed FNCFS Funding Approach” means the multi-year funding structure which is intended to eliminate the discrimination found by the Tribunal and prevent its recurrence, by addressing the needs of First Nations children, youth, families and communities, as further described in PART V –THE REFORMED FNCFS FUNDING APPROACH: INITIAL FIVE-YEAR FUNDING PERIOD and PART VI –THE REFORMED FNCFS FUNDING APPROACH: SECOND FIVE-YEAR FUNDING PERIOD.

(ppp) “Reformed FNCFS Program” means the FNCFS Program on and after the implementation of the Reformed FNCFS Funding Approach.

(qqq) “Regional Secretariats” means the entities established to support the work of the National Secretariat, as described further in paragraph 117.

(rrr) “Registrar” means the Dispute Resolution Tribunal Registrar or the Chief Administrator of the Administrative Tribunals Support Service of Canada, when the enabling Legislation is in force and if it so provides.

(sss) “Remoteness” means a variable factor measured on a continuum and describes the lived circumstances of First Nations communities for whom issues of access (by road network, by ice road only, by air only, or otherwise), geography and context exacerbate challenges faced by all First Nations, including by increasing the costs associated with child and family services. Remoteness is generally associated with geographic distance from, and access to, service centres (often defined on the basis of population size and density), which affects the costs of shipping goods as well as costs related to personnel, including travel, and living costs.

(ttt) “Roster of Adjudicators” means the roster of Adjudicators established and maintained by the President who are available to adjudicate Disputes.

(uuu) “RQAF” means the Remoteness Quotient Adjustment Factor methodology, being the result of a statistical regression model, as developed at the NAN-Canada Remoteness Quotient Table, which estimates the amount of additional funding required to account for the increased costs incurred by a particular FNCFS Service ProviderFirst Nation or FNCFS Service Provider due to remoteness.

(vvv) “Second Five-Year Funding Period” means the period of five (5) fiscal years following the Initial Five-Year Funding Period, beginning on April 1, 2029 and ending on March 31, 2034.

(www) “Service Provider Funding Adjustment Request” means a request made by an FNCFS Service Provider First Nation or FNCFS Service Provider to ISC pursuant to paragraphs 191 and 192.

(xxx) “small agency costs” means costs reimbursed pursuant to 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), 2018 CHRT 4 to small FNCFS Agencies, which are defined as FNCFS Agencies that serve a total on-reserve population aged 0 to 18 years of less than 1,000.

(yyy) “Structural Drivers” means factors that are largely out of a caregiver’s control which contribute to the over-representation of First Nations children and youth in the child welfare system, including poverty, poor housing, racism – including systemic racism – and intergenerational trauma.

(zzz) "Systemic Review Committee” means the subcommittee of the Reform Implementation Committee formed pursuant to paragraph 153.

(aaaa) “Technical Advisory Committee” means the subcommittee of the Reform Implementation Committee formed pursuant to paragraph 157.

(bbbb) “Term” means the period beginning on April 1, 2024, and ending on March 31, 2034.

(cccc) “Terms and Conditions” means the terms and conditions of the Reformed FNCFS Program, commonly known as the First Nations Child and Family Services Terms and Conditions.

(dddd) “Transitional Dispute Resolution Tribunal” means the entity that shall hear Disputes before the enabling Legislation comes into in force.

(eeee) “Tribunal” means the Canadian Human Rights Tribunal.