

SUPREME COURT OF NOVA SCOTIA

BETWEEN:

**RICHARD ROBERT MARTELL and MICHAEL HARRY GERALD
PERRIER**

PLAINTIFFS

- AND -

THE ATTORNEY GENERAL OF NOVA SCOTIA, representing
His Majesty the King in right of the Province of Nova Scotia and
ATLANTIC PROVINCES SPECIAL EDUCATION AUTHORITY

DEFENDANTS

Proceeding under the *Class Proceedings Act*, SNS 2007, c 28

SETTLEMENT AGREEMENT

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RECITALS

WHEREAS the Plaintiffs brought this action under the *Class Proceedings Act*, SNS 2007, c 28 (the “Act”) for alleged negligence and breach of fiduciary duty in respect of the Defendants’ operation, supervision and management of the School for the Deaf in Halifax, Nova Scotia and the Interprovincial School for the Education of the Deaf in Amherst, Nova Scotia (the “Action”);

AND WHEREAS the Action was certified, on consent of the Defendants, as a class proceeding on January 31, 2019;

AND WHEREAS all disclosure and discovery steps have been completed;

AND WHEREAS the common issues trial of this Action is scheduled for October 1, 2025 to November 6, 2025;

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

AND WHEREAS the Parties have committed to work together to prepare supporting documents for notice and claims administration;

AND WHEREAS in consideration of all of the circumstances and after extensive arms’ length negotiations, the Parties, through this Settlement Agreement, seek to resolve all issues in this Action;

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

AND WHEREAS the settlement, notice process and the claims administration process have been and will be designed to accommodate Class Members' accessibility needs;

AND WHEREAS for the Settlement Agreement to be effective, it must be approved by the Court, pursuant to s. 38(1) of the *Act*;

AND WHEREAS the Plaintiffs shall arrange for the dismissal of the proposed class proceeding filed in the Nova Scotia Supreme Court on September 12, 2009 bearing file No. 342460 in which Walter Wilfred Wile and Myles Murphy are the Plaintiffs and the Attorney General of Nova Scotia representing His Majesty the King in right of the Province of Nova Scotia is the Defendant, such dismissal to be effective upon the Effective Date;

NOW THEREFORE for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties to this Settlement Agreement agree to settle the issues in dispute in the Action on the following terms and conditions:

1. DEFINITIONS

1.1 For the purposes of this Settlement Agreement, defined terms have the following meanings:

- (a) "Action" means the certified class proceeding commenced in the Supreme Court of Nova Scotia styled Richard Robert Martell and Michael Harry Gerald Perrier v The Attorney General of Nova Scotia and Atlantic Provinces Special Education Authority, Hfx. No. 447198;
- (b) "Administration End Date" means the date on which all payments from the Compensation Fund have been distributed to Approved Claimants by the Administrator and the period for the deposit of payments has expired;
- (c) "Administration Fees" means all costs, fees and out-of-pocket expenses, and all applicable taxes thereon, of the Administrator to implement the Phase I Notice Plan

and Phase II Notice Plan, and to distribute the Compensation Fund, inclusive of Class Counsel Administration Disbursements, the payment of which shall be subject to the approval of the Court;

- (d) “Administration Fund” means a payment by the Defendants of \$2,500,000, designated to pay the Administration Fees;
- (e) “Administrator” means a third-party claims administrator mutually agreed to by the Parties and approved by the Court;
- (f) “AGNS” means His Majesty the King in right of the Province of Nova Scotia;
- (g) “Amherst School” means the Interprovincial School for the Education of the Deaf in Amherst, Nova Scotia, subsequently renamed the Atlantic Provinces Resource Centre for the Hearing Handicapped, and thereafter subsequently renamed the Atlantic Provinces Special Education Authority – Resource Centre for the Hearing Impaired;
- (h) “Approval Date” means the date the Court issues the Settlement Approval Order;
- (i) “Approved Claimant” means a Claimant who submits a completed Claim Form for compensation under the Settlement Agreement, and that claim is approved;
- (j) “APSEA” means the Atlantic Provinces Special Education Authority;
- (k) “Attendance List” means the list of Class Members prepared by the Parties and provided to the Administrator for the purpose of administration of the Settlement;
- (l) “Claim Deadline” means six months after the Phase II Notice Implementation Date;
- (m) “Claim Form” means an Eligible Class Member Claim Form, an Eligible Estate Claim Form, and/or an Eligible Representative Claim Form, as the context requires;
- (n) “Claimant” means anyone who files a Claim Form under this Settlement Agreement;

- (o) “Class Counsel Administration Disbursements” means all out-of-pocket expenses of Class Counsel, including applicable taxes thereon, incurred by Class Counsel after the date of filing the motion record for the Motion to Approve Fee and Disbursements in relation to the performance of their role in implementing the Phase II Notice Plan and providing assistance to Claimants during the claims administration process, as such payment is approved by the Court;
- (p) “Class Counsel Disbursements” means all out-of-pocket expenses of Class Counsel, including applicable taxes thereon, incurred by Class Counsel between the date of commencement of work on the Action and the date of filing the motion record for the Motion to Approve Fee and Disbursements, as such payment is approved by the Court. For certainty, Class Counsel Disbursements are distinct from and additional to Class Counsel Administration Disbursements;
- (q) “Class Counsel Fee” means the contingency fee paid to Class Counsel, as such payment is approved by the Court;
- (r) “Class Counsel” means Wagners;
- (s) “Class Member” means all former students who, between 1913 and 1995, attended and or/resided at one or both of the Schools, excluding:
 - (a) those who attended exclusively the vocational training program at the Amherst School without ever attending the academic program at the School(s) as a Residential Student and/or Day Student; and
 - (b) those who validly opted out of the Action on or before May 1, 2019;
- (t) “Collective Redress Fund” means a payment by the Defendants of \$3,000,000, subject to a possible additional amount from SHP Residue, designated to pay for Collective Redress Initiatives and Sharing Circles;
- (u) “Compensation Fund” means a fund of \$36,235,702 and it is comprised of the SHP Fund and the IAP Fund;
- (v) “Court” means the Supreme Court of Nova Scotia;

- (w) “Day Student” means a Class Member who attended the academic program at the School(s) but did not reside in residence during that time;
- (x) “Day” means a calendar day;
- (y) “Distribution Plan” means the plan for distribution of the Compensation Fund to Approved Claimants, substantially in the form attached hereto as Schedule “A”;
- (z) “Effective Date” means the later of: (i) the day following the last day on which the Settlement Approval Order may be appealed; and (ii) the day following the date of a final determination of any appeal brought in relation to the Settlement Approval Order;
- (aa) “Eligible Class Member Claim Form” means a Claim Form submitted by an Eligible Class Member to the Administrator seeking compensation from the Compensation Fund;
- (bb) “Eligible Class Member” means all Class Members who were alive on or after January 31, 2019;
- (cc) “Eligible Estate” means the Estate Executor or Estate Claimant, as such terms are defined in Schedule 1 of the Distribution Plan, of an Eligible Class Member;
- (dd) “Eligible Estate Claim Form” means a Claim Form submitted by an Eligible Estate to the Administrator seeking compensation from the Compensation Fund;
- (ee) “Eligible Representative” means a Personal Representative of an Eligible Class Member who is or becomes a Person Under Disability, as such terms are defined in Schedule 1 of the Distribution Plan;
- (ff) “Eligible Representative Claim Form” means a Claim Form submitted by an Eligible Representative to the Administrator seeking compensation from the Compensation Fund;

- (gg) “Execution Date” means the date on which the Settlement Agreement has been signed by all Parties;
- (hh) “Final Claim Report” means the report summarizing the notice and administration processes to be prepared by the Administrator and provided by Class Counsel to the Court no later than six months after the Administration End Date, with such filing date being the “Final Claim Report Date”;
- (ii) “Halifax School” means the School for the Deaf in Halifax, Nova Scotia;
- (jj) “IAP Fund” means a fund of \$22,105,000 from which IAP Payments are paid;
- (kk) “IAP Payment” means an amount awarded to an Eligible Class Member for the harms they endured at the School(s) in excess of what is intended to be compensated for by the Systemic Harms Payment;
- (ll) “Motion to Approve Fee and Disbursements” means the motion, on notice to the parties to be heard by the Court, seeking approval of the Class Counsel Fee and Class Counsel Disbursements;
- (mm) “Motion to Approve Phase I Notice” means the motion seeking the issuance of the Notice Approval Order;
- (nn) “Motion to Approve Settlement” means the motion, to be heard by the Court, seeking approval of the Settlement Agreement and the issuance of the Settlement Approval Order;
- (oo) “Notice Approval Order” means an order issued by the Court *inter alia* approving the content and means of delivery of the Phase I Notice, and the provisional appointment of the Administrator;
- (pp) “Parties” means the Plaintiffs, the Attorney General of Nova Scotia representing His Majesty the King in right of the Province of Nova Scotia, and Atlantic Provinces Special Education Authority;

