

MEMORANDUM OF AGREEMENT

BETWEEN:

[PARTY] (“[XX]”)

-and-

THE UNIVERSITY OF MANITOBA

On behalf of The National Centre for Truth and Reconciliation (the “NCTR”)

(individually a “Party” and together, the “Parties”)

PREAMBLE

WHEREAS the **[PARTY]** is [NTD: describe party]

WHEREAS the Indian residential school system entered the lives of the **[PARTY]** and **[#]** of children have attended the [NTD: list subject institutions] (the “Subject Institutions”). [NTD: Include this section where necessary. Keep section to basic facts that pertain only to the agreement where possible for brevity]

WHEREAS the **[PARTY]** is [NTD: list work they are conducting (i.e. is conducting research into the location of unmarked burials of children associated with the Subject Institutions, and the identity of the missing children who may be buried there)] for which access to the NCTR’s Archives would assist in this [NTD: list work being conducted (i.e. research)];

WHEREAS the Indian Residential Schools Settlement Agreement (“IRSSA”) was struck between various parties to acknowledge the harms of the Indian Residential School system in Canada (“Residential Schools”) and to support healing, acknowledgement, and reconciliation between Indigenous and settler societies. To achieve these goals the IRSSA created the Truth and Reconciliation Commission (“TRC”) to investigate the history and legacy of the residential school system;

WHEREAS the NCTR was created as the successor of the TRC under Schedule “N” of the IRSSA and is a national Indigenous research centre that holds the records from the TRC and other records proving the history and legacy of the Residential School system and that promotes reconciliation between Indigenous and settler societies through education and an acknowledgement of the history of and legacy of the residential school system;

WHEREAS the NCTR is hosted by the University of Manitoba in accordance with the *Centre for Truth and Reconciliation Trust Deed* (the “Trust Deed”) between the TRC and the University of Manitoba and the *Centre for Truth and Reconciliation Administrative Agreement*;

WHEREAS the NCTR is mandated under its Trust Deed and *The National Centre for Truth and Reconciliation Act, C.C.S.M. c. N20* (the “NCTR Act”) to 1) ensure preservation of the TRC’s archives and other materials relating to Residential Schools; 2) to make the records accessible to former students, their families and communities, the general public, researchers and educators, in accordance with access and privacy legislation, and any other applicable legislation; and 3) to

promote engagement of the public regarding Residential Schools and other Indigenous issues, including through the fostering of understanding and reconciliation;

WHEREAS the NCTR is responsive to the guidance and direction of Indigenous societies as represented in the Governing Circle and the Survivors Circle and is also driven by the Survivors who carry the burden of residential school memory, and the concerns of Indigenous families and communities whose lives were overturned by the residential school system;

WHEREAS [PARTY] views the NCTR's Archives as an important resource for its use in the [investigation/research/task/purpose] and wishes to access the NCTR Archives for this purpose;

WHEREAS the NCTR supports Indigenous communities in meeting their [investigation/research/task/purpose] needs by providing access to its Archival repositories, and by this Agreement details the access to and Use by [PARTY] for the Permitted Purposes outlined and in accordance with the terms and conditions herein set out.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the promises and the covenants and agreements herein contained the Parties hereto agree as follows:

1. DEFINITIONS

1.1 In this Agreement, the following terms have the following meanings:

"Agreement" means this agreement between [PARTY] and the NCTR, including the preamble and any schedule or appendix thereto, as amended from time to time in accordance with its terms.

"Applicable Law" means, with respect to any person, property, transaction, event or other matter, any Government of Canada and province of Manitoba law, statute, regulation, order, judgment, decree, treaty, rule, policy of the NCTR or the University of Manitoba, or other requirement having the force of law relating to or applicable to such person, property, transaction, event or other matter and the privacy, interests or rights thereof, and includes, but is not limited to, *The Freedom of Information and Protection of Privacy Act*, CCSM c F175 ("FIPPA") and *The Personal Health Information Act*, CCSM c P33.5 ("PHIA"), as amended from time to time.

"Disclose" or "Disclosure" means the release of the information in the NCTR Archives or the Records by [PARTY], or any person engaged thereby, to Third Parties other than for the Use and Permitted Purpose expressly set out herein. [NTD: add where it is applicable or where a Community wishes to provide investigative knowledge to family members in order for them to contact NCTR- "For greater clarity, this does not prevent communication of the investigative knowledge to the families of children who died or went missing at the Subject Institutions"]

"NCTR Archives" means the database of all the records, including those acquired by the TRC, which create documentary resources on the history and legacy of the Canadian Residential School system, which are preserved and held at the NCTR. This also includes the additional records acquired by the NCTR that create a comprehensive resource to promote

reconciliation and to study, learn, commemorate, and heal from the Indigenous experience of residential schools.

“Permitted Purpose” has the meaning set out in section 3.1 herein;

“Personal Information” means recorded information about an identifiable individual, as further defined in *The Freedom of Information and Protection of Privacy Act* (“FIPPA”).

“Personal Health Information” means recorded information about an identifiable individual as further defined in *The Personal Health Information Act* (“PHIA”).

“Records” means the originals or copies of documents, materials or recorded information contained in the NCTR Archives regarding [investigation/research/task/purpose] on [describe], as well as any supporting Records providing evidence of [list] [NTD: Example: “Records” means documents or recorded information contained in the NCTR Archives regarding the Subject Institutions or which concern the children from families of the party and other Indigenous children who died or went missing at the Subject Institutions, as well as any supporting Records providing evidence of unmarked burials at or near the Subject Institutions].

“Subject Institutions” means ... [list any applicable institutions]

“Third-Party” means an individual, corporation, government department or entity other than the NCTR.

“Use” means the authorized use and access of the Records by [PARTY] or researchers engaged by the [PARTY] provided that they are bound by the terms and conditions of this Agreement, to access to the Records for the Permitted Purpose and subject to the terms of this Agreement. For greater certainty, Use by [PARTY] does not include the download, storage or Disclosure of Records and does not preclude the authority of the Director of the NCTR to proactively make NCTR Records available and to disclose any Personal Information contained in NCTR Records, to the extent necessary, to fulfill the mandate of the NCTR as it relates to the Records under section 7.1 of the NCTR Act.

2. SCOPE OF THE AGREEMENT

2.1 This Agreement:

- a) facilitates access to the Records by [PARTY] for the Permitted Purpose
- b) defines the respective roles and responsibilities of the Parties with respect to [PARTY]'s access to Records held at the NCTR Archives; and
- c) sets out the terms and conditions upon which [PARTY] will be granted access to and Use of the Records.

- 2.2 The scope of this Agreement is limited to [PARTY]'s access to and Use of the Records in the NCTR Archives that are relevant to the Permitted Purpose. For greater certainty, this Agreement does not govern [PARTY]'s access to and use of any records obtained independently by [PARTY] prior to, during, and following the initial and/or successive terms of this Agreement, including copies of Records that may be found in the NCTR Archives.
- 2.3 This Agreement does not displace the ability of individual survivors or family members of children who attended Residential School to directly contact the NCTR to request access to information, records, or documents in accordance with NCTR processes and Applicable Laws.
- 2.4 The Parties acknowledge and agree that nothing in this Agreement will serve as a process for or will have the effect of transferring ownership or custodial rights of the NCTR Archives, the original Records, or copies of those Records to [PARTY] or any other Third Party. The NCTR Archives and Records shall remain with the NCTR, and NCTR shall remain the custodian of the NCTR Archives and Records. The [PARTY] shall not have any right to access, Use or Disclose the Records except as expressly set out herein.

3. USE OF THE RECORDS

- 3.1 [PARTY] shall Use the Records for the following Permitted Purposes:
- a) [NTD: list all Permitted Purposes, include all applicable uses that the access pertains to.] [SEE EXAMPLES BELOW]
 - b) to conduct research into the experience of the Indigenous children at Residential Schools and the matter of unmarked burial sites of children located at or near the Residential Schools, in order to locate these unmarked burial sites and identify the children;
 - c) where permissible by law and this Agreement and to the extent reasonably possible, to identify and locate family members of missing children, and to provide investigative knowledge to those family members and direct them to contact the NCTR to acquire any relevant records and information, if they so choose;
 - d) to honour missing children who have been identified through the Use of the Records, in accordance with Applicable Laws, provided that no Personal Information or Personal Health Information is Disclosed;
 - e) to prepare reports on the results of its research, such reports which may be made available to family members of missing children, membership, or the general public. These reports will not Disclose Records or include Personal Information or Personal Health Information without expressed written consent from the individual the information is about or that individual's personal legal representative, and the reports will only be made available in accordance with the terms of this Agreement and Applicable Laws; and

- f) to supply investigative information to support community spiritual customs and ceremony to respectfully assist the spirit of missing children to be finally at rest.

4. JOINT OBLIGATIONS

4.1 The Parties agree:

- a) to adhere to all Applicable Laws as it relates to the access and Use of the Records, including institutional policies and procedures of the NCTR and the University of Manitoba, as applicable;
- b) to identify designated representatives and other required staff, for meetings, events and communication activities related to the implementation of this Agreement, joint initiatives arising out of or related to this Agreement, to address any questions or concerns regarding the use of the Records, and to work together to establish ceremony and non-textual processes to formally and officially recognize the obligations of the Parties to this Agreement, where appropriate.
- c) To make reasonable efforts to work together:
 - i. to support future initiatives of mutual benefit in relation to the NCTR's goals of supporting community social memory, conducting commemoration activities, research, public engagement, healing, cultural revitalization and education and reconciliation activities relating to the legacy of Residential School system; and
 - ii. to develop of common and mutually beneficial approaches, in accordance with Applicable Laws, to making the Records related to the Indigenous experience and legacy of the residential school system in Canada more publicly available.

5. [PARTY]'S RESPONSIBILITIES

5.1 [PARTY] shall:

- a) access and Use the Records only for the Permitted Purposes and in accordance with this Agreement and any Applicable Laws, particularly those laws with respect to privacy and intellectual property. Any request for Disclosure or copies of Records shall be made by [PARTY] to NCTR in accordance with Applicable Law and NCTR policies and protocols;
- b) comply with reasonable guidelines or direction given by the NCTR from time to time related to the safety and security of the Records;
- c) except where Disclosure is authorized in accordance with this Agreement or at law, keep any Personal Information or Personal Health Information contained in the Records confidential, and not directly or indirectly Disclose or allow access to the

Records by any Third Party without the consent of the individuals whose personal information is to be disclosed;

- d) use the electronic data repository, where provided, to store their digital material research accumulated or created for the Permitted Purpose during the Term. This electronic data repository will be used for the sole purpose of storing research material and will not be used to download or store Records or any copies thereof. [PARTY], or researchers engaged thereby provided that they are bound by the terms and conditions of this Agreement, shall have the right to access and /or retrieve all of its digital material research accumulated or created for the Permitted Purpose from their electronic data repository at any time and, in any event, no later than the termination of this Agreement; and
 - e) have and maintain appropriate security arrangements covering the administrative, physical and technical safeguarding of the Records from unauthorized or accidental access, collection, Disclosure, use, modification and deletion. Such arrangements shall adhere to industry accepted “best practices” for information of the same level of sensitivity, including (without limitation):
 - i. maintaining adequate physical controls and password protections for any server or system on which the Records are accessed;
 - ii. requiring all staff and contractors are aware of and adhere to the Applicable Laws, including but not limited to FIPPA and PHIA, or equivalent provincial or federal legislation; and
 - iii. taking any other measures reasonably necessary to prevent any Use or Disclosure of the Records other than as allowed under this Agreement;
- 5.2 [PARTY] shall promptly report any unauthorized access, Use or Disclosure of Records or breach under this Agreement to the NCTR. In the event of said unauthorized access, Use or Disclosure, [PARTY] shall take immediate steps to contain and mitigate such access, Use or Disclosure to the greatest extent reasonable and shall cooperate with NCTR to mitigate any effects thereof.
- 5.3 [PARTY] shall not:
- a) except as provided in this Agreement, Use or Disclose the Records or permit the Records to be Used, other than for the Permitted Purposes set out herein;
 - b) initiate contact with any individual, specifically pertaining to the Records to which they have been granted access to under this Agreement, directly or indirectly, except as otherwise permitted under this Agreement;
 - c) make use of the Records to sell goods or services to any individual, corporation, business, agency, organization or entity the Records are about;

- d) release or Disclose any Records which have not previously been disclosed or made public or for which consent has not been obtained;
- e) exchange any Records for any information, goods, services, or benefits; or
- f) conduct searches about specific individuals, except as required for the Permitted Purposes.

6. NCTR'S RESPONSIBILITIES

6.1 The NCTR shall:

- a) allow [PARTY] electronic access to Use the Records that are in the NCTR Archives solely for the Permitted Purpose in accordance with this Agreement and within a reasonable time following the execution of this Agreement.
- b) make [PARTY] aware of applicable NCTR policies and procedures in respect of accessing, Using and managing information in the NCTR Archives applicable to the Records.
- c) seek the input, commentary, and spiritual guidance of the NCTR Survivors Circle in decisions concerning the access and use of the Records, where required or deemed necessary.
- d) provide reasonable assistance to [PARTY], as requested, on how to use the NCTR Archives database for the Permitted Purpose and Use outlined in this Agreement.
- e) In support of the [NTD: list purpose (i.e. investigative research)], provide [PARTY] an electronic data repository to store their digital material research accumulated or created for the Permitted Purpose during the Term, where requested. This electronic data repository will be used for the sole purpose of storing research material and will not be used to download or store Records or any copies thereof.

7. COMMUNICATIONS

- 7.1 The Parties will jointly develop a communications strategy at the outset of any initiatives or other written agreements made pursuant to this Agreement.
- 7.2 All communications in any form to the public, including press releases, launches and events, resulting from this Agreement and any subsequent agreements must be approved in advance by each Party in writing.

8. NOTICE

- 8.1 Any notice, report or other communication required or permitted to be given or delivered pursuant to the provisions of this Agreement will be delivered in writing to the Parties as follows:

If to the NCTR:

[NAME]
[ADDRESS]
[CONTACT]

If to the [PARTY]:

[NAME]
[ADDRESS]
[CONTACT]

and any such notice, report or other communication will be deemed to have been effectively delivered or given and received: a) if personally delivered to the other Party, on the date which it was delivered; b) if sent by email to the other Party, on the second business day following the date the email was sent; or c) if sent by regular mail to the other Party, on the fifth business day following the date the notice was mailed. During a period of postal service interruption or apprehension or interruption, all notices shall be given or made only by personal delivery or email.

- 8.2 A Party may change its contact name, address, or email address from time to time by giving notice in accordance with the foregoing.

9. FINANCIAL AGREEMENTS

- 9.1 Except as set out to the contrary herein, this Agreement will not impose any financial responsibilities on the Parties, except that each Party will be responsible for the funding costs that each Party incurs in its own interests, related to its obligations set out in this Agreement.
- 9.2 The NCTR will be responsible for all costs associated with the long-term preservation of Records within its NCTR Archival system.

10. INDEMNITY AND DISCLAIMER

- 10.1 The Parties acknowledge and agree that Records are provided “as is” and NCTR makes no representations, guarantees, or warranties, express or implied, with respect to the reliability, accuracy, fitness, validity, or content of any of the Records to which access is provided under this Agreement, including any Personal Information and/or Personal Health Information contained therein.
- 10.2 The Parties acknowledge and agree that the NCTR shall not be liable for any loss, direct or consequential, damages or expenses which may be suffered, sustained, paid, or incurred by reason of any error or omission in such Records or by reason of any reliance upon such Records.
- 10.3 [PARTY] shall indemnify and hold harmless the NCTR, its employees, agents, and contractors from and against any and all direct liabilities, claims, losses, suits or actions, costs, damages and expenses (including without limitation any costs as between a solicitor and his own client) which may be brought or made against the NCTR or which the NCTR may be required to pay or incur as a result of or in connection with any breach, violation or non-performance

by the [PARTY] of any of its covenants or obligations contained in this Agreement, or by the negligent acts or omissions of [PARTY] or its employees, agents or contractors in connection with the Records.

- 10.4 The NCTR shall indemnify and hold harmless [PARTY], its employees, agents, and contractors from and against any and all direct liabilities, claims, losses, suits or actions, costs, damages and expenses (including without limitation any costs as between a solicitor and his own client) which may be brought or made against [PARTY] or which [PARTY] may be required to pay or incur as a result of or in connection with any breach, violation or non-performance by the NCTR of any of its covenants or obligations contained in this Agreement.

11. TERM

- 11.1 This Agreement will come into force upon signature of both Parties and will automatically renew for successive terms of twelve months unless amended or terminated pursuant to sections 12 and 13.

12. AMENDMENT

- 12.1 This Agreement may be amended only with the mutual written consent of the Parties.

13. TERMINATION

- 13.1 The Parties will make best efforts to resolve any conflicts with the objective of avoiding termination of this Agreement.
- 13.2 Notwithstanding section 13.1 above, this Agreement may be terminated upon thirty (30) days prior written notice to the other Party or at any time by mutual agreement in writing of both Parties. In the event of a breach of this Agreement by [PARTY], the NCTR shall be entitled to terminate this Agreement upon written notice to [PARTY]. The NCTR will be provided with a copy of any reports regarding the investigation of the breach.
- 13.3 As of the date of the termination of this Agreement:
- a) all rights granted pursuant to this Agreement shall cease; and
 - b) [PARTY] will no longer be permitted access to or Use of the Records.

14. REVIEW

- 14.1 The Parties agree to review this Agreement every two (2) years from the date of signature and as otherwise required.

15. INDEPENDENT LEGAL ADVICE

15.1 Each of the Parties hereby acknowledges that it has been afforded the opportunity to obtain independent legal advice and confirms by the execution and delivery of this Agreement that they have either done so or waived their right to do so in connection with the entering into of this Agreement.

16. ENTIRE AGREEMENT

16.1 Nothing in this Agreement shall be construed as to establish any agency, employment, partnership or joint venture relationship between the Parties. This Agreement, including the recitals and any schedules or appendices, contains the entire agreement between the Parties with respect to the subject matter hereof. There are no undertakings, representations, or promises, express or implied, other than those contained in this Agreement, and none have been relied on.

17. COUNTERPARTS

17.1 This Agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery by facsimile or by electronic transmission in portable document format (PDF) of an executed counterpart of this Agreement is as effective as delivery of an originally executed counterpart of this Agreement. Execution by electronic signature shall also be considered sufficient.

[PARTY]

**THE UNIVERSITY OF MANITOBA
on behalf of The National Centre for Truth and
Reconciliation**

Name:
Title:
Date:

Name: Stephanie Scott
Title: Executive Director, National Centre for Truth and
Reconciliation
Date:

Name: Dr. Catherine Cook
Title: Vice-President, Indigenous, University of Manitoba
Date: