

## **THREE PARTY NOVATION AGREEMENT**

(pursuant to the British Columbia Tripartite Framework  
Agreement on First Nations Health Governance)

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA**  
as represented by the Minister of Health (the “**Minister**”)

AND:

**FIRST NATIONS HEALTH AUTHORITY,**  
a not-for-profit society incorporated under the *Society Act* of British Columbia  
with its head office on the Squamish Indian Reserve in West Vancouver (the “**FNHA**”)

AND:

\_\_\_\_\_ (the “**Recipient**”)  
*[insert name of recipient on Canada CA]*

### **RECITALS**

#### **Whereas:**

A. The Minister and the Recipient entered into a health funding contribution agreement bearing agreement number \_\_\_\_\_ on date \_\_\_\_\_. This contribution agreement was amended by way the following amendments:

- (a) amending agreement dated \_\_\_\_\_ bearing agreement number 1234567-A01;
  - (b) amending agreement dated \_\_\_\_\_ bearing agreement number 1234567-A02 ;
  - (c) amending agreement dated \_\_\_\_\_ bearing agreement number 1234567-A03,
- (collectively the “Canada CA”)

B. In accordance with the Framework Agreement, the Minister wishes to Novate the Canada CA, including all of the Minister’s rights, liabilities, duties and obligations under and in respect of the Canada CA, to the FNHA;

C. The FNHA wishes to accept the Novation; and

D. The Recipient wishes to consent to the Novation and to accept the FNHA as its sole counterpart with respect to the Novated CA from the Novation Date forward.

**Therefore**, the parties agree as follows:

## **SECTION 1 – DEFINITIONS**

### **1.1 Definitions**

In this agreement, including the recitals, the following definitions apply:

- (1) **Annual Audit** means the annual audit as defined in the Canada CA and Novated CA. *[Note: Use for all Canada CAs except stand-alone Set Funding CAs where an annual audit is not required]*
- (2) **Annual Report** means the annual report required for program reporting purposes under the Canada CA and the Novated CA
- (3) **Canada CA** has the meaning set out in Recital A.
- (4) **Canada Funding Agreement** means the funding agreement between the Minister and the FNHA to provide funding to the FNHA for the Transfer of Federal Health Programs under the Framework Agreement.
- (5) **Fiscal Year** means any period commencing on April 1<sup>st</sup> of any year and terminating on March 31<sup>st</sup> of the year immediately following.
- (6) **Framework Agreement** means the *British Columbia Tripartite Framework Agreement on First Nations Health Governance* signed on October 13, 2011.
- (7) **Novate, Novated or Novation** means the process set out in section 3.1.
- (8) **Novated CA** means the Canada CA as Novated pursuant to this agreement.
- (9) **Novation Date** means the Phase 2 Transfer Date under the *Canada Funding Agreement*, which is expected to be October 1, 2013.
- (10) **Novation Fiscal Year** has the meaning set out in section 7.2(1).
- (11) **Year-End Financial Report** means the year-end financial report required pursuant to the Canada CA and Novated CA. *[Note: use only for Canada CAs that are stand-alone Set Funding CAs]*

## **SECTION 2 – GENERAL**

### **2.1 Commencement**

- (1) This agreement will take effect when it is signed by all three parties.

## **SECTION 3 – NOVATION**

### **3.1 Novation**

- (1) The parties hereby agree to the Novation of the Canada CA, which means that on and from the Novation Date:

- (a) The FNHA and the Recipient will be deemed to have entered into a new agreement between themselves commencing on the Novation Date (the Novated CA), having terms that are identical to those of the Canada CA, as amended in accordance with section 7 of this agreement; and
- (b) The Canada CA will thereafter be deemed to be terminated as between the Minister and the Recipient.

## **SECTION 4 – THE MINISTER**

### **4.1 Pre-Novation**

- (1) The Minister will provide funding to the Recipient and undertake all of her other obligations, and enjoy all of her rights, under the Canada CA until the day prior to the Novation Date.

### **4.2 Post-Novation**

- (1) On and from the Novation Date, the Canada CA will be deemed to be terminated but the Minister will:
- (a) remain entitled to any rights and benefits that may have accrued under provisions of the Canada CA prior to the Novation Date which survive termination or expiry, including but not limited to the rights to:
    - (i) receive all financial and program reports due from the Recipient under the Canada CA in accordance with the Canada CA or sections 7.2 to 7.5 of this agreement that relate to the period prior to the Novation Date;
    - (ii) undertake any audit provided for in the Canada CA for any period prior to the Novation Date; and
    - (iii) if necessary, exercise any default, remedial and collection steps under the Canada CA in relation to any default by the Recipient that occurred prior to the Novation Date; and

- (b) remain obliged to fulfill any obligations that may have accrued under provisions of the Canada CA prior to the Novation Date, including any obligation to pay any amounts due in respect of the period prior to the Novation Date.
- (2) The Minister will not be a party to the Novated CA and will owe no duties or obligations to the Recipient or the FNHA under the Novated CA.

#### **4.3 Release**

- (1) With effect on and from the Novation Date, and subject to section 4.2(1), the Minister releases and discharges the Recipient from any obligations it would have owed the Minister arising after the Novation Date under the Canada CA had it not been Novated.

### **SECTION 5 – THE FNHA**

#### **5.1 Pre-Novation**

- (1) The FNHA will have no rights, duties or obligations to the Recipient or the Minister for any matter relating to the Canada CA and the period prior to the Novation Date except as provided under this agreement.

#### **5.2 Post-Novation**

- (1) On and from the Novation Date, the FNHA will:
  - (a) accept the Novation of the Canada CA in accordance with section 3.1; and
  - (b) obtain all of the rights and interests, and undertake and perform all duties and obligations formerly of the Minister under the Canada CA, as Novated under this agreement, including the obligation to provide funding to the Recipient but excluding the matters set out in section 4.1 and 4.2(1) of this agreement.

### **SECTION 6 – THE RECIPIENT**

#### **6.1 Consent**

- (1) The Recipient consents to the Novation described in this agreement.

#### **6.2 Pre-Novation**

- (1) The Recipient will be responsible to the Minister for fulfilling the terms and conditions of the Canada CA until the Novation Date.

#### **6.3 Post-Novation**

- (1) On and from the Novation Date, the Recipient will:
  - (a) accept the FNHA as its sole counterparty with respect to the Novated CA and abide by the terms of the Novated CA, including the delivery of any financial and

program reporting that is due to the FNHA which relates to period after the Novation Date, subject to and in accordance with section 7.2 to 7.5 of this agreement.

- (b) abide by any terms of the Canada CA which survive the Novation in accordance with section 4.2(1), including the delivery of any financial and program reporting that is due to the Minister which relates to period prior to the Novation Date, subject to and in accordance with section 7.2 to 7.5 of this agreement.

#### **6.4 Release**

- (1) With effect on and from the Novation Date, the Recipient:
  - (a) releases and discharges the Minister, subject to section 4.2(1)(b), from any and all duties and obligations that the Minister would have owed the Recipient following the Novation Date under the Canada CA had it not been Novated.
  - (b) agrees to make no claim or demand against the Minister in respect of any claim it may have against the FNHA under the Novated CA.

### **SECTION 7 – PROCEDURES TO FACILITATE NOVATION AND TO SIMPLIFY NOVATION FISCAL YEAR REPORTING**

#### **7.1 Waivers**

- (1) The Minister and the Recipient hereby waive, at the moment of Novation, the no-assignment provision of the Canada CA in order to permit the Novation.
- (2) The Minister hereby waives its right to receive:
  - (a) a separate [Year-End Financial Report/ Annual Audit], in favour of a single combined version with the FNHA in accordance with section 7.2 of this agreement; and *[Note: Each novation agreement will be amended to refer to either a Year-End Financial Report or an Annual Audit, as applicable to the relevant Canada CA and the definitions will be adjusted accordingly]*
  - (b) a separate Annual Report, in favour of a joint Annual Report with the FNHA in accordance with section 7.5.

#### **7.2 Annual Financial Reporting Obligations**

- (1) For the purpose of providing year-end financial reporting under the Canada CA and the Novated CA for the April 1, 2013 – March 31, 2014 Fiscal Year (“Novation Fiscal Year”), the Recipient will prepare one combined [Year-End Financial Report/ Annual Audit] in respect of the full Novation Fiscal Year.
- (2) The single combined [Year-End Financial Report/ Annual Audit] referred to in paragraph (1) must include: (i) a breakdown into pre- and post-Novation periods; and (ii) a total

as follows:

- (a) Ministerial funding period (April 1, 2013 to the Novation Date);
  - (b) FNHA funding period (Novation Date to March 31, 2014); and
  - (c) Total.
- (3) The breakdown required in subsection (2) may be provided in the notes or a schedule to the [Year-End Financial Report/Annual Audit].
- (4) *[Note: use this clause for cases where there is an Annual Audit]* The single combined Annual Audit referred to in subsection (2) will consist of a single audit covering both periods with a single opinion from the auditor, and need not consist of separate audits or opinions.
- (5) The Recipient will deliver a copy of the single combined [Year-End Financial Report/Annual Audit] to each of the Minister and the FNHA at the time the [Year-End Financial Report/Annual Audit] is due under the Novated CA.

### **7.3 Repayment Obligations**

- (1) The Recipient will ensure that its final [Year-End Financial Report/ Annual Audit] clearly sets out any repayable surpluses (if any), deficits (if any) and repayment obligations for ineligible expenses or other debts due to the Crown in right of Canada or the FNHA (if any) for each of the pre- and post-Novation periods of the Novation Fiscal Year set out in section 7.2(2)(a) and (b).
- (2) The Recipient will pay to the Minister any repayable surpluses, ineligible expenses or other debts due to the Crown in right of Canada that relate to the pre-Novation period referred to in subsection 7.2(2)(a) no later than the date for delivery of final reporting for the Novation Fiscal Year, unless the Minister and the Recipient agree to a payment plan that permits repayment over another period of time.
- (3) The Recipient will pay to the FNHA any repayable surpluses, ineligible expenses or other debts due to the FNHA that relate to the post-Novation period referred to in subsection 7.2(2)(b) no later than the date for delivery of final reporting for the Novation Fiscal Year, unless the FNHA and the Recipient agree to a payment plan that permits repayment over another period of time.

### **7.4 NIHB Reporting Frequency**

- (1) There will be only one interim financial report and one interim program activity report due from the Recipient for the April 1, 2013 – Novation Date period for any NIHB programs funded under the Canada CA. These reports will be due at such times following this period as are consistent with the usual delivery times for interim reports in the Canada CA.
- (2) The Recipient will provide one final financial and program activity report for NIHB programs as funded by the Canada CA and the Novated CA for the full Novation Fiscal Year in

its [Year-End Financial Report/ Annual Audit] and its Annual Report.

## **7.5 Annual Program Reporting Obligations**

- (1) For the purpose of providing year-end program reporting under the Canada CA and the Novated CA, the Recipient will prepare a joint Annual Report for the full Novation Fiscal Year.
- (2) The Recipient will deliver a copy of the joint Annual Report referred to in subsection (1) to each of the Minister and the FNHA at the time it is due under the Novated CA.

## **7.6 Conflict**

- (1) All financial reporting provisions of the Canada CA and the Novated CA will be deemed to be modified and amended to the extent required by the conditions of section 7.2 to 7.5 of this agreement. In the event of a conflict between the financial reporting provisions of the Canada CA or the Novated CA and sections 7.2 to 7.5 of this agreement, the conflict will be resolved in favour of sections 7.2 to 7.5 of this agreement.

## **7.7 Interpretation of certain Crown clauses in the Novated CA**

- (1) The FNHA and the Recipient agree to interpret all provisions of the Novated CA in a purposeful manner which respects the intention of the original parties.
- (2) All references to the “Minister” “Ministerial” or the “Crown” in the Novated CA will be read and construed as if they were references to the FNHA.
- (3) Notwithstanding subsection (1) the following conditions will be deemed to be inapplicable and excluded from the Novated CA:
  - (a) the Parliamentary appropriations condition to the provision of funding; and
  - (b) the reference to the *Crown Liability and Proceedings Act* in the funder’s indemnity provision.

## **SECTION 8 - GENERAL PROVISIONS**

### **8.1 Consideration**

- (1) This agreement and the Novation process herein is entered into by the parties for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties.

### **8.2 Governing Law**

- (1) This agreement will be governed by, interpreted and enforced in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein.