- (qq) “Phase I Notice Implementation Date” means the date on which the Administrator commences implementation of the Phase I Notice Plan;
- (rr) “Phase I Notice Plan” means the plan, created by agreement of the Parties with the input of the Administrator, and which is subject to the approval of the Court, according to which the Administrator will disseminate the Phase I Notice;
- (ss) “Phase I Notice” means the notice, created by agreement of the Parties with the input of the Administrator, advising Class Members that the Settlement Agreement will be considered by the Court at the Motion to Approve Settlement;
- (tt) “Phase II Notice Implementation Date” means the date on which the Administrator commences implementation of the Phase II Notice Plan;
- (uu) “Phase II Notice Plan” means the plan, created by agreement of the Parties with the input of the Administrator, and which is subject to the approval of the Court, according to which the Administrator will disseminate the Phase II Notice;
- (vv) “Phase II Notice” means the notice, created by agreement of the Parties with the input of the Administrator, advising Class Members that the Court has approved the Settlement and informing them about the claims process;
- (ww) “Releasees” means the Defendants and each of their employees, servants, officers, agents, Ministers, insurers, representatives, and assigns;
- (xx) “Releasor” means each Class Member (living or deceased) and their respective legal representatives, successors, heirs and assigns;
- (yy) “Representative Plaintiff Honorarium” means an honorarium in the amount of \$15,000 to be paid to each of the Representative Plaintiffs, subject to the approval of the Court;
- (zz) “Representative Plaintiffs” means Richard Robert Martell and Michael Harry Gerard Perrier;

- (aaa) “Residential Student” means a Class Member who attended the academic program at the School(s) and resided in residence during that time;
- (bbb) “School” or “Schools” means the Halifax School and/or the Amherst School, as the context requires;
- (ccc) “Settlement Agreement” means this agreement, as executed by the Parties or their representatives, and it includes the attached Schedule;
- (ddd) “Settlement Approval Order” means the Order of the Court approving, *inter alia*, the Settlement Agreement and dismissing the Action with prejudice and without costs, with such dismissal to take effect upon the Effective Date;
- (eee) “SHP Fund” or “Systemic Harms Payment Fund” means a fund of \$14,130,702 from which Systemic Harms Payments are paid;
- (fff) “SHP Minimum Payment” means \$9,891,491, being 70% of the SHP Fund;
- (ggg) “SHP Residue” means any amount of the SHP Minimum Payment that remains undistributed after the calculation of all approved Systemic Harms Payments, to be distributed in accordance with the Distribution Plan attached hereto as Schedule “A”;
- (hhh) “SHP” or “Systemic Harms Payment” means an amount awarded to an Approved Claimant for an Eligible Class Member’s commonly experienced systemic harms at the School(s), as further described in the Distribution Plan attached hereto as Schedule “A”; and
- (iii) “Vocational Student” means a Class Member who attended the vocational training program at the Amherst School.

2. DEFENDANTS’ PAYMENT OBLIGATIONS

2.1 The Defendants hereby agree to the payment of the following amounts, in accordance with and subject to the terms and conditions of this Settlement Agreement, including the right of reversion described in section 2.16:

- (a) Compensation Fund of \$36,235,702, comprised of the SHP Fund of \$14,130,702 and the IAP Fund of \$22,105,000;
- (b) Collective Redress Fund of \$3,000,000;
- (c) Representative Plaintiff Honoraria totaling \$30,000;
- (d) Administration Fund of \$2,500,000;
- (e) Class Counsel Fee; and
- (f) Class Counsel Disbursements.

2.2 Such payments represent the total and final financial obligations of the Defendants under this Agreement.

2.3 Within 90 days of the Effective Date, the Defendants shall pay the Compensation Fund, Representative Plaintiff Honoraria, and the Administration Fund to the Administrator, to be held in trust in an interest-bearing account(s), as agreed between the Parties and the Administrator.

2.4 The Compensation Fund, Representative Plaintiff Honoraria, and Administration Fund shall be managed and paid out, as set out herein, by the Administrator.

(i) PAYMENT OF ADMINISTRATION FUND

2.5 The Defendants shall pay the Administration Fund directly to the Administrator to be held in trust for the payment of Administration Fees.

2.6 The Administrator shall provide its invoices to the Defendants for reasonable and proper Administration Fees, to be paid to the Administrator from the Administration Fund

within 60 days of the provision of invoices, provided there is no notice of objection by either Defendant.

2.7 If a Defendant objects to an invoice and there has been no resolution within 90 days from the provision of the invoice, the objecting Defendant must bring a motion to the Court for directions to resolve the matter.

2.8 Interest accruing on the Administration Fund shall be applied as follows:

(a) First, to pay any Administration Fees exceeding \$2,500,000;

(b) Second, it shall form part of the Reverting Funds, which for certainty includes any interest earned on those Reverting Funds, and be returned to the Defendants in accordance with section 2.16.

2.9 All reasonable and proper Class Counsel Administration Disbursements shall be paid from the Administration Fund only after approval by the Court on notice to the Parties, as described in section 4.10.

2.10 If the Administration Fees exceed \$2,500,000, the sources of payment will be as follows:

a) First, any interest that accrues on the Administration Fund;

b) Second, any Reverting Funds as described in section 2.16, which for certainty includes any interest that accrues on the Reverting Funds.

2.11 If the Administration Fees are less than \$2,500,000, the unused Administration Fees will revert to the Defendants in accordance with section 2.16.

(ii) PAYMENT OF COMPENSATION FUND

2.12 The Compensation Fund shall be distributed to Approved Claimants in accordance with the Distribution Plan attached hereto as Schedule A.

2.13 All interest that accrues on the SHP Minimum Payment shall be apportioned between the Approved Claimants and the Collective Redress Fund based on the percentage amount of the SHP Minimum Payment that is distributed to the Approved Claimants, and distributed as follows:

- (a) The amount of interest allocated to the Approved Claimants shall be distributed to the Approved Claimants in proportion to the amount(s) to which they are entitled from the Compensation Fund (including for certainty their proportionate share of interest on any top-up of their Systemic Harms Payment and/or IAP Payment from SHP Residue, in accordance with s. 5.23 of the Distribution Protocol), and
- (b) Any remaining interest shall be added to the Collective Redress Fund, and for greater certainty, none shall revert to the Defendants.

For example, if only 80% of the SHP Minimum Payment is paid to Approved Claimants, then 80% of the interest on the SHP Minimum Payment will be paid to the Approved Claimants, and 20% of the interest earned on the SHP Minimum Payment will be added to the Collective Redress Fund.

2.14 Subject to 2.13, interest accruing on the Compensation Fund (net of the interest accruing on the SHP Minimum Payment) shall be apportioned between the Approved Claimants and the Defendants based on the percentage of the underlying amount payable to the Approved Claimants, allocated as follows:

- (a) the Approved Claimants shall receive the interest earned on their portion, in proportion to the amounts they are entitled to from the Compensation Fund;

(b) any remaining interest will pay any Administration Fees exceeding the Administration Fund and interest thereon; and

(c) any interest remaining after the payments described in a) and b) above shall form part of the Reverting Funds and shall be returned to the Defendants in accordance with section 2.16.

2.15 No interest payable to Approved Claimants in accordance with sections 2.13 and 2.14 above will be considered when, for purposes of distributing any SHP Residue in accordance with s. 5.23 of the Distribution Protocol, there is a calculation of the maximum Systemic Harms Payment and maximum IAP Payment, as applicable, to which Approved Claimants are entitled, as further described in the Distribution Plan. For certainty, the calculation of top-ups of Systemic Harms Payments and IAP Payments with SHP Residue in accordance with s. 5.23 will not be reduced by any interest payable to Approved Claimants.

(iii) REVERSION TO DEFENDANTS

2.16 On the Final Claim Report Date, the Administrator shall return to the Defendants any undistributed balance of the Compensation Fund and any unspent portion of the Administration Fund, including applicable accrued and undistributed interest (collectively, the “Reverting Funds”). For certainty, no portion of the SHP Minimum Payment and accrued interest specific to the SHP Minimum Payment shall form part of the Reverting Funds.

(iv) COLLECTIVE REDRESS FUND

2.17 The Collective Redress Fund will be used for the payment of:

(a) the design and implementation of a process, focused on the objective of restorative justice, whereby Eligible Class Members may choose to share the

nature and the impact of their experiences at the School(s) (“Sharing Circles”);
and

- (b) the implementation of initiatives by the Defendants to benefit the deaf and hard of hearing community by providing support services for the community, as identified and recommended by external subject matter expert(s) in consultation with and agreed by the Parties (“Collective Redress Initiatives”).

2.18 The Collective Redress Fund shall be paid to the Administrator or to another entity as agreed to by the Parties, to be held in trust for distribution in accordance with this Agreement. Interest accruing on the Collective Redress Fund shall be added to and form part of the Collective Redress Fund, to be used in accordance with the terms of this Agreement. For certainty, no portion of the Collective Redress Fund, including any accrued interest, shall revert to the Defendants.

2.19 Taxes payable on interest accrued in relation to the Collective Redress Fund shall be deducted and paid by the entity to which the Collective Redress Fund is paid.

2.20 The entity to which the Collective Redress Fund is paid shall be responsible for any required tax filings related to interest earned on the Collective Redress Fund and shall ensure that all taxes are remitted in accordance with applicable tax laws.

(v) PAYMENT OF CLASS COUNSEL FEE

2.21 The Defendants shall pay to Class Counsel the Class Counsel Fee and Class Counsel Disbursements, as approved by the Court, within the later of:

- (a) 90 days after the Effective Date; and
- (b) 90 days after the Court’s approval of the Class Counsel Fee and Class Counsel Disbursements.

- 2.22 The Parties do not intend for this Settlement Agreement to be dependent for effectiveness upon the Court's approval of any particular Class Counsel Fee or Class Counsel Disbursements request.

3. ACCOUNTING AND TAX RESPONSIBILITY

- 3.1 Taxes payable on interest accrued in relation to any funds held in trust by the Administrator shall be deducted and paid by the Administrator from the relevant fund before any distribution of interest to the benefiting party.
- 3.2 The Administrator shall be responsible for any required tax filings related to interest earned on any funds held in trust by the Administrator and shall ensure that all taxes are remitted in accordance with applicable tax laws.
- 3.3 The Administrator shall provide an accounting to the Defendants' Counsel and Class Counsel of:
- (a) Number of claimants for SHP and quantum paid out;
 - (b) Number of claimants for IAP and quantum paid out;
 - (c) Interest accrual; and
 - (d) Any and all other appropriate fees and costs.
- 3.4 The accounting is to be provided every two (2) months from the date the Compensation Fund is payable to the Administrator until the Final Claim Report Date.
- 3.5 The final accounting shall include a breakdown of the calculation of any Reverting Funds, including related interest, payable to the Defendants.

4. MOTIONS SEEKING COURT'S APPROVAL

4.1 As soon as practical after the Execution Date, the Parties shall advise the Court of the proposed settlement and attend a case management conference to establish a schedule for the requisite motions, in accordance with the timelines further described below.

4.2 At all hearings of the requisite motions, and for the full duration thereof, certified interpreters will be present.

(i) **MOTION TO APPROVE PHASE I NOTICE**

4.3 The Plaintiffs will file the Motion to Approve Phase I Notice with reasonable dispatch after the Execution Date and following a case management conference for directions.

4.4 The Motion to Approve Phase I Notice will be conducted in writing, subject to the direction of the Court.

4.5 The Defendants will support the Motion to Approve Phase I Notice.

(ii) **MOTION TO APPROVE SETTLEMENT**

4.6 The Plaintiffs will file the Motion to Approve Settlement within 60 days of the Phase I Notice Implementation Date or such earlier or later time as agreed to by the Parties.

4.7 At the Motion to Approve Settlement, the Parties will ask that the Court approve of the Parties providing the Attendance List to the Administrator for its use in accordance with the Distribution Plan.

4.8 The Defendants will support the Motion to Approve Settlement.

(iii) **MOTION TO APPROVE FEE AND DISBURSEMENTS**

- 4.9 The Plaintiffs will request that the Court hear the Plaintiff's Motion to Approve Fee and Disbursements on the same day as, or on the earliest available date after, the Motion to Approve Settlement.

(iv) **MOTION TO APPROVE CLASS COUNSEL ADMINISTRATION DISBURSEMENTS**

- 4.10 The Plaintiffs will seek the Court's approval of the payment by the Administrator of Class Counsel Administration Disbursements by way of a motion on notice conducted in writing, subject to the direction of the Court, to be filed no later than 60 days after the Administration End Date.

(v) **RIGHT TO OBJECT**

- 4.11 Any Eligible Class Member may provide to the Administrator, by the applicable deadline, an objection in writing or by video to any aspect of the Settlement, including the Class Counsel Fee and/or Class Counsel Disbursements. If such a written or filmed objection is provided, then subject to the direction of the Court, the Eligible Class Member may appear at the hearing of the Motion to Approve Settlement to object to any aspect of the Settlement, and at the Motion to Approve Fee and Disbursements to object to the Class Counsel Fee and/or Class Counsel Disbursements.

5. NOTICE

- 5.1 Within 30 days of the issuance by the Court of the Notice Approval Order, the Administrator will implement the Phase I Notice Plan.

- 5.2 Within 30 days of the issuance by the Court of the Settlement Approval Order, the Administrator will implement the Phase II Notice Plan.

6. COLLECTIVE REDRESS FUND

- 6.1 The Court retains supervisory jurisdiction over all aspects of the Collective Redress Fund to ensure its processes and the expenditure of funds are compliant with the terms of this Agreement.

(i) SHARING CIRCLES

- 6.2 The Parties will retain subject matter experts in restorative justice with experience designing and/or facilitating restorative processes as agreed by the Parties. The experts will design the process and format of the Sharing Circles, which will be subject to the approval of the Parties.

Intent and Objective:

- 6.3 Sharing Circles are intended to offer a meaningful platform for Eligible Class Members to express the nature and impact of their experiences at the School(s), if they so choose. This collective forum allows participants to learn from and engage with one another. It is expressly not intended to be a venue for individual testimony. Eligible Class Member participants will be prompted to respond to a specific set of questions formulated by the external subject matter expert(s) to facilitate focused discussion.

Participation and Facilitation:

- 6.4 Sharing Circles will be facilitated by facilitator(s) who are to be recommended by the subject matter expert(s) referred to in section 6.2 and agreed by the Parties (“Sharing Circle Facilitators”). The Defendants may have representatives participate in the Sharing Circles, as agreed by the Parties.
- 6.5 Eligible Class Members may participate in Sharing Circles by providing written responses to the focused questions or by attending one of the sessions of the Sharing

Circles, with other Eligible Class Members, interpreters, Sharing Circle Facilitator(s) and representatives from the Defendants.

- 6.6 Participation by Eligible Class Members in the Sharing Circles is entirely voluntary and has no impact on eligibility for compensation under the Settlement.
- 6.7 The costs directly associated with the participation of the Defendants' representatives shall be borne by the Defendants and shall not be deducted from the Collective Redress Fund. All other costs associated with Sharing Circles will be paid out of the Collective Redress Fund.

Timing:

- 6.8 Sharing Circles, the sessions of which will be offered in person with some offered virtually, will be conducted prior to the Administration End Date.

Outcomes and Reporting:

- 6.9 As soon as reasonably practicable following the conclusion of all Sharing Circles, the Sharing Circle Facilitator(s), subject matter expert(s), and the Defendants' representatives (collectively, the "Sharing Circle Subcommittee") shall conduct a debriefing session to identify prevalent themes and insights which may be considered for the identification and recommendation of Collective Redress Initiatives.
- 6.10 Following the debriefing session, the Sharing Circle Subcommittee shall prepare an accessible summary document (the "Sharing Circles Summary") to memorialize prevalent themes and insights shared through participation in the Sharing Circles.
- 6.11 The modes and scope of dissemination of the Sharing Circles Summary shall be determined in consultation with the external subject matter expert(s) and agreement of the Parties.

- 6.12 The Sharing Circles Summary shall in no way identify any Eligible Class Member participants by name.

(ii) COLLECTIVE REDRESS INITIATIVES

- 6.13 The Parties will mutually agree on the appointment of more than one external subject matter experts possessing relevant expertise, knowledge, and experience, in support services within the deaf and hard of hearing community, such as a representative from Deaf Community Organizations, Deaf Educator and Advocate, Sign Language Interpreter, Accessibility Consultant, or Healthcare Professional (“Collective Redress Committee”) to facilitate the process of identifying and recommending Collective Redress Initiatives.
- 6.14 The Parties shall agree on the specific programs or services for which funds will be allocated from the Collective Redress Fund.
- 6.15 The Parties will agree on a process by which the collective redress initiatives are implemented and how payment for each of the Collective Redress Initiatives is made.

7. PUBLIC APOLOGY

- 7.1 The Defendants shall jointly provide a public apology (the “Apology”) to be released in a format as agreed by the Defendants. The Apology will reflect the Defendants’ acknowledgment of the harm suffered by the Class Members.

8. NO IMPACT ON SOCIAL ASSISTANCE PAYMENTS

- 8.1 AGNS confirms that any settlement funds received by or on behalf of Approved Claimants under this Settlement Agreement will not affect their eligibility for, the amount, nature and/or duration of any social benefits or social assistance benefits

administered by the Department of Opportunities and Social Development on behalf of the Province of Nova Scotia.

9. IN EVENT SETTLEMENT NOT APPROVED

- 9.1 If the Court declines to approve the Settlement Agreement, it shall be null and void and have no further force or effect, and the Parties will be restored to their respective positions prior to the execution of this Settlement Agreement, except as may be expressly provided for herein.
- 9.2 In the event the Court declines to approve the Settlement Agreement, Class Counsel shall seek the direction of the Court with respect to notice of the Court's decision to be provided to Class Members.
- 9.3 In the event the Court declines to approve the Settlement Agreement all Administration Fees incurred or reasonably yet to be incurred shall be payable as directed by the Court.

10. RELEASES

- 10.1 On the Effective Date, each Releasor, whether or not they submit a claim and/or are approved for compensation, will be deemed by this Settlement Agreement to have completely and unconditionally released and forever discharged the Releasees of and from any and all actions, counterclaims, causes of action, claims, whether statutory or otherwise, and demands for damages, indemnity, contribution, costs, interest, loss or harm of any nature and kind whatsoever, known or unknown, whether at law or in equity, and howsoever arising which they may heretofore have had, may now have or may hereafter have relating to the matters raised or which might have been raised in the Action or in the Wile action (Hfx Court File No. 342460), including, without limitation, any and all claims relating to the operation, supervision and management of the Schools, except, for certainty, for any Eligible Class Member's entitlement to be paid in respect of a claim pursuant to the terms hereof.

- 10.2 On the Effective Date, each Releasor will be forever barred and enjoined from commencing, instituting or prosecuting any action, litigation, investigation or other proceeding in any Court of law or equity, arbitration, tribunal, proceeding, governmental forum, administrative forum or any other forum, directly, representatively, or derivatively, asserting against the Releasees any claims relating to the matters raised or which might have been raised in the Action, including, without limitation, any and all claims relating to the operation, supervision and management of the Schools.
- 10.3 On the Effective Date, each Releasor will be forever barred and enjoined from commencing, instituting or prosecuting any action, litigation, investigation or other proceeding in any Court of law or equity, arbitration, tribunal, proceeding, governmental forum, administrative forum or any other forum, directly, representatively, or derivatively, against any person or entity that could or does result in a claim over against the Releasees or any of them for contribution, indemnity in common law, or equity, relating to the matters raised or which might have been raised in the Action, including, without limitation, any and all claims relating to the operation, supervision and management of the Schools. It is understood and agreed that if such Releasor commences such an action or takes such proceedings, and the Releasees or any of them, are added to such proceeding in any manner whatsoever, whether justified in law or not, such Releasor will immediately discontinue the proceedings and claims or otherwise narrow the proceedings and claims to exclude the several liability of the Releasees. This Agreement shall operate conclusively as an estoppel in the event of any claim, action, complaint or proceeding which might be brought in the future by such Releasor with respect to the matters covered herein. This Agreement may be pleaded in the event that any such claim, action, complaint or proceeding is brought, as a complete defence and reply, and may be relied upon in any proceeding to dismiss the claim, action, complaint or proceeding on a summary basis and no objection will be raised by such Releasor in any subsequent action that the parties in the subsequent action were not privy to the formation of this Agreement.

11. BINDING EFFECT

- 11.1 All Class Members shall be bound by all of the terms and conditions of the Settlement Agreement, as approved by the Court, whether or not a Claim is submitted by them or on their behalf under this Settlement Agreement.

12. NO USE EXCEPT TO ENFORCE SETTLEMENT AGREEMENT

- 12.1 The Parties understand and agree that neither the Settlement Agreement, nor the Without Prejudice negotiations that preceded it, shall be used as evidence with respect to the claims asserted in the Action, or in any other proceeding or dispute, except to enforce the terms of the Settlement Agreement.

13. GENERAL

- 13.1 This Settlement Agreement shall be governed by, construed, and interpreted in accordance with the laws of the Province of Nova Scotia and the laws of Canada applicable therein.
- 13.2 Effective upon the Execution Date, the Parties agree to remove the matter from the trial list.
- 13.3 This Settlement Agreement, including the Schedules, constitutes the entire agreement between the Parties. For certainty, the Recitals form part of the Settlement Agreement.
- 13.4 The division of the Settlement Agreement into sections and the insertion of a table of contents are for convenience of reference only and do not affect the construction or interpretation of the Agreement, nor are the descriptive headings of sections intended as complete or accurate descriptions of the content thereof.

- 13.5 The provisions of this Settlement Agreement relating to timelines and the modes of participation of Eligible Class Members in the administration of the Settlement, including without limitation Schedule 1 of the Distribution Protocol, are subject to any amendments agreed to in writing by the Parties arising from the consultation of the Parties with the Administrator and/or with individuals experienced in the fields of accessibility and/or restorative justice. Any such amendments shall not materially alter the Settlement Agreement. The Parties will notify the Court of any such amendments made after the Approval Date. The Court may direct whether a motion for approval of any such post-approval amendment is required.
- 13.6 Any of the Parties may apply to the Court for directions in respect of the interpretation, implementation and administration of this Settlement Agreement, on notice to the Parties.
- 13.7 In this Settlement Agreement, unless a contrary intention appears, where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days.
- 13.8 In this Settlement Agreement, the words “includes” and “including” and similar terms of inclusion will not, unless expressly modified by the words “only” or “solely”, be construed as terms of limitation, but rather will mean “includes but is not limited to” and “including but not limited to”, so that references to included matters will be regarded as illustrative without being either characterizing or exhaustive.
- 13.9 The Parties agree that the Court shall retain jurisdiction with respect to implementation, administration, interpretation and enforcement of the terms of this Settlement Agreement, including, without limitation, all aspects of the Collective Redress Fund.
- 13.10 This Settlement Agreement may be signed by the Parties in counterpart, which shall have the same effect and enforceability as a single executed document.

IN WITNESS WHEREOF, each of the Parties has executed this Settlement Agreement, either personally and/or through their duly authorized representative.

Executed on _____, 2025.

This Settlement Agreement is executed by:

RICHARD ROBERT MARTELL on his own behalf and on behalf of the Class

Signature:



Date:

May 27, 2025

MICHAEL HARRY GERARD PERRIER on his own behalf and on behalf of the Class

Signature:



Date:


May 27, 2025

CLASS COUNSEL on behalf of the Class

Name of Authorized Signatory:

RAY WAGNER

Signature of Authorized Signatory:



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THE ATTORNEY GENERAL OF NOVA SCOTIA

Name of Authorized Signatory:

Becky Druhan

Signature of Authorized Signatory:



Date:

August 11, 2025

ATLANTIC PROVINCES SPECIAL EDUCATION AUTHORITY

Name of Authorized Signatory:

Signature of Authorized Signatory:

Date:

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THE ATTORNEY GENERAL OF NOVA SCOTIA

Name of Authorized Signatory:

Signature of Authorized Signatory:

Date:

ATLANTIC PROVINCES SPECIAL EDUCATION AUTHORITY

Name of Authorized Signatory:

Lisa Doucet, APSEA Superintendent

Signature of Authorized Signatory:



Date:

August 8, 2025

(c)

List of Schedules

Schedule “A” – Distribution Plan

Schedule 1 – Payments for Eligible Estates and Eligible Representatives

SCHEDULE “A” – DISTRIBUTION PLAN

1. DEFINITIONS

- 1.1 All defined terms in the Settlement Agreement apply.

2. GUIDING PRINCIPLES FOR THE DISTRIBUTION PLAN

- 2.1 The Distribution Plan (inclusive of Schedule 1) must be read in conjunction with, and is subject to, all of the terms and conditions of the Settlement Agreement.
- 2.2 The Distribution Plan is intended to reflect a restorative approach. The focus of this Distribution Plan is on the harms endured by Class Members. Its objectives are to address these harms in the context of a process that is accessible, safe, and comfortable for Class Members, that treats them with dignity and respect, and allows them to fully participate in the process.
- 2.3 The Parties share a desire to ensure that the process is designed to support the fair and just distribution of the Compensation Fund and that Class Members are not subjected to an adversarial adjudicative process. The Parties intend for this process to not be focused on past blame and fault.
- 2.4 The financial compensation provided by this Settlement serves an important symbolic role in acknowledging the consequences and harms suffered by Class Members. The interests of Class Members guide the distribution of this settlement.

3. THE OVERALL SETTLEMENT PROCESS

- 3.1 The Distribution Plan provides for two forms of compensation:

(a) **Systemic Harms Payments:** All Class Members shared a common experience based on the alleged systemic failures at the School(s). The Systemic Harms Payment is designed to acknowledge aspects of their experience and symbolically compensate Eligible Class Members for the harmful aspects of their shared experience at the School(s). All Eligible Class Members (or their Eligible Estates/Eligible Representatives) are eligible for a Systemic Harms Payment. The eligibility for, and process for claiming, a Systemic Harms Payment is further described below at section 5.

(b) **Independent Assessment Process Payments:** Some Class Members experienced harms beyond what is intended to be compensated for by the Systemic Harms Payment. The Independent Assessment Process (“IAP”) is designed to acknowledge and compensate Eligible Class Members for these harms that were more individualized, and which fall outside of the alleged systemic harms. Living Eligible Class Members, in addition to a Systemic Harms Payment, may elect to participate in the IAP. To claim an IAP Payment, an Eligible Class Member must meet with a Claims Evaluator (with or without the participation of a Claim Facilitator, but in all cases with a certified interpreter present). In order to be approved for an IAP Payment, the Eligible Class Member’s experiences at the School(s) must be determined to be beyond the alleged systemic harms. The eligibility requirements for, and process for claiming, an IAP Payment are further described below at section 6.

4. CLAIM FORMS

4.1 There may be three types of Claim Forms, each corresponding to a particular category of claimant: Eligible Class Member (Eligible Class Member Claim Form), Eligible Estate (Eligible Estate Claim Form), and Eligible Representative (Eligible Representative Claim Form).

4.2 The claims process is intended to be accessible, expeditious, cost effective and user friendly, all to minimize the burden on Claimants.

4.3 The Administrator shall, in the absence of reasonable grounds to the contrary, assume Claimants to be acting honestly and in good faith.

4.4 Where a Claim Form contains minor omissions or errors, the Administrator shall correct such omissions or errors if the information necessary to correct the error or omission is readily available to the Administrator.

i) ***Section A – All Claimants - SHP***

4.5 All Claim Forms contain Section A. All Claimants must complete Section A of the Claim Form in order to be considered for a Systemic Harms Payment. Section A of the Claim Form will be used by the Administrator, in conjunction with the process described herein, to calculate the Systemic Harms Payment.

4.6 Section A requires information about the Eligible Class Member's: (i) period(s) of attendance at the School(s); and (ii) corresponding status as a Residential Student, Day Student, and/or Vocational Student throughout the period(s) of attendance.

4.7 For certainty, every Eligible Class Member is eligible to submit a claim for a Systemic Harms Payment, whether or not they also submit a claim under the IAP.

ii) ***Section B - Eligible Class Members – IAP***

4.8 Living Eligible Class Members who allege experience(s) beyond the systemic harms compensated for by the Systemic Harms Payment may elect to apply for compensation under the Independent Assessment Process. If they choose to do this, they are required to complete Section B of the Claim Form.

- 4.9 For certainty, IAP Payments are separate from, and in addition to, Systemic Harms Payments. They are intended to address different harms.

iii) ***Section C – Eligible Class Members – Sharing Circles***

- 4.10 Living Eligible Class Members may elect to participate in the Sharing Circles to share the nature and the impact of their experiences at the School(s). This election will be noted on Section C of the Eligible Class Member Claim Form.
- 4.11 For certainty, participation in the Sharing Circles is entirely voluntary and is separate from, and in addition to, the compensatory aspects of the Settlement Agreement which provide funds to Approved Claimants in the form of the Systemic Harms Payments and IAP Payments.

iv) ***Schedule 1 Requirements - Eligible Estates, Eligible Representatives***

- 4.12 If the Claimant is an Eligible Estate or an Eligible Representative, the applicable requirements outlined in Schedule 1 to this Distribution Plan must be satisfied.

v) ***Submission of Claim Forms***

- 4.13 Any Claimant who wishes to claim compensation from the SHP Fund, or the SHP Fund and the IAP Fund, shall deliver to or otherwise provide to the Administrator a Claim Form no later than the Claim Deadline. If the Administrator does not receive a Claim Form from a Claimant by the Claim Deadline, then the Claimant shall not be eligible for any compensation, provided that in exceptional circumstances in which the deadline was not missed because of willful neglect by the Claimant, the Administrator has the discretion to permit late claims until two months after the Claim Deadline.

- 4.14 Mailed or couriered Claim Forms received after the Claim Deadline but post-marked on or before the Claim Deadline will be deemed received on the post-marked date. Emailed, electronically submitted via portal, or personally delivered Claim Forms will be deemed received on the date received by the Administrator. The Administrator shall provide the Claimant with confirmation that the Claim Form has been received.
- 4.15 A Claimant shall submit one Claim Form that comprises all claims that they may have. A Claimant may not submit more than one Claim Form.

5. SYSTEMIC HARMS PAYMENTS

i) *Eligibility*

- 5.1 Eligible Class Members, Eligible Estates and Eligible Representatives are eligible to submit the applicable Claim Form for a Systemic Harms Payment.
- 5.2 For certainty, every Eligible Class Member is eligible to submit a claim for a Systemic Harms Payment, whether or not they also submit a claim under the Independent Assessment Process.
- 5.3 Approved claims of Eligible Class Members who are alive on the Approval Date, and their Eligible Representatives, will receive 100% of the value of the applicable Systemic Harms Payment, calculated in accordance with Tables 1-3 below. If an Eligible Class Member is alive on the Approval Date but subsequently dies before receiving their Systemic Harms Payment, a claim for a Systemic Harms Payment must be submitted by their Estate Executor or Estate Claimant. The applicable requirements outlined in Schedule 1 to this Distribution Plan must be satisfied in order for distribution of the Systemic Harms Payment to be made to the Estate Executor or Estate Claimant. Any Systemic Harms Payment for which they are subsequently approved will continue to be calculated at 100% of its value, notwithstanding that it is an Eligible Estate Claim.

- 5.4 With the exception of the Eligible Estates referred to in section 5.3, all approved claims of Eligible Estates will receive 50% of the value of the applicable Systemic Harms Payment. For certainty, all Systemic Harms Payments are subject to potential *pro rata* reduction in accordance with section 5.21, as the circumstances may require.

ii) ***Verification of Threshold Eligibility***

- 5.5 Upon receipt of a Claim Form and validated personal identity documentation the Administrator shall verify the status of the Eligible Class Member as:

(a) having attended and/or resided at one or both of the School(s), by referring to the Attendance List; and

(b) having been alive on January 31, 2019.

- 5.6 In the event that an Eligible Class Member is not identified by the Administrator as being on the Attendance List, the Administrator shall:

(a) Promptly notify the Claimant who shall be requested to, within ninety (90) days of receiving said request, provide to the Administrator any supporting documentation that the Claimant believes objectively demonstrates the individual's status as an Eligible Class Member;

(b) Promptly notify Class Counsel and the Defendants in writing of such. Class Counsel and APSEA shall, within ninety (90) days of receiving such notice, confer in good faith with reference to the compiled Attendance List to determine whether the individual's status as an Eligible Class Member can be confirmed. For greater certainty, this process shall not require Class Counsel or APSEA to conduct a broader search of records beyond those already in their possession but may involve reviewing assumptions or decisions made in compiling the Attendance List, including a limited

reference to supporting records contained within it. Should Class Counsel and APSEA be unable to reach agreement on whether the individual should be deemed an Eligible Class Member, all relevant information shall be provided by Class Counsel and APSEA to the Claims Administrator for final determination of the individual's status.

- 5.7 If the Class Member is on the Attendance List but is recorded as having died before January 31, 2019, the Claimant will be notified of this eligibility exclusion and be requested to, within ninety (90) days of receiving said request, provide supporting documentation that the Claimant believes objectively demonstrates the Class Member died on or after January 31, 2019.
- 5.8 The Administrator shall maintain the strict confidentiality of any records provided by the Claimant, or Class Counsel in the above-described verification process and shall destroy them upon completion of the settlement administration.
- 5.9 In regard to any records provided by Class Counsel in the above-described verification process, all personal or other information in regard to persons other than the Claimant will be redacted and not disclosed. The Administrator shall send a copy of such redacted record(s) to the Claimant to whom the record(s) pertains for the purposes of the above-described verification process.
- 5.10 Decisions made by the Administrator in relation to the matter of verification as an Eligible Class Member, after conducting the process described above in sections 5.6 and 5.7, may be the subject of a Request for Reconsideration, described below.

iii) *Verification of Period of Attendance and Student Status*

- 5.11 The Administrator shall refer to the Attendance List to verify the Eligible Class Member's:

- (a) period(s) of attendance; and

- (b) corresponding student status (i.e., Residential Student, Day Student, and/or Vocational Student) throughout the period(s) of attendance.

5.12 The procedure described in section 5.14 below applies in the event that the eligibility status of an Eligible Class Member has been verified, but there is an inconsistency between the Attendance List and Section A of the Claim Form in respect of:

- (a) the period of attendance; and/or

- (b) student status.

5.13 Whereby the Attendance List indicates a *shorter* period of attendance and/or a *shorter* period of status as a Residential Student, thus resulting in a lower Systemic Harms Payment than would be calculated based on the information provided by the Claimant in Section A of the Claim Form, the Administrator shall:

- (a) Promptly notify the Claimant, who shall be requested to, within ninety (90) days of receiving said request, provide to the Administrator any supporting documentation that the Claimant believes objectively demonstrates the Eligible Class Member's stated period of attendance and/or student status; and

- (b) Promptly notify the Defendants and Class Counsel in writing of such. Class Counsel and APSEA shall, within ninety (90) days, confer in good faith with reference to the compiled Attendance List to determine an agreed period of attendance and/or student status for the Eligible Class Member. For greater certainty, this process shall not require Class Counsel or APSEA to conduct a broader search of records beyond those already in their possession but may involve reviewing assumptions or decisions made in compiling the Attendance List, including a limited reference to supporting records

contained within it. Should Class Counsel and APSEA be unable to reach agreement on the Eligible Class Member's period of attendance and/or student status, all relevant information shall be provided by Class Counsel and APSEA to the Claims Administrator for final determination of period of attendance and/or student status.

- 5.14 For certainty, if there is an inconsistency between the Attendance List and Section A of the Claim Form in relation to the period of attendance and/or student status whereby the Attendance List indicates a ***longer*** period of attendance and/or a ***longer*** period of status as a Residential Student (thus resulting in a higher Systemic Harms Payment than would be calculated based on Section A of the Claim Form) the Attendance List will govern the calculation of the SHP in the Claimant's favour.
- 5.15 Decisions made by the Administrator in relation to the matter of period of attendance and/or student status, after conducting the process described above in section 5.13 may be the subject of a Request for Reconsideration, described below.

iv) ***SHP Payment Amounts***

- 5.16 Systemic Harms Payments are paid in the following amounts. They are calculated based on:
- (a) an Eligible Class Member's period(s) of attendance at the School(s);
 - (b) corresponding status at the School(s) as a Residential Student, Day Student, and/or Vocational Student during their period(s) of attendance; and
 - (c) whether an Eligible Class Member was alive on the Approval Date.
- 5.17 Partial years of enrollment are rounded up to a full year. There is no minimum number of days of attendance within an academic year to qualify as a year.

- 5.18 If an Eligible Class Member's student status changed in a given year, from (i) Residential Student to (ii) Day Student or Vocational Student, the partial year as a Residential Student will be counted as one full year with the status of a Residential Student.
- 5.19 Time as a Vocational Student is only eligible to be counted in the calculation of a Systemic Harms Payment if the Eligible Class Member had, prior to enrollment as a Vocational Student, been enrolled as a Residential Student and/or Day Student for a minimum of one year (or part thereof).
- 5.20 For certainty, enrollment at the School(s) for consecutive years is not a requirement in order for such time to be counted in calculating a Systemic Harms Payment. Each year of attendance will be included in the calculation, provided other eligibility requirements are satisfied.
- 5.21 If the total value of the approved Systemic Harms Payments exceeds the SHP Fund of \$14,130,702, each Systemic Harms Payment will be reduced on a *pro rata* basis.

v) ***Harms Compensated For By Systemic Harms Payments***

- 5.22 The SHP is intended to provide compensation for alleged systemic harmful experiences commonly suffered by Class Members, which include:
- (a) social isolation, emotional and psychological abuse and neglect, examples of which include:
- i) punishment (physical or verbal) for signing at the School(s) and/or for not understanding verbal instruction;
 - ii) verbal and demeaning abuse by staff;
 - iii) name calling by staff;
 - iv) students being degraded for showing emotion after experiencing physical abuse;

v) students witnessing abuse;

(b) physical abuse that did not result in a serious injury, examples of which include:

- i) physical discipline that went beyond minor corrective force of a transitory and trifling nature, and that was unreasonable under the circumstances;
- ii) corporal punishment and use of force not intended for safety restraint or disciplinary purposes, that is harsh or causes harm, including being strapped and beaten with sticks and other objects such as books, rulers, and wood; being shoved to the ground, pulling and twisting ears, pulling hair; slapped, hit or beaten on the head, face, ears, hands, stomach, buttocks and genitals; and the use of objects or blows or slaps leaving bruises, marks or cuts;

(c) use of punishment that was humiliating, discriminatory and undermining of dignity, examples of which include:

- i) punishment for wetting the bed and being forced to sleep in urine-soaked mattresses;
- ii) being isolated in dark rooms and closets for periods of time;
- iii) deprivation of food and/or being forced to eat all of their food, even when ill.

vi) ***Distribution of SHP Residue***

5.23 If the total value of the approved Systemic Harms Payments is less than the SHP Guaranteed Minimum of \$9,891,491, and thus there is SHP Residue, the SHP Residue shall be distributed in the following manner:

(a) First, the SHP Residue will be distributed on a *pro rata* basis to increase each Systemic Harms Payment up to a maximum value of 110% of the initially calculated

Systemic Harms Payment (e.g. if an Eligible Class Member is awarded a SHP of \$25,000, they may be topped up by an additional 10% (\$2,500) for a total SHP of \$27,500, subject to additional interest as outlined in section 2.13(a) of the Settlement Agreement);

(b) Second, if any SHP Residue remains after topping up Systemic Harms Payments, it will be distributed on a *pro rata* basis to increase each IAP Payment up to a maximum value of 110% of the initially calculated IAP Payment (e.g. if an Eligible Class Member is awarded an IAP Payment of \$90,000, they may be topped up by an additional 10% (\$9,000) for a total IAP Payment of \$99,000, subject to additional interest as outlined in sections 2.13(a) of the Settlement Agreement);

(c) Third, if any SHP Residue remains after the distributions described above, it will top-up the Collective Redress Fund. There is no maximum cap on the top-up of the Collective Redress Fund.

vii) *Systemic Harms Payment Amounts*

5.24 Systemic Harms Payments will be calculated as outlined in Tables A, B and C.

Table A – Calculation of SHP for Residential Student Years

Residential Student Years	Duration of Time Spent as Residential Student	Award - 100% Value
Level 1	0-1 year	\$10,000
Level 2	2 years	\$15,000
Level 3	3 years	\$18,000
Level 4	4 years	\$20,000
Level 5	5+ years	Additional \$1,000/year after Level 4

Table B – Calculation of SHP for Day Student Years

Day Student Years	Duration of Time Spent as Day Student	Award - 100% Value
Level 1	0-1 year	\$3,300
Level 2	2 years	\$4,950

Level 3	3 years	\$5,940
Level 4	4 years	\$6,600
Level 5	5+ years	Additional \$330/year after Level 4

Table C – Calculation of SHP for Vocational Student Years

Vocational Student Years	Duration of Time Spent as Vocational Student (if also a Residential and/or Day Student)	Award – 100% Value
Level 1	0-1 year	\$3,300
Level 2	2 years	\$4,950
Level 3	3 years	\$5,940
Level 4	4 years	\$6,600
Level 5	5+ years	Additional \$330/year after Level 4

5.25 The following examples of the calculations of a Systemic Harms Payment are provided solely for illustrative purposes.

(a) **Example A:** Eligible Class Member attended the Amherst School from 1967-1972, for a total of five years, as a Day Student in 1967-1968 (1 year) [\$3,300], Residential Student in 1968-1971 (3 years) [\$18,000], and Vocational Student in 1971-1972 (1 year) [\$3,300]. The Eligible Class Member is alive on the Settlement Approval Date. The Eligible Class Member's SHP award (excluding any interest, or *pro rata* adjustment) is \$24,600.

(b) **Example B:** Eligible Class Member attended the Amherst School in 1970 for one month, and then returned in 1973 and attended through to 1982, for a total of eleven years, as a Residential Student in 1970 and 1973-1978 (7 years) [\$23,000], Day Student in 1978–1981 (3 years) [\$5,940], and Vocational Student in 1981-1982 (1 year) [\$3,300]. The Eligible Class Member is alive on the Settlement Approval Date. The Eligible Class Member's SHP award (excluding any interest, or *pro rata* adjustment) is \$32,240.

viii) ***Request for Reconsideration***

- 5.26 Where the Administrator (i) disallows a SHP claim in its entirety based on ineligibility of the Claimant, or (ii) where a SHP claim is allowed in whole or in part but the Claimant wishes to dispute the amount of the SHP awarded, the Administrator shall send to the Claimant at the Claimant's postal or email address as indicated in the Claim Form, a notice advising the Claimant that they may request an administrative review of the decision, by way of filing a request for reconsideration (in a form to be provided by the Administrator) (a "Request for Reconsideration").
- 5.27 Any Request for Reconsideration must be received by the Administrator within 60 days of the date of the notice advising of the decision. If no Request for Reconsideration is received by the Administrator within this time period, the Claimant shall be deemed to have accepted the Administrator's determination as to ineligibility and/or amount of SHP and the determination shall be final and binding and not subject to further review by any court or other tribunal.
- 5.28 Where a Claimant files a timely Request for Reconsideration with the Administrator in accordance with sections 5.26-5.27 above, the Administrator shall advise Class Counsel of the request and an administrative review of the Claimant's Request for Reconsideration shall be conducted by a second reviewer (i.e. not the initial reviewer of the claim).
- 5.29 Following its determination in an administrative review, the Administrator shall send the Claimant, at the Claimant's postal or email address as indicated in the Claim Form (copied to Class Counsel), a notice advising the Claimant of its determination.
- 5.30 The determination of the Administrator in an administrative review is final and binding and is not subject to further review by any court or other tribunal.

6. INDEPENDENT ASSESSMENT PROCESS

- 6.1 The Independent Assessment Process is intended to compensate Claimants for harmful experiences above and beyond the shared experiences of Eligible Class Members compensated for by the SHP. Any living Eligible Class Members whose experiences at the School(s) are beyond the systemic harms will be eligible to be considered for compensation under the Independent Assessment Process.
- 6.2 For certainty, Eligible Class Members must be alive in order to submit a claim for an IAP Payment. Further, if an Eligible Class Member dies on or after the date on which they submit a claim for an IAP Payment and they have not yet engaged in the Independent Assessment Process and completed their meeting with the Claim Evaluator, no further processing of the IAP claim will occur, and the Eligible Class Member's estate is ineligible for an IAP payment.
- 6.3 If an Eligible Class Member dies on or after the date on which they have completed their meeting with the Claim Evaluator, and if the Administrator would, but for the death, have otherwise approved an IAP Payment to them (whether or not the Administrator had yet made the decision and/or the Eligible Class Member had been notified of it), then provided the requisite proof required in Schedule 1 to this Distribution Plan is provided by the Estate Executor/Estate Claimant, their estate is entitled to be paid the full value of the IAP Payment.
- 6.4 To participate in the IAP, Eligible Class Members must complete Section B of the Claim Form and will thereby be entered into the Independent Assessment Process. At any time throughout the process, an Eligible Class Member may elect to abandon their IAP claim. For certainty, such a decision has no impact on their claim for a SHP or their ability to participate in the Sharing Circles.
- 6.5 The Administrator shall review each Claim Form and verify, for purposes of continuing through the next steps of the IAP, that the Eligible Class Member is eligible to participate in the IAP, meaning:

(a) The claimant is an Eligible Class Member (verified in the same manner as for a SHP);
and

(b) The Eligible Class Member alleges an experience(s) above and beyond the systemic harms that are compensated for by the SHP, as indicated on Section B of the Claim Form. In order to ultimately be approved for an IAP Payment, the Eligible Class Member's experiences at the School(s) must be determined through the IAP to be beyond the harms intended to be compensated for by the SHP.

6.6 The Administrator will next assign each Eligible Class Member who has submitted an IAP claim to a Claim Facilitator (described below) and a Claim Evaluator (described below).

6.7 At every stage of the IAP at which an Eligible Class Member is engaging in a telephone, video or in-person meeting, the services of a certified interpreter will be made available. For certainty, and without limitation, the associated expenses shall form part of the Administration Fees.

i) ***STEPS IN THE IAP***

(a) ***Assignment of Claim Facilitator, Claim Evaluator***

6.8 The Administrator will advise the Eligible Class Member in writing of the Claim Facilitator and Claim Evaluator assigned to their IAP claim.

6.9 The Administrator will send copies of the Eligible Class Member's Claim Form to the assigned Claim Facilitator and Claim Evaluator.

6.10 Within 30 days of receipt of the Claim Form, the Claim Facilitator will contact the Eligible Class Member directly to arrange a meeting.

(b) ***Meeting with the Claim Facilitator***

- 6.11 The Claim Facilitator will meet in person or virtually with the Eligible Class Member and explain the restorative goals underlying the distribution process and answer any questions of the Eligible Class Member.
- 6.12 Eligible Class Members have the option of attending the Claim Facilitator meeting with a support person(s) of their choosing.
- 6.13 The Claim Facilitator will seek to draw out the Eligible Class Member's experiences at the School(s) and any harm which may have resulted from such experiences. The Claim Facilitator will assist the Eligible Class Member in determining whether their experience at the School(s) fits within the systemic harms intended to be compensated for by the Systemic Harms Payment, or whether their experience is beyond the systemic harms so as to warrant consideration under the Independent Assessment Process. The decision to continue under the IAP will be at the sole discretion of the Eligible Class Member.
- 6.14 The Claim Facilitator will work with the Eligible Class Member to assess whether there exists any documentation that may be of relevant assistance to the Claim Evaluator's review. For example, the Claim Facilitator will make inquiries about the existence of any potentially relevant medical records, or statements.
- 6.15 Where the Claim Facilitator is satisfied that such documentation may exist, the Claim Facilitator shall promptly request such documentation and, upon receipt, promptly provide copies to the Eligible Class Member and to the assigned Claim Evaluator. Upon doing so, the Claim Facilitator shall destroy any copies of the documentation that remain in the Claim Facilitator's possession.
- 6.16 The Claim Facilitator shall notify the assigned Claim Evaluator when production is complete. Where there exists no supporting documentation, the Claim Facilitator shall notify the Claim Evaluator of such.

- 6.17 The costs of any such production shall be borne by the Administrator as a disbursement (i.e. an Administration Fee). The Claim Facilitator shall send any invoices related to the production to the Administrator. Upon receipt of the invoice, the Administrator shall issue payment.
- 6.18 For certainty, supporting documentation is not a requirement under the IAP. Eligible Class Members are not required to provide written proof of their experiences. The lack of documentation shall not be used against Eligible Class Members in the determination of their eligibility. In no event shall the absence of such documentation be construed as a lack of credibility or be considered as a basis to disqualify or diminish the claims of any Eligible Class Member.

(c) Meeting with the Claim Evaluator

- 6.19 Within 30 days after being informed by the Claim Facilitator that (i) production is complete, or (ii) alternatively that no documentation will be provided, the Claim Evaluator shall be responsible for contacting the Claim Facilitator, who will arrange a meeting either in person or virtually between the Eligible Class Member and Claim Evaluator.
- 6.20 Eligible Class Members have the option of attending the meeting with the Claim Evaluator with a support person(s) of their choosing.
- 6.21 The meeting with the Claim Evaluator is intended to be restorative. The form and conduct of the meeting will aim to ensure that the process does not cause additional harm and burden on Eligible Class Members. The meeting shall be inquisitorial, not adversarial.
- 6.22 The Claim Evaluator shall ask questions of the Eligible Class Member so as to try to draw out their full story. The Claim Evaluator shall focus the meeting on the harms alleged by the Eligible Class Member and the circumstances that led to the harms.

- 6.23 Where the Claim Evaluator has reasonable grounds to believe that an Eligible Class Member is not being honest or acting in good faith, the Claim Evaluator shall not award compensation to that Eligible Class Member under the IAP.
- 6.24 To ensure fairness and equity in the IAP evaluation process, there shall be a process whereby the Claims Evaluators shall meet to assess uniformity and consistency across assessments, provided each Claim Evaluator remains solely responsible for deciding the claims they have heard. This process will aim to maintain a standardized approach, ensuring that similar cases are treated similarly and that variations in assessments are minimized. For certainty, there is no defined quota or proportion of Eligible Class Members who must be assessed at Level 1 Harm versus Level 2 Harm, and no arbitrary limits or proportions imposed on the distribution of harm levels among Approved Claimants.
- 6.25 At the conclusion of the meeting, the Claim Evaluator will advise the Eligible Class Member that their decision will be provided in writing within 30 days. Within this timeframe, the Claim Evaluator will send to both the Eligible Class Member and Administrator a decision in standard format outlining, in plain language, key factual findings and providing a rationale for finding or not finding compensability within the Independent Assessment Process and for the compensation assessed, if any.

(d) IAP Awards and Distribution of IAP Payments

- 6.26 IAP Payments are intended to address actions taken by the perpetrator (agents, employees, and contractors of the Amherst School) or amongst students which resulted in harmful experiences that are beyond the scope of the harms compensated for by the Systemic Harms Payment (SHP).
- 6.27 IAP Payments will be awarded based on two categories of harm, Level 1 and Level 2. Level 2 Harms includes harms that are more severe than those in Level 1. Levels 1 and 2 will be assessed by the Claim Evaluators using evidence-based predictive factors that

have been identified in the research as significant in predicting and understanding the level of harm related to childhood abuse.

- 6.28 Level 1 and Level 2 are not cumulative: an Approved Claimant shall only be paid for one of the two Levels, as determined by the Claim Evaluator.
- 6.29 The IAP Fund of \$22,105,000 shall be distributed as outlined in Table 4.
- 6.30 If there are insufficient funds in the IAP Fund to compensate all Claimants on the basis of the full value of the IAP Payments determined in accordance with Table 4, the IAP Payments shall be adjusted downward on a *pro rata* basis.
- 6.31 IAP Payments are subject to top-up from any SHP Residue as described in section 5.23.
- 6.32 The award of IAP Payments shall be guided by a list of evidence-based predictive factors that may escalate or exacerbate the harmful or lasting effects of abuse. The Claim Evaluator shall consider this list of factors in conjunction with the Eligible Class Member's life circumstances and evaluate harm for the purpose of awarding compensation based on the compensation level described in Table 4, below.

TABLE 4 – IAP Awards

Type of Harm	Award
Level 1 Harm	
Short term psychological or physical harms, arising from the following forms of abuse, including: <ul style="list-style-type: none">• One or more incidents of physical assaults causing temporary mobility impairment or persisting pain, and resulting in an observable injury	\$90,000-\$100,000

<p>beyond bruising, such as a sprain or soft tissue injury;</p> <ul style="list-style-type: none"> • One or more incidents of non-consensual sexual touching, fondling under clothing or kissing; • One or more incidents of exposure of genitals and/or simulated intercourse and/or masturbation by the perpetrator. 	
Level 2 Harm	
<p>Long-lasting and significant psychological and/or physical harm arising from the following forms of abuse, including:</p> <ul style="list-style-type: none"> • One or more incidents of physical assaults causing a serious physical injury that led to or should have led to hospitalization or medical treatment by a physician; • Permanent or demonstrated long-term physical injury, impairment or disfigurement • Loss of consciousness, broken bones, or a serious but temporary incapacitation such that bed rest or hospital care of several days duration was required, e.g., severe beating; • One or more incidents of non-consensual masturbation; • One or more incidents of attempted 	<p>\$140,000-\$150,000</p>

<p>vaginal/anal/digital penetration and/or attempted oral sex;</p> <ul style="list-style-type: none">• One or more incidents of non-consensual vaginal/anal/digital penetration and/or oral sex.	
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(e) IAP Awards – Appeal of the Decision of the Claim Evaluator

6.33 The decision of a Claim Evaluator with respect to the amount of an IAP Payment is final and binding, and there is no ability to appeal the amount awarded. However, an Eligible Class Member may appeal the decision of a Claim Evaluator as to entitlement to an IAP Payment if the Eligible Class Member believes the Claim Evaluator’s decision contains obvious and significant mistakes with respect to the conclusion that the alleged harms do not exceed the systemic harms and thus do not qualify for an IAP award. However, decisions of Claim Evaluators: (i) that an Eligible Class Member is ineligible due to failure to meet the definition of an Eligible Class Member; and (ii) as to the amount awarded, are not appealable.

6.34 Where an Eligible Class Member believes the decision of the Claim Evaluator that the alleged harms do not exceed the systemic harms and thus do not qualify for an IAP award, contains obvious and significant mistakes, the Eligible Class Member may file an appeal form (to be provided by the Administrator) and, if applicable, any additional documentation upon which they rely to demonstrate that the Claim Evaluator made an obvious and significant mistake in concluding that the alleged harms were within the systemic harms (collectively an “Appeal Package”). The Appeal Package must be provided to the Administrator [within 30 calendar days after receiving the decision.]

6.35 If no Appeal Package is received by the Administrator within this time period, the Eligible Class Member shall be deemed to have accepted the Claim Evaluator’s decision

as to eligibility for IAP Payment and the decision shall be final and binding and not subject to further review by any court or other tribunal.

- 6.36 Upon receipt of an Appeal Package, the Administrator shall review the decision of the Claim Evaluator, along with the Appeal Package, to determine if the Claim Evaluator made any obvious and significant mistake(s).
- 6.37 For an appeal to be successful, the Eligible Class Member must present evidence to satisfy the Administrator on a balance of probabilities that the Claim Evaluator made an obvious and significant mistake in concluding that the alleged harms formed part of the systemic harms.
- 6.38 Where the Administrator is satisfied from the Appeal Package that the Claim Evaluator made an obvious and significant mistake, the Administrator shall substitute the decision with one of its own. The Administrator shall award compensation based on the Appeal Package and Table 4 herein.
- 6.39 Following its review of the appeal, the Administrator shall advise the Eligible Class Member of its determination and the supporting reasons. The decision of the Administrator in regard to the Eligible Class Member's appeal shall be final and binding and not subject to further review by any court or other tribunal.

7. DISTRIBUTION OF SYSTEMIC HARMS PAYMENTS AND IAP PAYMENTS

- 7.1 The Administrator shall distribute Systemic Harms Payments no more than 90 days after completing calculation of SHPs.
- 7.2 As soon as possible after all Independent Assessment Process decisions have been finalized, the time to request an appeal of the Claims Evaluator's decision has expired, and all appeal reviews have concluded, the Administrator shall allocate and distribute IAP Payments.

7.3 The Administrator shall mail the individual compensation cheques to the Claimants at the postal addresses indicated in the Claim Forms within 30 days. If, for any reason, a Claimant does not cash a cheque within 6 months after the date of the cheque, the Claimant shall forfeit the right to compensation and the funds shall form part of the Compensation Fund, to be distributed in accordance with the Settlement Agreement. Thirty days prior to the expiry of the 6-month period described above, the Claims Administrator shall:

- (a) provide Class Counsel and the Defendants with a list of Claimants who have not cashed their compensation cheques;
- (b) send the Claimant a further letter (copied to Class Counsel) advising the Claimant that they have 30 days to cash the compensation cheque; and
- (c) provide an accounting to Class Counsel and the Defendants of any interest accrued by the Claims Administrator in relation to any monies it has held pending the clearance or expiration of all cheques.

SCHEDULE 1 –

PAYMENTS FOR ELIGIBLE ESTATES AND ELIGIBLE REPRESENTATIVES

A. Payment if Eligible Class Member Deceased: Grant of Probate, Grant of Administration, Grant of Administration with Will Annexed, or the Like

This section applies if the Eligible Estate has legal proof that the Estate Executor may deal with the assets of the Deceased Claimant.

1. If an Eligible Class Member is deceased (“Deceased Claimant”) and the executor, administrator, trustee or liquidator of such Deceased Claimant’s estate (the “Estate Executor”) has submitted the evidence required by section A.2 to the Administrator, the Estate Executor shall have authority to provide instructions on behalf of the Deceased Claimant, and the Administrator shall pay the Estate Executor, in trust for the estate, any amounts to which the Deceased Claimant is entitled under this Settlement Agreement, with such payment made to “the estate of” such Deceased Claimant.
2. In support of a claim made pursuant to section A.1, the Estate Executor for the Deceased Claimant shall submit to the Administrator, in a form acceptable to the Administrator:
 - a) A Claim Form (if a Claim Form was not submitted by such Deceased Claimant themselves or by their Personal Representative prior to the death of the Deceased Claimant);
 - b) Evidence that such Deceased Claimant is deceased and evidence of the date on which such Deceased Claimant died (if the date of death was prior to January 31, 2019, they are not an Eligible Class Member and the Estate is ineligible for any compensation under the Settlement Agreement); and
 - c) Evidence of the following to identify the Estate Executor as having the legal authority to receive compensation on behalf of the estate of the Deceased Claimant:

- i. If the claim is based on a will or other testamentary instrument or on intestacy, a copy of a grant of probate, a grant of administration, a grant of administration with will annexed, a grant and letters testamentary, or other document of like import; or
- ii. if the claim is based on a Quebec notarial will, an authenticated copy thereof.

B. Payment if Eligible Class Member Deceased: No Grant of Authority or the Like

This section applies if the Eligible Estate does not submit legal proof that they may deal with the assets of the Deceased Claimant.

- 3. If an Eligible Class Member is deceased (“Deceased Claimant”) but the estate of such Deceased Claimant has **not** submitted (and/or does not have) all of the evidence required by section A.2(c) above, the Personal Representative (as defined below), or another representative of such Deceased Claimant shall be an “Estate Claimant” for the Deceased Claimant, and the Estate Claimant must submit to the Administrator, in each case in a form acceptable to the Administrator, an “Estate Representation Claim” which consists in totality of:
 - a) A Claim Form (if a Claim Form was not submitted by such Deceased Claimant themselves or by their Personal Representative prior to the death of the Deceased Claimant);
 - b) Evidence that such Deceased Claimant is deceased and evidence of the date on which such Deceased Claimant died (if the date of death was prior to January 31, 2019, they are not an Eligible Class Member and the Estate Claimant is ineligible for any compensation under the Settlement Agreement); and
 - c) The following evidence that they represent the estate of such Deceased Claimant, in each case in a form acceptable to the Administrator:

i) ***If the Deceased Claimant had a will:***

- 1) A copy of the will appointing the Estate Claimant to represent the estate of such Deceased Claimant; and
- 2) Except in respect of Deceased Claimants who were ordinarily resident in Quebec, an attestation or declaration signed by the Estate Claimant, together with one other person who knew the Deceased Claimant personally, confirming that they: (i) believe the will to be valid; (ii) do not know the will to have been revoked; (iii) know of no later will of the Deceased Claimant; and (iv) know of no executor, administrator, trustee, or liquidator that has been appointed by a court; or

ii) ***If the Deceased Claimant did not have a will:***

- 1) An attestation or declaration signed by the Estate Claimant, together with one other person who knew the Deceased Claimant personally, confirming that they do not know such Deceased Claimant to have had a will and that no executor, administrator, trustee, or liquidator has been appointed by a court;
- 2) Proof of the relationship of such Estate Claimant to the Deceased Claimant, in a form reasonably acceptable to the Administrator;
- 3) An attestation or declaration signed by the Estate Claimant, together with one other person who knew the

Deceased Claimant personally confirming:

- a. That they know of no equal priority heir of such Deceased Claimant (per below); or
 - b. if there are any equal priority heirs of such Deceased Claimant (per below), listing the persons at the same priority level and providing such persons' signed consent for the Estate Claimant to act for the estate of such Deceased Claimant.
4. For purposes of this protocol, the priority level of heirs from highest to lowest priority is:
- a) For all Deceased Claimants other than those who were ordinarily resident in Quebec, as follows, with each term defined in
 - i. surviving spouse or common-law partner;
 - ii. children;
 - iii. grandchildren
 - iv. parents;
 - v. siblings;
 - vi. children of siblings.
 - b) For Deceased Claimants who were ordinarily resident in Quebec as set out in the Civil Code of Quebec (RLRQ, c. CCQ-1991) as follows:
 - i. surviving spouse
 - ii. children, or their own children if the case may be
 - iii. parents; and
 - iv. siblings, or their own children if the case may be.
5. If only one Estate Representation Claim is submitted in respect of such Deceased Claimant on or prior to the Claim Deadline, the Estate Claimant, having provided the necessary

documentation as described above, shall have authority to provide instructions on behalf of the Deceased Claimant, and the Administrator shall pay the Estate Claimant any amounts to which the Deceased Claimant was entitled under the Settlement Agreement, payable to the estate of the Deceased Claimant.

6. If more than one Estate Representation Claim is made in respect of such Deceased Claimant on or prior to the Claim Deadline:
 - a. The Estate Claimants identified in all such Estate Representation Claims may submit to the Administrator: (i) a signed agreement directing the payment of the amount(s) to which such Deceased Claimant is entitled under the Settlement Agreement; and (ii) provide a release in a form acceptable to the Administrator, and the Administrator will pay such amounts to the estate of the Deceased Claimant in accordance with such agreement; or
 - b. If the Estate Claimants identified in all such Estate Representation Claims do not submit to the Administrator an agreement in accordance with section B.6.a above, the Administrator shall require one of the Estate Claimants to submit the evidence set out in section B.6.a including a release and indemnity in a form satisfactory to the Administrator and the Administrator will pay such person on behalf of the estate of the Deceased Claimant the amount to which the Deceased Claimant was entitled under the Settlement Agreement;
 - c. If no person submits the evidence set out in section B.6.a to the Administrator within one month of the Claim Deadline, the amount(s) to which the Deceased Claimant was entitled shall form part of the SHP Fund and will be distributed in accordance with the Settlement Agreement.

C. Person Under Disability

7. If a Claimant who submitted a Claim Form to the Administrator prior to the Claim Deadline is or becomes a person who is unable to manage or make reasonable judgments or decisions

in respect of their affairs by reason of mental incapacity and for whom, prior to their receipt of any amount to which they are entitled under this Settlement Agreement, a person has been appointed pursuant to the applicable provincial or federal legislation to manage or make reasonable judgments or decisions in respect of the affairs of a Person Under Disability (“Personal Representative”) (such a claimant being a “Person Under Disability”), and the Administrator receives notice that such Claimant is a Person Under Disability prior to paying such amounts, and is satisfied that the Personal Representative has been appointed to look after their financial affairs, the Administrator shall pay the Personal Representative of such Claimant any amounts to which the Claimant is entitled under the Settlement Agreement. If the Administrator receives no such notice, the Administrator shall pay such amounts to the Claimant.

8. If a Claimant is or becomes a Person Under Disability prior to submitting a Claim Form to the Administrator, the Personal Representative of the Claimant, who has provided documentation satisfying the Administrator that they have been appointed to look after the Claimant’s financial affairs, may provide instructions and submit a Claim Form on behalf of such Claimant prior to the Claim Deadline.