

THE KING'S BENCH
Winnipeg Centre

BETWEEN:

DAVID WEREMY

Plaintiff,

- and -

THE GOVERNMENT OF MANITOBA

Defendant.

Proceeding under
The Class Proceedings Act, C.C.S.M. c. C.130

SETTLEMENT AGREEMENT

WHEREAS the Plaintiff brought this class action under the *Class Proceedings Act* C.C.S.M. c. 130 (the "Act") for alleged negligence and breach of fiduciary duty in respect of the Defendant's operation and management of the Manitoba Developmental Centre ("MDC") resulting in alleged physical and sexual harm to some Class Members;

AND WHEREAS Manitoba has denied the allegations in the amended Statement of Claim;

AND WHEREAS counsel for the parties to this Settlement Agreement (the "Agreement") have conducted a thorough analysis of the claims, and they have taken into account the extensive burdens and expense of litigation, including the risks of going to trial;

AND WHEREAS in consideration of all of the circumstances and after extensive arm's length negotiations, both directly and with the assistance of Judicially Assisted Dispute Resolution sessions, the parties to this Settlement Agreement wish to settle any and all issues among themselves in any way relating to the Action (hereinafter defined);

AND WHEREAS the parties executed a term sheet on December 16, 2022 ("Term Sheet") setting out the main terms of agreement between the parties subject to the execution of this Agreement;

AND WHEREAS after their investigation, the Plaintiff and Class Counsel have concluded that this Agreement provides substantial benefits to the Class Members and is fair, reasonable and in the best interests of the Class Members;

NOW THEREFORE the parties to this Agreement agree to settle all matters related to the Action (as herein defined) on the following terms and conditions:

Definitions

1. For the purposes of this Settlement Agreement and attached Schedules (hereinafter collectively the “Agreement”), the following definitions apply:
 - (a) **“Action”** means the class proceeding, including all amendments thereto, commenced by David Weremy in the Manitoba Court of King's Bench against The Government of Manitoba, having Court File No. CI 18-01-17220, and certified as a class proceeding by Order of the Court on May 29, 2020;
 - (b) **“Administration Costs”** means all costs to administer the Claims Process and distribute the Settlement Fund, including the costs of the Claims Administrator and the Claims Supervisor, and the costs of implementing the Notice Plan;
 - (c) **“Approval Hearing”** or **“Settlement Approval Hearing”** means the Court hearing to approve the Settlement of the Action;
 - (d) **“Approval Order”** means the Order of the Court approving the Settlement;
 - (e) **“Approved Claims”** means Claims assessed by the Claims Administrator and/or Claim Supervisor pursuant to the Claims Process and, approved by the Claims Administrator and/or Claims Supervisor for payment from the Settlement Fund;
 - (f) **“Certification Order”** means the Certification Order of Justice Grammond dated May 29, 2020;
 - (g) **“Claim”** means a claim made by a Claimant by filing a Claim Form with the Claims Administrator in accordance with the Claims Process;
 - (h) **“Claimant”** means any Class Member who files a Claim Form in accordance with the Claims Process;

- (i) **"Claims Administrator"** means the persons or entities agreed upon by the Parties or appointed by the Court to administer the Claims Process;
- (j) **"Claims Deadline"** means the date by which all Claims must be submitted to the Administrator in order to be entitled to compensation pursuant to the Claims Process, and as defined in Schedule "B" hereto;
- (k) **"Claims Process"** means the procedure for the submission, review and determination of Claims set out in Schedule "B" hereto;
- (l) **"Claims Supervisor"** means the person agreed to by the parties and/or appointed by the Court to perform such roles as specified by the Claims Process;
- (m) **"Class", "Class Member" or "Class Members"** is defined as per the Certification Order of Justice Grammond dated May 29, 2020, being "all persons who resided at the Manitoba Developmental Centre for any period or periods of time between July 1, 1951 and May 29, 2020, and who were alive as of October 31, 2016", and excluding any person who validly opted out of the Action pursuant to the Certification Order;
- (n) **"Class Counsel"** means Koskie Minsky LLP;
- (o) **"Class Period"** means July 1, 1951 to May 29, 2020;
- (p) **"Counsel Fees"** means the fees, disbursements and all applicable taxes awarded to Class Counsel as determined and approved by the Court at the Approval Hearing and pursuant to s. 38 of *The Class Proceedings Act* C.C.S.M. c. C.130;
- (q) **"Counsel for Manitoba"** means Thompson Dorfman Sweatman LLP;
- (r) **"Court"** means the Manitoba Court of King's Bench;
- (s) **"Court Approval Date"** means the later of:

- (i) 31 days after the date on which the Court issues the Approval Order; and
- (ii) The disposition of any appeals from the Approval Order;
- (t) **“Eligible Claimant”** means a Claimant determined to be eligible for compensation pursuant the Claims Process and as determined by the Claims Administrator;
- (u) **“Excluded Claim”** means a Claim by a person who has previously and validly opted out of the Action in writing or who has previously settled claims against the Defendant and has executed a release, or consent judgment dismissing in favour of Manitoba in relation to matters that are the subject of this Action, or that otherwise presents a bar to recovery in the Action;
- (v) **“Honorarium”** means an honorarium, if any, to be paid to the Plaintiff in an amount determined by the Court at the Approval Hearing or thereafter;
- (w) **“Notice of Approval Hearing”** means the Court-approved notice to the Class Members of the Approval Hearing;
- (x) **“Notice of Settlement Approval”** means the Court-approved notice to the Class Members advising that the Court has approved the Settlement and advising of the Claims Process;
- (y) **“Notice Plan”** means the plan to disseminate the Notice of Settlement Approval and Notice of Approval Hearing to the Class approved by the Court based on the plan agreed to by the Parties;
- (z) **“Manitoba”** means the Defendant, the Government of Manitoba;
- (aa) **“MDC Cemetery”** means the cemetery utilized by MDC located 1.5kms north of Portage la Prairie on Highway 240, and having Certificate of Title No. 1493823/3;

(bb) **"Medical Evidence Fees"** means reasonable fees, up to a maximum of \$500.00 per Claimant, charged by a professional providing the medical evidence necessary for a Level 4 Sexual Assault (as defined in the Claims Process);

(cc) **"Reconciliation Initiatives"** means those initiatives agreed to by the Parties as set out in Schedule "A";

(dd) **"Releasees"** means individually and collectively Manitoba, and each of its past, present and future officers, employees, representatives, administrators, insurers, volunteers, agents and their respective heirs, successors, executors and assigns;

(ee) **"Settlement"** or **"Settlement Agreement"** means this Agreement, as executed by the Parties or their representatives, including the attached Schedules;

(ff) **"Settlement Fund"** means the sum of \$17,000,000.00 which Manitoba has agreed to pay to settle the Action, inclusive of compensation for Approved Claims, Honorarium, interest, legal costs and disbursements, Counsel Fees, and Reconciliation Initiatives, but exclusive of Administration Costs.

Settlement Fund

2. As defined herein, the Settlement Fund will be used to pay the Approved Claims, Reconciliation Initiatives, Counsel Fees, and Honorarium, in accordance with this Settlement Agreement in full and final settlement of the Action. Manitoba shall hold the Settlement Fund from the Court Approval Date until such time as all payments required by this Settlement Agreement have been made.
3. The Settlement Fund shall be paid out as follows:
 - (a) First to satisfy Counsel Fees and Honorarium;
 - (b) Second to satisfy the payment of the amounts set out in Schedule "A" according to the terms therein;

- (c) Third to satisfy Medical Evidence Fees;
 - (d) Fourth to satisfy Approved Claims determined in accordance with the Claims Process at Schedule “B”; and
 - (e) Any amounts remaining in the Settlement Fund after the payments in clause 3(a) through (d) inclusive have been made will revert to Manitoba.
4. Manitoba shall pay to Class Counsel the Counsel Fees and Honorarium in trust, as approved by the Court, within thirty (30) days after the Court Approval Date.
 5. Manitoba shall pay for all Administration Costs that are approved by the Court, which shall not be paid from the Settlement Fund.
 6. The Claims Administrator will be mutually agreed upon by the Parties and approved by the Court.
 7. The Claims Supervisor will be mutually agreed upon by the Parties and approved by the Court.
 8. The Notice Plan will be mutually agreed upon by the Parties and approved by the Court. Any disputes relating to the design, content or dissemination of the Notice Plan shall be resolved by the Court. Neither party will appeal the Court’s decision on the Notice Plan.
 9. The Claim Form will be mutually agreed upon by the Parties and approved by the Court. Any disputes relating to the design or content of the Claim Form shall be resolved by the Court. Neither party will appeal the Court’s decision on the design or content of the Claim Form.
 10. The Claims Administrator may pay Medical Evidence Fees, which shall not exceed \$500.00 total per Claimant, and may be paid by the Claims Administrator out of the Settlement Fund in the following two scenarios:
 - (a) Upon presentation of receipt(s) of payment issued by the professional for payment already made by a Claimant, the Medical Evidence Fees shall be payable by the Claims Administrator directly to the Claimant; and
 - (b) Where payment has not yet been rendered by the Claimant, upon receipt by the Claims Administrator of a written confirmation from the professional indicating that a request for

medical evidence has been made and the amount required for payment, the Medical Evidence Fees shall be paid directly by the Claims Administrator to the professional.

11. In either circumstance set out in paragraph 10 herein, the Claims Administrator shall provide to Manitoba a monthly accounting of amounts requested and paid for the Medical Evidence Fee.
12. Manitoba shall pay to the Claims Administrator amounts for payment of Approved Claims and Medical Evidence Fees from time to time as the Claims Administrator requests.
13. The Parties agree, and Manitoba confirms that, subject to operation of applicable provincial law, it is intended that there be no deduction or clawback from social or income assistance programs as a result of payments to Class Members on account of Approved Claims. Manitoba confirms that payment of Approved Claims will be deemed not to be a form of income replacement, or compensation for loss of income. Manitoba confirms that payment of Approved Claims will not affect the eligibility for or duration of social assistance or other benefits available to Class Members. Manitoba shall, within thirty (30) days of the Court Approval Date, send a letter to the federal government and other provincial governments to request their agreement that any social assistance benefits available to Class Members from those other governments will not be affected by any settlement funds received by individual Class Members, which letter shall be substantially in the form attached as Schedule "C".
14. Manitoba shall undertake the Reconciliation Initiatives in accordance with Schedule "A" following the Court Approval Date.
15. The Parties agree that when commenting publicly on the Action or this Settlement, they shall:
 - (a) Inform the inquirer that the Action has been settled to the satisfaction of all parties;
 - (b) Inform the inquirer that it is the view of the Parties that the settlement of the Action is fair, reasonable and in the best interests of the Class; and
 - (c) Decline to comment in a manner that casts the conduct of any party in a negative light or reveals anything said during the settlement negotiations.
16. Class Counsel shall abide by the trust reconciliation requirements set out in Schedule A.

COURT APPROVAL

17. The Parties agree to adjourn all steps in the Action pending a determination by the Court on whether to approve the Settlement.
18. It is understood and agreed that Court Approval of this Settlement Agreement and Claims Process is required. The Parties will arrange for the Settlement Approval Hearing to be heard as soon as possible following the execution of this Settlement Agreement. Prior to the Approval Hearing, the Notice of Approval Hearing is to be ordered and directed by the Court. The Parties shall move before the Court with dispatch to have the Settlement and all necessary advance steps approved by the Court at the earliest possible opportunity.
19. The Parties agree to file motion materials, as necessary, with respect to the motion to approve the Settlement and counsel shall act reasonably and in good faith on the content of such motion materials.
20. Class Counsel shall bring a motion for approval of their requested Counsel Fees by the Court at the time of the Settlement Approval Hearing. The Defendant shall take no position on Class Counsel's motion to approve their requested Counsel Fees.
21. On the Court Approval Date, each Class Member, whether or not he or she or they submits a Claim or otherwise receives compensation in accordance with the Claims Process, will be deemed by this Settlement Agreement to have completely and unconditionally released, remised and forever discharged the Releasees of and from any and all actions, counterclaims, causes of action, claims, whether statutory or otherwise and demands for damages, indemnity, contribution, costs, interest, loss or harm of any nature and kind whatsoever, known or unknown, whether at law or in equity, and howsoever arising which they may heretofore have had, may now have or may hereafter have whether commenced or not in connection with all claims relating to the matters raised in the Action, except for any Claimant's entitlement to be paid in respect of an Approved Claim pursuant to the terms hereof.
22. On the Court Approval Date, each Class Member will be forever barred and enjoined from commencing, instituting or prosecuting any action, litigation, investigation or other proceeding in any Court of law or equity, arbitration, tribunal, proceeding, governmental

forum, administrative forum or any other forum, directly, representatively, or derivatively, asserting against the Releasees any claims relating to the matters raised in the Action.

23. On and after the Court Approval Date, in the event that a Class Member commences, institutes or prosecutes any action, litigation, investigation or other proceeding in any Court of law or equity, arbitration, tribunal, proceeding, governmental forum or any other forum, directly, representatively, or derivatively, relating to the matters raised in the Action, against any person, firm, corporation, or administrative entity or regulator who may claim contribution or indemnity from the Releasees under the provision of any statute or otherwise, and the Releasees or any of them are added to such proceeding in any manner whatsoever, whether justified in law or not, such Class Member will immediately discontinue the proceedings and claims or otherwise narrow the proceedings and claims to exclude the several liability of the Releasees. This Settlement Agreement shall operate conclusively as an estoppel in the event of any claim, action, complaint, or proceeding which might be brought in the future by such Class Member with respect to the matters covered herein. This Agreement may be pleaded in the event that any such claim, action, complaint or proceeding is brought, as a complete defence and reply, and may be relied upon in any proceeding to dismiss the claim, action, complaint or proceeding on a summary basis and no objection will be raised by such Class Member in any subsequent action that the parties in the subsequent action were not privy to the formation of this Agreement.

No Admission, No Use

24. This Settlement Agreement, whether or not approved by the Court, and any proceeding taken pursuant to this Settlement Agreement are for settlement purposes only. Neither the fact of, nor any provision contained in this Settlement Agreement or the schedules hereto, or any action taken hereunder, shall be construed as, offered in evidence as, and/or deemed to be evidence of a presumption, concession, or admission of any kind by the parties of the truth of any fact alleged or the validity of any claim or defence that has been, could have been in the future might be asserted in any litigation, Court of law or equity, proceeding, arbitration, tribunal, government action, administrative forum, or any other forum, or of any liability, responsibility, fault, wrongdoing or otherwise of any parties except as may be required to enforce or give effect to the settlement and this Settlement Agreement. For greater clarity,

Manitoba denies the truth of the allegations in the Action, and denies any and all liability whatsoever. This settlement is agreed to with an express denial of liability.

Termination

25. This Settlement Agreement shall, without notice, be automatically terminated if the Court does not approve this Settlement Agreement. In the event of termination, this Settlement Agreement shall be deemed to be a without prejudice settlement discussion and shall have no further force or effect, save and except for this section and section 24, which shall survive termination.

General

26. This Settlement Agreement shall be governed, construed and interpreted in accordance with the laws of the Province of Manitoba.
27. This Settlement Agreement constitutes the entire agreement between the Parties and may not be modified or amended except in writing, on consent of the Parties, and with Court approval.
28. This Settlement Agreement may be signed (including electronic signatures) by the Parties in counterpart, and delivered electronically, which shall have the same effect and enforceability as a single executed document.

IN WITNESS WHEREOF, each of the Parties has caused this Settlement Agreement to be executed on his/her/their behalf by his/her/their duly authorized counsel of record, effective as of March 7, 2023.

KOSKIE MINSKY LLP

March 7, 2023

Date

Counsel for the Plaintiff and the Class

THOMPSON DORFMAN SWEATMAN LLP

March 7, 2023

Date

Counsel for the Defendant, Government of Manitoba

SCHEDULE "A" – RECONCILIATION INITIATIVES

1. Unless otherwise defined in this Schedule, all other capitalized terms used in this Schedule have the same meaning as in the Settlement Agreement.
2. Manitoba shall undertake the initiatives listed below in the timeframes identified, and if not so identified, as soon as practical after the Court Approval Date.

Apology

3. Manitoba will issue an apology in the Legislative Assembly from the Premier or the Minister of Families, to the Class who suffered harm, the content and timing of which shall be in the sole discretion of Manitoba, but which shall reference a commitment to community living for persons with developmental disabilities.
4. Manitoba shall provide the Class, through Class Counsel, with advance notice of the issuance of the apology. Individual Class Members who elect to receive one, will receive a written copy of the apology addressed to them, which election shall be made when submitting a Claim Form.

Reconciliation Endowment

5. Manitoba will establish an endowment of \$1,000,000.00 (the "**Reconciliation Endowment**") out of the Settlement Fund with the Winnipeg Foundation, that may be drawn upon annually by community organizations to fund:
 - (a) educational programming related to the history of institutionalization of individuals with intellectual and developmental disabilities in Manitoba;
 - (b) inclusion initiatives that support assisted decision making/support network development, in addition to other initiatives that support community living;
 - (c) projects that promote or support community inclusion for individuals with intellectual and developmental disabilities in Manitoba; and
 - (d) training for people and agencies providing support for individuals with intellectual or developmental disabilities.

6. In awarding funding from the Reconciliation Endowment, the Winnipeg Foundation will be guided by the principle of "*nothing about us without us*". In formally establishing the endowment with the Winnipeg Foundation, the parties will agree on any necessary further terms, guided by the principles set out in this paragraph and paragraph 5 of this Schedule.
7. In the event that the Winnipeg Foundation does not accept the Reconciliation Endowment as detailed in paragraphs 5 and 6 herein, an appropriate alternative for the endowment will be established that accomplishes the same objectives.

Memorial, Cemetery Grounds, Access to MDC, and Preservation of Documents

8. Manitoba will erect a memorial on the grounds of the MDC Cemetery following the closure of MDC. The memorial will include a commemorative plaque, the content of which will be agreed to by the parties. The costs of the memorial are exclusive of the Settlement Fund, and shall be borne by Manitoba. Manitoba shall provide the Class, through Class Counsel, with advance notice of the dedication of the memorial.
9. Manitoba shall allow reasonable access to Class Members to attend the MDC grounds and participate in a guided tour of select buildings after the closure of MDC on two dates to be determined by Manitoba. Each Class Member shall be entitled to be accompanied by one support person, if required. The Class Members and their support persons shall, at all times, comply with the MDC policy regarding tours (MDC Policy IV-20 Tours, and any amendments thereto).
10. For a period of six months from the Court Approval Date Manitoba shall, upon request, provide a guided tour, on a single occasion, to a researcher selected by the Plaintiff for the purposes of viewing the artifacts at MDC and having the researcher select the significant items which they wish to arrange to have archived in a suitable site to document what is socially and historically significant. This is subject to the proviso that if Manitoba disposes of the property on which MDC is located, the Plaintiff shall be provided with 45 calendar days advance notice of the intended disposition, and the Plaintiff shall have 20 calendar days from the notice to complete the foregoing attendance by said researcher. The researcher shall at all times comply with the MDC policy regarding tours. The Plaintiff shall have 20 calendar days from the researcher's

attendance to remove any items from the property. An artifact shall be government owned items and shall not include items currently in use or items that may be repurposed by Manitoba, determined in its sole discretion.

11. For greater certainty, Manitoba shall not be responsible for identifying the researcher or arranging for a suitable site.
12. As set out in paragraph 14 herein, Manitoba shall pay the all-inclusive sum of \$10,000.00, from the Settlement Fund, for the costs of the researcher and the costs to remove and store artifacts, in addition to costs related to activities set out at paragraph 9 herein. Costs in excess of the amount set out in paragraph 14 shall be borne by the Plaintiff or others, and Manitoba shall not be responsible or liable for same.
13. The request for the tour set out at paragraph 10 herein shall be communicated by Class Counsel to Counsel for Manitoba.
14. Manitoba shall pay the sum of \$10,000.00 to Class Counsel, in trust, from the Settlement Fund, to reimburse costs associated with: (a) transportation and personal support workers to attend the activities outlined in paragraph 9 herein; (b) costs of the researcher identified in paragraph 10; and (c) costs to remove and store artifacts as outlined in paragraph 10 herein. After the Claims Deadline, Class Counsel shall report to Manitoba on the total expenditures in this regard, and any residue from these trust funds shall revert to the Settlement Fund.
15. Within three months following completion of the guided tours referenced in paragraph 9 and 10 herein, Class Counsel shall provide a trust reconciliation to the Administrator and to Manitoba setting out the funds received, the funds disbursed in accordance with this Agreement, and the balance remaining which shall revert to the Settlement Fund, and be paid forthwith to the Administrator.
16. Regarding the MDC Cemetery:
 - (a) Manitoba will undertake reasonable efforts to preserve and maintain the MDC Cemetery, including the gate;
 - (b) Manitoba will undertake reasonable efforts to provide access to the MDC Cemetery;

(c) The parties will make reasonable efforts to have the MDC Cemetery designated as a Site of Historical Significance, which would include the placement of appropriate signage; and

(d) Upon request, Manitoba will consider reasonable amelioration efforts paid for by Class Members or other third parties. Costs of such efforts or the costs resulting from such efforts shall not be the responsibility of Manitoba. Manitoba's approval will not be unreasonably withheld.

17. Regarding the preservation of and access to documents:

(a) Manitoba will provide clear written instructions regarding how archival documents related to MDC may be accessed. Requests for and access to documents remain the subject to applicable privacy legislation.

(b) Manitoba will provide copies of all documents produced to the Plaintiff in this proceeding to the Archives of Manitoba. Access to these documents shall be pursuant and subject to the requirements of *The Archives and Record Keeping Act* S.M. 2001, c. 35, *The Fatality Inquiries Act*, C.C.S.M. c. F52, *The Personal Health Information Act* C.C.S.M. c.P33.5, *The Privacy Act* C.C.S.M. c. P125, *The Vulnerable Persons Living with a Mental Disability Act* C.C.S.M. c. V90, *The Freedom of Information and Protection of Privacy Act* C.C.S.M. c. F175, *The Ombudsman Act*, C.C.S.M. c. 45 (as amended), and any other applicable legislation.

Storytelling Initiatives

18. Manitoba shall pay the sum of \$50,000.00 to Class Counsel, in trust, from the Settlement Fund, for the creation of audiovisual productions concerning of the stories of Class Members and the history of MDC. Class Counsel shall have a duty to consult Class Members regarding which audiovisual productions shall receive these funds. Within three months following the Claims Deadline, Class Counsel shall provide a trust reconciliation to the Administrator and to Manitoba setting out the funds received, the total funds dispersed in accordance with this Agreement, invoices supporting each disbursement, and the balance remaining, which balance shall revert to the Settlement Fund and be paid forthwith to the Administrator.

Claims Process Counselling

19. Manitoba shall pay the sum of \$150,000.00 to Class Counsel, in trust, from the Settlement Fund, from which Claimants may be reimbursed for counselling, psychological, or psychiatric care arising from any traumatization Claimants experience as a result of making a Claim, up to a maximum of \$1,500.00 per Claimant. Within three months following the Claims Deadline, Class Counsel shall provide a trust reconciliation to the Administrator and to Manitoba setting out the funds received, the total funds disbursed in accordance with this Agreement, invoices supporting each disbursement over \$100 and the balance remaining, which balance shall revert to the Settlement Fund and be paid forthwith to the Administrator.
20. Within three months following the Claims Deadline, Class Counsel shall provide a trust reconciliation to the Administrator and to Manitoba setting out the funds received, the total funds disbursed in accordance with this Agreement, invoices supporting each disbursement, and the balance remaining, which balance shall revert to the Settlement Fund and be paid forthwith to the Administrator.

SCHEDULE "B" – CLAIMS PROCESS

Definitions

1. The following definitions apply in this Schedule:

- (a) **"Claim Form"** means the Claim Form as described herein, which shall be in the form of a solemn declaration, by oath either sworn or affirmed;
- (b) **"Claims Deadline"** means twelve (12) months after the Court Approval Date;
- (c) **"Class List"** means the list of Class Members provided by Manitoba on November 23, 2020 and updated as agreed to by the Parties;
- (d) **"Compensation Grid"** means the grid of compensation to be allocated to each Claimant for the harms as set out at Appendix "I" hereto;
- (e) **"Major Psychological Injury"** means prolonged major psychological trauma symptoms resulting in a diagnosis by a psychiatrist or psychologist of a mental illness/disorder recognized by the Diagnostic and Statistical Manual of Mental Disorders. The diagnosis must not be pre-existing and must occur after the incident(s) in question and prior to the commencement of the Action;
- (f) **"MDC Resident File"** means the records having document retention identification 0054.
- (g) **"SDM"** means a Claimant's authorized Substitute Decision Maker, appointed by the Office of the Vulnerable Person's Commission, pursuant to *The Vulnerable Persons Living with a Mental Disability Act*, C.C.S.M. c.V90;
- (h) **"Serious Physical Injury"** means physical injury that led or should have led to hospitalization or serious medical treatment by a physician; permanent or demonstrated long-term physical injury, impairment or disfigurement; loss of consciousness; broken bones; or a serious but temporary incapacitation such that bed rest or infirmary care of several days duration was required; and
- (i) **"Serious Sexual Assault"** means non-consensual oral, vaginal or anal penetration or attempted non-consensual oral, vaginal or anal penetration.

2. All other capitalized terms used in this schedule have the same meaning as in the Settlement Agreement.

Resident Files

3. While the Class Member's MDC Resident File will not be required to make a Claim, it may be that a Claimant, or their SDM, will wish to obtain a copy of their MDC Resident File in order to assist in completing or supporting the Class Members' Claim. Any MDC Resident File requests made on or after the date of the Approval Order and within two (2) months after the Court Approval Date will be considered a request under the Resident File request process as follows ("Resident File Request Process"):
 - (a) Claimants' requests for their MDC Resident File pursuant to this Resident File Request Process must be made to Manitoba by the Claimant, or their SDM, to a mailing and email address to be specified in the Claim Form;
 - (b) For this Resident File Request Process to apply, the request must be made to Manitoba within three months after the Court Approval Date;
 - (c) If a Claimant requests their MDC Resident File within the timeframe set out in subparagraph (b), Manitoba will produce the Resident File to the Claimant, or their SDM if appropriate, within three (3) months from the date of the request or such other time frame as Manitoba and Class Counsel may agree or by Order of the Court;
 - (d) Any request made for a MDC Resident File that is received by Manitoba before the date of the Approval Order shall be treated as having been made outside of the Resident File Request Process and the timelines specified herein shall not apply;
 - (e) Requests for MDC Resident Files received by Manitoba after the deadline set out in subparagraph (b) shall be addressed outside the Resident File Request Process, and the timelines specified herein shall not apply;
 - (f) The parties hereto and the Claimants understand and acknowledge that applicable privacy legislation will apply to all requests for a MDC Resident File and therefore some

information contained in that file may be redacted. Manitoba will comply with all applicable legislation when responding to a Resident File Request; and

(g) The Resident File Request Process is not intended to impact any individual's ability to request his/her/their MDC Resident File outside of this proceeding.

Claims for Compensation

4. There are two categories of compensation that may be payable to an Eligible Claimant. These are: Section A Claims and Section B Claims. A Claimant is only entitled to compensation for one category of compensation. In other words, a Claimant may not receive both Section A and Section B compensation and must identify the category of compensation they seek at the time the Claim Form is submitted.
5. Any person who wishes to claim compensation shall deliver to, or otherwise provide, the Claims Administrator with a completed Claim Form by the Claims Deadline. If the Claims Administrator does not receive a completed Claim Form and supporting documentation (where necessary) from a Class Member by the Claims Deadline, then the Claimant shall not be eligible for any compensation whatsoever, subject to paragraph 41.
6. The Claims Administrator shall review each Claim Form for completeness and shall advise a Claimant, no later than seven (7) business days after receipt of the Claim Form if their Claim Form is incomplete. The Claimant shall rectify an incomplete Claim Form within the later of (i) thirty calendar days (30) days from the date that the Claims Administrator advises them that their Claim Form is incomplete, or (ii) the Claims Deadline.
7. The Claims Form shall require the Claimant to provide their name, contact information, and other information agreed upon by the parties and the Administrator to verify the Claimant is an Eligible Claimant.
8. The Claim Form shall provide for two types of claims for compensation: Section A Claim and Section B Claim. The Claimant must identify which category of compensation they are applying for on the Claim Form. In the event it is unclear to the Claims Administrator as to which category of claim a Claimant is making in the Claim Form, the Claims Administrator may seek such clarification from the Claimant as soon as possible after receiving the Claim.

9. Section A Claims require an affirmation from the Claimant or the Claimant's SDM that:
 - (a) The Claimant is an Eligible Claimant;
 - (b) The SDM submitting a Claim has authority to submit the Claim on behalf of the Claimant or, in the alternative, that the Claimant does not have a SDM; and
 - (c) The Claimant experienced harm while a resident at the MDC during the Class Period.
10. Section B Claims require an affirmation from the Claimant or the Claimant's SDM that:
 - (a) The Claimant is an Eligible Claimant;
 - (b) The SDM submitting a Claim has authority to submit the Claim on behalf of the Claimant or, in the alternative, that the Claimant does not have a SDM; and
 - (c) That the Claimant experienced specified harm and the Claimant shall provide a detailed description of the physical and/or sexual assault(s) the Claimant experienced, including, to the best of the Claimant's recollection and ability: the precise or estimated date(s) on which the incident(s) were alleged to have occurred, where the incident(s) occurred, identification of parties involved, identification of witnesses (if any), description of injuries sustained and medical treatment received (if any).

Process for the Assessment and Determination of Claims

Assessment of Eligibility

11. The Claims Administrator shall review each Claim Form and verify that the Claimant is eligible for compensation, as follows:
 - (a) For a Claimant claiming as a Class Member, the Claims Administrator shall:
 - (i) confirm that the Claimant is identified on the Class List;
 - (ii) confirm that the Claimant is a Class Member as defined pursuant to the Certification Order;
 - (iii) confirm that the Claimant does not have a SDM who ought to be submitting the Claim on behalf of the Claimant; and

- (iv) confirm that the Claim is not an Excluded Claim.
- (b) For a Claims being submitted by a SDM or by an authorized representative of a Class Member's estate (the "Estate"), the Claims Administrator shall;
- (i) be satisfied that the SDM or the Estate has authority to act on behalf of the Class Member in respect of financial affairs;
 - (ii) the person or Estate on whose behalf the Claim submitted is identified on the Class List;
 - (iii) confirm that the Claimant is a Class Member as defined pursuant to the Certification Order; and
 - (iv) the Claim is not an Excluded Claim.
- (c) In order to verify that a person acting as SDM has authority to act on behalf of a Claimant, the SDM must provide Notice of Decision Letter and Appointment Document, and Renewal of Substitute Decision Maker
- (d) In order to verify that the Estate has authority to act on behalf of the Claimant, the Estate must provide: (a) Letters of Administration; (b) Letters of Administration with Will Annexed; (c) Grant of Probate; or (d) an Order for Summary Administration under section 47 of *The Court of King's Bench Surrogate Practice Act*.

Manitoba Documents

12. For Claimants who submit a Section B Claim, once the Claims Administrator has verified that the Claimant is eligible for compensation pursuant to the terms herein, the Claims Administrator shall, within four (4) business days, forward a copy of the Claim Form to Manitoba. Manitoba may, within sixty (60) days of receiving the Section B Claim Form, submit to the Claims Administrator any documentation from the Claimant's MDC Resident File (without argument or submissions) that Manitoba determines in its sole discretion is relevant to the determination of the Section B Claim. Any documents provided to the Claims Administrator shall be copied to Class Counsel at the same time as they are provided to the Claims Administrator.

Assessment of Compensation

13. The Claims Process is intended to be expeditious, cost effective, "user-friendly", and to minimize the burden on Class Members. The Claims Administrator shall, in the absence of reasonable grounds to the contrary, assume a Claimant to be acting honestly and in good faith.
14. Where a Claim Form contains minor omissions or errors of a typographical nature, the Claims Administrator shall correct such omissions or errors if the information necessary to correct the error or omission is readily available to the Claims Administrator.
15. The Claim Form will provide instructions as to what supporting evidence is required. The supporting evidentiary requirements are set out in the Compensation Grid at Appendix "I".
16. The Claims Administrator shall take reasonable measures to verify that the Claimant is eligible for compensation identified in the Compensation Grid and that the information in the Claim Form is accurate. The Claims Administrator may make inquiries of the Claimant or Manitoba in the event of any concerns, ambiguities or inconsistencies in the Claim Form, the Claimant's supporting documents, or any documents submitted by Manitoba.
17. Subject to paragraph 13, the Claims Process is also intended to prevent fraud and abuse. If, after reviewing any Claim Form, the Claims Administrator believes that the Claim contains unintentional errors which would materially exaggerate the amount of compensation to be awarded to the Claimant, then the Claims Administrator may disallow the Claim in its entirety, or make such adjustments so that an appropriate amount of compensation is awarded to the Claimant, or include the Claim as a Section A Claim only. If the Claims Administrator believes that the Claim is fraudulent or contains intentional errors which would materially exaggerate the amount of compensation to be awarded to the Claimant, then the Claims Administrator shall disallow the Claim in its entirety.
18. A Claimant may not submit more than one Claim Form. A Claimant shall submit one Claim Form that comprises all claims that he or she or they may have individually. If more than one Claim Form is submitted, the Claims Administrator will treat them as one Claim Form. If more than one Claim Form is submitted on behalf of a Claimant, which, in the opinion of the

to the Claims Administrator raises inconsistencies, the Claims Administrator may seek clarification from the Claimant.

19. All Claims approved by the Administrator as Section A Claims shall be eligible for an award of \$3,000.00 in accordance with paragraphs 45 and 49 herein.
20. The Claims Administrator shall review the Section B Claims, any supporting documentation, and the documentation submitted by Manitoba to determine the compensation level, if any, for which a Claimant is eligible pursuant to the Compensation Grid.
21. Where the Claims Administrator disallows a Claim in its entirety, the Claims Administrator shall send to the Claimant or the Claimant's SDM, or the Claimant's Estate at the Claimant's postal and/or email address as indicated in the Claim Form, and to Class Counsel and Manitoba Counsel, notice that the Claim has been denied and the basis for disallowing the Claim within five (5) business days of coming to that determination.
22. Where a Claim Form identifies facts that support a finding of a Level 3 Sexual Assault or a Level 4 Sexual Assault (as described in the Compensation Grid) and the Claims Administrator determines that the Level 3 Sexual Assault or a Level 4 Sexual Assault claim does not meet the evidentiary requirements for such claims, the Claims Administrator shall send notice of this determination to the Claimant or the Claimant's SDM or his/her Estate within five (5) business days of coming to that determination.
23. Where a Claimant is determined to be entitled to compensation, notice of that determination shall be made by the Claims Administrator. After notice of the determination is communicated to the Claimant, and subject to paragraphs 28, 29, and 30, the Claimant may not submit any further Claim information to the Claims Administrator for consideration in the Claims Process.

Estate Claims

24. In the event an Estate is submitting a Claim Form on behalf of a Claimant, the Estate must submit medical and/or other evidence in support of the claim of sexual or physical assault. A narrative from the Estate will not be sufficient to qualify for compensation for a Section B

Claim. Documentary and/or medical evidence in support of the narrative in addition to affirmation is required.

Claim Supervisor Review

25. Before a Claimant is notified of a decision pursuant to paragraph 23 herein, the Claims Supervisor may review the Claims Administrator's determination of Claims to provide commentary and direction to the Claims Administrator respecting the process and determination of Claims (the "Claims Supervisor Review").
26. The Claims Supervisor Review shall adhere to the following process:
 - (a) The Claims Supervisor Review is intended to be expeditious and cost effective;
 - (b) The Claims Administrator shall provide notice to Manitoba, Class Counsel, and the Claims Supervisor when the Claims Administrator has determined that a Claimant is entitled to compensation of either a Section A or Section B Claim;
 - (c) The Claims Supervisor may, at their discretion and within five (5) business days of receiving notice of a determination pursuant to paragraph 26(b), request to review a sample of the Claim's Administrator's determination of Claims;
 - (d) The Claims Supervisor may review all documents and information received, reviewed and/or relied upon by the Claims Administrator in making a determination;
 - (e) The Claims Administrator must provide all documentation to the Claims Supervisor within two (2) business days of the request for same;
 - (f) The Claims Supervisor shall provide any commentary or direction to the Claims Administrator within five (5) business days of receipt of the Claim documentation from the Claim Administrator;
 - (g) Class Counsel and Manitoba Counsel shall be provided with a copy of any commentary or direction provided by the Claims Supervisor to the Claims Administrator;
 - (h) Neither Class Counsel nor Manitoba Counsel may initiate a Claims Supervisor Review;
 - (i) The Claims Supervisor Review shall be distinct from the Audit process set out herein; and

(j) The Claims Supervisor shall, in their discretion, determine the appropriate sample size of determined Claims to review as part of this process.

27. The Claims Administrator shall not notify a Claimant of a determination pursuant to paragraph 23 herein until:

(a) the time period for the Claims Supervisor Review process has expired and no Claim Supervisor Review has been requested or the Claims Supervisor advises the Claims Administrator that no Claim Supervisor Review will be conducted for such Claims; or

(b) if the Claim Supervisor has initiated a Claim Supervisor Review, the Claim Administrator has received any commentary or direction from the Claims Supervisor.

Reconsideration

28. A Claimant may request a reconsideration by the Claims Administrator of a decision to disallow a Claim in its entirety or of a determination of ineligibility. No other decision of the Claims Administrator relating to the application of the Compensation Grid is subject to review or reconsideration.

29. Any request for reconsideration must be received by the Claims Administrator within fourteen (14) calendar days of the date of the notice advising of the disallowance of a Claim in its entirety or the determination that the Claimant is ineligible ("Reconsideration Deadline"). If no request for reconsideration is received by the Claims Administrator by the Reconsideration Deadline, the Claimant shall be deemed to have accepted the determination and the determination shall be final.

30. Where a Claimant files a timely request for reconsideration with the Claims Administrator in accordance with paragraph 28 above, the Claims Administrator shall advise Class Counsel and Manitoba of the request and conduct a review of the Claimant's request for reconsideration (a "Reconsideration"). The Claims Administrator must issue its decision on the Reconsideration to the Claimant, Class Counsel and Manitoba within fourteen (14) calendar days of receipt of the request for reconsideration ("Reconsideration Period").

31. Following the Claims Administrator's determination on a Reconsideration, the Claims Administrator shall send a copy of its decision to the Claimant by mail and/or email (Copied to Class Counsel and Manitoba) within two (2) business days of making the decision.
32. The determination of the Claims Administrator of a Reconsideration is final and binding.

Manitoba's Right to Request Audits

33. The Claims Administrator shall:
 - (a) Provide notice to Manitoba and Class Counsel when the Claims Administrator has determined and approved a Claim as being a Level 3 Sexual Assault Claim, Level 4 Sexual Assault Claim, and/or Level 3 Physical Assault Claim at the same time as advising the Claimant pursuant to paragraph 23;
 - (b) Provide notice to Manitoba and Class Counsel when the Claims Administrator has determined and approved a Claim as being a Level 3 Sexual Assault Claim, Level 4 Sexual Assault Claim, and/or Level 3 Physical Assault Claim following a Reconsideration at the same time as advising the Claimant; and
 - (c) Provide Manitoba and Class Counsel a list of all Claims determined and approved as being a Level 3 Sexual Assault Claim, Level 4 Sexual Assault Claim, and/or Level 3 Physical Assault Claim after the Reconsideration Period has expired for all Claims and the Claims Administrator's decision on a Reconsideration is made. ("Potential Audit List").
34. For greater clarity, the Potential Audit List shall be updated as Claims are conclusively determined following the expiration of the Reconsideration Period and the Claims Administrator's decision on a Reconsideration is made. The Administrator shall provide Manitoba with the current Potential Audit List monthly or at such other frequency decided by Manitoba. The Potential Audit List will be updated until such time as all Claims are decided, the Reconsideration Period of all Claims has expired, and the Claims Administrator has issued a decision on all Reconsideration requests.

35. Manitoba shall be entitled to require an audit by the Claims Supervisor (an "Audit") of a number of Claims equivalent to the following, rounded up to the next whole number:
 - (a) 25% of Level 3 Sexual Assault Claims;
 - (b) 50% of Level 4 Sexual Assault Claims; and
 - (c) 25% of Level 3 Physical Assault Claims.
36. The parties may, by agreement, direct the Claims Supervisor to conduct further audits of any Claims.
37. Manitoba may initiate an Audit at any time up to 15 days after Manitoba is provided the final Potential Audit List. Manitoba may make a request for an Audit at any time during this period, but subject to paragraph 36, the number of Audits to be conducted shall not exceed the percentage set out at paragraph 35 herein.
38. The Claims Administrator and Claims Supervisor shall monitor the requirements of paragraph 35.
39. The Claims Supervisor shall conduct the Audit as follows:
 - (a) The purpose of the Audit is to prevent fraud and abuse by seeking to confirm the veracity of information provided in the Claim Form, while maintaining the presumption in paragraph 13;
 - (b) The Audit process is also intended to be expeditious, cost effective and "user friendly";
 - (c) The Claims Supervisor shall take whatever steps they deem necessary to confirm the veracity of the information in the Claim Form and the veracity and source of the description of the harms experienced by the Claimant as described by the Claimant, the SDM or Estate;
 - (d) As part of the Audit Process, the Claims Administrator will provide to the Claims Supervisor copies of all documents and information received, reviewed and/or relied upon by the Claims Administrator in making a determination;
 - (e) As part of the Audit process, the Claims Supervisor may conduct an in-person or remote/virtual interview of the Claimant, SDM and/or Estate, as the Claims Supervisor deems appropriate;

(f) The Claims Supervisor may confirm, vary, reverse, or make any other decision that, in the opinion of the Claims Supervisor, is appropriate having regard to the evidence before them, and provide written summary of their decision to the Claims Administrator, Class Counsel, and Manitoba Counsel;

(g) The Claims Supervisor may consult with the parties to establish further or specific procedures for such Audit; and

(h) The determination of the Claims Supervisor in such Audit is final and binding.

40. All Audits must be complete and decisions rendered within sixty (60) days of the audit request, or such further time as the parties may agree upon, with the consent of the Supervisor (the "Audit Deadline").

Late Claims

41. The Claims Administrator may consider a Claim Form submitted after the Claims Deadline ("Late Claim Forms") if the completed Claim Form and all necessary supporting documentation are received by the Claims Administrator within two (2) months after the Claims Deadline and if:

(a) the Claimant, the Claimant's SDM, or the Claimant's Estate has provided written reasons for failing to submit the Claim Form and is able to demonstrate that he/she intended to submit the Claim Form before the applicable deadline;

(b) the Claimant has described special circumstances that would justify the consideration of the Late Claim Form in the interests of justice;

(c) the parties consent to have such Claim Form be assessed by the Claims Administrator;
or

(d) the Court otherwise orders accordingly.

42. For any Late Claim Forms accepted by the Claims Administrator, in accordance with paragraph 41, such Late Claim Forms shall be otherwise treated as any other Claim, except as provided in this paragraph, and the Claims Administrator will make an assessment of the Late Claim Form as filed. Notwithstanding paragraph 5, the Claims Administrator shall review

each Late Claim Form for completeness and shall advise a Claimant and Class Counsel, no later than two (2) business days after receipt of the Late Claim Form if the Claimant's Late Claim Form is incomplete. In that event, the Claimant shall complete the Late Claim Form within ten (10) calendar days from the date of the written notice of the Claims Administrator advising the Claimant, their SDM, or their Estate, that the Claim Form is incomplete.

No Appeals

43. All determinations of the Claims Administrator and/or Claims Supervisor are final and there is no appeal or review of any decision of the Claims Administrator or Claims Supervisor except for determinations on eligibility pursuant to paragraph 11. To be clear, except for the determination of whether an individual claim is “eligible”, all decisions of the Claims Administrator relating to *inter alia*, any claims assessment, sufficiency of a claim, sufficiency of the supporting documents, timelines, late delivery of any claim or component of a claim or supporting documentation, any matter relating to the Resident File Request process, or any other matter relating to the Claims Process are final and the parties expressly agree that these decisions may not be appealed to or put before the Court for any review or a determination. All decisions of the Claims Supervisor shall be final.

Compensation and Payments to Class Members

44. There shall be no compensation for an Excluded Claim.
45. Compensation for a Section A Approved Claim shall be \$3,000.00 to be paid as set out in paragraph 49 below.
46. Compensation for Section B Approved Claims is set out in the Compensation Grid based on the physical and sexual assaults specified therein, subject to paragraph 51 below.
47. If the Claims Administrator determines that a Claimant's Section B Claim has not met the minimum evidentiary threshold for such Section B Claim, and if the Claim is not otherwise disallowed pursuant to any provision herein, the Claim will automatically be considered as a Section A Claim only.

48. Claims that set out a Section A Claim shall be prioritized for review and determination by the Claims Administrator.
49. Once the Claims Administrator determines that the Claimant is entitled to Compensation for a Section A Claim, the Claims Administrator shall pay such compensation to the Claimant forthwith.
50. If the Claims Administrator determines that a Claimant's Section B Claim should be compensated as a Section A Claim only, pursuant to paragraph 47, the Claims Administrator shall pay such compensation to the Claimant forthwith.
51. Subject to paragraphs 45 and 49, which speak to the priority and immediacy of payments for Section A Claims, as soon as possible after all Claim Forms have been processed and determined by the Claims Administrator, and after the Audit Deadline has lapsed, the Claims Administrator shall allocate amounts to the Claimants from the Settlement Fund subject to the following limitations:
 - (a) All Section A Claims shall be paid in their entirety if not already paid in accordance with paragraphs 45 and 49; and
 - (b) If there are not enough funds in the Settlement Fund to compensate all Claimants with approved Section B Claims on the basis of the Compensation Grid, the amount of compensation for all Claimants with approved Section B Claims shall be adjusted downward such that each Claimant receives the proportionate share of the Settlement Fund based on the relative values of each compensate on level.
52. It is the intention of the parties to make payments for Approved Claims as quickly as possible given the requirements of the Claims Process. After receiving all Claims following the Claims Deadline, the Claims Administrator and the Parties will assess and determine whether, at any time during the Claims Process, payment, in whole or in part, of approved Section B Claims can be made prior to final determination of all Claims (including final determinations of all Reconsiderations and all Audits), while respecting the priority of payment in paragraph 51

and ensuring that doing so will not result in seeking a return, in whole or in part, of payments made to Claimants.

53. The Claims Administrator shall mail the individual compensation cheques to the Claimants at the postal addresses indicated in the Claim Forms, within ten (10) business days of receiving the necessary funds from Manitoba, and shall provide a copy of that correspondence to Class Counsel. If, for any reason, a Claimant does not cash a cheque within six (6) months after the date of the cheque, the Claimant shall forfeit the right to compensation and the funds shall be returned to the Settlement Fund. Thirty days prior to the expiry of the six (6) month period described above, the Claims Administrator shall:
- (a) Provide Class Counsel with a list of Claimants who have not cashed their compensation cheques; and
 - (b) Send the Claimant a further letter and/or email (copied via email to Class Counsel) advising the Claimant that they have 30 days to cash the compensation cheque.

APPENDIX “I” - Compensation Grid

Section B Claims¹	
Sexual Abuse	
Level 1 Sexual Assault Any non-consensual sexual touching of a Claimant by staff, or other non-consensual sexual behaviour by staff towards a Claimant that is not a Serious Sexual Assault.	\$15,000
Level 2 Sexual Assault Repeated non-consensual sexual touching of a Claimant or other non-consensual sexual behaviour that is not a Serious Sexual Assault.	\$20,000
Level 3 Sexual Assault One or two incidents of Serious Sexual Assault,	\$35,000
Level 4 Sexual Assault (i) More than two incidents of Serious Sexual Assault; or (ii) Level 3 Sexual Assault resulting in a Major Psychological Injury. Requires medical evidence in addition to the affirmation to support allegation that a Serious Sexual Assault resulted in Major Psychological Injury.	\$60,000 plus Medical Evidence Fees of up to a maximum of \$500 per Claimant
Physical Abuse	
Level 1 Physical Assault Multiple physical assaults not causing a Serious Physical Injury and not resulting in an observable injury.	\$4,500
Level 2 Physical Assault One or more physical assaults not causing a Serious Physical Injury, but resulting in an observable injury such as a black eye, bruise or laceration.	\$10,000
Level 3 Physical Assault One or more physical assaults causing a Serious Physical Injury.	\$25,000

¹ Claimants are only eligible for one compensation level of each of the sexual assault or physical assault categories but can be awarded amounts in both the sexual assault and physical assault categories.

SCHEDULE "C" – Form of letter to other Governments

Dear _____

Manitoba has recently settled the class action styled *Weremy v Manitoba* (Manitoba Court of King's Bench File No. CI 18-01-17220) which involved claims by former residents of the Manitoba Developmental Centre ("MDC") relating to negligence and breach of fiduciary duty in the operation and management of MDC.

Pursuant to the terms of settlement, the Province has agreed to pay compensation to individual Class Members who file claims demonstrating that they were harmed; and has further agreed that any settlement funds received by those Class Members would be deemed not to be a form of income replacement, or compensation for loss of income and will not affect eligibility for, the amount, nature and/or duration of social assistance programs administered by or on behalf Manitoba.

We are writing to request your agreement that any social assistance benefits available to Class Members from your government will not be affected by any settlement funds received by individual Class Members. Please let us know if you are agreeable.

Yours truly