

MANITOBA FLOOD CLASS ACTION

SETTLEMENT AGREEMENT

Made as of the 1st day of September, 2017

Between

CLIFFORD J. ANDERSON, KURVIS ANDERSON,
BERTHA TRAVERS, PRISCILLA ANDERSON, LILLIAN
TRAVERSE,
MELLONEY FRANCOIS, MARY STAGG, and
NORMAN STAGG

And

HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF MANITOBA AS REPRESENTED BY THE
MINISTER OF INDIGENOUS AND NORTHERN
RELATIONS

And

HER MAJESTY THE QUEEN IN RIGHT OF CANADA, AS
REPRESENTED BY THE MINISTER OF INDIAN
AFFAIRS AND NORTHERN DEVELOPMENT

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PREAMBLE

Clifford J. Anderson, Kurvis Anderson, Bertha Travers, Priscilla Anderson, Lillian Traverse, Melloney Francois, Mary Stagg, and Norman Stagg, enter into this agreement on behalf of the Settlement Class, as certified in *Clifford J. Anderson et al. v. The Government of Manitoba et al.*, Court File No. CI 12-01-77146 (the “Class Action”), (hereinafter collectively referred to as the “Plaintiffs”), and Her Majesty The Queen In Right Of The Province Of Manitoba As Represented By The Minister Of Indigenous And Northern Relations (“Manitoba”) and Her Majesty the Queen in Right of Canada, as represented by the The Minister of Indian Affairs and Northern Development (“Canada”) (collectively referred to as the “Defendants”) for the settlement of actual and potential claims arising out of or relating to displacement and other damages of individual members of the Lake St. Martin, Dauphin River, Little Saskatchewan and Pinaymootang First Nations (“First Nations”), as a result of the 2011 flooding pursuant to the terms and conditions set out herein and subject to the approval of the Manitoba Queen’s Bench.

RECITALS

- A. WHEREAS** the Plaintiffs commenced a proceeding under the *Class Proceedings Act*, C.S.S.M. c. C130, Court File No. CI 12-01-77146, against the Defendants;
- B. AND WHEREAS** the Class Action asserts claims on behalf of the Class Members, consisting of all members of the four First Nations, ordinarily resident in Manitoba during the 2011 Flood;
- C. AND WHEREAS** this action has been certified by the Manitoba Court of Appeal on the basis of the specific common issues pursuant to the terms set out in the Certificate of Decision dated January 25, 2017;
- D. AND WHEREAS** the Defendants deny the allegations made in the Class Action, have not conceded or admitted any liability, deny that any damages are payable, and have defences to all of the claims in the Class Action;
- E. AND WHEREAS** the Parties intend by this Settlement Agreement to resolve all past, present, and future claims of Class Members in any way arising from or relating to the 2011 Flood, known or unknown;
- F. AND WHEREAS** the Parties have engaged in extensive, arms-length negotiations through counsel that have resulted in this Settlement Agreement;
- G. AND WHEREAS** the Plaintiffs and Class Counsel, namely McKenzie Lake Lawyers LLP and Troniak Law, have reviewed and fully understand the terms of this Settlement Agreement and based on their analysis of the facts and law applicable to the Plaintiffs’ claims, and having regard to the burden and expense of prosecuting the Class Action, including the risks and uncertainties associated with trials and appeals, have concluded that this Settlement Agreement is fair, reasonable, and in the best interests of the Plaintiffs and the Class Members they represent;

- H. AND WHEREAS** despite the availability of defences to the action, the Defendants are entering into this Settlement Agreement in order to achieve a final resolution of all current and potential claims asserted against them by the Plaintiffs on behalf of the Class Members and to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation, and it is acknowledged that the Defendants would not have entered into this Settlement Agreement were it not for the foregoing;
- I. AND WHEREAS** the Parties therefore wish to, and hereby do, fully and finally resolve the Class Action without admission of liability on the part of the Defendants;
- J. AND WHEREAS** the Defendants, in entering into the Settlement Agreement, intend to resolve and release all claims between and amongst themselves and also asserted against Third Parties, arising from or relating to the events that are the subject of the Class Action, including all claims for contribution and indemnity;
- NOW THEREFORE** in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed by the Parties that the Class Action be settled and that the Parties shall consent to the Court Order finally approving the Settlement Agreement in Manitoba on the following terms and conditions:

ARTICLE 1: DEFINITIONS

- 1.1** For the purpose of this Settlement Agreement only, including the recitals and Schedules hereto:
- (a) **2011 Flood** means the flooding of the Lake St. Martin, Dauphin River, Little Saskatchewan, and Pinaymootang First Nations in Manitoba in the spring of 2011 as particularized in the Class Action;
 - (b) **Administrator** means the Notice and Claims Administrator;
 - (c) **Administration Expenses** means all fees, disbursements, expenses, costs, taxes, and any other amounts incurred or payable by the Plaintiffs, Class Counsel, or otherwise for the approval, implementation, and operation of this Settlement Agreement, including the costs of notice and the fees and expenses of the Claims Administrator but excluding Class Counsel Fees;
 - (d) **Canada** means the Her Majesty the Queen in Right of Canada, as represented by the The Minister of Indian Affairs and Northern Development i;
 - (e) **Claim** means a claim for benefits under the Settlement Agreement that is submitted by or on behalf of a Class Member pursuant to a Claim Form;

- (f) **Claims Administrator** means the third-party agent agreed to by the Parties and appointed by the Court in the Class Action to administer and oversee the Claims Program pursuant to the duties and terms outlined in **Schedule “A”** hereto. The Parties have agreed that RicePoint Administration Inc. shall serve as Claims Administrator, subject to approval by the Court;
- (g) **Claims Administration Expenses** means the reasonable costs incurred for the Claims Administrator to administer the Claims Program, including but not limited to the Claims Administrator’s fees and disbursements, the costs to administer the Settlement Website, Settlement Phone Number, and any related translation costs;
- (h) **Claim Form** means the document used to submit a Claim as attached hereto as **Schedule “K”**;
- (i) **Claims Period** means the time period during which Class Members may submit a claim for review by the Claims Administrator lasting 120 days from the date of first publication of the Settlement Approval Notice;
- (j) **Claims Program** means the program through which Class Members may file Claims and, if eligible, obtain benefits under the Settlement Agreement;
- (k) **Claims Program Account** means an interest bearing trust account under the control of the Claims Administrator at a Schedule 1 chartered Canadian bank from which the Compensation Fund, Claims Program, including Claims Administration Expenses and Notice Expenses will be paid;. ;
- (l) **Claim Submission Deadline** means the date by which Class Members must submit and complete a valid Claim being 120 days from the date of first publication of the Settlement Approval Notice ;
- (m) **Class or Settlement Class** means all persons, or their estates, who are or were a member of one of the four First Nations and ordinarily resident in Manitoba during the 2011 Flood;
- (n) **Class Action** means *Clifford J. Anderson et al. v. The Government of Manitoba et al.*, Court File No. CI 12-01-77146;
- (o) **Class Counsel** means McKenzie Lake Lawyers LLP and Troniak Law;
- (p) **Class Counsel Fees** means the fees, disbursements, costs, HST/PST/GST, and/or other applicable taxes or charges of Class Counsel;
- (q) **Class Member** means a member of the Class or Settlement Class;
- (r) **Class Release** means upon entry of the Settlement Approval Order, the release and waiver by Class Members;

- (s) ***Comment Deadline*** means the deadline by which a Class Member's comment regarding the Settlement Agreement must be posted or transmitted to the Notice Administrator in order to be timely and valid. The Comment Deadline is 45 days from the Pre-Approval Notice Date;
- (t) ***Compensation Fund*** means the portion of the Settlement Amount, less Notice Expenses and Class Counsel Fees and disbursements and taxes, to be used for payment of Eligible Claims;
- (u) ***Court*** means the Court of Queen's Bench of Manitoba;
- (v) ***Defendants*** means Manitoba and Canada;
- (w) ***Disruption Payment*** means the compensation paid to an Eligible Claimant on a *pro rata* basis for the disruption he/she endured on account of the 2011 Flood, including his/her evacuation, or, if not evacuated, the adverse conditions he/she was subjected to while remaining on reserve;
- (x) ***Effective Date*** means either thirty (30) days after the Settlement Approval Date, unless any appeals are taken from the Settlement Approval Order, in which case it is the date upon which all appeals have been fully disposed of on the merits in a manner that affirms the Approval Order, or any date that is agreed to in writing by Class Counsel and the Defendants;
- (y) ***Eligible Claim*** means a claim determined by the Claims Administrator to be eligible to receive benefits under the Settlement Agreement;
- (z) ***Eligible Claimant*** means a Class Member who has been determined by the Claims Administrator to be eligible to receive benefits under the Settlement Agreement;
- (aa) ***First Nations*** means the Lake St. Martin, Dauphin River, Little Saskatchewan, and Pinaymootang First Nations in Manitoba;
- (bb) ***Honoraria*** means payments made to the Representative Plaintiffs to compensate them for time and out-of-pocket expenses incurred to be calculated by the Claims Administrator pursuant to the criteria contained in **Article 3.8** below and approved by the Court;
- (cc) ***Manitoba*** means Her Majesty The Queen In Right Of The Province Of Manitoba As Represented By The Minister of Indigenous And Northern Relations;
- (dd) ***Notice Administrator*** means the third-party agent or administrator agreed to by the Parties and appointed by the Court in the Class Action to implement and consult on the Notice Plans. The Parties agree that RicePoint Administration Inc. shall serve as Notice Administrator, subject to approval by the Court;

- (ee) **Notice Expenses** means all reasonable costs and expenses incurred in publishing Notices pursuant to the Settlement Agreement, including, but not limited to: (1) preparing, translating, disseminating, posting, promoting, internet housing, and publishing of the Notice Program; and (2) any other necessary notice or notice-related activities to implement the Notice Programs;
- (ff) **Notice Programs** means a reasonable notice program for disseminating the Pre-Approval Notices as attached hereto as **Schedules “C” and “D”** and the Settlement Approval Notices as attached hereto as **Schedules “H” and “I”**;
- (gg) **Opt-Out** means a person who would have been a Class Member except for his/her timely and valid request for exclusion. Such exclusion will be made by the timely submission of an Opt-Out Form as attached hereto as **Schedule “B”**;
- (hh) **Opt-Out Deadline** means the last day that a Class Member may opt-out of the Class. The Opt-Out Deadline is 45 day from the Pre-Approval Notice Date;
- (ii) **Opt-Out Form** means the document used to Opt-Out of the Class Action as attached hereto as **Schedule “B”**;
- (jj) **Opt-Out Notice** means the Pre-Approval Notice in the form attached hereto as **Schedules “C” and “D”** as published pursuant to **Schedule “E”** which advises Class Members of, among other things, the date of the Opt-Out Deadline;
- (kk) **Opt-Out Report** means the report furnished by the Notice Administrator to the parties, five to seven business days after the Opt-Out Deadline;
- (ll) **Parties** means the Plaintiffs, Class Members, Canada, and Manitoba;
- (mm) **Plaintiffs** means Clifford J. Anderson, Kurvis Anderson, Bertha Travers, Priscilla Anderson, Lillian Traverse, Mathew Traverse, Melloney Francois, Mary Stagg, and Norman Stagg;
- (nn) **Points Assessment Process** means the points awarded to each Eligible Claimant by the Claims Administrator for the purposes of calculating Disruption Payments as part of the Claims Program;
- (oo) **Points System** means the internally fair and consistent pro-rata distribution of settlement benefits for Disruption Payments to Eligible Claimants under this Settlement Agreement in accordance with the procedure described in **Schedule “M”** hereto;
- (pp) **Pre-Approval Hearing** means the hearing before the Court seeking Court approval of the Pre-Approval Notice and the Pre-Approval Notice Program of the Certification, Opt-Out, and Settlement Approval Hearing Notice;

- (qq) ***Pre-Approval Notice*** means the notice that advises Class Members of certification, opt-out rights and comment deadlines, and the date of the Settlement Approval Hearing, substantially in the form approved by the Court and attached hereto as **Schedules “C” and “D”**;
- (rr) ***Pre-Approval Notice Date*** means the date on which the Pre-Approval Notice is first published on the Settlement Website;
- (ss) ***Pre-Approval Notice Plan*** means the manner for disseminating the Pre-Approval Notice, as attached hereto as **Schedule “E”** and approved by the Court;
- (tt) ***Pre-Approval Order*** means the Court’s Order approving the Pre-Approval Notice as attached hereto as **Schedule “F”**;
- (uu) ***Released Claims*** means any and all manner of claims, demands, actions, suits and causes of action alleged or which could have been asserted in the Class Action, whether direct or indirect, class, individual, or otherwise in nature, whether personal or subrogated, including for damages whenever incurred and liability of any nature whatsoever, including interest, costs, expenses, penalties, and lawyer fees that the Releasors, or any one of them, whether directly, indirectly, representatively, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have against any or all of the Releasees, whether known or unknown, relating in any way to any act or omission by the Releasees prior to the execution of this Settlement Agreement concerning the 2011 Flood;
- (vv) ***Releasees*** means, jointly and severally, Manitoba and Canada;
- (ww) ***Releasors*** means, jointly and severally, individually and collectively, the Plaintiffs and Class Members who are not Opt-Outs and their Representative Claimants;
- (xx) ***Representative Claimants*** means personal representatives, heirs, assigns, and trustees of Class Members and/or executors, administrators, and personal representatives of Class Members;
- (yy) ***Settlement Agreement*** or ***Settlement*** means this agreement, including the Recitals and Schedules hereto;
- (zz) ***Settlement Amount*** means \$90,283,000.00 including a Claims Program Account for payment of Eligible Claims and a contribution made by Canada and Manitoba towards Administration Expenses, Claims Administration Expenses, Notice Expenses, and Class Counsel Fees;
- (aaa) ***Settlement Approval Date*** means the date on which the Settlement Approval Order is issued;

- (bbb) ***Settlement Approval Hearing*** means the motion to be brought by the Plaintiffs seeking Court approval of the Settlement Agreement;
- (ccc) ***Settlement Approval Notice*** means the notice of the Settlement Approval Order to be published and disseminated to Class Members in accordance with the Settlement Approval Notice Plan and in the form attached hereto as **Schedules “H” and “I”**;
- (ddd) ***Settlement Approval Notice Plan*** means the manner for disseminating the Settlement Approval Notice, as attached hereto as **Schedule “J”** and approved by the Court;
- (eee) ***Settlement Approval Order*** means the final approval order entered by the Court in respect of approving the Settlement Agreement and the expiration of the time to appeal or to seek permission to appeal such final judgment or approval, without any appeal being taken, or if an appeal from any of the above it taken, the affirmance of such final judgement, approval order in its entirety, without modification, by the Manitoba Court of Queen’s Bench in the form attached hereto as **Schedule “G”**;
- (fff) ***Settlement Phone Number*** means the toll-free telephone number that Class Members can call to receive information about the Settlement and the Claims Program;
- (ggg) ***Settlement Website*** means the public website that provides information about the Settlement Agreement;;
- (hhh) ***Special Circumstances Compensation*** means compensation in respect of personal property loss or damage, income loss and/or health care costs or personal injuries relating to the 2011 Flood that have not already been compensated;
- (iii) ***Special Circumstances Fund*** means the portion of the Compensation Fund set aside for payment of Eligible Claims under the provisions outlined in **Article 3.7**, not to exceed 7.5% of the Compensation Fund.
- (jjj) ***Termination Deadline*** means the date by which Canada and Manitoba may terminate the Settlement Agreement after the Opt-Out Deadline, by giving written notice of termination to Class Counsel, being no later than twenty (20) days after the receipt of the Opt-Out Report.

ARTICLE 2: CONDITIONS PRECEDENT, COURT APPROVAL

2.1 Subject to **Article 6**, this Settlement Agreement shall be of no force or effect unless:

- (a) the Court approves this Settlement Agreement;

- (b) the Approval Order has become a Final Order; and
- (c) the Effective Date has occurred.

2.2 Motions for Approval

Pre-Approval Hearing

- (a) The Plaintiffs shall file an initial motion, being the Pre-Approval Hearing, seeking the Pre-Approval Order:
 - (i) approving the Pre-Approval Notice; and
 - (ii) approving the Pre-Approval Notice and Pre-Approval Notice Plan, the publication of which will trigger the opt-out period ending with the Opt-Out Deadline.
- (b) The Pre-Approval Order referred to in **Article 2.2(a)** shall be in a form substantially similar to the order attached hereto as **Schedule “F”** and as agreed upon by Class Counsel and counsel for the Defendants and approved by the Court.

Settlement Approval Hearing

- (c) Following the expiry of the Opt-Out Deadline, the Plaintiffs shall file a second motion, being the Settlement Approval Hearing, seeking the Settlement Approval Order for the approval of this Settlement Agreement;
- (d) The Settlement Approval Order referred to in **Article 2.2(b)(i)** shall be in a form substantially similar to the order attached hereto as **Schedule “G”** and as agreed upon by Class Counsel and counsel for the Defendants and approved by the Court.

ARTICLE 3: SETTLEMENT BENEFITS

3.1 Payment of Settlement Amount

- (a) Contingent on the dismissal of the claims of the Class Members as against the Defendants and third parties and on the approval of the Settlement Agreement as more particularly described in **Article 2.2(b)**, Manitoba and Canada have agreed to pay the Settlement Amount, in equal proportion, as follows:
 - (i) a total of \$1,000,000 towards Claims Administration Expenses and Notice Expenses;

- (ii) a total of \$6,000,000 towards Class Counsel Fees (which fees will not to exceed 15% of the total value of the Settlement/Settlement Amount);
 - (iii) a total of \$83,283,000 towards *pro-rata* payments to the Eligible Claimants and the Honoraria to the Plaintiffs.
- (b) The Defendants shall pay the Settlement Amount set forth in **Article 3.1(a)** above as follows:
 - (i) The Defendants will pay to the Claims Administrator the amount as soon after the Effective Date as reasonably practicable, in accordance with **Article 3.1(a)(i)** above;
 - (ii) Within 30 days of the date of the Effective Date, the Defendants will pay:
 - (A) to the Claims Administrator the amount in accordance with **Article 3.1(a)(iii)**; and
 - (B) to McKenzie Lake Lawyers LLP the amount in accordance with **Article 3.1(a)(ii)** (the balance of Class Counsel Fees, as approved by the Court, to be forwarded by the Claims Administrators to McKenzie Lake Lawyers LLP out of the Compensation Fund amount).
- (c) The Claims Administrator will invest the monies paid to it in a bankers acceptance issued by a Schedule 1 chartered Canadian bank. All interest accrued will be added to the Claims Program Account. The conversion rate for the Settlement Amount will be the Bank of Canada rate on the date of payment. If the monies are not paid when due, they will accrue interest until paid at the rate of 5% per annum.
- (d) The Defendants shall have no obligation in any circumstance or for any reason to pay any amount in addition to the Settlement Amount pursuant to or in furtherance of this Settlement Agreement or otherwise.
- (e) The Claims Administrator shall maintain the Claims Program Account as provided for in this Settlement Agreement and shall not pay out any monies from the Claims Program Account except in accordance with the provisions of this Settlement Agreement without an Order of the Court made on notice to or on consent of the Parties.
- (f) The Defendants agree to pay the Settlement Amount in accordance with the specific requirements of this Settlement Agreement in full satisfaction of the releases described in **Article 4.1** below.

3.2 Notice Administrator and Claims Administrator

- (a) The Parties have agreed that RicePoint Administration Inc. shall be appointed as Notice Administrator and Claims Administrator by the Court for the purpose of administering the Notices and Claims and paying Eligible Claimants as provided for in this Settlement Agreement.
- (b) The Notice Administrator and Claims Administrator shall have the authority to perform all actions, to the extent not expressly prohibited by, or otherwise inconsistent with, any provision of this Settlement Agreement deemed by the Claims Administrator to be reasonably necessary for the efficient and timely administration of this Settlement Agreement, including entering into such contracts and obtaining such financial, accounting, and other expert assistance as are reasonably necessary in the implementation of the Settlement Agreement as more particularly described in **Schedule “A”** hereto.
- (c) The Claims Administrator will use forms developed by the Parties and attached hereto including, but not limited to, the Opt-Out Form (**Schedule “B”**) and the Claim Form (**Schedule “K”**) for administration of the Settlement. Without limitation of the foregoing, the Claims Administrator shall have the authority to recommend to Class Counsel for the approval of Class Counsel any modifications and/or supplements to the Opt-Out Form and the Claim Form to provide more efficient administration of the Claims Program.
- (d) The Claims Administrator shall preserve, in hard copy or electronic form as the Claims Administrator deems appropriate, the submissions relating to all Claims until one (1) year after the last payment is made to an Eligible Claimant under this Settlement Agreement and at such time shall dispose of such submissions by shredding or other such means as will render the materials permanently illegible.
- (e) Within five (5) calendar days of the end of each calendar month, the Claims Administrator shall submit a report to Class Counsel itemizing and certifying the following:
 - (i) all Claims Administration Expenses then due and payable or anticipated to be become due and payable during the following calendar month;
 - (ii) all payments of the Settlement Amount which as of the end of such calendar month have been fully determined and otherwise are timely for payment; and
 - (iii) any distributions made from, and the monies remaining in, the Claims Program Account.
- (f) The Notice Administrator and Claims Administrator shall not be held liable, absent negligence or fraud, in respect of the implementation and administration of the Settlement Agreement and any related accounting.

3.3 Claims Program

- (a) In order to receive any payment under this Settlement Agreement, a Class Member must deliver to the Claims Administrator, not later than the end of the Claims Period, in a single submission: (1) a Claim Form that is properly and fully completed and properly and fully executed as specified in the Claim Form; and (2) all records or other documents specified in the relevant Claim Form to be attached thereto or otherwise submitted therewith. If a Class Member fails to submit a Claim Form by the end of the Claims Period, such Class Member shall immediately cease to have any right to receive any payment under this Settlement Agreement. Without limitation of the preceding sentence, the Claims Administrator shall not review any Claim Form delivered to it after the expiry of the Claims Period.
- (b) The terms of the Claims Program are outlined in the Notice and Claims Administration Procedures in **Schedule “A”** hereto. The terms of the Notice and Claims Administration Procedures are incorporated herein by this reference.
- (c) Any determination by the Claims Administrator pursuant to the Notice and Claims Administration Procedures shall be final.
- (d) Nothing in the Notice and Claims Administration Procedures absolves the Class Member or their respective representative and/or lawyer from their responsibility to timely comply with the requirements of this Settlement Agreement and the Notice and Claims Administration Procedures in particular. Neither the Claims Administrator nor the Parties shall have any responsibility or liability for (i) any failure of a Class Member to qualify as an Eligible Claimant or (ii) any failure of an Eligible Claimant to receive any particular benefit under this Settlement Agreement as a result of any deficiency in such Eligible Claimant’s submission.
- (e) All submissions by Class Members to the Claims Administrator of or relating to a Claim Form shall be made (i) electronically through the Claims Portal or (ii) in paper form delivered by regular Canada Post mail, by same-day or overnight courier or in person. All submissions by mail shall be conclusively deemed to have been submitted to the Claims Administrator on the postmark date of such mail. All submissions delivered to the Claims Administrator by same-day or overnight courier shall be conclusively deemed to have been submitted to the Claims Administrator on the date the submissions were received by the Claims Administrator.

3.4 Eligible Claimants

- (a) The Points Assessment Process shall apply only to those Class Members who are determined to be an Eligible Claimant by the Claims Administrator.

- (b) Only those Class Members who are determined to be an Eligible Claimant by the Claims Administrator shall receive any payments under this Settlement Agreement.

3.5 Disruption Payments

- (a) Disruption Payments shall be paid to Eligible Claimants on a *pro rata* basis in accordance with the points awarded to each Eligible Claimant under the Points Assessment Process as described in **Article 3.12** below.

3.6 Points Assessment Process

- (a) The Claims Administrator shall determine the Points awards to each Eligible Claimant based solely on the Points System. The Points awards to Eligible Claimants shall be determined in accordance with **Schedule “M”** hereto.

3.7 Special Circumstances Fund

- (a) Payments from the Special Circumstances Fund shall be paid to Eligible Claimants at the sole discretion of the Claims Administrator under the Special Circumstances Fund in accordance with **Schedule “O”** hereto.

3.8 Honoraria

- (a) The Plaintiffs shall be eligible for an Honoraria, if approved by the Court, to be payable from the Compensation Fund amount. The Plaintiffs shall submit a written submission including any relevant documentation to the Claims Administrator prior to the Claims Deadline.
- (b) The Claims Administrator shall determine the Honoraria payable to each Plaintiff who submits a written submission based on a review of the written submissions made by each Plaintiff and taking into account the criteria included in **Schedule “N”** hereto.

3.9 Payment Calculation Report

- (a) Within 15 days after the expiry of the Claims Deadline, the Claims Administrator shall prepare a Payment Calculation Report setting forth the following information:
 - (i) a list of Eligible Claimants;
 - (ii) the Points awarded to each Eligible Claimant;
 - (iii) the Disruption Payment due to each Eligible Claimant;

- (iv) the Special Circumstances Fund payment due to each Eligible Claimant, if applicable; and
 - (v) the Honoraria due to each Plaintiff, if applicable.
- (b) The Claims Administrator shall send an electronic copy of the Payment Calculation Report to Class Counsel and the Defendants.

3.10 Final Payments to Eligible Claimants

After all claims are made and all deductions from the Settlement Amount have been calculated and accounted for (relating to Administration Expenses, Claims Administration Expenses, Honoraria and Class Counsel Fees and Disbursements) then payments will be made to Eligible Claimants.

3.11 No Clawback from Disruption Payment

Subject to operation of applicable provincial law relating to provincial income assistance programs, it is intended that there be no deduction or clawback from Disruption Payments on account of social or income assistance programs. Disruption Payments will be deemed not to be a form of income replacement, or compensation for loss of income. Disruption Payments will not affect the eligibility for or duration of social assistance or other benefits available to individuals.

3.12 Residual Distribution of Surplus Settlement Monies

If within twelve (12) months of the payments being issued to Claimants from the Claims Administrator, a balance exists in the Claims Program Account as a result of returned or uncashed cheques, interest earned on the Settlement Amount and not allocated to claimants, or any other surplus monies, the balance in the Claims Program Account shall be paid in the following manner:

- (a) if the balance is \$1,000,000, or more, it shall be distributed, on a pro-rata basis, to all Eligible Claimants who received Disruption Payments, equally; or
- (b) if the balance is less than \$1,000,000, it shall be distributed to a qualified donee selected by the Plaintiffs and approved by the Court.

3.13 Taxes and Interest

- (a) All interest earned on the Settlement Amount and/or the Claims Program Account shall become and remain part of the Settlement Amount.
- (b) Class Counsel shall bear all risks related to the investment of the Settlement Amount in the Claims Program Account.

- (c) All funds held by the Claims Administrator shall remain subject to the jurisdiction of the Court until such time as such funds shall be distributed pursuant to the Settlement Agreement and/or further order of the Court.
- (d) Class Counsel, jointly and severally, hereby indemnifies, defends, and holds harmless the Defendants from and against any harm or injury suffered by reason of the use, misuse, erroneous disbursement, or other action taken or failure to act by Class Counsel or by the Claims Administrator with respect to the Settlement Amount or funds in the Claims Program Account not strictly in accordance with the provisions of this Settlement Agreement or any order of the Court.
- (e) All taxes payable on any interest which accrues on the Settlement Amount in the Claims Program Account or otherwise in relation to the Settlement Amount shall be the sole responsibility of the Claims Administrator. The Claims Administrator in consultation with Class Counsel shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount in the Claims Program Account, including any obligations to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned by the Settlement Amount shall be paid from the Claims Program Account.
- (f) The Defendants shall have no responsibility to make any tax filings relating to the Claims Program Account and shall have no responsibilities to pay tax on any income earned by the Settlement Amount or pay tax on the monies in the Claims Program Account.

ARTICLE 4: RELEASES AND DISMISSALS

4.1 Releases

- (a) Upon the Effective Date, the Releasors shall execute the Class Release.
- (b) Upon the Effective Date, the Releasors forever and absolutely release, acquit, and discharge the Releasees from the Released Claims. For the consideration provided herein, the Releasors agree not to make any claim or take, commence or continue any proceeding arising out of or relating to the subject matter of the Released Claims against any other person, corporation or entity which might claim damages and/or contribution and indemnity and/or other relief under the common law or any provincial legislation including relief of a monetary, declaratory or injunctive nature, from one or more of the Releasees.
- (c) Upon the Effective Date, the Releasees forever and absolutely release, acquit, and discharge each other from the Released Claims and from any other claims, demands, action, suits, and causes of action, including claims for contribution and indemnity or otherwise, relating in any way to any act or omission by the

Releasees, whether known or unknown, concerning the 2011 Flood or any act or omission asserted, alleged or referenced or which could have been asserted, alleged or referenced in the Class Action, and agree not to make or continue any other claim, or take, commence or continue any proceeding against any other person, corporation or entity which might claim damages and/or contribution and indemnity and/or any other relief under the common law or any provincial legislation for any relief whatsoever, including relief of a monetary, declaratory or injunctive nature, from one or more of the Releasees.

- (d) The Parties intend that the Settlement Agreement will be approved by the Court and will result in the dismissal of all claims asserted or which could have been asserted, including third party claims, by Class Members or the Defendants, on the terms set forth in this Settlement Agreement.
- (e) Without limiting any other provision herein, each Class Member who is not an Opt-Out whether or not he/she receives a payment, will be deemed by the Settlement Agreement completely and unconditionally to have released and forever discharged the Releasees from any and all Released Claims, including all claims, actions, causes of action, suits, debts, duties, accounts, bonds, covenants, contracts, and demands whatsoever, known or unknown, that were or could have been asserted in the litigation that is the subject of this Settlement Agreement.
- (f) The Parties agree that each Class Member who is not an Opt-Out whether or not he/she receives a payment, will be forever barred and enjoined from continuing, commencing, instituting or prosecuting any action, litigation, investigation or other proceeding in any court of law or equity, arbitration, tribunal, proceeding, governmental forum, administrative forum or any other forum, directly, representatively or derivatively, asserting against the Defendants any claim that relate to or constitute any Released Claims covered by this Settlement Agreement.

4.2 Dismissal of the Class Action

The Parties shall, on consent, as part of the Settlement Approval Hearing, request the Court to dismiss the Class Action, including the Third Party Claims, with prejudice as against the Defendants, without costs.

ARTICLE 5: OPTING-OUT

5.1 Procedure

The procedure for opting-out of the Class Action, including timing and notice requirements and the information required from the person seeking to opt-out, shall be agreed to by the Parties and approved by the Court, substantially in the form as set out in **Schedule “B”** hereto.

5.2 Opt-Out Notice

As part of the Pre-Approval Hearing, Class Counsel shall submit a notice in a form that is mutually agreed to by the Parties and approved by the Court substantially similar to **Schedule “C”** and **Schedule “D”** hereto (“Pre-Approval Notice”), which shall include, *inter alia*, information regarding opting-out. This notice shall require that Class Members who do not want to participate in the Settlement to submit a timely and valid request for exclusion therefrom using the Opt-Out Form (**Schedule “B”**) on or before the Out-Out Deadline.

5.3 Opt-out Report

Five to seven days business days following the Opt-Out Deadline, the Defendants and Class Counsel shall be provided with a report from the Notice Administrator advising as to the number of Opt-Outs, the reasons for their opting-out, if known, and a copy of all information provided, including the Opt-Out Form (“Opt-Out Report”).

ARTICLE 6: TERMINATION OF SETTLEMENT AGREEMENT

6.1 Right and Manner of Termination

Either of Canada or Manitoba may terminate the Settlement Agreement, in their sole discretion, if in the opinion of either Canada or Manitoba, a significant number of Class Members have opted-out of the Class Action. Canada and Manitoba may terminate the Settlement Agreement after the Opt-Out Deadline, by giving written notice of termination to Class Counsel no later than twenty (20) days after the receipt of the Opt-Out Report (“Termination Deadline”). Canada and Manitoba will consult with each other before exercising the right of termination.

6.2 Effect of Termination

- (a) In the event of termination of the Settlement Agreement, all Parties shall be restored to their respective positions immediately prior to the date on which this Settlement agreement was signed by all Parties. All statutes of limitations and/or repose for all claims asserted shall be tolled from the date of the signature of this Settlement Agreement by all Parties until the date of reinstatement and reactivation or for such longer period as the law may provide without reference to this Settlement Agreement.
- (b) The cost of the Pre-Approval Notice dissemination shall be considered a non-refundable expense if this Settlement Agreement is terminated.

6.3 Not Approved by the Court

- (a) If this Settlement Agreement is not approved by the Court:

- (i) Subject to **Article 6.3(b)** below, it shall have no force or effect, and the Parties shall not be bound by its terms, with the sole exception of the agreements and commitments contained in **Article 10**, which shall survive; and
- (ii) All negotiations, statements, and proceedings relating to the Settlement Agreement shall be deemed to be without prejudice to the rights of the Parties and the Parties shall be deemed to be restored to their respective positions existing immediately before it was executed.
- (b) The Parties expressly reserve all of their respective rights to the extent that the Court does not approve this Settlement Agreement.
- (c) The costs of the Pre-Approval Notice shall be considered a non-refundable expense if this Settlement Agreement is not approved by the Court.

ARTICLE 7: DISTRIBUTION OF THE SETTLEMENT AMOUNT AND ACCRUED INTEREST

7.1 Settlement Payments

- (a) The Settlement Amount shall be held by the Claims Administrator in trust for the benefit of Class Members and, after the Effective Date, shall be paid in accordance with this Settlement Agreement and its schedules, subject to approval by the Court.
- (b) The Claims Administrator shall administer payments to Eligible Claimants who are not Opt-Outs in accordance with **Article 3.10(a)** of this Settlement Agreement.

7.2 Monies in the Claims Program Account

In no event shall the Defendants have any responsibility, financial obligations, or liability whatsoever with respect to the investment, distribution, use or administration of monies in the Claims Program Account, including, but not limited to, the costs and expenses of such investment, distribution, use, and administration. In no event shall the Defendants have any responsibility, financial obligations, or liability whatsoever with respect to Administration Expenses and/or Class Counsel Fees except as otherwise provided for in **Article 3** of this Settlement Agreement.

ARTICLE 8: LEGAL FEES AND DISBURSEMENTS

8.1 Motion to Approve Class Counsel Fees

- (a) Class Counsel will bring a motion to the Court for approval of Class Counsel Fees at the same time as the Settlement Approval Hearing. Such fees and disbursements shall be awarded at the discretion of the Court after hearing from counsel for the Parties. The Defendants will not take any position with respect to the amount of Class Counsel Fees requested by Class Counsel.
- (b) Class Counsel will seek legal fees in the amount of 15% of the Settlement Amount, plus disbursements, plus applicable taxes on fees and disbursements.
- (c) Any legal fees and/or disbursements and/or taxes thereon awarded to Class Counsel as approved by the Court in excess of the amount listed in **Article 3.1(a)(ii)** will be paid from the Compensation Fund amount and not by the Defendants.
- (d) Class Counsel Fees may be paid out of the Claims Program Account only after Class Counsel obtains approval from the Court.
- (e) Class Members who have retained or who retain lawyers to assist them in respect filing claims for payments from this Settlement shall be responsible for the legal fees and expenses of such lawyers.

ARTICLE 9: ADMINISTRATION AND IMPLEMENTATION

9.1 Mechanics of Administration

- (a) Pre-Approval: The Class Members shall be given notice of:
 - (i) certification, Opt-Out and Comment rights and deadlines, and the Settlement Approval Hearing; and
 - (ii) any termination of the Settlement Agreement.
- (b) Post-Approval: The Class Members shall be given notice of:
 - (i) the Court approval of the Settlement Agreement along with the manner and deadline for making Claims along with contact information for both the Claims Administrators and Class Counsel from whom to obtain further information.

- (c) Class Counsel acknowledge that all notices and the Notice Plans must be approved by the Court. No notices shall be disseminated anywhere until such time as they are approved by the Court.
- (d) If Notice Expenses plus Claims Administration Expenses exceed the monies as set out in **Article 3.1(a)(i)**, the difference will be paid from the Compensation Fund amount.

ARTICLE 10: NO ADMISSION OF LIABILITY

10.1 No Admission of Liability Generally

- (a) The Parties agree that, whether or not this Settlement Agreement is approved or is terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussion, and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement shall not be deemed, construed or interpreted to be an admission of any violation of any statute or law or of any wrongdoing or liability by the Releasees or of the truth of any of the claims or allegations made in the Class Action or in any other pleading filed by the Plaintiffs.
- (b) The Parties further agree that whether or not this Settlement Agreement is approved or terminated, neither this Settlement Agreement 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.

10.2 Releasees Have No Liability for Administration

The Releasees have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement.

ARTICLE 11: MISCELLANEOUS

11.1 Best Efforts

The Parties shall use their best efforts to effectuate this Settlement Agreement.

11.2 Motion for Directions

- (a) The Plaintiffs, Class Counsel, Claims Administrator, and the Defendants may apply to the Court for directions in respect of the interpretation, implementation, and administration of this Settlement Agreement.

- (b) All motions contemplated by this Settlement Agreement, including application to the Court for directions, shall be on notice to the Parties.

11.3 Timing

Class Counsel will make their best efforts to bring the Pre-Approval Hearing and the Settlement Approval Hearing as soon after the execution of the Settlement Agreement as possible.

11.4 Headings etc. in this Settlement Agreement

- (a) The division of the Settlement Agreement into Articles and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement.
- (b) The terms “this Settlement Agreement”, “the Settlement Agreement”, “hereto”, “hereunder”, “herein”, and similar expressions refer to this Settlement Agreement and not to any particular section or portion of this Settlement Agreement.

11.5 Governing Law and Ongoing Jurisdiction

- (a) The Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Manitoba.
- (b) The Court shall retain exclusive jurisdiction over all matters relating to the implementation and enforcement of this Settlement Agreement.

11.6 Entire Agreement

- (a) This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes any and all prior and contemporaneous understandings, undertakings, negotiations, representations, communications, promises, agreements, agreements in principle, and memoranda of understanding in connection herewith. The Parties agree that they have not received or relied on any agreements, representations or promises other than as contained in this Settlement Agreement. None of the Parties shall be bound by any prior obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.
- (b) This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto, and any such modification or amendment must be approved by the Court.

11.7 Binding Effect

Once the Settlement Agreement is approved by the Court, this Settlement Agreement shall be binding upon and inure to the benefit of the Plaintiffs, Class Members, the Releasors, the Defendants, the Releasees, Class Counsel, and the Claims Administrator.

11.8 Survival

The representations and warranties contained in this Settlement Agreement shall survive its execution and implementation.

11.9 Counterparts

This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement and an electronically scanned or facsimile signature shall be deemed to be an original signature for the purposes of executing this Settlement Agreement. This Settlement Agreement may be delivered and is fully enforceable in either original, facsimile or other electronic form provided that it is duly executed.

11.10 Negotiated Agreement

There shall be no presumption at law that any ambiguity in this Agreement should be interpreted in favour of or against the interests of any party.

11.11 Dates

Dates referred to in this Settlement Agreement may be altered with the written consent of the Parties and with the approval of the Court.

11.12 Language

The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English.

11.13 Ojibwa (Anishinabec) Translation

An Ojibwa (Anishinabec) translation of this Settlement Agreement, all Schedules hereto, and all notices pursuant to this Settlement Agreement shall be prepared by the Administrators and paid from the Claims and Notice Administration Amount and made available to Class Members upon request.

11.14 Confidentiality

- (a) The Parties agree that no public statements shall be made regarding the Class Action or the Settlement which are in any way inconsistent with the terms of the Settlement Agreement. In particular, the Parties agree that any public statements regarding the Class Action will indicate clearly that the Settlement has been negotiated, agreed, and approved by the Court without any admission or finding of liability or wrongdoing and without any admissions or conclusions as to the trust of any of the facts alleged in the Class Action, all of which are specifically denied by the Defendants.

- (b) Each Party agrees not to disparage the opposite Parties or their counsel with respect to any of the matters in issue in the Class Action or the manner in which the Settlement was conducted. .

11.15 Recitals

The recitals to this Settlement Agreement are true and form part of the Settlement Agreement.

11.16 Schedules

The Schedules annexed hereto form part of this Settlement Agreement.

11.17 Authorized Signatures

Each of the undersigned represents that they are fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement on behalf of the Parties they represent.

11.18 Notice

Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another, such notice, communication or documentation shall be provided by email, facsimile, or letter by overnight delivery to the representative for the Party to whom notice is being provided, as identified below:

For Plaintiffs and Class Counsel:

Michael J. Peerless

Dennis Troniak

McKenzie Lake Lawyers LLP

Troniak Law

140 Fullarton Street
Suite 1800
London ON N6A 5P2

1000-444 St. Mary Avenue
Winnipeg MB R3C 3T1

Tel: (519) 667-2644

Tel: (204) 947-1743

Fax: (519) 672-2674

Fax: (204) 947-0101

Email: peerless@mckenzielake.com

Email: info@troniaklaw.com

For Canada:

Paul Anderson

Prairie Region/Region des Prairies
Department of Justice Canada/
Ministere de la Justice Canada

301-310 Broadway Ave./310
Broadway piece 301
Winnipeg, Manitoba R3C 0S6

Tel: (204) 983-0873

Fax: (204)984-0074

Email: panderso@justice.gc.ca

For Manitoba:

Neil Trenholm

Manitoba Justice
Legal Services Branch
730-405 Broadway
Winnipeg, Manitoba R3C 3L6

Tel: (204) 945-0241


Fax: (204) 948-2041

Email: neil.trenholm@gov.mb.ca

The Parties have executed this Settlement Agreement as of the date on the cover page.


Clifford J. Anderson, Kurvis Anderson, Bertha Travers, Priscilla Anderson, Lillian Traverse, Melloney Francois, Mary Stagg, and Norman Stagg,

Per:


McKenzie Lake Lawyers LLP

Date: Aug 30 / 2017

Per:

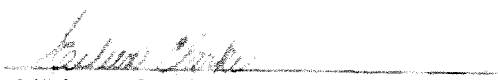

Trohiak Law
Lawyers for the Plaintiffs

Date: Sept 1 / 2017

Date: August 30 2017

Her Majesty the Queen in right of the Province of Manitoba, as represented by the Minister of Indigenous and Northern Relations

Per:


Minister of Indigenous and Northern Relations

Date: September 1, 2017

Her Majesty the Queen in Right of Canada, as
represented by the Minister of Indian Affairs and
Northern Development

Per:

P. Thynell SEP - 1 2017

Chief Finances, Results and Delivery
Officer, Indian Affairs and Northern
Development Canada

SCHEDULE “A”

NOTICE AND CLAIMS ADMINISTRATION PROCEDURES

ARTICLE 1

OVERVIEW OF ADMINISTRATION

General

- 1.1 The procedures set forth herein are for the administration of the Notices and Settlement Agreement and for the payment to Eligible Claimants. These procedures shall be implemented by the Claims Administrator/ Notice Administrator (**hereinafter “Administrator”**) subject to the ongoing authority and supervision of the Court.
- 1.2 The Administrator may adopt additional policies and procedures for the administration of the Settlement Agreement that are consistent with the Settlement Agreement (including these Notice and Claims Administration Procedures). These Notice and Claims Administration Procedures may not be modified or amended except by and instructed in writing by the Parties and, in the case of any material modification or material amendment, with the approval thereof by the Court. Without limitation of the foregoing, the Administrator may, with the consent of the Parties, deviate in any particular instance from the terms of these Notice and Claims Administration Procedures if such deviation if set forth in a formal modification or amendment to the Settlement Agreement, would not require the approval of the Court as specified in the preceding sentence.
- 1.3 The Administrator shall implement the Settlement Agreement so as to provide payments to Eligible Claimants in a timely and efficient manner and to minimize, to the extent reasonably practicable, the administration and other transaction costs associated with the implementation of the Settlement Agreement.
- 1.4 The Administrator shall provide copies of any written communication to or from the Administrator relating in any way to the Settlement Agreement to the Parties. Any counsel entitled to receive copies of such written communication under this provision may waive that entitlement by so advising the Administrator.
- 1.5 The Administrator shall act according to the terms of the Settlement Agreement and these Notice and Claims Administration Procedures and shall sign and adhere to a confidentiality agreement with respect to their work under the Settlement Agreement.
- 1.6 All defined terms are as defined in the Settlement Agreement or herein. All calculations of time and deadlines pursuant to these Notice and Claims Administration Procedures shall be calculated in accordance with the Manitoba Court of Queen’s Bench Rules which are available at <http://web2.gov.mb.ca/laws/rules/qbr1e.php> as Regulation 553/88 to the *Court of Queen’s Bench Act*, C.C.S.M. c. C280.

Responsibilities

- 1.7 In addition (and without limitation), the Administrator shall be responsible for:
- (a) providing adequately trained, supervised, and monitored personnel in such reasonable numbers as are required for the performance of their duties within reasonable timeframes;
 - (b) setting up and maintaining a system for the handling of queries from Class Members in English, and Ojibway including a multilingual toll-free telephone line and website;
 - (c) reporting as required by the Settlement Agreement (including these Notice and Claims Administration Procedures) including the provision of the Opt-Out Report and Class Member comments, reporting to the Parties with respect to the implementation of the Settlement Agreement generally and as to the total amount of money distributed, the amount of money remaining in the Settlement Account, and the interest accrued;
 - (d) co-ordinating with the Parties and holding administrative conference calls to advise them of the progress of the administration of the Settlement Agreement, as needed; and
 - (e) such other duties and responsibilities as the Court may, from time to time, direct.

Communication

- 1.8 The Administrator shall employ , English, and Ojibway speaking persons with appropriate experience and/or provide appropriate training so as to communicate effectively with all Class Members.
- 1.9 The Administrator shall establish a multilingual toll-free call centre for the assistance of Class Members and to provide Class Members with information on the status of their Claims.
- 1.10 The Administrator shall establish a multilingual website for the assistance of Class Members.
- 1.11 All written communications from the Administrator shall be delivered by regular Canada Post mail.

ARTICLE 2

NOTICE ADMINISTRATION

- 2.1 The Administrator shall disseminate both the Pre-Approval and Settlement Approval Notices in accordance with the Settlement Agreement and **Schedules D** and **G** thereto, and in accordance with Court approval Orders regarding same.
- 2.2 In respect of the Pre-Approval Notice, the Administrator shall:
- (a) make Opt-Out Forms available to Class Members via posting a pdf version on their website and mailing a hard-copy to any Class Member requesting it;
 - (b) in accordance with the Settlement Agreement, at Article 5.3, prepare an Opt-Out Report, to be provided to the Parties advising as to the number of Opt-Outs, the reasons for their opting-out, if known, and a copy of all information provided, including the Opt-Out Form;
 - (c) in accordance with the Settlement Agreement and Schedules thereto, collect all written comments from Class Members in respect of the Settlement Agreement and provide copies to the Parties in advance of the Settlement Approval Hearing; and
 - (d) post a copy of the Settlement Agreement in pdf format on their website and provide hard copies of the Settlement Agreement to any Class Member requesting a copy, by regular mail.
- 2.3 In respect of the Settlement Approval Notice, the Administrator shall:
- (a) post the short and long-form versions of the Settlement Approval Notice on their website;
 - (b) create, in consultation with the Parties and “Frequently Asked Questions” document and post same on their website; and
 - (c) make Claim Forms available to Class Members via posting a pdf version on their website and mailing a hard-copy to all Class Member for whom contact information has been provided to them by the Parties, and/or any Class Member requesting a copy.

ARTICLE 3.

CLAIMS ADMINISTRATION

- 3.1 As provided for in the Settlement Agreement, the Administrator shall be responsible for:
- (a) conducting workshops throughout Manitoba, assisting Class Members in completing Claim Forms;

- (b) assessing claims eligibility and making payment determinations in accordance with the terms of the Settlement Agreement and Schedules thereto;
 - (c) disbursing monies out of the Claims Program Account in accordance with the Settlement Agreement and the Schedules thereto and these Notice and Claims Administration Procedures or upon directions issued by the Court;
 - (d) assessing and disbursing Honoraria payments to Representative Plaintiffs in accordance with the terms of the Settlement Agreement;
 - (e) holding, investing, and disbursing funds in the Claims Program Account in accordance with the terms of the Settlement Agreement.
- 3.2 The Administrator shall take all reasonable steps to minimize the imposition of taxes upon monies held from time to time in the Claims Program Account.
- 3.3 In accordance with Article 3.3.6 of the Settlement Agreement, the Administrator within 15 days after the expiry of the Claims Deadline, shall prepare a Payment Calculation Report setting forth the following information:
- (a) a list of Eligible Claimants;
 - (b) the Points awarded to each Eligible Claimant;
 - (c) the Disruption Payment due to each Eligible Claimant;
 - (d) the Special Circumstances Fund payment due to each Eligible Claimant, if applicable; and
 - (e) the Honoria due to each Plaintiff, if applicable.

The Claims Administrator shall send an electronic copy of the Payment Calculation Report to Class Counsel and the Defendants.

- 3.4 If any payment to an Eligible Claimant is returned to the Claims Administrator, the Claims Administrator will make best efforts to ascertain the reason for the returned payment (i.e. will conduct searched for updated Eligible Claimant contact information or confirm the reason for the return of the payment and advise the Parties accordingly).
- 3.5 Following a period of one hundred and eighty (180) days after final payments have been issued, any un-cashed cheques will be cancelled and the monies distributed pursuant to the Settlement Agreement.

ARTICLE 4. MISCELLANEOUS

Extension of Deadlines

- 4.1 The Parties jointly may from time to time in their absolute discretion extend any of the periods or deadlines prescribed herein relating to the administration or processing of claims, either generally or in relation to particular Class Members.
- 4.2 No failure of the Administrator to meet any deadline for the administration, processing, evaluation or adjudication of claims shall give rise to any Class Member becoming entitled to receive any benefits pursuant to the Settlement Agreement or any liability of the Administrator to any Class Member.

Privacy of Communications

- 4.3 Any personal information provided by or regarding any Class Member or such information otherwise obtained pursuant to the Settlement Agreement (including these Notice and Claims Administration Procedures) shall be kept confidential and shall not be disclosed except to appropriate persons to the extent necessary to provide payment pursuant to the Settlement Agreement or as otherwise expressly provided in the Settlement Agreement and the Schedules thereto. All Class Members shall be deemed to have consented to the disclosure of this information for these purposes.

Settlement Agreement

- 4.4 In the event of any conflict between these Notice and Claims Administration Procedures and the Settlement Agreement, the provisions of the Settlement Agreement shall prevail.

SCHEDULE “B”

OPT-OUT FORM

This is NOT a Claim Form. This form EXCLUDES you from participating in the Settlement Agreement. DO NOT fill out this form if you wish to participate in the Settlement Agreement.

A class action lawsuit was commenced in Manitoba alleging that the Defendants’ negligence caused damage by way of causing a flood in 2011 to Lake St. Martin, Dauphin River, Little Saskatchewan, and Pinaymootang First Nations (the “2011 Flooding”).

The Manitoba Court of Appeal certified this class action for the following class:

All Members of the listed First Nations:

- i. whose property on Reserve, real or personal, was flooded in 2011; or
- ii. who were evacuated, displaced or were unable to reside on Reserve because of the flooding on Reserve in 2011; or
- iii. who were unable to work and thereby earn income because of the flooding on Reserve in 2011.

If you want to opt-out of the Class, meaning, it means you will not be entitled to any payment under the Settlement Agreement, if the Court approves it. But, you keep your legal rights to sue on your own about the same legal claims made in this lawsuit (subject to any limitation periods that may apply).

If you want to opt-out of the Class, this Opt-Out Form must be completed, signed, sent, and post-marked by regular mail or fax **no later than November 30, 2017** to the Opt-Out Notice Administrator at the address listed at the end of this Opt-Out Form. No further opportunity to opt-out will be provided.

No person may opt-out a minor or a mentally incompetent or vulnerable individual without permission of the Court and after notice to the Public Guardian and Trustee of Manitoba.

Please read the entire form and follow the instructions carefully.

1. **Personal Information:** Please provide the following information about yourself, or if you are filing this Opt-Out Form as the legal representative of a Class Member, please provide the following information about the Class Member.

Current name and other names (ie. maiden names, married names) used by the Class Member for the past ten years (last name first, following by first name and middle initial):

Prefix: ☐ Mr. ☐ Mrs. ☐ Miss ☐ Ms. ☐ Dr.

First Name

Middle Name

Last Name

Prior Last Name

Relationship to Class Member (*i.e.*, spouse or child)

Date of Birth (Day/Month/Year)

Street Address

City

Province /Territory

Postal Code

()

()

Daytime Phone Number

Evening Phone Number

e-mail address

Language Preference:

English ☐

Ojibwa ☐

2. **Legal Representative Information (if applicable):** If you are filing this Opt-Out Form as the legal representative of a Class Member (ie. as the executor of his/her estate), please

provide the following information about **yourself** and attach a copy of your Court approval or other authorization to represent the Class Member.

Last Name	First Name	Middle Initial
-----------	------------	----------------

Street Address

City	Province /Territory	Postal Code
------	---------------------	-------------

()	()	
--------	--------	--

Daytime Phone Number	Evening Phone Number	e-mail address
----------------------	----------------------	----------------

Type of Legal Representative (e.g. executor, guardian)

Please attach a copy of a court order or other official document(s) demonstrating that you are the duly authorized legal representative of the Class Member and check the box below describing the Class Member's status:

- ☐ minor (court order appointing guardian or property or custody order, if any, or sworn affidavit of the person with custody of the minor);

- ☐ a mentally incompetent or vulnerable person (copy of an enduring power of attorney for property, or a court order appointing a committee of property, or appointment of substitute decision maker over property);

- ☐ Grant of Probate, Administration Order or Letters of Administration.

3. **Lawyer Information (if applicable):** If you or the Class Member have hired a lawyer in connection with a claim arising from the 2011 Flooding, please provide the following information about the lawyer:

Law Firm Name _____

Lawyer's Last Name _____ First Name _____ Middle Initial _____

Address _____

City _____ Province _____

Postal Code _____

Phone _____ Fax _____

Email _____

Law Society Number _____

4. **Acceptance and Acknowledgement**

I have read the foregoing and understand that by opting out, I will never be eligible to receive any compensation pursuant to the Settlement Agreement with the Defendants.

Date signed	Signature
	(Class Member or Executor, Administrator, or Personal Representative)

Print Name

If you have questions about using or completing this Form, contact your lawyer or call the Opt-Out Notice Administrator's Information Line at ●

RICEPOINT



THE INFORMATION CONTAINED IN THIS FORM WILL REMAIN CONFIDENTIAL

SCHEDULE "C"

SHORT FORM – Certification, Opt-Out and Settlement Approval Hearing Notice

2011 MANITOBA FLOOD CLASS ACTION NOTICE of CERTIFICATION and SETTLEMENT APPROVAL HEARING

To anyone who is a member of the Pinaymootang (Fairford), Little Saskatchewan, Lake St. Martin, or Dauphin River First Nations, who lived in Manitoba during the 2011 Flood:
A Class Action Lawsuit May Affect Your Legal Rights.

CERTIFICATION

The Courts have determined that the class action is certified and can proceed as a group action rather than having each member of the class bring a separate lawsuit.

SETTLEMENT

Following certification the parties entered into negotiations and have settled the lawsuit. The settlement must be approved by the Court before settlement benefits can be paid to the class. If the settlement is approved another Notice will be published with details on how to make a claim for payment.

The **Settlement Approval Hearing** is scheduled to occur on January 12, 2018 at 10:00 am at the Law Courts, 408 York Avenue, Winnipeg Manitoba.

Settlement Outline:

While not admitting wrongdoing, the Governments of Manitoba and Canada have agreed to pay **\$90,283,000.00**. This amount includes a contribution towards lawyer ("Class Counsel") fees and expenses as well as Administration costs.

All members of the Pinaymootang (Fairford), Little Saskatchewan, Lake St. Martin, and Dauphin River First Nations resident in Manitoba at the time of the 2011 flood are eligible to make claims for both Disruption Payments and Special Circumstances compensation.

Because payments under the settlement are based on the number of people that come forward to make claims, it is not possible to estimate the amounts eligible Class Members may receive.

The timing and process for making a claim and receiving payment under the Settlement Agreement will be available in another Notice if the Settlement Agreement is approved by the Court.

WHAT YOU NEED TO DO: YOUR OPTIONS AT THIS STAGE

Do Stay in this lawsuit. Share in the Settlement Agreement, if Court approved. Give up certain rights.

Nothing

By doing nothing, you will be entitled to participate in the Settlement, but you give up any rights to sue on your own about the same claims made in this lawsuit.

By staying in the lawsuit, you have a right to submit comments on the Settlement that the Court will consider at the Approval Hearing. If you wish to make a comment, you must submit your written comment to the Notice Administrator no later than **November 30, 2017**.

Remove Yourself

("Opt Out")

Get out of this lawsuit. Get no money or benefits from the Settlement. Keep your legal rights to sue on your own.

If you ask to be removed ("opt out"), you will not be entitled to any payment under the Settlement. You keep your legal rights to sue on your own about the same legal claims made in this lawsuit (subject to any limitation periods that may apply).

To remove yourself ("opt-out") of the lawsuit and any Settlement that is approved by the Court, you must complete and return an "Opt-Out" Form to the Notice Administrator no later than **November 30, 2017**.

NOTICE ADMIN CONTACT INFO]

LEARNING MORE

The Court Office will NOT be able to answer questions about the matters in this Notice. If you have any questions regarding the Certification or about the Settlement Agreement, information is available by contacting Class Counsel at:

McKenzie Lake Lawyers LLP

Troniak Law

Website: www.mckenzielake.com

www.Troniaklaw.com

Email: manitobaflood@mckenzielake.com

troniaklawoffice@gmail.com

Phone: 1.844.672.5666

1.877.947.1743

IMPORTANT DATES:

Opt-Out Deadline: November 30, 2017

Comment Deadline: November 30, 2017

Settlement Approval Hearing: January 12, 2018

SCHEDULE “D”

LONG FORM – Certification, Opt-Out and Settlement Approval Hearing Notice

2011 MANITOBA FLOOD CLASS ACTION NOTICE OF CERTIFICATION AND SETTLEMENT APPROVAL HEARING

To anyone who is a member of the Pinaymootang (Fairford), Little Saskatchewan, Lake St. Martin, or Dauphin River First Nations, who lived in Manitoba during the 2011 Flood

A Class Action Lawsuit May Affect Your Rights.

This is a court authorized notice. You are not being sued.

BACKGROUND INFORMATION

Severe flooding in Manitoba in 2011 led to the evacuation of many members of these First Nations. On April 3, 2012 a class action was commenced against the Governments of Manitoba & Canada for damages suffered by members of the class in relation to the flooding (i.e. damage to their personal property and evacuation from the Reserves).

CERTIFICATION

The Courts have determined that the class action is certified, and can proceed as a group action rather than having each member of the class bringing a separate lawsuit.

SETTLEMENT APPROVAL HEARING

Following the certification the parties entered into negotiations and have settled the lawsuit. This settlement must be approved by the Court before settlement benefits can be paid to the

class. If approved another Notice will be published with details on how to make a claim for payment.

The Settlement Approval Hearing is scheduled to occur on January 12, 2018 at 10:00 am at the Law Courts, 408 York Avenue, Winnipeg Manitoba.XXXXXXX at XXXXXX.

SETTLEMENT SUMMARY

The basic terms of the Settlement Agreement are as follows:

- All members of the Pinaymootang (Fairford), Little Saskatchewan, Lake St. Martin, and Dauphin River First Nations resident in Manitoba at the time of the 2011 flood are eligible to make claims for both Disruption Payments and Special Circumstances compensation as outlined below.
 - Disruption Payments will be based on a point system that takes into account how long Class Members were evacuated and/or living in adverse conditions and whether or not they were residents of the reserves or resided elsewhere in Manitoba.
 - Special Circumstances Payments. In addition to the Disruption Payments, Class Members who have verifiable personal property losses/repair costs, income loss and/or health care costs not already compensated, *may* be eligible for additional payments.
- While not admitting wrongdoing, the Governments of Manitoba and Canada have agreed to pay **\$90,283,000.00**. This amount includes a contribution towards lawyer (“Class Counsel”) fees and expenses as well as Administration costs.
- Because the payments under the settlement are based on the number of people that come forward to make claims/receive payments, it is not possible to estimate the amounts eligible Class Members may receive.

- The timing and process for making a claim and receiving payment under the Settlement Agreement will be available in a further Notice if the Settlement Agreement is approved by the Court.

*Further details on the Settlement Agreement can be viewed at **www.mckenzielake.com** and **www.troniaklaw.com**, or by contacting Class Counsel as listed below.*

WHAT YOU NEED TO DO - YOUR OPTIONS AT THIS STAGE

Do Nothing

Stay in this lawsuit. Share in the Settlement Agreement, if Court approved. Give up certain rights.

By doing nothing, you will be entitled to participate in the Settlement, but you give up any rights to sue on your own about the same claims made in this lawsuit.

By staying in the lawsuit, you have a right to submit comments on the Settlement Agreement that the Court will consider at the Settlement Approval Hearing. If you wish to make a comment on the Settlement Agreement, you must submit your written comment to the Notice Administrators no later than **November 30, 2017**.

Remove Yourself ("Opt Out")

Get out of this lawsuit. Get no money or benefits from the Settlement. Keep your legal rights to sue on your own.

If you ask to be removed ("opt out"), you will not be entitled to any payment under the Settlement Agreement, if the Court approves it. But, you keep your legal rights to sue on your own about the same legal claims made in this lawsuit (subject to any limitation periods that may apply).

To remove yourself ("opt-out") of the lawsuit and any Settlement that is approved by the Court, you must act by **November 30, 2017**.

You must complete and return an "Opt-Out" Form to the Notice Administrator before **November 30, 2017**.

[NOTICE ADMIN CONTACT INFO]

LEGAL FEES

At or after the Settlement Approval Hearing, Class Counsel (**McKenzie Lake Lawyers LLP** and **Troniak Law**), will also seek court approval of their legal fees not to exceed 15% of the Settlement Amount, plus disbursements and applicable taxes.

LEARNING MORE

The Court Office will be unable to answer any questions about the matters in this Notice. If you have any questions regarding the certification or about the Settlement Agreement, information is available by contacting Class Counsel at:

	<u>McKenzie Lake Lawyers LLP</u>	<u>Troniak Law</u>
Website:	www.mckenzielake.com	www.Troniaklaw.com
Email:	manitobaflood@mckenzielake.com	troniaklawoffice@gmail.com
Phone:	1.844.672.5666	1.877.947.1743

This Notice was approved by order of the Court of Queen's Bench of Manitoba

SCHEDULE “E”

Pre-Approval Notice Dissemination Plan

A. The Short-Form Notice

The Short-Form of the Pre-Approval Notice shall be disseminated as follows:

Direct Mail

1. Mailed directly to all Class Members for whom contact information has been provided to the Notice Administrator; and
2. Mailed to anyone requesting a copy.

Publication

3. An information Press Release shall be issued across the CNW newswire in English and Ojibwa, to be disseminated to all major digital, print and broadcast news outlets across Canada.
4. Published once in the weekend edition and once in the daily edition of the following newspaper publications:
 - (a) First Nations Drum;
 - (b) Winnipeg Free Press; and
 - (c) The Brandon Sun

Radio Broadcast

5. Broadcasting English and Ojibwa language radio advertisements, over a variety of dayparts (i.e. morning/evening, day, peak time and late night), on the NCI FM radio station.

B. The Long-Form Notice

1. The Long-Form of the Pre-Approval Notice shall be posted on Class Counsel's and the Notice Administrator's websites.

SCHEDULE “F”

PRE-APPROVAL ORDER

File No: CI 12 01-77146

**THE QUEEN’S BENCH
WINNIPEG JUDICIAL CENTRE**

BETWEEN:

CLIFFORD J. ANDERSON, KURVIS ANDERSON,
BERTHA TRAVERS, PRISCILLA ANDERSON, LILLIAN TRAVERSE,
MATHEW TRAVERSE, MELLONEY FRANCOIS, MARY STAGG,
NORMAN STAGG, DAUPHIN RIVER FISHERIES COMPANY LTD.

(Plaintiffs) Appellants

- and -

THE GOVERNMENT OF MANITOBA, THE ATTORNEY GENERAL FOR CANADA AND
THE MANITOBA ASSOCIATION OF NATIVE FIREFIGHTERS INC.

(Defendants) Respondents

-and-

DAUPHIN RIVER FIRST NATION, LAKE ST. MARTIN FIRST NATION, LITTLE
SASKATCHEWAN FIRST NATION AND PINAYMOOTANG FIRST NATION

Third Parties

Proceeding under *The Class Proceedings Act, C.C.S.M. c. C130*

ORDER

McKENZIE LAKE LAWYERS LLP

1800 – 140 Fullarton Street
London, ON N6A 5P2
Tel: 519-672-5666
Fax: 519-672-2674
Michael Peerless (LSUC #34127P)
Sabrina Lombardi (LSUC#52116R)

TRONIAK LAW

1000-444 St. Mary Ave.
Winnipeg, MB R3C 3T1
Tel: 204-947-1743
Fax: 204-947-0101
Dennis Troniak (LSM #1977074)
Jon Troniak (LSM#2012006)

Lawyers for the Plaintiffs

**THE QUEEN'S BENCH
WINNIPEG JUDICIAL CENTRE**

THE HONOURABLE) _____, THE _____
JUSTICE EDMOND) DAY OF _____, 2017

BETWEEN:

**CLIFFORD J. ANDERSON, KURVIS ANDERSON,
BERTHA TRAVERS, PRISCILLA ANDERSON, LILLIAN TRAVERSE,
MATHEW TRAVERSE, MELLONEY FRANCOIS, MARY STAGG,
NORMAN STAGG, DAUPHIN RIVER FISHERIES COMPANY LTD.**

(Plaintiffs) Appellants

- and -

**THE GOVERNMENT OF MANITOBA, THE ATTORNEY GENERAL FOR CANADA
AND THE MANITOBA ASSOCIATION OF NATIVE FIREFIGHTERS INC.**

(Defendants) Respondents

-and-

**DAUPHIN RIVER FIRST NATION, LAKE ST. MARTIN FIRST NATION, LITTLE
SASKATCHEWAN FIRST NATION AND PINAYMOOTANG FIRST NATION**

Third Parties

Proceeding under *The Class Proceedings Act, C.C.S.M. c. C130*

ORDER

THIS MOTION made by the Plaintiffs for an order, *inter alia*, approving the form and content of the notice that will advise Class Members of the Certification, Opt-Out Rights and Deadline, Commentary Right and Deadline and the Settlement Approval Hearing date and

location (“Pre-Approval Notice”), as well as the manner of dissemination of such notice, was heard at the Courthouse, 408 York Avenue, Winnipeg, Manitoba.

UPON READING the materials filed, including the Manitoba Court of Appeal’s Certificate of Decision, dated January 25, 2017 and the Plaintiffs’ Motion Record and the Settlement Agreement and upon hearing the submissions of Class Counsel and counsel for the Defendants and upon being advised that:

- a. The Manitoba Court of Appeal’s Certificate of Decision, dated January 25, 2017, certified this action as a class proceeding, pursuant to *The Class Proceedings Act*, C.C.S.M. c.C130, subject to further order of this Court, on the basis of the following common issues:
 - a. Did the Defendant, Government of Manitoba, owe a duty of care to the plaintiffs in the management and operation of the water-control structures at the Shellmouth Dam, Portage Diversion and Fairford Dam between September 1, 2010 and December 31, 2011;
 - b. Did the Defendant, Government of Manitoba, owe a duty of care to the plaintiffs in the design, selection and implementation of the flood-control measures taken in 2011;
 - c. Did the Defendant, Government of Manitoba, breach the duty of care owed to the plaintiffs in the management and operation of the water-control structures at the Shellmouth Dam, Portage Diversion and Fairford Dam between September 1, 2010 and December 31, 2011;
 - d. Did the Defendant, Government of Manitoba, breach the duty of care owed to the plaintiffs in the design, selection and implementation of the flood-control measures taken in 2011;
 - e. Did the Defendant, Government of Manitoba, interfere with the treaty rights of the members of the Pinaymootang, Little Saskatchewan, Lake St. Martin, and Dauphin River classes by the flooding and flood-control measures which were taken in 2011; and
 - f. Did the Defendant Government of Manitoba by its actions cause flooding to occur on the Pinaymootang (Fairford), Little Saskatchewan, Lake St. Martin and Dauphin River Reserves?
- b. The Parties, by their counsel, entered into a Memorandum of Understanding on May 31, 2017 which formed the foundation of the Settlement Agreement (the “Settlement Agreement”) executed September 1, 2017;
- c. The Settlement Agreement seeks to resolve this action and all the claims that were or could have been asserted against the Defendants; and
- d. Ricepoint Administration Inc. consents to being appointed as the Notice Administrator to disseminate this notice pursuant to this Order;

1. **THIS COURT ORDERS** that for the purposes of this Order, the definitions set out in the Settlement Agreement attached hereto as Schedule “A” apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that the certified Class is defined as: all persons, or their estates, who are or were a member of one of the four First Nations and ordinarily resident in Manitoba during the 2011 Flood.
3. **THIS COURT DECLARES** that the nature of the claims asserted on behalf of the certified Class against the Defendant, the Government of Manitoba, are for negligence, nuisance and breach of treaty rights.
4. **THIS COURT ORDERS** that Clifford J. Anderson, Kurvis Anderson, Bertha Travers, Priscilla Anderson, Lillian Traverse, Melloney Francois, Mary Stagg and Norman Stagg be and are hereby appointed as the representative plaintiffs in the within proceeding;
5. **THIS COURT ORDERS** that the motion for the Settlement Approval Hearing shall be heard on January 12, 2018 at the Courthouse, 408 York Avenue, Winnipeg, Manitoba;
6. **THIS COURT ORDERS** that the form and content of the long and short-form Pre-Approval Notice, substantially in the form attached hereto as Schedules “B” and “C”, be and are hereby approved.
7. **THIS COURT ORDERS** that the form and content of the Opt-Out Form, substantially in the form attached hereto as Schedule “D”, be and is hereby approved.
8. **THIS COURT ORDERS** that the proposed manner of publishing the Pre-Approval Notice, substantially in the form attached hereto as Schedule “E”, be and is hereby approved (the “Pre-Approval Notice Plan”).
9. **THIS COURT ORDERS** that the Pre-Approval Notice and Pre-Approval Notice Plan constitute fair and reasonable notice to the Class of the certification of this action, the right to opt-out of this litigation, the hearing seeking approval of the Settlement Agreement, the right of Class Members to comment on the Settlement Agreement for the benefit of the Court at the approval hearing, and satisfies the requirements of sections 19, 21, 22, and 35 of *The Class Proceedings Act*, C.C.S.M. c. C130.
10. **THIS COURT ORDERS** that all Class Members who wish to opt-out of the action and thereby preserve their claims, if any, must elect not to participate in the Settlement Agreement and must mail a fully completed and executed Opt-Out Form to the Administrator which must be received or postmarked within forty-five (45) days following first publication of the Settlement Approval Hearing Notice/Opt-Out Notice. No further opportunity to opt-out of this action will be provided. Class Members who have opted-out shall not be entitled to participate or have the opportunity to participate in the future in the action, shall not be entitled to any payments under the Settlement

Agreement, and shall not be entitled to appear at any hearing or comment on the settlement of this action or the Settlement Agreement.

11. **THIS COURT ORDERS** that no person may opt-out a minor or mentally incompetent or vulnerable Class Member without the permission of the Court after notice to the Public Guardian and Trustee of Manitoba.
12. **THIS COURT ORDERS** that Ricepoint Administration Inc. is appointed as Notice Administrator to carry out the Notice Plan and to receive any Opt-Out Forms submitted as well as to carry out the other functions, roles, and responsibilities contemplated in the Settlement Agreement, subject always to the terms and conditions of the Settlement Agreement, including further Order of this Court, as contemplated therein.
13. **THIS COURT ORDERS** that the Pre-Approval Notice shall be given to Class Members in the manner described in the Pre-Approval Notice Plan as soon as practicable.
14. **THIS COURT ORDERS** that within seven (7) days after the expiration of the Opt-Out Deadline, the Notice Administrator shall report to the Defendants and Class Counsel by way of affidavit and advise as to the names and addresses of any Opt-Outs, the reasons for their opting out, if known, and a copy of all information provided by that Opt-Out (including a copy of the Opt-Out Form as executed and delivered by such Opt-Out).
15. **THIS COURT ORDERS** that Class Members may submit written comments regarding the approval of the Settlement Agreement before the deadline set out in the Pre-Approval Notice to the Notice Administrator who shall file all such submissions with the Court prior to the Approval Hearing. Class Members (or their counsel) who do not file a written comment and indicate that they (or their counsel) intend to appear at the Approval Hearing may not be entitled to appear and raise any comment at the Approval Hearing, at the Court's discretion.
16. **THIS COURT ORDERS** that the costs and fees of the Notice Administrator payable pursuant to the Settlement Agreement shall be paid by the Defendants and if the Settlement Agreement is approved shall be treated as partial payment of the Claims Administration and Notice Expenses. If the Settlement Agreement is not approved, the notice costs paid by the Notice Administrator to disseminate the Pre-Approval Notice, shall nevertheless be paid by the Government of Manitoba and the Attorney General of Canada.
17. **THIS COURT ORDERS** that if the Settlement Agreement is terminated in accordance with its terms, without restricting the application of the provisions of the Settlement Agreement:
 - a. This Order shall be set aside and be of no further force or effect and without prejudice to any party; and

- b. All negotiations, statements, and proceedings relating to the Settlement Agreement shall be deemed to be without prejudice to the rights of the Parties, and the Parties shall be deemed to be restored to their respective positions existing immediately before the Settlement Agreement was executed.

Justice Edmond
Manitoba Court of Queen's Bench

SCHEDULE “G”

SETTLEMENT APPROVAL ORDER

File No: CI 12 01-77146

**THE QUEEN’S BENCH
WINNIPEG JUDICIAL CENTRE**

BETWEEN:

CLIFFORD J. ANDERSON, KURVIS ANDERSON,
BERTHA TRAVERS, PRISCILLA ANDERSON, LILLIAN TRAVERSE,
MATHEW TRAVERSE, MELLONEY FRANCOIS, MARY STAGG,
NORMAN STAGG, DAUPHIN RIVER FISHERIES COMPANY LTD.

(Plaintiffs) Appellants

- and -

THE GOVERNMENT OF MANITOBA, THE ATTORNEY GENERAL FOR CANADA AND
THE MANITOBA ASSOCIATION OF NATIVE FIREFIGHTERS INC.

(Defendants) Respondents

-and-

DAUPHIN RIVER FIRST NATION, LAKE ST. MARTIN FIRST NATION, LITTLE
SASKATCHEWAN FIRST NATION AND PINAYMOOTANG FIRST NATION

Third Parties

Proceeding under *The Class Proceedings Act, C.S.S.M. c. C130*

ORDER

McKENZIE LAKE LAWYERS LLP

1800 – 140 Fullarton Street
London, ON N6A 5P2
Tel: 519-672-5666
Fax: 519-672-2674
Michael Peerless, LSUC #34127P
William Jenkins, LSUC #10055D
Sabrina Lombardi, LSUC #52116R
Lawyers for the Plaintiffs

TRONIAK LAW

1000-444 St. Mary Ave.
Winnipeg, MB R3C 3T1
Tel: 204-947-1743
Fax: 204-947-0101
Dennis Troniak, LSM #1977074
Jon Troniak, LSM #2012006

**THE QUEEN'S BENCH
WINNIPEG JUDICIAL CENTRE**

THE HONOURABLE) _____, THE _____
JUSTICE EDMOND) DAY OF _____, 2017

BETWEEN:

**CLIFFORD J. ANDERSON, KURVIS ANDERSON,
BERTHA TRAVERS, PRISCILLA ANDERSON, LILLIAN TRAVERSE,
MATHEW TRAVERSE, MELLONEY FRANCOIS, MARY STAGG,
NORMAN STAGG, DAUPHIN RIVER FISHERIES COMPANY LTD.**

(Plaintiffs) Appellants

- and -

**THE GOVERNMENT OF MANITOBA, THE ATTORNEY GENERAL FOR CANADA
AND THE MANITOBA ASSOCIATION OF NATIVE FIREFIGHTERS INC.**

(Defendants) Respondents

-and-

**DAUPHIN RIVER FIRST NATION, LAKE ST. MARTIN FIRST NATION, LITTLE
SASKATCHEWAN FIRST NATION AND PINAYMOOTANG FIRST NATION**

Third Parties

Proceeding under *The Class Proceedings Act, C.S.S.M. c. C130*

ORDER

THIS MOTION made by the Plaintiffs for an order, *inter alia*, approving the Settlement Agreement dated September 1, 2017 attached to this Order as Schedule "A" and dismissing the Action was heard at the Courthouse, 408 York Avenue, Winnipeg, Manitoba.

UPON READING the materials filed, including the Plaintiffs' Motion Record and the Settlement Agreement and upon hearing the submissions of Class Counsel and counsel for the Defendants:

1. **THIS COURT ORDERS** that for the purposes of this Order, the definitions set out in the Settlement Agreement attached hereto as Schedule "A" apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that the settlement as set forth in this Order and in the Settlement Agreement is fair, reasonable, and in the best interests of the Class.
3. **THIS COURT ORDERS** that the settlement of this action on the terms set forth in the Settlement Agreement be and is hereby approved pursuant to section 35 of *The Class Proceedings Act*.
4. **THIS COURT ORDERS** that the Settlement Agreement in its entirety (including its preambles, recitals, and schedules) forms part of this Order and has the full force and effect of an Order of this Court.
5. **THIS COURT ORDERS** that the Settlement Agreement shall be implemented in accordance with its terms and is valid and binding on (a) the Plaintiffs, (b) all Class Members, including persons who are minors or are under a disability as defined in the *Queen's Bench Rules*, and (c) the Government of Manitoba and Attorney General for Canada.
6. **THIS COURT ORDERS** that the need for service of this or any further or subsequent steps in these proceedings on the Public Guardian and Trustee, as well as all other requirements in Rule 7 of the *Queen's Bench Rules* are hereby dispensed with.
7. **THIS COURT ORDERS** that this Order, including the Settlement Agreement, is binding upon each Class Member including those persons who are minors or mentally incapable, and the requirements of Rules 7.04 and 7.08 of the *Court of Queen's Bench Rules* are dispensed with in respect of this action.
8. **THIS COURT ORDERS** that any distribution of the Settlement under the Claims Process to infant Class Members shall be paid into Court in trust in accordance with the provisions of Rule 7.09 of the *Court of Queen's Bench Rules*.
9. **THIS COURT ORDERS** that this Order constitutes the full and final resolution of all Released Claims connected with the 2011 Flood, including, without limitation, all claims and causes of action raised by the Plaintiffs and all other Releasors.
10. **THIS COURT ORDERS** that each Plaintiff and all other Releasors shall be deemed to have released and do hereby release each Releasee from any and all Released Claims as set out in Article 4 of the Settlement Agreement.

11. **THIS COURT ORDERS** that the Releasors are forever barred and enjoined from continuing, commencing, instituting or prosecuting any action in Canada, on their own behalf or on behalf of any class or any other person, asserting against any Releasee any Released Claims.
12. **THIS COURT ORDERS** that upon the date of this Order, any other proceeding by a Releasor in Manitoba shall be and is hereby dismissed without costs and with prejudice.
13. **THIS COURT ORDERS** that the Government of Manitoba and the Attorney General for Canada shall pay the Settlement Amount within thirty (30) days of the Effective Date.
14. **THIS COURT ORDERS** that upon the occurrence of the Effective Date, this action shall be and is hereby dismissed without costs and with prejudice.
15. **THIS COURT ORDERS** that Ricepoint Administration Inc. is appointed as the Claims Administrator and they shall execute their obligations as set out in the Settlement Agreement and Schedules thereto.
16. **THIS COURT ORDERS** that for the purposes of the enforcement of this Order, this Court will retain jurisdiction and the Parties and Class attorn to the jurisdiction of this Court for these purposes.
17. **THIS COURT ORDERS** that the Government of Manitoba and the Attorney General for Canada have no liability whatsoever with respect to the administration of the Settlement Agreement.
18. **THIS COURT ORDERS** that the Approval Notice is hereby approved substantially in the forms attached hereto as Schedule “B” (Short Form) and Schedule “C” (Long Form).
19. **THIS COURT ORDERS** that the Notice Plan for the publication and dissemination of the Approval Notice, attached hereto as Schedule “D”, is approved and shall be performed as soon as practicable.
20. **THIS COURT ORDERS** that if the Settlement Agreement is terminated in accordance with its terms, then, without restricting the application of the provisions of the Settlement Agreement, (a) this Order shall be set aside and be of no further force or effect, and without prejudice to any party, and (b) all negotiations, statements and proceedings relating to the Settlement Agreement shall be deemed to be without prejudice to the rights of the Parties, and the Parties shall be deemed to be resorted to their respective positions existing immediately before the Settlement Agreement was executed.

Justice Edmond

Manitoba Court of Queen's Bench

SCHEDULE "H"

SHORT FORM –Settlement Approval Notice

2011 MANITOBA FLOOD CLASS ACTION SETTLEMENT APPROVAL

To anyone who is a member of the Pinaymootang (Fairford), Little Saskatchewan, Lake St. Martin, or Dauphin River First Nations, who lived in Manitoba during the 2011 Flood:

SETTLEMENT

A Settlement Agreement has been reached and approved by the Manitoba Court of Queen's Bench that settles the litigation involving the severe flooding in Manitoba in 2011 that led to the evacuation of and/or adverse conditions endured by members of the Pinaymootang (Fairford), Little Saskatchewan, Lake St. Martin, and Dauphin River First Nations.

While not admitting wrongdoing, the Governments of Manitoba and Canada have agreed to pay **\$90,283,000.00**. This amount includes lawyer ("Class Counsel") fees and expenses as well as Administration costs.

All members of the Pinaymootang (Fairford), Little Saskatchewan, Lake St. Martin, and Dauphin River First Nations resident in Manitoba at the time of the 2011 flood can make claims for Disruption Payments and Special Circumstances compensation:

- **Disruption Payments:** For the disruption the Eligible Claimant endured on account of the 2011 Flood, including his/her evacuation, or, if not evacuated, the adverse conditions he/she was subjected to while remaining on reserve. These payments will be determined on a point system that takes into account the length of time an Eligible Claimant was evacuated and/or living under adverse conditions and whether or not the Eligible Claimant was resident on or off one of the Four First Nations reserves.
- **Special Circumstances:** Eligible Claimants may also apply for compensation in respect of personal property loss or damage, income loss and/or health care costs or personal injuries relating to the 2011 flooding that have not already been compensated.

Because payments under the Settlement are based on the number of people that come forward to make claims, it is

not possible to estimate the amounts Eligible Class Members may receive.

MAKING A CLAIM

In order to make a claim for benefits under the Settlement, Class Members must complete, sign and return a **Claim Form** to the **Claims Administrator**, along with any necessary supporting documents, postmarked or deposited by courier or delivered in person (at various "Workshops") no later than **XXXXXX, 2018**.

Class Members must complete and submit a Claim Form by the deadline or he or she will **not** be able to participate in or share in the benefits available under the Settlement.

A detailed instruction package on how to obtain, complete and submit a Claim Form is available at **www.XXXXXXX.com** or by contacting the Claims Administrators using the contact information below

LEARNING MORE

The Court Office will NOT be able to answer questions about the matters in this Notice. If you have any questions regarding the Settlement Agreement or making a Claim, information is available by contacting the Claims Administrators at:

CLAIMS ADMIN CONTACT INFO

IMPORTANT DATES:

Claim Form Workshops: XX

Claim Deadline: XX, 2018

SCHEDULE "I"

LONG FORM –Settlement Approval Notice

2011 MANITOBA FLOOD CLASS ACTION SETTLEMENT APPROVAL

To anyone who is a member of the Pinaymootang (Fairford), Little Saskatchewan, Lake St. Martin, or Dauphin River First Nations, who lived in Manitoba during the 2011 Flood:

SETTLEMENT

A Settlement Agreement has been reached and approved by the Manitoba Court of Queen's Bench that settles the litigation involving the severe flooding in Manitoba in 2011 that led to the evacuation of and/or adverse conditions endured by members of the Pinaymootang (Fairford), Little Saskatchewan, Lake St. Martin, and Dauphin River First Nations.

While not admitting wrongdoing, the Governments of Manitoba and Canada have agreed to pay **\$90,283,000.00**. This amount includes lawyer ("Class Counsel") fees and expenses as well as Administration costs.

All members of the Pinaymootang (Fairford), Little Saskatchewan, Lake St. Martin, and Dauphin River First Nations resident in Manitoba at the time of the 2011 flood can make claims for Disruption Payments and Special Circumstances compensation:

- **Disruption Payments:** For the disruption the Eligible Claimant endured on account of the 2011 Flood, including his/her evacuation, or, if not evacuated, the adverse conditions he/she was subjected to while remaining on reserve. These payments will be determined on a point system that takes into account the length of time an Eligible Claimant was evacuated and/or living under adverse conditions and whether or not the Eligible Claimant was resident on or off one of the Four First Nations reserves.
- **Special Circumstances:** Eligible Claimants may also apply for compensation in respect of personal property loss or damage, income loss and/or health care costs or personal injuries relating to the 2011 flooding that have not already been compensated.

Because payments under the Settlement are based on the number of people that come forward to make claims, it is not possible to estimate the amounts Eligible Class Members may receive.

MAKING A CLAIM

In order to make a claim for benefits under the Settlement, Class Members must complete, sign and return a **Claim Form** to the **Claims Administrator**, along with any necessary supporting documents, postmarked or deposited by courier or delivered in person (at various “Workshops”) no later than **XXXXXX, 2018**. If a Class Member does not timely and properly submit a Claim Form, he or she will ***not*** be able to participate in or share in the benefits available under the Settlement.

A detailed instruction package on how to obtain, complete and submit a Claim Form is available at **www.XXXXXXX.com** or by contacting the Claims Administrators using the contact information below.

Workshops will be held throughout Manitoba (see below for location, dates and times) by the Claims Administrators to assist Class Members in making claims in the Settlement. There is no cost to Class Members in attending these workshops.

LEGAL FEES

The Manitoba Court of Queen’s Bench will be asked to award legal fees, not to exceed 15% of the total Settlement Amount, plus expenses and applicable taxes. Class Counsel were retained on a contingent basis and were responsible for funding all expenses incurred in pursuing this litigation and approving and overseeing implementation of the Settlement.

If Class Members choose to retain a lawyer to help them in making individual claims under the Settlement, they are responsible for paying the legal fees of any lawyer they retain.

LEARNING MORE

The Court Office will NOT be able to answer questions about the matters in this Notice. If you have any questions regarding the Settlement Agreement or making a Claim, information is available by contacting the Claims Administrators at:

CLAIMS ADMIN CONTACT INFO

IMPORTANT DATES:

Claim Form Workshops: XX

Claim Deadline: July 3, 2018

SCHEDULE “J”

Settlement-Approval Notice Dissemination Plan

A. The Short-Form Notice

The Short-Form of the Settlement Approval Notice shall be disseminated as follows:

Direct Mail

1. Mailed directly to all Class Members for whom contact information has been provided to the Notice Administrator; and
2. Mailed to anyone requesting a copy.

Publication

3. An information Press Release shall be issued across the CNW newswire in English and Ojibwa, to be disseminated to all major digital, print and broadcast news outlets across Canada.
4. Published once in the weekend edition and once in the daily edition of the following newspaper publications:
 - (a) First Nations Drum;
 - (b) Winnipeg Free Press; and
 - (c) The Brandon Sun

Radio Broadcast

5. Broadcasting English and Ojibwa language radio advertisements, over a variety of dayparts (i.e. morning/evening, day, peak time and late night), on the NCI FM radio station.

Television Broadcast

6. Broadcast in the English language, and where possible in the Ojibwa language, on the Aboriginal People Television Network (“APTN”) and the CBC television network over a variety of programming and dayparts.

B. The Long-Form Notice

1. The Long-Form of the Settlement Approval Notice shall be posted on Class Counsel’s and the Claims Administrator’s websites.

SCHEDULE “K”

CLAIM FORM

IMPORTANT:

Before Filling Out This Form, Read This Entire Claim Form And The Accompanying Class Notice Carefully.

**Each Class Member Requires Their Own Claim Form.
Complete One Claim Form For Each Member Of Your Family, Including One Claim Form For Each Child.**

If you would like assistance in completing this Claim Form, You can Contact the Claims Administrators at the contact information below and/or attend various Workshops that will be held on the following dates and locations in Manitoba:

●

If you do not require assistance, you can make a claim by completing and returning this form by email to: XXX@XXXX.XXX or by regular Canada Post mail, postmarked no later than ● to:

Manitoba Flood Claims Administrator

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The Deadline to Submit this Claim in Order to be Eligible for Payment(s) is: XXXXXX, 2018

PART 1: PERSONAL INFORMATION

A). Please complete your personal information below. *Please print neatly in blue or black ink.*

Name: _____

First Nation Membership: _____

Address: _____

City: _____

Province: _____ Postal Code: _____

Telephone Number: _____

Email Address: _____

Language Preference: ☐ English ☐ Ojibwa

B). Are You Completing This Claim Form For Yourself, An ESTATE or for a MINOR (under the age of 18 years)?

- ☐ Myself (*go to PART 2*)
- ☐ A Minor (*see below*)
- ☐ An Estate, as its legal representative (*see below*)

If Applying for a MINOR,

Name of Minor: _____

First Nation Membership of Minor: _____

Your Relationship to the Minor: _____

Address of Minor: _____

City: _____

Province: _____ Postal Code: _____

If Applying for an ESTATE, as the Legal Representative,

Name of Deceased: _____

First Nation Membership of Deceased: _____

Your Relationship with the Deceased (*i.e. spouse or child*): _____

Date of Death: _____

Address of Deceased in Spring of 2011: _____

City: _____

Province: _____ Postal Code: _____

Are you the legal representative of the Estate? ☐ YES (*If yes, attach proof*) ☐ NO**C). Legal Representation**

If you have retained a lawyer to assist you with the completion/filing of this Claim for compensation in the Manitoba Flood Settlement, please provide their contact information. Please note that if you complete this section, all future correspondence will be directed to your lawyer.

Name of Law Firm: _____

Name of Lawyer: _____

Law Firm Address: _____

City: _____

Province: _____ Postal Code: _____

Telephone Number: _____ Fax Number: _____

Email Address: _____

PART 2: CLASS MEMBERSHIP

Are You (the MINOR or ESTATE) a Class Member?

In order to be eligible to participate in the Settlement, you **MUST** satisfy **BOTH** of the eligibility criteria: (i) being a member of one of the Four First Nations (identified below) and (ii) resident in Manitoba at the time of the 2011 Flooding Event.

A). Which First Nation are you (the MINOR or ESTATE) a member of?

- ☐ Lake St. Martin
- ☐ Dauphin River
- ☐ Little Saskatchewan
- ☐ Pinaymootang

B). Were you (the MINOR or ESTATE) ordinarily resident/living in Manitoba, either on reserve or off reserve, during the 2011 Flood?

- ☐ Yes (If YES, attach proof of residency in Manitoba.)
- ☐ No

PART 3: DISRUPTION PAYMENT CLAIM

A). Check the box next to the category that describes you (or the MINOR or ESTATE for whom you are making this claim):

- ☐ In the spring of 2011, resided **on reserve** and was **evacuated** from the reserve.
- ☐ In the spring of 2011, resided **on reserve** but was **not evacuated** from the reserve
- ☐ In the spring of 2011, resided **off reserve** but in Manitoba.

B). If you were evacuated, how long were you evacuated from the reserve?

- ☐ I was evacuated from the reserve for three (3) or more years.
- ☐ I was evacuated from the reserve for less than three (3) years.

C). If you were NOT evacuated, but remained on reserve,

(i) how long did you remain resident on the flooded reserve?

- ☐ I remained on the flooded reserve for three (3) or more years.
- ☐ I remained on the flooded reserve for less than three (3) years.

(ii) describe your living conditions during this time:

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

Attach separate sheet if you require more room to describe your living conditions while remaining on reserve following the 2011 Flood.

D). If you lived off reserve, but in Manitoba at the time of the 2011 Flood, provide details and proof of residence.

Address: _____

City/Town: _____

Province: _____

Postal Code: _____

Proof of Residency (i.e. utility bill or banking or tax documents showing address as of the Spring of 2011), Attached: ☐ YES ☐ NO

PART 4 –SPECIAL CIRCUMSTANCES FUND CLAIM

In addition to the Disruption Payment, an eligible Class Member may make a claim under this section for payment from the Special Circumstances Fund . This fund is meant to compensate for losses above and beyond the Disruption Payment, and any other compensation received in respect of the loss(es).

Payments awarded under the Special Circumstances Fund are in the discretion of the Claims Administrator.

PLEASE SEE THE CLASS NOTICE FOR FURTHER INFORMATION REGARDING MAKING A CLAIM UNDER THIS SECTION.

If you are making a claim under this section, you MUST provide any related supporting documents. If you require more space, please enclose additional pages as required.

A). Which category are you (the MINOR or ESTATE) making a claim under?

- ☐ Personal Property Loss or Repair.
- ☐ Income Loss.
- ☐ Personal Injury/Health Care Costs.

B). Described your Claim:

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

PART 5 – SIGNATURE AND DECLARATION

By signing and submitting this Claim Form, I certify and declare under penalty of perjury that all of the foregoing information is true and correct and all documents submitted are true, complete and correct copies. I acknowledge that any false information or documentation may result in my entire claim being denied, in which case I would not receive any compensation in this settlement.

I hold the Claims Administrators, [●], its officers, officials, employees and volunteers harmless from any and all liabilities, claims, or suits arising out of or in connection with their assistance with the completion of this Claim Form.

Signature

Date

Signature of Claimant's Lawyer (if any)**Lawyer:** _____**Law Firm:** _____**Law Firm Address:** _____**Law Firm Tel./Fax. Nos.:** _____

Date**PART 6 SUBMIT YOUR CLAIM**

You can email, fax or mail your Claim Form to the Claims Administrator (●) at the following address:

[●]

You must submit this completed and signed CLAIM FORM so that it is postmarked by [●] in order to make a valid claim.

Please keep a copy of this CLAIM FORM and any accompanying documents for your records

Schedule “L”

ELIGIBILITY PROTOCOL

Evacuation Register

- 1.1 Canada will provide to the Claims Administrator the most current and complete copy of the Evacuation Lists it has maintained in respect of the four First Nations previously evacuated and/or still evacuated, in response to the 2011 Flood.

Indian Register

- 1.2 Canada will provide to the Claims Administrator the most current and complete copy of the Indian Register, maintained pursuant to s.5(1) of the *Indian Act*, RSC 1985, cI-5, limited to those members of the four First Nations.

Band Lists

- 1.3 Canada will also provide to the Claims Administrator the most current and complete Band Lists for each of the four First Nations that it has available, pursuant to s. 9(1) of the *Indian Act*, RSC 1985, cI-5. If no such Band List exists, on account of the Band having taking over its list, pursuant to s. 10(1) and 10(6) of the *Indian Act*, RSC 1985, cI-5, then Canada will provide a copy of the most current Membership Rules for the Band.
- 1.4 Should Band Lists need to be obtained from any of the four First Nations, an Order requiring that they provide their lists will be obtained at or following the Settlement Approval hearing.

Eligibility Assessment

- 1.5 A Claimant whose name appears on a Band List is eligible to participate in the Settlement, subject to s.1.7 below.
- 1.6 Any Claimant whose name does not appear on the Band List(s), will not be eligible to participate in the Settlement *unless*:
 - (a) the claimant has made an Application for Entry to the Department of Indian Affairs, pursuant to s. 9(5) of the *Indian Act*, RSC 1985, cI-5 prior to making a Claim in the Settlement, and the Registrar determines that they ought to be included on the Band List, pursuant to s. 9(3); **or**
 - (b) if a Band has assumed control of its membership, in accordance with the *Indian Act*, RSC 1985, cI-5 s. 10(1), and in accordance with the Band’s Membership Rules, the claimant can provide proof of having engaged the membership review process under those rules, prior to making a Claim in the Settlement, and the Bands affirmatively determines membership. In either event, the Claimant must

provide the Claims Administrator with a copy of the affirmative decision of either the Registrar or the Band, as the case may be.

- 1.7 In order to be eligible to participate in the Settlement, all Claimants must establish that they were resident in Manitoba during the 2011 Flood. Acceptable documentary proof of residency includes, but is not limited to, the following:

- (i) 2011 Utility Bills
- (ii) 2011 Credit-Card or other Financial/Bank Statements
- (iii) 2011 Income Tax filing or 2011 Notice of Assessment

Other documents proving residency during the class period may be accepted by, in the sole discretion of, the Claims Administrator.

POINT ASSESSMENT PROTOCOL

- 1.1 The Points System is designed to reflect an internally fair and consistent distribution of the Compensation Fund to Eligible Claimants.
- 1.2 At the end of the Claims Period, the Claims Administrator will use the Points, outlined below, to calculate the Disruption Payment amounts payable to Eligible Claimants from the Compensation Fund.
- 1.3 The ratio between the points outlined in that manner and the total points available will be multiplied against the monies in the Compensation Fund to determine each Eligible Claimant's *pro rata* payment.

1.4 The Claims Administrator shall determine the Points awards to each Eligible Claimant based on the following Point System:

Category	Points
<p>(a) Ordinarily Resident on Reserve – Evacuated</p> <p>Each Class Member who was normally resident on reserve at the time of the 2011 Flood and who was evacuated from reserve due to the 2011 Flood is eligible for a Disruption Payment, as follows:</p> <ul style="list-style-type: none"> i. Adults as of the Effective Date evacuated for three (3) or more years 120 ii. Adults as of the Effective Date evacuated for less than three (3) years 75 iii. Minors as of the Effective Date who were evacuated for any time period 15 	
<p>(b) Ordinarily Resident on Reserve – Not Evacuated</p> <p>Each Class Member who was normally resident on reserve at the time of the 2011 Flood and who was <u>not</u> evacuated from reserve due to the 2011 Flood but can establish to the satisfaction of the Claims Administrator he or she was directly affected as to the need for accommodation, living conditions, income, or personal property loss by the 2011 Flood is eligible for a Disruption Payment, as follows:</p>	

i. Adults as of the Effective Date not evacuated, but remained resident on flooded reserves under adverse conditions for three (3) or more years	120
ii. Adults as of the Effective Date not evacuated, but remained resident on flooded reserves under adverse conditions for less than three (3) years	75
iii. Minors as of the Effective Date who were not evacuated, but remained on flooded reserves under adverse conditions for any time period	15
(c) Not Ordinarily Resident Member of First Nations Each Class Member who was <u>not</u> ordinarily resident on reserve at the time of the 2011 Flood but who was a member of the First Nations and was normally resident in Manitoba at the time of the 2011 Flood, is eligible for a Disruption Payment as follows:	
i. Adults as of the Effective Date	1.5
ii. Minors as of the Effective Date	1

SCHEDULE “N”

HONORARIA ASSESSMENT PROTOCOL

- 1.1 The Claims Administrator shall determine the Honoria payable to each Plaintiff on the basis of written submissions received.
- 1.2 Payments shall be made to each Plaintiff at the discretion of the Claims Administrator in applying the following criteria:
 - (a) A \$5,000 payment to the Plaintiff(s) who attended only a rare meeting with the Plaintiffs and Class Counsel.
 - (b) A \$10,000 payment to the Plaintiff(s) who attended most meetings with the Plaintiffs and Class Counsel and who resides in Winnipeg and therefore had limited travel to and from such meetings.
 - (c) A \$15,000 payment to the Plaintiff(s) who attended most meetings with the Plaintiffs and Class Counsel and who resides outside Winnipeg and therefore had to travel to and from such meetings.

SCHEDULE “O”

SPECIAL CIRCUMSTANCES FUND PROTOCOL

ARTICLE 1 - OVERVIEW

- 1.1 In addition to Disruption Payments, Class Members can make a claim for quantifiable damages or losses not covered by the Disruption Payment, or any other reimbursement (i.e. insurance claim, social assistance, unemployment insurance, other income costs replacement programs or monies paid in respect of health care treatments).
- 1.2 In order to make a claim for a Special Circumstances payment, a Class Member must file a properly completed Claim Form (Part 4 therein), accompanied by all supporting documentation, and submitted to the Claims Administrator on or before the Claim Submission Deadline.

ARTICLE 2 – SPECIAL CIRCUMSTANCES FUND AND CLAIMS

- 2.1 The Special Circumstances Fund from which payments will be made shall not exceed 7.5% of the Compensation Fund.
- 2.2 Special Circumstances payments may be awarded by the Claims Administrator for such matters as:
 - (a) **Personal Property Loss/Repair:** Eligible claimants with repair costs of chattels damaged or destroyed as a result of the flooding, not already compensated via a Disruption Payment or through an insurance claim, disaster financial assistance or otherwise, are entitled to make a claim under this heading. Proof of ownership and damage to said chattels is required.
 - (b) **Income Loss:** Eligible Claimants whose employment or business income was impacted by the flooding and/or evacuation in a direct way, and not otherwise compensated, such as by social assistance, unemployment insurance or other income replacement programs, are entitled to make a claim for payment of lost wages and benefits, upon proof of employment, income and employment-interruption or other such evidence satisfactory to the Claims Administrator.
 - (c) **Personal Injury/Health Care Costs:** Eligible Claimants whose health was impacted by the flooding and/or evacuation in a special or unusual way are entitled to make a claim for payments relating to injuries they sustained as a result of the flooding or evacuation and/or compensation of monies paid in respect of health care treatments.

- 2.3 Supporting documentation that must be submitted with the Claim Form includes documents that quantify the losses/damages claimed (i.e. receipts, income tax filings, physician reports) as well as documents relating to other reimbursements received (i.e. insurance claim, social assistance, unemployment insurance, other income costs replacement programs or monies received in respect of health care treatments).
- 2.4 Failure to submit all supporting documentation will result in the denial of the claim.

ARTICLE 3 - DETERMINATION

- 3.1 Eligible Claims for Special Circumstances payments will be limited to quantifiable damage amounts provable at law, not sufficiently accounted for out of the Disruption Payment or other reimbursement programs (i.e. insurance claim, social assistance, unemployment insurance, other income costs replacement programs and/or settlement or monies paid in respect of health care treatments).
- 3.2 In order to make a valid claim for Special Circumstances payments, an Eligible Claimant must provide all supporting documentation (i.e. receipts, income tax filings, physician reports) that both quantify and/or validate the claim made.
- 3.3 If reimbursements from other programs, (i.e. insurance claim, social assistance, unemployment insurance, other income costs replacement programs or monies paid in respect of health care treatments), were received in respect of the Special Circumstances damages claim, those payments and the related documentation must be provided to the Claims Administrator.
- 3.4 The Claims Administrator has the discretion to seek independent expert advice in evaluating a claim for Special Circumstances payments, or to appoint an arbitrator in determining the proper claim value.
- 3.5 Determinations by the Claims Administrator will be final and binding.

ARTICLE 4 - PAYMENTS

- 4.1 The amount of compensation awarded will be assessed by the Claims Administrator and paid only after all Claims have been determined.
- 4.2 If there is not enough money in the Special Circumstances Fund to pay the full amount of the claims of each Eligible Claimant as approved by the Claims Administrator, Eligible Claims will be paid out on a *pro-rata* basis.
- 4.3 If after all the claims for Special Circumstances have been paid there is any money remaining in the Special Circumstances Fund, that money will be transferred into the

Compensation Fund and dispersed, pursuant to Article 3.12 (“Residual Distribution of Surplus Settlement Monies”) of the Settlement Agreement.