### **8.3 Interpretation**

(1) The captions and titles in this agreement are for convenience or reference only and will not affect the scope, intent or interpretation of any provision.

(2) All amendments to this agreement are to be made in writing and signed by all parties.

#### **8.4 Waiver**

(1) No provision of this agreement and no event of default by any party of any provision of this agreement will be deemed to have been waived unless the waiver is in writing and signed by the other party.

(2) The waiver by a party of default by any other party of any provision of this agreement will not be deemed to be a waiver of any subsequent default by any party of the same or any other provision of this agreement.

#### **8.5 Relationship of Parties**

(1) No principal-agent, employer-employee, partnership, contract for services or joint venture relationship exists or will be deemed to exist between the parties by virtue of this agreement. No party hereto will have the express or implied right or authority to assume or create any obligation on behalf of or in the name of any other party, or to bind any other party to any contract, agreement or undertaking with any other entity. The parties further agree not to represent themselves as such, including in any agreement with a third party.

#### **8.6 Warranty of Authority**

(1) The parties warrant that their representatives who sign this agreement have the authority to do so and bind them, and each agree to provide the other, upon request, with evidence of that authorization as may reasonably be required.

#### **8.7 Notices**

Any notice or other communication to be given to a party under this agreement will be given in writing or in electronic format, and will be sufficiently given if delivered personally, by electronic mail or if sent by prepaid registered mail or fax to such party as follows:

to the FNHA:

Name: Chief Executive Officer  
Address: 1205 – 100 Park Royal South  
West Vancouver BC V7T 1A2  
Attention: Chief Executive Officer

Facsimile: 604-913-2081  
[JGallagher@fnhc.ca](mailto:JGallagher@fnhc.ca)

to the Minister:

Name: Senior Assistant Deputy Minister, First Nations and Inuit Health Branch,  
Health Canada

Address: 21<sup>st</sup> Floor, Jeanne Mance Building  
200 Eglantine Driveway, Tunney's Pasture Ottawa, Ontario K1A 0K9

Attention: Senior Assistant Deputy Minister, First Nations and Inuit Health Branch,  
Health Canada

Facsimile: 613-957-1118

[Michel.Roy@hc-sc.gc.ca](mailto:Michel.Roy@hc-sc.gc.ca)

to [the Recipient]

*[Insert details]*

or at such other address as the party to whom such notice is to be given will have last notified to the party giving the same in the manner provided in this section.

Any notice personally delivered to a party will be deemed to have been given and received on the day it is so delivered at such address. Any notice mailed to a party will be deemed to have been given and received on the fifth business day next following the date of its mailing provided no postal strike is then in effect or comes into effect within five business days after such mailing. A facsimile will be deemed to be delivered to the other party on the business day on which it was transmitted to that party provided that such transmission took place between 8:00 am and 5:00 pm of such business day.

Any party may at any time change its address for notice from time to time by giving notice to the other parties.

## **8.8 Further Assurances**

(1) The parties will, from time to time and at all times hereafter, but without further consideration, do all such further acts and execute and deliver all such further deeds and documents as will be reasonably required in order to fully perform and carry out the terms and conditions of this agreement.

(2) No party will assign its rights or obligations under this agreement without the consent of the other two parties.

(3) This agreement is legally binding upon the parties and their respective successors and permitted assigns.

## **SECTION 9 - EXECUTION**

(1) This agreement and any Amendment may be executed and delivered by fax or by e-mail and in counterparts, each of which when executed and delivered is an original but each of which taken together constitute one and the same instrument.

**IN WITNESS WHEREOF**, Her Majesty the Queen in Right of Canada has executed this agreement at the City of \_\_\_\_\_, in the Province \_\_\_\_\_, the FNHA has executed this agreement at the City of \_\_\_\_\_, in the Province \_\_\_\_\_, and the Recipient has executed this agreement at \_\_\_\_\_ on the dates set out below:

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA,  
as represented by the Minister of Health**

By: \_\_\_\_\_

Name:

Title:

Date:

**FIRST NATIONS HEALTH AUTHORITY**

By: \_\_\_\_\_

Name:

Title:

Date:

**RECIPIENT** *[Note: insert Recipient's full name and adjust to match signing line norms in Canada CAs]*

By: \_\_\_\_\_

Name:

Title:

Date: