

**THE KING'S BENCH  
Winnipeg Centre**

BETWEEN:

**LANNA PALSSON as Litigation Guardian of TAIT PALSSON**

Plaintiff

- and -

**THE GOVERNMENT OF MANITOBA**

Defendant

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

**SETTLEMENT AGREEMENT**

This Settlement Agreement, including its recitals and attached Schedules (“**Settlement Agreement**” or “**Agreement**”), is entered into by and between the Plaintiff, as of the 21st day of November, 2022, individually and on behalf of the Class Members (as defined herein), and the Government of Manitoba (“**Manitoba**” or the “**Defendant**”; and together with the Plaintiff and Class Members, the “**Parties**”). This Settlement Agreement is intended by the Parties to resolve, discharge, and settle the Released Claims (as defined herein), upon and subject to the terms and conditions of this Settlement Agreement, and upon approval by the Court.

**RECITALS**

**WHEREAS** the Plaintiff brought this class action under *The Class Proceedings Act*, C.C.S.M. c. C130 alleging that the Defendant’s breached various statutory, fiduciary and common law duties, and intruded upon seclusion of the Class, in regard to a privacy breach that occurred on August 26, 2020, as particularized in the Statement of Claim filed in Manitoba Court of King’s Bench file no. CI21-01-30434 (the “**Class Action**”);

**AND WHEREAS** this action was certified to proceed as a class proceeding on June 29, 2021;

**AND WHEREAS** counsel for the Parties have conducted a thorough analysis of the claims, and have also considered the extensive burdens and expense of litigation, including the risks of going to trial;

**AND WHEREAS** after their investigation, the Parties and their respective counsel have concluded that this Settlement 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 agree to settle the issues in dispute in this Class Action on the following terms and conditions:

**NOW, THEREFORE**, in exchange for the mutual promises and valuable consideration provided for in this Agreement, the Parties agree to a full and final settlement and resolution of certain claims pending in this Action, subject to Court approval, on the following terms and conditions:

#### **PART I - INTERPRETATION**

1. For the purposes of this Settlement Agreement, the following terms have the following meanings:
  - (a) **“Action”** means the above referenced action, Court File No. CI21-01-30434;
  - (b) **“Additional Compensation”** means the awards available in Categories C through F stipulated in the Award Grid at **Schedule “A”** to this Agreement;
  - (c) **“Administrator”** means RicePoint Administration Inc., or an otherwise mutually agreed upon Administrator with responsibilities outlined in this Settlement Agreement, subject to Court approval;
  - (d) **“Approval Date”** means the date the Court issues an Order approving this Settlement;
  - (e) **“Approval Hearing”** means the hearing by the Court to determine whether approval of the Court is granted in regard to the proposed settlement reflected in this Agreement, and whether the fees and disbursements of Class Counsel are approved, in accordance with the *Class Proceedings Act*, C.C.S.M. c. C130;

- (f) **“Approval Order”** means the order of the Manitoba Court of King’s Bench, approving this Settlement Agreement as fair, reasonable, and in the best interests of the Class Members;
- (g) **“Approved Claims”** means Claims assessed by the Administrator pursuant to this Settlement Agreement and approved by the Administrator for payment from the Settlement Fund;
- (h) **“Base Award”** means the Category A and Category B awards stipulated in the Award Grid at **Schedule “A”** to this Agreement;
- (i) **“Claim”** means the claim made by a Claimant by filing a Claim Form with the Administrator in accordance with the procedure in this Settlement Agreement;
- (j) **“Claimant”** means any Class Member who files a Claim Form pursuant to the terms of this Settlement Agreement;
- (k) **“Claims Period”** means the 180-day period commencing on the Notice Date;
- (l) **“Class”** or **“Class Members”** is defined as per the Certification Order of Justice Edmond, dated June 29, 2021, excluding any Class Members who has opted out of this action in the manner approved in that Certification Order;
- (m) **“Class Counsel”** means Koskie Minsky LLP;
- (n) **“Court”** means the Manitoba Court of King’s Bench;
- (o) **“Credit Monitoring Fund”** means the maximum amount of \$111,537.00, to be available for Class Members who elect to be enrolled in credit monitoring services to protect against identity theft or fraud, to be distributed to Class Members in the order in which they notify the Administrator of their election to enrol, after any *pro rata* reduction to contribute to Class Counsel fees, disbursements and taxes;
- (p) **“CPA”** means *The Class Proceedings Act*, C.C.S.M. c. C130;

- (q) “**Cy Pres Recipient**” means a non-profit or charitable organization that provides services to children with disabilities and their families, to be recommended by Class Counsel and agreed to by Manitoba, subject to Court approval;
- (r) “**Defendant’s Contribution to Notice Costs, Administration Costs, Fees, Disbursements and Taxes**” means the sum of \$250,000.00 to be paid by the Defendant directly to Class Counsel, which money will be used to pay all administration and notice costs as they come due, with the remainder to be an offset against Class Counsel fees, disbursements and taxes;
- (s) “**Honourarium**” means the sum of \$5,000.00, to be approved by the Court, and paid from the Settlement Fund to Tait Palsson, within the later of thirty (30) days of the Approval Order or after the disposition of any appeal;
- (t) “**Notice Approval Order**” means an order approving the Phase I Notice Plan a draft of which is attached as **Schedule “F”**;
- (u) “**Notice Date**” means the day on which Phase II Notice is first disseminated to Class Members;
- (v) “**Notice of Approval of Settlement**” means the Court approved notice to the Class Members advising that the Court has approved the Settlement and advising of the claims process;
- (w) “**Notice of Settlement Approval Hearing**” means the notice to the Class Members that the proposed Settlement will be considered by the Court, as agreed to by the parties and approved by the Court;
- (x) “**Notice Plan**” means the plan and notices created by agreement of the parties and approved by the Court to disseminate the Notice of Approval of Settlement and Notice of Settlement Approval Hearing to the Class as attached hereto in **Schedule “C”**;
- (y) “**Objection**” means the delivery of a valid Objection Form describing an objection to Class Counsel prior to the Objection Deadline;

- (z) “**Objection Deadline**” means the final date by which a Class Member’s Objection Form must be received in order for the Class Member to object to the Settlement;
- (aa) “**Privacy Breach**” means the delivery of an email of August 26, 2020 by staff at the Office of Children’s DisABILITY Services, to multiple unauthorized recipients, containing the personal information and personal health information of Class Members and as further particularized in the Action;
- (bb) “**Released Claims**” means any claim by any Releasor on the basis of the Privacy Breach, regardless of cause of action, type of loss or damage, or relief sought, and including, without limitation, any and all past, present, future or potential claims, demands, suits, proceedings, payment of obligations, adjustments, executions, offsets, actions, causes of action, costs, defences, debts, sums of money, assertions of rights, accounts, reckoning, bills, bonds, covenants, contracts, controversies, agreements, promises, expenses (including without limitation court costs, legal fees and disbursements), requests for relief of any kind, statutory or regulatory obligations, judgments or any liabilities of any nature whatsoever, known or unknown, anticipated or unanticipated, fixed or contingent, matured or unmatured, accrued or unaccrued, personal or representative, derivative or subrogated, direct or indirect, whether statutory, in law, equity, civil or criminal, whether sounding in tort, contract, equity, nuisance, trespass, negligence or strict liability, which have been asserted in the Action, could have been asserted, or may be asserted by or on behalf of any Releasor;
- (cc) “**Releasees**” means individually and collectively, the Defendant and all current and former Ministers, employees, departments, officers, servants, agents, agencies, and their employees, Crown servants, and members, together with the underwriters and insurers of any Releasee;
- (dd) “**Releasors**” means the Plaintiff, each Class Member and deceased Class Member, and any person who may be entitled to make any subrogated, derivative or other claim pursuant to any contract, law or statute based upon any relationship with the Class Members, any person or organization deemed to be a Releasor by operation

of this Agreement, and the respective successors, heirs, beneficiaries, transferees, grantees, next of kin, executors, administrators and assigns of any of the foregoing;

- (ee) **“Settlement”** means the settlement provided for in this Settlement Agreement;
- (ff) **“Settlement Cheque”** means any cheque or e-transfer issued by the Administrator payable from the Settlement Fund to a Class Member for payment of a valid Claim or Claims.
- (gg) **“Settlement Fund”** means the total of \$954,965.00 that the Defendant has agreed to pay to settle this action, inclusive of the Credit Monitoring Fund and Honourarium and any notice costs, administration costs, Class Counsel fees, disbursements and taxes in excess of the Defendant’s Contribution to Notice Costs, Administration Costs, Fees, Disbursements and Taxes;
- (hh) **“Unpaid Funds”** means any and all funds remaining in the Settlement Fund after the calculation of all payments of Approved Claims, and the payment of all notice and administration costs, approved fees and disbursements, applicable taxes and the Honourarium, excluding the Credit Monitoring Fund.

## **PART II - APPROVAL AND IMPLEMENTATION**

2. The following Schedules to this Settlement Agreement are incorporated into and form part of it by this reference as fully as if contained in the body of this Settlement Agreement:

**Schedule “B”: Statement of Claim in Court of King’s Bench file no. CI21-01-30434**

**Schedule “C”: Notice Plan**

**Schedule “D”: Phase I Form of Notice**

**Schedule “E”: Objection Form**

**Schedule “F”: Draft Phase I Notice Approval Order**

3. However, in the event of a contradiction between the content of the body of this Settlement Agreement and the content of the body of one of the above Schedules, the language of the body of the Settlement Agreement will govern.

#### **PART IV - NOTICE PROGRAM**

4. **Phase I Notice:** Class Counsel shall seek Court approval of the Phase I Notice attached hereto as **Schedule “D”**, in the manner provided in the Notice Plan at **Schedule “C”**, and shall implement the Phase I Notice using the forms of Notice approved by the Court. The Notice shall include, among other information: a description of the material terms of this Settlement; a date by which Class Members may object to this Settlement; the date upon which the Approval Hearing shall occur; and the address of the website at which Class Members may access this Settlement Agreement and other related documents and information.
5. **Objections:** The Phase I Notice shall explain the procedure for Class Members who wish to object to the Settlement by submitting written objections to Class Counsel prior to the Objection Deadline set by the Court for such action and as described in the Notice Plan. The Phase I Notice must set forth the time and place of the Approval Hearing (subject to change) and state that any Class Member who does not file a timely and adequate objection in accordance with this paragraph waives the right to object or to be heard at the Approval Hearing and shall be barred from making any objection to the Settlement. Class Counsel shall deliver all Objections to the Defendant thirty (30) before the Approval Hearing.
6. **Phase II Notice:** Upon the later of thirty (30) days of the Approval Date, or after the disposition of any appeal, the Administrator shall distribute the Notice of Approval of Settlement, in the manner approved by the Court.

#### **PART V - SETTLEMENT CONSIDERATION**

7. **Establishment of Settlement Fund:** Within sixty (60) days after the issuance of the Approval Order, or as soon after as is reasonably practicable, the Defendant shall pay the total of the Settlement Fund to the Administrator in trust, unless there is an appeal(s) of the Approval Order in which case the Defendant shall pay the funds within thirty (30) days of the final disposition of any unsuccessful appeal(s) of the Approval Order.
8. **Defendant’s Contribution to Costs:** Within sixty (60) days after the issuance of the Approval Order, or as soon as is reasonably practicable, the Defendant shall pay the total

of the Defendant's Contribution to Notice Costs, Administration Costs, Fees, Disbursements and Taxes to Class Counsel in trust, unless there is an appeal(s) of the Approval Order in which case the Defendant shall pay the funds within thirty (30) days of the final disposition of any unsuccessful appeal(s) of the Approval Order.

9. **Custody of Settlement Fund:** Funds shall be held by the Administrator in an interest-bearing account. The Administrator shall provide a detailed accounting of any and all funds in the Settlement Fund, including any interest accrued thereon and payments made pursuant to this Agreement, upon request of any of the Parties. The Settlement Fund shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the entirety of the Settlement Fund is distributed pursuant to this Settlement Agreement, or the balance returned to those who paid the Settlement Fund in the event this Settlement Agreement is terminated in accordance with this Agreement.
10. **Use of the Settlement Fund:** Subject to the terms of this Agreement, the Settlement Fund shall be distributed as follows:
  - (a) the portion of the Settlement Fund that does not constitute the Credit Monitoring Fund shall be used by the Administrator to pay for first, (i) a *pro-rata* share of the notice costs and administrative expenses, and then, (ii) a *pro-rata* share of the fee awards and disbursements, and then (iii) the Approved Claims of Class Members;
  - (b) the portion of the Settlement Fund constituting the Credit Monitoring Fund shall be used by the Administrator to pay for first, (i) a *pro-rata* share of the notice costs and administrative expenses, and then, (ii) a *pro-rata* share of fee awards and disbursements, and then (iii) Credit Monitoring Enrolments; and

No amounts may be withdrawn from the Settlement Fund unless expressly authorized by this Agreement or as further approved by the Court.

11. **Use of Unpaid Funds:** The Administrator shall use the Unpaid Funds to pay each Approved Claim up to 25% more of its value. For greater clarity, the potential 25% increase applies only to categories A, B, E & F in the Award Grid attached at **Schedule "A"**. If Unpaid Funds remain after the dissemination of the increase in that manner, then the



Administrator shall pay to the *Cy Pres* recipient an amount not exceeding 25% of the total amount of Approved Claims. Any remaining Unpaid Funds after payment to the *Cy Pres* recipient shall revert to the Defendant and the Administrator shall repay the amount to the Defendant within 60 days of the payment to the *Cy Pres* recipient, or as soon as reasonably practicable.

12. **Full Reversion of Credit Monitoring Fund:** The Credit Monitoring Fund is fully reversionary to the Defendant. After the payment of all Approved Claims, as well as *pro rata* shares of any and all notice and administration costs, Class Counsel's fees disbursements and taxes, and the Honourarium, should the payment of enrolments in the Credit Monitoring Fund be less than the amount of the Credit Monitoring Fund, the Administrator will pay the remainder of that Fund, in its entirety, to the Defendant.

#### **PART VI - CLAIMS PROCESS**

13. To be eligible for monetary relief from the Settlement Fund, Claimants must be found eligible for a Base Award and/or Additional Compensation as described in the Award Grid attached hereto as **Schedule "A"**.
14. **Responsibilities of the Administrator:** Class Counsel shall retain the Administrator on behalf of the Parties, and Class Counsel shall take reasonable measures to cause the Administrator to diligently carry out its responsibilities as described in this Agreement, including but not limited to the Claims Process (Clause 15) and the Administrator Functions (Clause 22). Class Counsel shall require the Administrator to agree to indemnify the Parties, Class Counsel and Defendant's Counsel as described in Administration Liability (Clause 24) and abide by the requirements of the Class Member Privacy (Clause 32).
15. **Claims Process:** Each Claim Form shall provide the opportunity for a Class Member to demonstrate eligibility, and indicate the elections set out in this Settlement Agreement. Each Class Member shall be entitled to submit a Claim Form that, if valid, will entitle the Class Member to a payment. The period for submitting such Claim Forms shall commence upon the Notice Date and continue for one hundred and eighty (180) days, absent further amendment by the Court. The Administrator shall, subject to the supervision of the Court,

administer the relief provided by this Settlement by processing Claim Forms in a rational, responsive, cost-effective and timely manner.

16. **Awards:** The Administrator shall decide whether each Claimant is eligible to receive one of the Base Awards indicated on the Award Grid, and any and all of the Additional Compensation awards on the Award Grid, based on the following principles:

**Category A (Low Harm):** All Claimants who indicate, through the Claim Form, that they suffered some harm in regard to the news of the Privacy Breach will be eligible for a Low Harm award;

**Category B (High Harm):** All Claimants who indicate, through the Claim Form, that they suffered loss or harm specifically in regard to the privacy breach beyond an initial reaction to the news of the Privacy Breach, as confirmed by either of the following:

(i) confirmation by the Defendant of the Defendant's records indicating conversations between the Claimant and staff of the Department of Families (within 30 days of request by the Administrator), or confirmation by Class Counsel of records indicating conversations between the Claimant and Class Counsel (through an affidavit sworn and served in advance of the Approval Date), that either: had a frequency of greater than 2, or identified a reaction from the Claimant beyond an initial reaction to the news of the Privacy Breach, or

(ii) a letter from a regulated healthcare professional that the Claimant complained to the regulated healthcare professional that the claimant suffered loss or harm beyond an initial reaction to the news of the Privacy Breach, will be eligible for a High Harm award of \$300 plus the cost of procurement of the letter outlined in (ii) as further described in Category C.

**Category C (Cost of proving High Harm):** Compensation for procurement of evidence in support of Category B shall not exceed \$75.

**Category D (Credit Monitoring):** Claimants who elect to be enrolled in a credit monitoring program, and submit proof of payment for such enrolment with their Claim Form, will be eligible for Additional Compensation of up to \$75 under Category D.

**Category E (Additional to those whose diagnosis was disclosed):** All Claimants who received child development services delivered by Children's Disability Services staff in the City of Winnipeg between 2017 and 2020, and whose diagnosis or childcare centre was disclosed during the Privacy Breach, will be eligible for Additional Compensation in the amount of \$35 under Category E.

**Category F (Additional to those whose additional information related to Child and Family Services was disclosed):** All Claimants who had initially received services through CDS, and then transitioned to being admitted to a Child and Family Services Agency during the 2017-18 and 2018-19 fiscal years, and whose personal and personal health information was disclosed during the Privacy Breach, will be eligible for Additional Compensation in the amount of \$60 under Category E.

17. **Decisions:** The Administrator will make best efforts to deliver decisions to all Class Members who have filed a Claim Form within ninety (90) days of the expiry of the Claims Period. The decision of the Administrator will be final and not subject to dispute or appeal.
18. **Settlement Cheques:** Each Claim Form shall provide the opportunity for a Class Member to elect to receive their Award(s) via mailed cheque or e-transfer. It is the Class Member's responsibility to ensure that they provide a correct, functioning, and accessible mailing address or email address through which to receive the Settlement Cheque. The Administrator will have discretion to reissue Settlement Cheques where same is requested within a reasonable time. For any Settlement Cheque mailed and returned to the Administrator as undeliverable (including, but not limited to, when the intended recipient is no longer located at the address), the Administrator shall make reasonable efforts to locate a valid address and resend the Settlement Cheque within thirty (30) days after the Settlement Cheque is returned to the Administrator as undeliverable. In attempting to locate a valid address, the Administrator is authorized to send mail, and if available e-mail, and/or

place telephone calls to that Class Member to obtain updated address information. Any Settlement Cheques issued to Class Members shall remain valid and negotiable for ninety (90) days from the date of their issuance and may thereafter automatically be canceled if not cashed by the Class Members within that time.

19. **Estate Payments:** Any payments owing under this Settlement Agreement to a deceased Class Member will be paid to the deceased Class Member's estate. In the event that payments cannot be accepted by a deceased Class Member's estate because it is closed or there is no duly-appointed estate administrator, and the Unpaid Funds have not been distributed at the time the Administrator is notified of same, the payment owing to that deceased Class Member shall revert to the Unpaid Funds. Any costs associated with reopening an estate and appointing an estate administrator shall be borne by the estate, not by the Parties.
20. **Payments to minor Claimants:** Payments of claims may be issued directly to Claimants who are minors.
21. **Administrator Functions:** The Administrator shall perform the functions and duties necessary to effectuate the Settlement and as specified in this Agreement, including, but not limited to, the following functions:
  - (i) maintain reasonably detailed records of its activities under this Settlement; and,
  - (ii) maintain all such records as are required by applicable law in accordance with its normal business practices, and such records will be made available to either Plaintiff, either Defendant, Class Counsel, or Defendant's Counsel promptly upon request.
  - (iii) provide reports and other information to the Court as the Court may require. Should the Court request or should it be reasonably advisable to do so, the Parties, in conjunction with the Administrator, shall submit a timely report to the Court summarizing the work performed by the Administrator;

- (iv) hold in trust, administer, and oversee the Settlement Fund;
- (v) provide the Phase I Notice and Phase II Notice to Class Members in accordance with the Notice Plan, attached as **Schedule “C”**;
- (vi) establish and maintain a toll-free telephone line for Class Members to call with Settlement-related inquiries, and answer the questions of Class Members who call with or otherwise communicate such inquiries within one (1) business day;
- (vii) respond to any mailed or emailed Class Member inquiries within one (1) business day;
- (viii) upon request by Defendants’ Counsel or Class Counsel, promptly forward to Defendants’ Counsel and Class Counsel, copies of all documents and other materials relating to the administration of the Settlement;
- (ix) provide reports and summaries, as requested, to Class Counsel and Defendants’ Counsel, including without limitation, reports regarding the number of Claim Forms received and the identity of the Claimants;
- (x) employ reasonable procedures to screen Claims Forms for waste, fraud, and abuse and reject a Claim Form, or any part of a claim for a payment reflected therein, where the Administrator determines that there is evidence of fraud. The Administrator will review each Claim Form based upon the initial submission by a Class Member and ensure that each is complete, properly substantiated and, based on the substantiation, determine the appropriate benefit to be paid, if any, in accordance with the terms of this Agreement. The Administrator is empowered to pay legitimate and valid claims only;
- (xi) issue Settlement Cheques: All Settlement Cheques issued pursuant to this Settlement shall bear in the legend that they expire if not negotiated within ninety (90) days of their date of issue. If a Settlement Cheque is not cashed within sixty (60) days after the date of issue, the Settlement Administrator is

authorized to send by mail (and, if available, an e-mail) and/or place a telephone call to that Class Member reminding him/her of the deadline to cash such cheque. To the extent that a Settlement Cheque is not cashed within ninety (90) days after the date of issue, the cheque will be void;

- (xii) The Claim Form will be sent to Class Members upon request by calling, writing, or emailing the Administrator. Class Members may submit their completed and signed Claim Forms to the Administrator by such means as prescribed by the Notice of Approval of Settlement on or before the Claims Deadline. Such Claim Form shall be submitted to the Court for approval;
- (xiii) after the Approval Date, process and transmit Settlement payments to Class Members and, if necessary, process and transmit any Unpaid Funds to the *Cy Pres* Recipient and to the Defendant as described in clauses 12 and 13;
- (xiv) in advance of the Approval Hearing, prepare an affidavit to submit to the Court that: (i) attests to implementation of the Notice Plan in accordance with the Approval Order; and (ii) identifies all objectors. Such declaration shall be provided to Defendants' Counsel and Class Counsel for filing with the Court no later than fourteen (14) days prior to the Approval Hearing;
- (xv) take reasonable steps to safeguard and maintain the confidentiality of the information, documents and materials received in the course of administering this Settlement; and
- (xvi) perform any function related to Settlement administration at the agreed-upon instruction of Class Counsel or Defendant's Counsel, including, but not limited to, verifying that Settlement payments have been distributed.

22. **Claims Deadline:** The Administrator shall only consider Claims submitted with a Claim Form and received by the Administrator or postmarked by the Claims Deadline. The Claims Deadline shall be clearly set forth in the Phase II Notice, and the website at which Class Members may access this Settlement Agreement and other related documents and

information, and on the Claim Form. Class Members who fail to submit a Claim Form by the Claims Deadline shall not be eligible for a payment.

23. **Administration Liability:** The Parties, Class Counsel, and Defendant's Counsel shall not have any liability whatsoever with respect to (i) any act, omission or determination of the Administrator, or any of its respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the management, investment or distribution of the Settlement Fund; (iii) the formulation, design or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation or payment of any claims asserted against the Settlement Fund; or (v) any losses suffered by or fluctuations in the value of the Settlement Fund. The Administrator shall indemnify and hold harmless the Parties, Class Counsel, and Defendant's Counsel for: (i) any act or omission or determination of the Administrator, or any of the Administrator's designees or agents, in connection with the Notice Plan and the administration of the Settlement; (ii) the management, investment or distribution of the Settlement Fund; (iii) the formulation, design or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by, or fluctuations in the value of the Settlement Fund.

#### **PART VII – APOLOGY AND COMMITMENTS**

24. **Apology:** The Defendant shall issue a written apology for allowing the Privacy Breach to occur, addressed to the representative Plaintiff and signed by the Minister or Deputy Minister of Families.
25. **Training and Qualifications:** The Defendant has now taken reasonable measures to require all employees of the Department of Families to complete mandatory training concerning privacy, which includes training specifically related to sending sensitive information through electronic communications. The Defendant has now taken reasonable measures to require staff of the Department of Families to demonstrate appropriate qualifications for the tasks with which they are entrusted, including proficiency in the use of email technology for those entrusted with email communications. The Defendant will continue to take reasonable steps in this regard,

26. **Safeguards:** The Defendant has now taken reasonable measures to put in place electronic safeguards affecting Children's DisABILITY Services to prevent a similar Privacy Breach from occurring again.
27. **Services and Benefits:** For greater certainty, submitting a Claim in accordance with this Settlement Agreement shall not impact any services Class Members receive from Children's DisABILITY Services or from the Manitoba Department of Families.
28. **No Deduction of Social Assistance or Benefits:** Subject to operation of applicable provincial law relating to provincial income assistance programs, it is intended that there be no deduction or clawback from payments of Approved Claims on account of social or income assistance programs. Payments of Approved Claims will be deemed not to be a form of income replacement, or compensation for loss of income. Payments of Approved Claims will not affect the eligibility for or duration of social assistance or other benefits available to individuals.
29. **Confidentiality of Settlement:** The Parties, Class Counsel, Defendant's Counsel and the Administrator shall treat information received from Class Members in the administration and implementation of this settlement as confidential, and may only be used for the purposes of administering this Settlement.

#### **PART VII - CONDITIONS AND TERMINATION**

30. **Termination:** Unless the Plaintiffs and the Defendant agree otherwise in writing, this Settlement Agreement shall be automatically terminated and shall become null and void, and no obligation on the part of any of the Parties will accrue, if the Court declines to issue the Approval Order without amendment, or if the Approval Order is overturned on appeal.
31. **Fees:** Class Counsel shall bring a motion for Court approval of their requested fees and reimbursement of disbursements, and all applicable taxes and honoraria at the time of Settlement Approval. The Defendant shall take no position on the fees sought by Class Counsel unless otherwise directed to do so by the Court.



## **PART IX - PRIVACY AND CONFIDENTIALITY**

32. **Privileged Information:** Any information provided, created or obtained in the course of developing or administering this Settlement, whether written or oral, will be kept confidential by the Parties and the Parties' counsel, and will not be shared or used for any purpose other than this settlement unless otherwise agreed by the Parties in writing or as otherwise provided for or required by law. Save as may otherwise be agreed between the Parties, the undertaking of confidentiality as to the discussions and all communications, whether written or oral, made in and surrounding the negotiations leading to this Settlement Agreement continues in force and in perpetuity, notwithstanding the termination or voiding of this Settlement Agreement.
33. **Class Member Privacy:** The Administrator shall retain all Class Member information in strict confidence. The Administrator shall also retain in strict confidence the information of all individuals who file a Claim Form under this Settlement Agreement, or communicate with the Administrator in any way with respect to this action. The Administrator must assert and to protect the privacy rights of Class Members, including by maintaining the confidentiality and security of and preventing the unauthorized access or acquisition of any financial or personal information submitted in connection with any claim for benefits pursuant to this Settlement Agreement. In the event of any unauthorized access to or acquisition of personal information concerning any Class Member as a direct result of the intentional or negligent acts or omissions of the Administrator, the Administrator shall be responsible for complying with any privacy, data security, or breach notification obligations under local, provincial or federal law, and will be solely responsible for directly providing notice to local, provincial, or federal agencies, affected Class Members, and/or other persons or entities.

## **PART X – NO ADMISSION OF LIABILITY**

34. Whether or not this Settlement Agreement is approved, this Settlement and anything contained herein, and any and all negotiations, documents, discussion, and proceedings associated with this Settlement, and any action taken to carry out this Settlement

Agreement shall not be relied on as an admission of liability in any current or future action or proceeding against the Defendant.

35. Whether or not this Settlement is approved, neither this Settlement nor any document relating to it shall be offered in evidence in any action or proceeding in any court, agency, or tribunal, except to seek Court approval of the Settlement Agreement or to give effect to and enforce the provisions of this Settlement Agreement. For clarity, the Parties, Class Counsel, and Defendant's Counsel are not barred from disclosing the existence of this Action or Settlement Agreement except as limited herein.

#### **PART XI - RELEASES**

36. The Releasors fully and forever release, remise, acquit and discharge the Releasees from the Released Claims, regardless of whether any Releasor executes and delivers a written release. By executing this Settlement Agreement, the Parties acknowledge that the Action shall be discontinued with prejudice as against the Defendant, without costs, pursuant to the terms of the Approval Order, and all Released Claims shall thereby be conclusively settled, compromised, satisfied and released as to the Releasees. The Approval Order shall provide for and effect the full and final release by the Releasors of all Released Claims.
37. If any Releasor brings an action or asserts a claim against any Releasee contrary to the terms of this Settlement Agreement, the counsel of record for such Releasor shall be provided with a copy of this Settlement Agreement. If the Releasor does not within 20 days thereafter dismiss his or her action and the action or claim is subsequently dismissed or decided in favour of the Releasees, the Releasor who brought such action or claim shall pay Releasees' reasonable counsel fees and disbursements incurred by Releasees in the defense of such action or claim.
38. Notwithstanding the above, the Court shall retain jurisdiction over the Parties and the Settlement Agreement and with respect to the future performance of the terms of the Settlement Agreement, and to ensure that all payments and other actions required of any of the Parties by the Settlement and this Settlement Agreement are properly made or taken.

**PART XII - GENERAL**

39. This Settlement Agreement will be governed and construed in accordance with the laws of the province of Manitoba.
40. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and which, taken together, will be deemed to constitute one and the same Settlement Agreement.
41. This Agreement may be executed manually or using commonly accepted electronic signature software.
42. The Counsel who have executed this Agreement hereby represent and warrant that they have authority to bind their respective clients to this Agreement.

For the Plaintiff:



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Per: Celeste Poltak / Adam Tanel  
Koskie Minsky LLP

For the Defendant:



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Per: Deputy Minister of the Department of Families  
Government of Manitoba

**SCHEDULE A – AWARD GRID**

<b>Category</b>	<b>Base Compensation</b>	<b>Amount</b>
A	Low Harm	\$35
B	High Harm	\$300
	<b>Additional Compensation</b>	<b>Amount</b>
C	Cost of proving High Harm	Up to \$75
D	Credit monitoring	Up to \$75
E	Additional to those whose diagnosis disclosed	\$35
F	Additional to those whose additional information related to Child and Family Services was disclosed	\$60

SCHEDULE B - STATEMENT OF CLAIM

File No. C1 21-01-30434

**THE QUEEN'S BENCH  
Winnipeg Centre**

BETWEEN:

**LANNA PALSSON as Litigation Guardian of TAIT PALSSON**

Plaintiff

- and -

**THE GOVERNMENT OF MANITOBA**

Defendant

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

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**STATEMENT OF CLAIM**

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Service of a true copy hereof admitted  
this 11<sup>th</sup> day of March 2021  
D. Guenette  
Solicitors for the Gov. Manitoba

**FILED MAR 11 2021**

**THE QUEEN'S BENCH  
Winnipeg Centre**

BETWEEN:

**LANNA PALSSON AS LITIGATION GUARDIAN OF TAIT PALSSON**

Plaintiff

- and -

**THE GOVERNMENT OF MANITOBA**

Defendant

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

**STATEMENT OF CLAIM**

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a Manitoba lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Queen's Bench Rules, serve it on the plaintiff's lawyer or where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Manitoba.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGEMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

**MAR 11 2021**

Issued Date

V. SCHAEFFER  
DEPUTY REGISTRAR  
COURT OF QUEEN'S BENCH  
FOR MANITOBA  
Deputy Registrar  
100C - 408 York Avenue  
Winnipeg, MB R3C 0P9

To: **GOVERNMENT OF MANITOBA**  
**Attorney-General**  
104 Legislative Building – 450 Broadway  
Winnipeg, MB R3C 0V8

## CLAIM

1. The Plaintiff claims:
  - (a) an order certifying this proceeding as a class proceeding and appointing the Plaintiff as representative plaintiff for the Class pursuant to *The Class Proceedings Act*, C.C.S.M. c. C130 (the “CPA”);
  - (b) a declaration that the Defendant breached its statutory, fiduciary and common law duties to the Plaintiff and the Class;
  - (c) a declaration that the Defendant wrongfully intruded upon the seclusion of the Plaintiff and Class;
  - (d) a declaration that the Defendant is liable to the Plaintiff and the Class for the damages for its statutory breaches, breach of fiduciary duty, negligence, and/or intrusion upon seclusion;
  - (e) damages for in an amount to be determined by the court;
  - (f) exemplary, punitive and/or aggravated damages in an amount to be determined by the court;
  - (g) compounded pre-judgment and post-judgment interest pursuant to the *Court of Queen's Bench Act*, C.C.S.M. c. C280;
  - (h) costs of this action on a substantial indemnity basis or in an amount that provides full indemnity to the Plaintiff;
  - (i) costs of the notice to Class members and of administering the plan of distribution of recovery in this action, plus applicable taxes, pursuant to subsections 24(1) and 33(6) of the CPA;
  - (j) an order directing as may be necessary to determine issues not determined at the trial of the common issues; and
  - (k) such further and other relief as this Honourable Court deems just and appropriate in the circumstances.

## OVERVIEW

2. This action arises from a privacy breach affecting children with disabilities in the care of the government. On August 26, 2020, the Defendant’s office for Children’s DisABILITY Services (“CDS”) sent an email containing the personal health information of approximately about 9,000 children to approximately 100 unauthorized agencies and

corporations, including everything from their addresses to medical diagnoses (the “**Privacy Breach**”).

3. CDS is a government service provider under the Defendant’s Department of Families, entrusted with particularly sensitive information of a particularly vulnerable group of children with disabilities. It needlessly subjected the Plaintiff and Class Members to humiliation, distress and potential future consequences by sharing their extremely personal information. Those consequences include identity theft, targeted solicitation, and prejudice from health providers, insurers, or employers.

4. The breach demonstrated that the Defendant had inadequate policies for the protection of sensitive information, and was blatantly careless in protecting such information. The Defendant’s response to the breach was equally inadequate as it failed to notify Class members directly, and refused to and continues to refuse to confirm details of the Breach.

#### **THE PARTIES**

5. The Plaintiff, Tait Palsson is an individual residing in the City of Winnipeg, in the Province of Manitoba. Tait was born in 2003 and was 16 at the time the Privacy Breach occurred. Tait has autism and dyslexia. Tait’s illnesses, treatment history, name, address, and other sensitive information were included in the Privacy Breach email sent August 26, 2020.

6. The litigation guardian of Tait, Lanna Palsson, is an individual residing in the City of Winnipeg, in the Province of Manitoba. Ms. Palsson is Tait’s biological mother and guardian.

7. The Defendant, The Government of Manitoba is named in these proceedings for Her Majesty the Queen in the Right of the Province of Manitoba (hereinafter “**Manitoba**” or the “**Crown**”), pursuant to the provisions of *The Proceedings Against the Crown Act*, C.C.S.M. c. P140, and the amendments thereto. The Manitoba Department of Families is a government agency overseen by the Minister of Families and an agent of the Defendant.



8. Manitoba Children’s DisABILITY Services (“CDS”) is a program provided through the Manitoba Department of Families, with a mandate to offer services and support for families raising children with one or more of these medically diagnosed conditions: intellectual disability; developmental delay autism spectrum disorder; lifelong physical disability; or high probability of developmental delay due to a pre-existing condition. All staff at CDS are employees of the Crown.

9. At all materials times, the Crown, through and with its agents, servants and employees, owned and was responsible for the operation, funding and supervision of the Manitoba Department of Families and CDS as a family support centre for children with disabilities.

10. The Plaintiff brings this action on his own behalf and on behalf of a Class defined as:

All persons whose personal information appeared in or was attached to the Privacy Breach email sent on August 26, 2020 by staff at Children’s Disability Services, to organizations including the Manitoba Advocate for Children and Youth

(the “Class” or “Class members”).

#### **THE PRIVACY BREACH**

11. On August 26, 2020, CDS staff negligently sent an email to approximately 100 unauthorized agencies, containing an easily accessible attachment with the extremely sensitive personal health information of approximately 9,000 children. The attachment contained all possible identifying information that would allow someone to find, track or use the identity of any of the Class members. It also contained very private information about the children’s diagnoses and care history. The vast array of personal information and personal health information included:

- (a) name;
- (b) address;
- (c) date of birth;

- (d) gender;
- (e) first language;
- (f) region of the province in which the child is located;
- (g) case worker's name;
- (h) the assessment type (for example, neurodevelopmental, Child Development Clinic, Newborn Follow-up Program);
- (i) the source of the child's referral to Children's disABILITY Services (physician, parent, school);
- (j) if applicable, the date of and reason for program closure;
- (k) if applicable, services that the child or family received during the years of 2015-16 to 2019-20, including respite, after school care, summer skills maintenance, equipment and supplies, behavioural psychology and child development; and
- (l) the name of the diagnosis (only included for children who received child development services in Winnipeg).

12. The Department of Families reported that the Privacy Breach email was intended to only be delivered to the Manitoba Advocate for Children and Youth ("MACY"). Instead, on August 26, 2020, CDS staff delivered it to approximately 100 different, agencies, advocacy organizations and service providers that included housing associations, employment agencies, cooperatives, and other corporations. Many of these recipients were not directly supervised by or connected to the Department of Families other than providing services under specific contracts.

13. While the spreadsheet was password protected, the password was provided in the same email as the spreadsheet. The spreadsheet was not encrypted or otherwise protected. The information in the spreadsheet was not anonymized.

14. Before the Privacy Breach email was sent, Class members were not notified that their information was being sent to MACY or any of the other approximately 100 agencies.

15. The number of individuals who had and have access to the information disseminated in the Breach Email is innumerable, but discoverable.

#### **AFTERMATH OF THE BREACH**

16. Two days after the breach, on August 28, 2020, the Defendant issued a press release admitting that the email constituted a “privacy breach”. The press release explained that the purpose of the email was as follows:

MACY is undertaking a CDS program review with the purpose of making recommendation for improvements. The information that was being collected by MACY was primarily intended to support the review of the program as a whole and not a review of child-specific circumstances.

17. Also on August 28, the fact of the Privacy Breach, with limited additional information, was published by CBC News and local news outlets. Some Class members’ first notification of their private information being disseminated was through public news articles.

18. The Defendant's press release stated that the province was in the process of calling all the affected families. However, the Plaintiff never received such a call. Many Class members did not receive the explanatory call before reading in the news that their information had been wrongfully disseminated.

19. The Plaintiff became aware of the breach through reading the CBC News article on August 28, 2020. The Plaintiff immediately wrote to her designated Community Services Worker at CDS, to inquire whether the Plaintiff's personal health information was included in the Privacy Breach. CDS staff wrote back on September 1, 2020, attaching a letter dated August 28, 2020, that addressed the breach. The letter did not state exactly who the information was sent to, what group of information was included, nor the specific purpose of the email. Moreover, the letter inaccurately quantified the number of recipients as a “small number”.

20. The letter further expressly acknowledged that the email constituted a “privacy breach” and implied a lack of proper privacy protection standards were implemented by the Defendant. The CDS letter read:

We know we have a serious responsibility to protect the personal information of our clients and I want to apologize to you for this error. We are following up with our staff to review and improve our processes so that this kind of error does not happen in the future.

21. The Plaintiff did not receive a number to call for more information until September 16, 2020.

22. On or around February 17, 2021, the Ombudsman released the list of organizations to which the Breach Email was sent to only those Class members who had requested it.

23. No written confirmation of when, how and by whom the Breach Email was deleted was ever provided to Class members.

24. CDS never explained to the Class why the child-specific information of 9,000 children had to be delivered to any organization in spreadsheet format without any anonymization or encryption.

#### **KNOWLEDGE OF THE CROWN**

25. The Crown knew or ought to have known that CDS policies for protecting personal and personal health information were inadequate. The operational policies and practices of the Crown were inadequate to meet the standard of operating and maintaining the Class’ privacy. As a result, the information of thousands of Manitoba children with disabilities was dispersed to and accessible by an unknown number of individuals.

26. By virtue of its position in providing services and programming to children with disabilities, the Crown was acutely aware that the Plaintiff and Class members relied on it to keep their personal and personal health information secure and confidential. The Department of Families knew or ought to have known that the children it supports, and in

particular children with disabilities, are highly vulnerable to a failure to protect their information.

### **THE DEFENDANT BREACHED ITS STATUTORY DUTIES**

27. The Defendant and its agents were required, under *The Personal Health Information Act*, S.M. 1997, c. 51 (the “*PHIA*”) to act in accordance with fair information principles. In particular, the Defendant was at all times required to:

- (a) establish a written policy concerning the retention and destruction of personal health information;
- (b) adopt reasonable administrative, technical and physical safeguards that ensure the confidentiality, security, accuracy and integrity of the information (such as encrypting sensitive information, or sending passwords to sensitive information through separate means);
- (c) specifically, if the trustee uses electronic means to request disclosure of personal health information or to respond to requests for disclosure, implement procedures to prevent the interception of the information by unauthorized persons; and
- (d) limit every use and disclosure by a trustee of personal health information must be limited to the minimum amount of information necessary to accomplish the purpose for which it is used or disclosed.

28. At all relevant times surrounding the Privacy Breach, CDS did not comply with the requirements set out in this Act. Amongst other things, the means used to relay the Class’ information did not implement procedures preventing its interception by unauthorized persons, and did not limit the amount of information disclosed. The procedures that were employed (e.g. a password protection for the spreadsheet containing the information), were rendered futile by CDS staff (e.g. by including the password in the same email. In failing to meet the requirements listed in paragraph 27, the Defendant breached its statutory duties under *PHIA*.

29. *The Protecting and Supporting Children (Information Sharing Act)*, C.C.S.M. c. P143.5 came into force on September 15, 2017 (the “*PSC*”). Under this Act, “service providers” may disclose personal health information to other “service providers” *only if*, amongst other things:

- (a) they reasonably believe that the disclosure is in the child's best interests;
- (b) is necessary to accomplish the purpose for provision of services or benefits;
- (c) is limited to the minimum amount of information necessary to accomplish that purpose;
- (d) includes relevant information about the strengths of the child and his or her parents or guardians where available; and
- (e) is not explicitly prohibited by another law.

30. The Department of Families has not confirmed that the recipients of the emails were all "service providers" as defined under this Act. To the extent that the Privacy Breach disclosed personal health information to agencies that do not fall under the definition of "service providers", the Defendant breached its statutory duty under the *PSC*.

31. At no time before the Privacy Breach occurred did CDS staff inquire into, or determine whether, the disclosure of information in the Privacy Breach was: in the best interests of the Plaintiff and the Class members; necessary to accomplish the purpose of its services or benefits; limited to the minimum amount of information necessary, or including relevant information about the strengths of the child. In failing to meet the requirements listed in paragraph 29, the Defendant breached its statutory duties under the *PSC*.

#### **THE DEFENDANT BREACHED ITS FIDUCIARY DUTY**

32. Manitoba's Department of Families provides services to children with disabilities and their families, often acting *in loco parentis* to the children. The Defendant was in a unique position of power over the Plaintiff and Class, such that their relationship was one of trust, reliance and dependence. By virtue of this relationship, its statutory powers, and/or an agreement to provide services to the Class, the Defendant undertook to act in the best interests of the Plaintiff and Class. The Defendant owed the Plaintiff and Class a fiduciary duty to act strictly and only in their best interests, and to protect their interests

and sensitive information above all else. This duty to act in the best interest of each child under its care was further mandated by the common law and provincial statutes.

33. The Crown, through its agents, employees and servants, had direct contact and interaction with the Plaintiff and Class members. The Defendant was unilaterally responsible for all information that the Plaintiff and Class members entrusted to its Department of Families. Class members were particularly vulnerable minors who entrusted the Defendant with their information hoping to receive necessary services and programming to ameliorate their lives.

34. As a result of its position of power, at all material times, the Crown owed a fiduciary duty to the Plaintiff and Class that included, but is not limited to, responsibilities to:

- (a) secure, protect and keep confidential the Class' personal information and personal health information;
- (b) establish appropriate standards of conduct, written policies and operational procedures to prevent confidential and personal health information from being disseminated to unauthorized parties;
- (c) have in place adequate training and measures to enforce those standards of conduct, written policies and operational procedures to prevent confidential and personal health information from being disseminated to unauthorized parties;
- (d) establish appropriate standards of conduct, written policies and operational procedures to protect against and appropriately address the Privacy Breach;
- (e) take reasonable steps to follow standards of conduct, written policies and operational procedures to protect against and appropriately address the Privacy Breach;
- (f) supervise staff adequately, properly and effectively staff to protect against and appropriately address the Privacy Breach;
- (g) adopt reasonable administrative, technical and physical safeguards that would ensure the confidentiality, security, accuracy and integrity of the information disseminated in the Privacy Breach;

- (h) inquire and determine whether the disclosure of the information in the Privacy Breach was in the best interests of the Class;
- (i) limit appropriately the amount of information and access to the information disclosed in the Privacy Breach to authorized and necessary agencies; and
- (j) enact adequate measures to address Class members' complaints and concerns about the Privacy Breach.

35. At all material times surrounding the time of the Privacy Breach, the Crown was in breach of the aforementioned fiduciary duty and acted contrary to the best interests of the Plaintiff and Class. Particulars of that breach include, but are not limited to:

- (k) failing to secure, protect and keep confidential the Class' personal information and personal health information;
- (l) failing establish appropriate standards of conduct, written policies and operational procedures to prevent confidential and personal health information from being disseminated to unauthorized parties;
- (m) failing to have in place adequate training and measures to enforce those standards of conduct, written policies and operational procedures to prevent confidential and personal health information from being disseminated to unauthorized parties;
- (n) failing establish appropriate standards of conduct, written policies and operational procedures to protect against and appropriately address the Privacy Breach;
- (o) failing to take reasonable steps to follow standards of conduct, written policies and operational procedures to protect against and appropriately address the Privacy Breach;
- (p) failing to adequately, properly and effectively supervise staff to protect against and appropriately address the Privacy Breach;
- (q) failing to adopt reasonable administrative, technical and physical safeguards that would ensure the confidentiality, security, accuracy and integrity of the information disseminated in the Privacy Breach;
- (r) failing to inquire and determine whether the disclosure of the information in the Privacy Breach was in the best interests of the Class;



- (s) failing to limit the amount of information and access to the information disclosed in the Privacy Breach to authorized and necessary agencies; and
- (t) failing to enact adequate measures to address Class members' complaints and concerns about the Privacy Breach.

36. The Defendant knew or ought to have known that a breach of its fiduciary duty would cause loss and damage to the Plaintiff and Class members.

37. As a result of the Defendant's acts and omissions, the Plaintiff and Class members have suffered reasonably foreseeable damages and losses, for which the Defendant is liable.

#### **THE DEFENDANT BREACHED ITS DUTY OF CARE**

38. At all material times, the Defendant owed the Plaintiff and Class members a duty of care in the holding, handling, and protecting their personal information and personal health information and a duty to safeguard the confidentiality of this information. Throughout their relationship with the Plaintiff and Class the Defendant presented themselves as entities that will keep their information safe and secure.

39. In order to receive services from CDS, Class members' guardians must have completed an Intake form with all their personal information, and attached a diagnostic assessment. The form states: "All assessment information is strictly confidential and resides in Children's disABILITY Services." Class members' guardians must also have completed an Acknowledgement of the Use of Personal Information and Personal Health Information form, in which they acknowledge that the Department of Families may share information with other "service providers" only "where they believe it to be in the best interest of the child," and that "personal health information will *only* be disclosed where it is in the best interest of my child", and limited to "the minimum amount" necessary.

40. At no point in time did Class members' guardians sign an acknowledgement allowing CDS to share their personal information or personal health information beyond the minimum necessary disclosure without prior consent. At no point in time did Class

members' guardians sign a waiver precluding them from suing the Defendant for damages should a privacy breach occur.

41. The duty of care the Defendant owed to the Plaintiff and Class is informed by, and no less onerous than, what is required by statutes such as, but not limited to the *PSC*, and/or the *PHIA*, and their regulations. The Defendant's statutory duties are further particularized above.

42. CDS does not have its own operational privacy policy available publicly through the dedicated website.

43. The standard of care expected in the circumstances required the Defendant to, among other things:

- (a) secure, protect and keep confidential the Class' personal information and personal health information;
- (b) establish appropriate standards of conduct, written policies and operational procedures to prevent confidential and personal health information from being disseminated to unauthorized parties;
- (c) have in place adequate training and measures to enforce those standards of conduct, written policies and operational procedures to prevent confidential and personal health information from being disseminated to unauthorized parties;
- (d) establish appropriate standards of conduct, written policies and operational procedures to protect against and appropriately address the Privacy Breach;
- (e) take reasonable steps to follow standards of conduct, written policies and operational procedures to protect against and appropriately address the Privacy Breach;
- (f) supervise staff adequately, properly and effectively staff to protect against and appropriately address the Privacy Breach;
- (g) adopt reasonable administrative, technical and physical safeguards that would ensure the confidentiality, security, accuracy and integrity of the information disseminated in the Privacy Breach;
- (h) inquire and determine whether the disclosure of the information in the Privacy Breach was in the best interests of the Class;

- (i) limit appropriately the amount of information and access to the information disclosed in the Privacy Breach to authorized and necessary agencies; and
- (j) enact adequate measures to address Class members' complaints and concerns about the Privacy Breach.

44. The Defendants breached their standard of care. Particulars of that breach include, but are not limited to:

- (a) failing to secure, protect and keep confidential the Class' personal information and personal health information;
- (b) failing establish appropriate standards of conduct, written policies and operational procedures to prevent confidential and personal health information from being disseminated to unauthorized parties;
- (c) failing to have in place adequate training and measures to enforce those standards of conduct, written policies and operational procedures to prevent confidential and personal health information from being disseminated to unauthorized parties;
- (d) failing establish appropriate standards of conduct, written policies and operational procedures to protect against and appropriately address the Privacy Breach;
- (e) failing to take reasonable steps to follow standards of conduct, written policies and operational procedures to protect against and appropriately address the Privacy Breach;
- (f) failing to adequately, properly and effectively supervise staff to protect against and appropriately address the Privacy Breach;
- (g) failing to adopt reasonable administrative, technical and physical safeguards that would ensure the confidentiality, security, accuracy and integrity of the information disseminated in the Privacy Breach;
- (h) failing to inquire and determine whether the disclosure of the information in the Privacy Breach was in the best interests of the Class;
- (i) failing to limit the amount of information and access to the information disclosed in the Privacy Breach to authorized and necessary agencies; and

- (j) failing to enact adequate measures to address Class members' complaints and concerns about the Privacy Breach.

45. The Defendant knew or ought to have known that a breach of its duty of care would cause loss and damage to the Plaintiff and Class members.

46. As a result of the Defendant's acts and omissions, the Plaintiff and Class members have suffered reasonably foreseeable damages and losses, for which the Defendant is liable.

#### **THE DEFENDANT INTRUDED ON THE CLASS' PRIVACY**

47. The actions of the Defendant constitute intentional or reckless intrusion upon seclusion that would be highly offensive to a reasonable person. The Defendant failed to take appropriate steps to guard against the misuse of the Plaintiff's and Class Members' personal information. The actions of the Defendant were highly offensive to the Plaintiff, Class members, and any reasonable person. The Defendant caused distress and anguish to the Plaintiff and Class Members, for which it is liable.

48. The Defendant intruded upon the Plaintiff's and Class Members' privacy intentionally, wilfully and/or recklessly through failing to securely collect, store, and manage the personal information of the Plaintiff and the Class Members in a manner that ensured such information was not accessed, collected, used, disclosed, copied, modified, or disposed of for purposes other than those to which the Plaintiff and Class Members had provided meaningful consent to.

49. There was no lawful justification for the Defendant's intrusion into Class members' privacy. Any lawful request that motivated the Privacy Breach did not allow any personal information to be disseminated to entities who are not authorized to request such information by statute. Furthermore, any motive to disseminate Class members' information to MACY was only lawful insofar as it was limited to only that information and recipients required. The Defendant did not make an appropriate effort to place limiting restrictions on its Privacy Breach email.

50. The Defendant's intrusion upon the Plaintiff's and Class Members' privacy was, and continues to be, highly offensive due to the following:

- (a) the vulnerability of the Class members as minors and as people with disabilities who had entrusted the Defendant with their information and affairs;
- (b) the breadth of the Privacy Breach and the ridiculous number of extra recipients of Class members information; and
- (c) the nature of the personal information and personal health information as disclosing all possible identifying facts as well as medical history.

51. The Defendant's actions and inactions related to the Privacy Breach caused humiliation, and extreme distress and anguish about the potential future uses of Class members' most sensitive information.

#### **DAMAGES SUFFERED BY THE CLASS**

52. As a result of the Defendant's tortious conduct, and breach of its common law, fiduciary, and statutory breaches, the Plaintiff and Class have suffered and will continue to suffer damages including, but not limited to:

- (a) emotional distress and mental anguish;
- (b) lost time and inconvenience in responding to the privacy breach;
- (c) cost of monitoring services to prevent identity theft, targeted solicitation, and prejudice from health providers, insurer, or employers; and
- (d) cost of rectifying any consequences of the privacy breach, including economic loss resulting from those consequences.

53. The Plaintiff and Class have suffered injuries which are permanent and lasting in nature, including emotional distress and diminished enjoyment of life.

#### **PUNITIVE DAMAGES**

54. The Defendant was, at all times, aware that their actions would have a significant adverse impact on the Plaintiff and Class members. Amongst other things, in particular,

in refusing to adequately inform each affected Class member of the Privacy Breach before informing the public media, the Defendant's conduct was high-handed, reckless, without care, deliberate, and in disregard of the Plaintiff's and Class members' rights. Accordingly, the Plaintiff requests substantial punitive damages.

55. This action is commenced pursuant to the *The Class Proceedings Act*, C.C.S.M. c. C.130.

56. The trial of the action should take place in the city of Winnipeg, in the Province of Manitoba.

Date of Issue: March ~~10~~<sup>11</sup>, 2021

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Lawyers for the Plaintiff

## SCHEDULE C - NOTICE PLAN

### NOTICE PLAN

In this schedule, all defined terms in the Final Settlement Agreement apply. The following definitions also apply:

**"Phase I Form of Notice"** means the Notice of Settlement Approval Hearing, substantially in the form attached as Schedule "D" to the Settlement Agreement.

#### Phase I Notice

After the Court signing the Notice Approval Order, Class Counsel and the Administrator shall make reasonable efforts to deliver Phase I Form of Notice to all known Class Members and their guardians.

Within ten (10) days of the Court signing the Notice Approval Order, Class Counsel shall:

1. Post a copy of the Phase I Form of Notice and blank Objection Form on its website;
2. Post a copy of the proposed Settlement Agreement on its website; and
3. Email a copy of the Phase I Form of Notice to each individual who has previously been in contact with Class Counsel concerning this class action.

Within thirty (30) days of the Court signing the Notice Approval Order, the Administrator shall:

1. Email a copy of the Phase I Form of Notice to each Class Member whose email address appears on the Class list provided by the Defendant on October 21, 2021;
2. Mail a copy of the Phase I Form of Notice to each Class Member whose mailing address appears on the Class list provided by the Defendant on October 21, 2021, for whom there is no email address listed, or for whom the email address is invalid; and
3. Call each Class Member whose name appears on the Class list provided by the Defendant on October 21, 2021 for whom mail delivered under number (2) is returned to sender, record a valid email or mailing address, and email or mail a copy of the Phase I Form of Notice to that address.

## SCHEDULE D - PHASE 1 NOTICE OF SETTLEMENT

### **This Notice is for all persons who were affected by the Manitoba Children's Disability Services Privacy Breach in August 2020**

*A court authorized this notice. You are not being sued.*

- You are receiving this Notice because a settlement is being proposed in a certified class action lawsuit on behalf of individuals whose information appeared in or was attached to an email sent by staff at Manitoba Children's DisABILITY Services ("CDS") on August 26, 2020 to approximately 100 unintended recipients. CDS is operated by the Government of Manitoba.
- As a person whose information was contained in the August 26, 2020 email, you could be affected by this settlement.
- The proposed Settlement Agreement offers approximately \$1.2 million, paid by the Government of Manitoba, on terms summarized in this Notice.
- This lawsuit is against the Government of Manitoba as a legal entity, not CDS. Making a claim under the Settlement will not impact the services you receive from Children's DisABILITY Services (CDS) or the Manitoba Department of Families

<b>Your Legal Rights and Options AT THIS STAGE</b>	
<b>Do Nothing</b>	<p>If you support the Settlement Agreement or you are indifferent to the Settlement Agreement, you do not have to do anything right now.</p> <p>When the Claims Period opens, you will be able to file a Claims Form to receive compensation on the terms outlined below.</p>
<b>Object to the Proposed Settlement</b>	<p>If you disagree with the Settlement Agreement offering compensation to Class Members, you can voice your objection to the Court by completing and submitting the attached Objection Form no later than February 1, 2023.</p>
<b>Object to the Proposed Fees</b>	<p>If you disagree with the legal fees sought by Class Counsel, you can voice your objection to the Court by completing and submitting the attached Objection Form no later than February 1, 2023.</p>

#### **GET MORE INFORMATION:**

Toll free at 1-833-786-0011, or by email: [mbprivacybreachclassaction@kmlaw.ca](mailto:mbprivacybreachclassaction@kmlaw.ca)



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### GET MORE INFORMATION:

Toll free at 1-833-786-0011, or by email: [mbprivacybreachclassaction@kmlaw.ca](mailto:mbprivacybreachclassaction@kmlaw.ca)

## BASIC INFORMATION

### 1. Why is there a notice?

The Court has approved this notice to let you know about the settlement being proposed in this class action lawsuit, and to explain your rights as a Class Member.

### 2. What is this lawsuit about?

This lawsuit concerns an email containing the personal information of approximately 8,700 children with disabilities, that was sent by CDS in error to approximately 100 unintended recipients, on August 26, 2020. The email contained personal information, including names and addresses, for all Class members as well as diagnoses and/or service history for certain Class members. The recipients were various organizations and corporations that work with CDS.

The lawsuit says that the Government of Manitoba was negligent and breached legislation in failing to prevent and address the privacy breach email. The Government of Manitoba denies these claims. The Court did not decide which side is right.

### 3. Am I a member of the Class?

The Class includes everyone whose information appeared in or was attached to an email sent by staff at CDS to unauthorized recipients on August 26, 2020.

If you are the parent, guardian or caregiver of someone who may be a part of that group, please provide this Notice to them.

### 4. What is the status of this lawsuit?

The lawsuit was certified to proceed as a "class action" on June 29, 2021. Notice was previously distributed about that certification.

Now, the parties to the lawsuit have agreed to settle the case, and compensate Class Members for the harms they suffered as a result of the Breach. The Court must approve any settlement agreement and fee award before it is effective. At a Court hearing on March 3, 2023, the parties will be asking the Court to approve this Settlement and legal fees award.

### GET MORE INFORMATION:

Toll free at 1-833-786-0011, or by email: [mbprivacybreachclassaction@kmlaw.ca](mailto:mbprivacybreachclassaction@kmlaw.ca)

## SETTLEMENT PROPOSALS

### 5. What does the Settlement offer?

The proposed Settlement offers compensation and benefits to Class Members valued at approximately \$1.2 million, paid by the Government of Manitoba, which includes: compensation for distress, compensation for additional information being disclosed, and compensation for enrolment in a credit monitoring program protecting against identity theft and fraud, as well as administration costs.

It also acknowledges safeguards committed to by the Government of Manitoba to prevent similar breaches from occurring again and recognizes measures taken by the Department of Families to ensure that all employees of the Department of Families receive appropriate training and qualifications relating to privacy.

### 6. How much money can I get?

The proposed Settlement allows Class Members to claim compensation for the distress they suffered as a result of the August 2020 Privacy Breach, and to enroll in a credit monitoring program paid for by the Government of Manitoba. This is a summary of the monetary benefits of the Settlement:

Category	Base Compensation	Amount
A	Low Harm	\$35
B	High Harm	\$300
	<b>Additional Compensation</b>	<b>Amount</b>
C	Cost of proving High Harm	Up to \$75
D	Credit monitoring	Up to \$75
E	Additional to those whose diagnosis was disclosed	\$35
F	Additional to those whose information concerning CFS was disclosed	\$60

The Administrator shall decide whether each Claimant is eligible to receive one of the Base Awards indicated on the Award Grid, and any and all of the Additional Compensation awards on the Award Grid, based on the following principles:

**Low Harm:** All Claimants who indicate, through the Claim Form, that they suffered some harm in regard to the news of the Privacy Breach will be eligible for a Low Harm award of \$35;

**High Harm:** All Claimants who indicate, through the Claim Form, that they suffered loss or harm beyond an initial reaction to the news of the Privacy Breach, as confirmed by either: (i) the Defendant's records of the substance or frequency of conversations between the Claimant and staff of the Department of Families, or (ii) a letter from a regulated

### GET MORE INFORMATION:

Toll free at 1-833-786-0011, or by email: [mbprivacybreachclassaction@kmlaw.ca](mailto:mbprivacybreachclassaction@kmlaw.ca)

healthcare professional that the class member complained to the regulated healthcare professional that the claimant suffered loss or harm beyond an initial reaction to the news of the Privacy Breach, will be eligible for a High Harm award of \$300.

The cost of procurement of the letter outlined in (ii), will also be covered up to \$75.

Additional compensation of \$35 and \$60 is available for those Claimants who fall into the category of (i) having received child development services delivered by CDS staff in the City of Winnipeg between 2017 and 2020; or (ii) initially having received services through CDS, and then having transitioned to being admitted to a Child and Family Services agency (“CFS”) during the 2017-18 and 2018-19 fiscal years, given that additional personal information regarding these individuals was disclosure during the Privacy Breach. The Defendant's records will identify whether Claimants fall into one of these groups. Claimants will *not* have to demonstrate eligibility when claiming.

If unpaid funds remain after the payment of all approved claims, Claimants may also receive additional compensation of up to 25% of the value of their Claim.

Finally, compensation for demonstrated enrolment in a credit monitoring program, up to \$75, is also available to all Class members, on a first-come-first served basis.

Making a claim under the Settlement will not impact the services you receive from Children's DisABILITY Services (CDS) or the Manitoba Department of Families. This lawsuit is against the Government of Manitoba as a legal entity, not CDS.

A full copy of the Settlement Agreement is available for download at: <https://kmlaw.ca/cases/manitoba-privacy-breach-class-action/>. You can also request a copy by calling 1-833-786-0011, or emailing: [mbprivacybreachclassaction@kmlaw.ca](mailto:mbprivacybreachclassaction@kmlaw.ca).

## **7. How will the lawyers be paid?**

Class Counsel will not be paid until the Court decides on what amount of legal fees are fair and reasonable. At the hearing on March 3, 2023, Class Counsel will seek Court approval of their legal fee up to 30% of recovery plus applicable taxes, as well as expenses that Class Counsel incurred.

### **GET MORE INFORMATION:**

Toll free at 1-833-786-0011, or by email: [mbprivacybreachclassaction@kmlaw.ca](mailto:mbprivacybreachclassaction@kmlaw.ca)

## YOUR RIGHTS AND OPTIONS

### 8. What happens if I do nothing at all?

If you do nothing, and the Court approves the proposed settlement, Class Members will be able to claim and benefit from the Settlement.

You will still need to take action in the future in order to receive any benefits. You will get another Notice when the Claims Period is open and you can take that action.

### 9. What if I do NOT agree with the proposed Settlement or fees?

If you are a member of the Class and you wish to object (disagree) with the proposed Settlement, you can voice your objection to the Court by submitting an Objection Form. Objecting means you do not want the Court to approve the Settlement offering compensation to Class Members.

The Objection Form is also available for download at: <https://kmlaw.ca/cases/manitoba-privacy-breach-class-action/>.

To be accepted for submission to the Court, your Objection Form must include:

1. Your full name, address and telephone number, as well as that of the Class Member if different;
2. Reasons for your objection;
3. Copies of any documents upon which you base your objection;
4. Confirmation of whether or not you intend to appear at the March 3, 2023 Court hearing; and
5. Your signature.

Your Objection Form must be sent to Class Counsel. You can send it by email to: [mbprivacybreachclassaction@kmlaw.ca](mailto:mbprivacybreachclassaction@kmlaw.ca) OR you can send it by **mail to:**

Koskie Minsky LLP  
20 Queen Street West  
Suite 900, Box 52  
Toronto, Ontario  
M5H 3R3

Call **1-833-786-0011**, or email: [mbprivacybreachclassaction@kmlaw.ca](mailto:mbprivacybreachclassaction@kmlaw.ca) if you have any questions about the proposed settlement, proposed fees, or this class action.

### GET MORE INFORMATION:

Toll free at 1-833-786-0011, or by email: [mbprivacybreachclassaction@kmlaw.ca](mailto:mbprivacybreachclassaction@kmlaw.ca)

## THE LAWYERS REPRESENTING YOU

### 10. Do I have a lawyer in the case?

Yes. The Court has appointed Koskie Minsky LLP from Toronto to represent you and all other Class Members as “Class Counsel.” The address of the law firm is:

Koskie Minsky LLP  
20 Queen Street West  
Suite 900, Box 52  
Toronto, Ontario  
M5H 3R3  
Email: [mbprivacybreachclassaction@kmlaw.ca](mailto:mbprivacybreachclassaction@kmlaw.ca)  
Phone: 1-833-786-0011

You will not be charged for contacting these lawyers with questions.

### GET MORE INFORMATION:

Toll free at 1-833-786-0011, or by email: [mbprivacybreachclassaction@kmlaw.ca](mailto:mbprivacybreachclassaction@kmlaw.ca)

**SCHEDULE E - OBJECTION FORM**

**OBJECTION FORM**

**MANITOBA PRIVACY CLASS ACTION**

**This is NOT a claim form!**

**Completing this form means you *disagree* with and want to *object* to the settlement of this action on the terms provided.**

For the reasons stated below, I:

<input type="checkbox"/>	I want to OBJECT to the proposed settlement agreement offering over \$1 million to Class members affected by the privacy breach at Manitoba Children's Disability Services in August 2020.
<input type="checkbox"/>	I want to OBJECT to the proposed legal fees of up to 30% of recovery plus disbursements and taxes sought by Class counsel.

I am objecting to the proposed settlement and/or legal fees for the following reasons (please attach extra pages if you require more space):

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I intend to appear, in person or by counsel, and to make submissions at the Court hearing on March 3, 2023 at 10:00 a.m.

**DEADLINE FOR OBJECTING: February 1, 2023**

**Email a copy of this form:** [mbprivacybreachclassaction@kmlaw.ca](mailto:mbprivacybreachclassaction@kmlaw.ca)

**OR Mail this form to:**  
Koskie Minsky LLP  
20 Queen Street West  
Suite 900, Box 52  
Toronto, ON M5H 3R3

**Section A: Complete only if you are filling out this Objection Form as a guardian or legal representative of a class member who is a minor and/or a person under disability:**

_____	_____	_____
Name of Guardian/Legal Representative	Signature of Guardian/Legal Representative	Date
Name of Class Member:	_____	
Address of Class Member:	_____	
Email of Class Member:	_____	
Telephone of Class Member:	_____	
Relationship of Guardian/Legal Representative to Class Member:	_____	
Address of Guardian/Legal Representative:	_____	
Email of Guardian/Legal Representative:	_____	
Telephone of Guardian/Legal Representative:	_____	

**Section B: Complete only if you are submitting this Objection Form on your own behalf:**

_____	_____	_____
Name of Class Member	Signature of Class Member	Date
Address of Class Member:	_____	
Email of Class Member:	_____	
Telephone of Class Member:	_____	



**SCHEDULE F - PHASE 1 ORDER**

FILE NO. CI21-01-30434

**THE KING'S BENCH  
Winnipeg Centre**

BETWEEN:

**LANNA PALSSON as Litigation Guardian of TAIT PALSSON**

Plaintiff

**- and -**

**THE GOVERNMENT OF MANITOBA**

Defendant

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

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**ORDER**

---

**KOSKIE MINSKY LLP**  
Barristers & Solicitors  
900-20 Queen Street West  
Toronto, ON M5H 3R3

**Celeste Poltak**

Tel: 416-595-2701

Fax: 416-204-2909

**Adam Tanel**

Tel: 416-595-2072

Fax: 416-204-4922

**Nathalie Gondek**

Tel: 416-542-6286

Fax: 416-204-2878

**THE KING’S BENCH  
Winnipeg Centre**

THE HONOURABLE )  
 )  
JUSTICE EDMOND ) DAY OF \_\_\_\_\_, 2022

BETWEEN:

**LANNA PALSSON as Litigation Guardian of TAIT PALSSON**

Plaintiff

- and -

**THE GOVERNMENT OF MANITOBA**

Defendant

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

**ORDER**

**THIS MOTION**, made by the Plaintiff was heard this day at the Law Courts Building, 408 York Avenue, Winnipeg by video conference,

**ON READING** the motion record of the Plaintiff;

**AND ON BEING ADVISED** that the parties consent to this Order;

**AND UPON HEARING** Adam Tanel on behalf of the Plaintiff and the Class and Jim Koch on behalf of the Defendant;

**AND WHEREAS** this action was certified as a class proceeding by way of an Order dated June 29, 2021, and the parties have now reached a proposed settlement which provides for a settlement fund and claims process,

**AND WHEREAS** court approval of the proposed settlement is required pursuant to the *The Class Proceedings Act*, C.C.S.M. c. C.130

1. This Court Orders that:
  - (a) The Settlement Approval Hearing will be heard before this Court on March 3, 2023 at 10:00 a.m.
  - (b) The Settlement Approval Hearing shall be heard in-person unless otherwise ordered by this Court.
  - (c) The notice attached hereto as Schedule “A” is hereby approved.
  - (d) The manner of dissemination of notice attached hereto as Schedule “B” is approved.
  - (e) Class Counsel may make non-material changes to the notice plan as are deemed necessary with the consent of the Defendant.
  - (f) The Notice period shall commence on the date of this Order and conclude on February 1, 2023 unless otherwise ordered by the Court or with the consent of the Plaintiff and Defendant.
  - (g) Any persons wishing to submit an Objection Form shall deliver the Objection Form in the form attached as Schedule C to the Notice Plan, to be emailed or postmarked by no later than February 1, 2023, to the contact information indicated on the Objection Form.
  - (h) Any Objection Forms received after the deadline set out in 1(g) shall not be filed with the Court or considered at the hearing to approve the Settlement Agreement without leave of the Court.
  - (i) Class Counsel shall be responsible for the receipt of Class Members’ Objection Forms and shall serve on the parties and file with the Court, seven days prior to the settlement approval hearing, an affidavit including copies of all Objection Forms it has received as of the date of the affidavit.

- (j) The expenses of distributing the notice in accordance with the Notice Plan, shall be paid by the Defendant and shall not be refundable in the event that this settlement is not finally approved. If the settlement is finally approved, all of these expenses previously incurred by the Defendant are to be deducted from the Settlement Fund.
- (k) Within thirty (30) days of the issuance of this Order, the Defendant shall disclose to Class Counsel the list of Class Members that may qualify for Category E and the list of Class Members that may qualify for Category F, as those categories are defined in the proposed Settlement Agreement. This information will be deemed to form part of the Class List and Class Counsel will be obliged to protect this information in the same manner as directed by this Court's Order of August 27, 2021 with regard to the Class List, with the sole exception that Class Counsel may disclose to Class Members or their legal guardians whether or not they qualify for Category E and Category F.
- (l) There shall be no costs arising out of this Order.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
Edmond J.

**APPROVED AS TO FORM AND CONTENT:**

For the Plaintiff:

\_\_\_\_\_  
Per: Celeste Poltak / Adam Tanel  
Koskie Minsky LLP

**APPROVED AS TO FORM AND CONTENT:**

For the Defendant Government of Manitoba:

---

Per: Jim Koch  
Legal Services Branch – Manitoba Justice

## SCHEDULE "A"

### **This Notice is for all persons who were affected by the Manitoba Children's Disability Services Privacy Breach in August 2020**

*A court authorized this notice. You are not being sued.*

- You are receiving this Notice because a settlement is being proposed in a certified class action lawsuit on behalf of individuals whose information appeared in or was attached to an email sent by staff at Manitoba Children's DisABILITY Services ("CDS") on August 26, 2020 to approximately 100 unintended recipients. CDS is operated by the Government of Manitoba.
- As a person whose information was contained in the August 26, 2020 email, you could be affected by this settlement.
- The proposed Settlement Agreement offers approximately \$1.2 million, paid by the Government of Manitoba, on terms summarized in this Notice.
- This lawsuit is against the Government of Manitoba as a legal entity, not CDS. Making a claim under the Settlement will not impact the services you receive from Children's DisABILITY Services (CDS) or the Manitoba Department of Families

<b>Your Legal Rights and Options AT THIS STAGE</b>	
<b>Do Nothing</b>	<p>If you support the Settlement Agreement or you are indifferent to the Settlement Agreement, you do not have to do anything right now.</p> <p>When the Claims Period opens, you will be able to file a Claims Form to receive compensation on the terms outlined below.</p>
<b>Object to the Proposed Settlement</b>	<p>If you disagree with the Settlement Agreement offering compensation to Class Members, you can voice your objection to the Court by completing and submitting the attached Objection Form no later than February 1, 2023.</p>
<b>Object to the Proposed Fees</b>	<p>If you disagree with the legal fees sought by Class Counsel, you can voice your objection to the Court by completing and submitting the attached Objection Form no later than February 1, 2023.</p>

#### **GET MORE INFORMATION:**

Toll free at 1-833-786-0011, or by email: [mbprivacybreachclassaction@kmlaw.ca](mailto:mbprivacybreachclassaction@kmlaw.ca)

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## BASIC INFORMATION

### 1. Why is there a notice?

The Court has approved this notice to let you know about the settlement being proposed in this class action lawsuit, and to explain your rights as a Class Member.

### 2. What is this lawsuit about?

This lawsuit concerns an email containing the personal information of approximately 8,700 children with disabilities, that was sent by CDS in error to approximately 100 unintended recipients, on August 26, 2020. The email contained personal information, including names and addresses, for all Class members as well as diagnoses and/or service history for certain Class members. The recipients were various organizations and corporations that work with CDS.

The lawsuit says that the Government of Manitoba was negligent and breached legislation in failing to prevent and address the privacy breach email. The Government of Manitoba denies these claims. The Court did not decide which side is right.

### 3. Am I a member of the Class?

The Class includes everyone whose information appeared in or was attached to an email sent by staff at CDS to unauthorized recipients on August 26, 2020.

If you are the parent, guardian or caregiver of someone who may be a part of that group, please provide this Notice to them.

### 4. What is the status of this lawsuit?

The lawsuit was certified to proceed as a "class action" on June 29, 2021. Notice was previously distributed about that certification.

Now, the parties to the lawsuit have agreed to settle the case, and compensate Class Members for the harms they suffered as a result of the Breach. The Court must approve any settlement agreement and fee award before it is effective. At a Court hearing on March 3, 2023, the parties will be asking the Court to approve this Settlement and legal fees award.

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## SETTLEMENT PROPOSALS

### 5. What does the Settlement offer?

The proposed Settlement offers compensation and benefits to Class Members valued at approximately \$1.2 million, paid by the Government of Manitoba, which includes: compensation for distress, compensation for additional information being disclosed, and compensation for enrolment in a credit monitoring program protecting against identity theft and fraud, as well as administration costs.

It also acknowledges safeguards committed to by the Government of Manitoba to prevent similar breaches from occurring again and recognizes measures taken by the Department of Families to ensure that all employees of the Department of Families receive appropriate training and qualifications relating to privacy.

### 6. How much money can I get?

The proposed Settlement allows Class Members to claim compensation for the distress they suffered as a result of the August 2020 Privacy Breach, and to enroll in a credit monitoring program paid for by the Government of Manitoba. This is a summary of the monetary benefits of the Settlement:

Category	Base Compensation	Amount
A	Low Harm	\$35
B	High Harm	\$300
	<b>Additional Compensation</b>	<b>Amount</b>
C	Cost of proving High Harm	Up to \$75
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The Administrator shall decide whether each Claimant is eligible to receive one of the Base Awards indicated on the Award Grid, and any and all of the Additional Compensation awards on the Award Grid, based on the following principles:

**Low Harm:** All Claimants who indicate, through the Claim Form, that they suffered some harm in regard to the news of the Privacy Breach will be eligible for a Low Harm award of \$35;

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healthcare professional that the class member complained to the regulated healthcare professional that the claimant suffered loss or harm beyond an initial reaction to the news of the Privacy Breach, will be eligible for a High Harm award of \$300.

The cost of procurement of the letter outlined in (ii), will also be covered up to \$75.

Additional compensation of \$35 and \$60 is available for those Claimants who fall into the category of (i) having received child development services delivered by CDS staff in the City of Winnipeg between 2017 and 2020; or (ii) initially having received services through CDS, and then having transitioned to being admitted to a Child and Family Services agency (“CFS”) during the 2017-18 and 2018-19 fiscal years, given that additional personal information regarding these individuals was disclosure during the Privacy Breach. The Defendant's records will identify whether Claimants fall into one of these groups. Claimants will *not* have to demonstrate eligibility when claiming.

If unpaid funds remain after the payment of all approved claims, Claimants may also receive additional compensation of up to 25% of the value of their Claim.

Finally, compensation for demonstrated enrolment in a credit monitoring program, up to \$75, is also available to all Class members, on a first-come-first served basis.

Making a claim under the Settlement will not impact the services you receive from Children's DisABILITY Services (CDS) or the Manitoba Department of Families. This lawsuit is against the Government of Manitoba as a legal entity, not CDS.

A full copy of the Settlement Agreement is available for download at: <https://kmlaw.ca/cases/manitoba-privacy-breach-class-action/>. You can also request a copy by calling 1-833-786-0011, or emailing: [mbprivacybreachclassaction@kmlaw.ca](mailto:mbprivacybreachclassaction@kmlaw.ca).

## **7. How will the lawyers be paid?**

Class Counsel will not be paid until the Court decides on what amount of legal fees are fair and reasonable. At the hearing on March 3, 2023, Class Counsel will seek Court approval of their legal fee up to 30% of recovery plus applicable taxes, as well as expenses that Class Counsel incurred.

### **GET MORE INFORMATION:**

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## YOUR RIGHTS AND OPTIONS

### 8. What happens if I do nothing at all?

If you do nothing, and the Court approves the proposed settlement, Class Members will be able to claim and benefit from the Settlement.

You will still need to take action in the future in order to receive any benefits. You will get another Notice when the Claims Period is open and you can take that action.

### 9. What if I do NOT agree with the proposed Settlement or fees?

If you are a member of the Class and you wish to object (disagree) with the proposed Settlement, you can voice your objection to the Court by submitting an Objection Form. Objecting means you do not want the Court to approve the Settlement offering compensation to Class Members.

The Objection Form is also available for download at: <https://kmlaw.ca/cases/manitoba-privacy-breach-class-action/>.

To be accepted for submission to the Court, your Objection Form must include:

1. Your full name, address and telephone number, as well as that of the Class Member if different;
2. Reasons for your objection;
3. Copies of any documents upon which you base your objection;
4. Confirmation of whether or not you intend to appear at the March 3, 2023 Court hearing; and
5. Your signature.

Your Objection Form must be sent to Class Counsel. You can send it by email to: [mbprivacybreachclassaction@kmlaw.ca](mailto:mbprivacybreachclassaction@kmlaw.ca) OR you can send it by **mail to:**

Koskie Minsky LLP  
20 Queen Street West  
Suite 900, Box 52  
Toronto, Ontario  
M5H 3R3

Call **1-833-786-0011**, or email: [mbprivacybreachclassaction@kmlaw.ca](mailto:mbprivacybreachclassaction@kmlaw.ca) if you have any questions about the proposed settlement, proposed fees, or this class action.

### GET MORE INFORMATION:

Toll free at 1-833-786-0011, or by email: [mbprivacybreachclassaction@kmlaw.ca](mailto:mbprivacybreachclassaction@kmlaw.ca)

## THE LAWYERS REPRESENTING YOU

### 10. Do I have a lawyer in the case?

Yes. The Court has appointed Koskie Minsky LLP from Toronto to represent you and all other Class Members as “Class Counsel.” The address of the law firm is:

Koskie Minsky LLP  
20 Queen Street West  
Suite 900, Box 52  
Toronto, Ontario  
M5H 3R3  
Email: [mbprivacybreachclassaction@kmlaw.ca](mailto:mbprivacybreachclassaction@kmlaw.ca)  
Phone: 1-833-786-0011

You will not be charged for contacting these lawyers with questions.

### GET MORE INFORMATION:

Toll free at 1-833-786-0011, or by email: [mbprivacybreachclassaction@kmlaw.ca](mailto:mbprivacybreachclassaction@kmlaw.ca)

## SCHEDULE "B"

### NOTICE PLAN

In this schedule, all defined terms in the Final Settlement Agreement apply. The following definitions also apply:

**"Phase I Form of Notice"** means the Notice of Settlement Approval Hearing, substantially in the form attached as Schedule "D" to the Settlement Agreement.

#### Phase I Notice

After the Court signing the Notice Approval Order, Class Counsel and the Administrator shall make reasonable efforts to deliver Phase I Form of Notice to all known Class Members and their guardians.

Within ten (10) days of the Court signing the Notice Approval Order, Class Counsel shall:

1. Post a copy of the Phase I Form of Notice and blank Objection Form on its website;
2. Post a copy of the proposed Settlement Agreement on its website; and
3. Email a copy of the Phase I Form of Notice to each individual who has previously been in contact with Class Counsel concerning this class action.

Within thirty (30) days of the Court signing the Notice Approval Order, the Administrator shall:

1. Email a copy of the Phase I Form of Notice to each Class Member whose email address appears on the Class list provided by the Defendant on October 21, 2021;
2. Mail a copy of the Phase I Form of Notice to each Class Member whose mailing address appears on the Class list provided by the Defendant on October 21, 2021, for whom there is no email address listed, or for whom the email address is invalid; and
3. Call each Class Member whose name appears on the Class list provided by the Defendant on October 21, 2021 for whom mail delivered under number (2) is returned to sender, record a valid email or mailing address, and email or mail a copy of the Phase I Form of Notice to that address.