

## SETTLEMENT AGREEMENT

This settlement agreement (“Agreement”) is entered into this 10th day of March, 2022 (“Effective Date”) between Disability Rights Montana, Inc. (“DRM”), Brian M. Gootkin (“Gootkin”), in his official capacity as the Director of the Montana Department of Corrections (“DOC”), and Jim Salmonsens (“Salmonsens”), in his official capacity as the Warden of Montana State Prison (“MSP”). Gootkin and Salmonsens shall be referred to collectively as “Defendants”. DRM and Defendants shall be referred to collectively as the “Parties” and, from time to time, individually as a “Party”.

### RECITALS

WHEREAS, DRM is the plaintiff and Gootkin and Salmonsens are the defendants in the lawsuit captioned *Disability Rights Montana, Inc. v. Brian M. Gootkin, et al.*, Case No. CV-15-22-DWM (the “Lawsuit”), which is currently pending in the United States District Court for the District of Montana, Butte Division; and

WHEREAS, DRM is the federally-mandated civil rights protection and advocacy organization for the State of Montana and in that capacity represents the legal interests of its constituents, who include individuals with serious mental illness incarcerated at MSP; and

WHEREAS, Gootkin is currently the Director of DOC and Salmonsens currently is the Warden of MSP; and

WHEREAS, In the Lawsuit, DRM has brought a claim on behalf of all prisoners with serious mental illness who are incarcerated at MSP alleging that Defendants, in their respective official capacities, are violating the right of those prisoners to be free from cruel and unusual punishment as protected by the Eighth Amendment of the United States Constitution; and

WHEREAS, Defendants deny the allegations in the Lawsuit; and

WHEREAS, The Parties now desire to enter into this Agreement in order to fully and finally settle all claims, causes of action, and defenses, and to dismiss the Lawsuit, upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in light of the foregoing, for good and valuable consideration the receipt and adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

**I. HOUSING AT MSP OF INMATES WITH SEVERE MENTAL ILLNESS (SMI)**

- a. Subject to the exceptions set forth below in the subsections b. through d., within six (6) months of the Effective Date, all cells used to house SMI inmates at MSP shall have at least the following features:
  - i. Clear, unfrosted exterior windows that allow natural light into the cell, other than cells that are not located on an exterior wall;
  - ii. Stainless steel toilet and sink, each with a potable water source; and
  - iii. Platform beds with pad and pillow, which pillow can be built into the platform bed or separate.
- b. The safe cells, which the parties understand to mean the 3 cells located in the Restrictive Housing Unit (“RHU”) and Secure Adjustment Unit (“SAU”) that currently contain squat toilets, are excepted from the requirement set forth above in subsection I.a.(i). Defendants will bring the safe cells into compliance with the requirements set forth above in subsections I.a.(ii) and (iii) within one year from the Effective Date.
- c. One observation cell in the infirmary shall be maintained as a dry cell and is excepted from the requirements set forth in subsection I.a.(ii) and (iii) of this Agreement, provided that any inmate temporarily housed in such observation cell shall be allowed access to a sink and toilet with potable water sources upon reasonable request.
- d. Frosted windows may be used only if reasonably necessary in certain cells to maintain the safety and security of the inmates, staff, and the institution. Such justification will be documented and must be approved by the Warden of the Montana State Prison, with copies of such documentation and approval to be provided to DRM within 30 days during the duration of the independent monitoring period.
- e. When an inmate with SMI is placed in a safe cell, the safe cell may be used on a temporary basis as a safe space in the following circumstances, but in no instance for longer than a Qualified Mental Health Professional (“QMHP”) determines is necessary:
  - i. when the inmate has already been placed on Close Watch or Constant Watch (as those terms are defined herein);
  - ii. for temporary placement if the inmate asks to go to a safe cell;
  - iii. for temporary placement when the inmate is exhibiting signs of suicidality or appears reasonably likely to engage in severe self-harm;
  - iv. for temporary placement if the inmate is actively assaultive and poses a substantial risk of bodily harm to himself, staff, or other inmates.

- f. Defendants will prioritize placing SMI inmates experiencing a mental health crisis in MSP's infirmary, or in another placement other than a safe cell, until stabilized. However, assuming the conditions set forth above in subsection e. exist, a safe cell may be used if:
  - i. a QMHP makes a documented determination that, given the inmate's degree of crisis, placement in a safe cell is preferable to moving the inmate to the infirmary or another location; or
  - ii. there are no available cells or insufficient staffing in the infirmary.
- g. The garments and footwear provided to an SMI inmate will be based on a QMHP's assessment of the inmate's degree of suicidality, with an article of clothing to be reintroduced to the inmate once a QMHP determines that the article no longer places the inmate at risk.
- h. All SMI inmates shall have access to soap, deodorant, toothbrushes, and toothpaste for use in their cells absent an immediate, documented danger that such items will be destroyed or used for self-harm. In such cases, reasonable efforts shall be made to use substitutes or facilitate supervised use of the items.
- i. Defendants shall adopt or amend one or more Policies (defined below) consistent with the terms of subsections I.c and I.e-h.

## **II. MINIMUM TIME OUT OF CELL FOR SMI INMATES IN RHU AND SAU**

- a. Except for inmates on Constant Watch or Close Watch (as those terms are defined herein), an SMI inmate shall be given an opportunity to receive at least four hours per day of out-of-cell time, and shall not be confined to a cell for more than 20 hours per day, unless a QMHP makes a written determination that:
  - i. it is necessary to protect the inmate or other inmates from a dire and imminent risk of harm; and
  - ii. confining the inmate to a cell for more than 20 hours per day would not exacerbate or worsen the inmate's SMI.
- b. If an SMI inmate does not receive at least four out-of-cell hours in a given calendar day, the reason(s) (e.g. inmate refused, unscheduled absence by programming leader) will be documented.
- c. Except for inmates on Constant Watch or Close Watch (as those terms are defined herein) and those for whom a QMHP has made a written determination as outlined in II.a, during each 7-day week (Sunday at 12:00 am to Saturday at 11:59 pm), SMI inmates shall receive:
  - i. At least 10 hours of out-of-cell unstructured activity, such as outdoor recreation or time in an indoor day room; and

- ii. At least 3 hours of structured activity, such as individual or group counseling, medication education class, or anger management class, at least 1 hour of which must be out of cell. Structured activities are those which are directed, organized, and regularly scheduled.
- d. The minimums set forth in section II.c may overlap with, and are not in addition to, the minimum daily out-of-cell time set forth in in section II.a.
- e. The minimums set forth in section II.c shall:
  - i. Not include time spent conducting daily prison routines such as showering, haircuts, attending or being interviewed for administrative or disciplinary hearings or matters, or visits to a medical professional for a physical ailment; and
  - ii. Be documented by Defendants in an electronically readable format that can be readily downloaded into Microsoft Excel format and quantitatively analyzed and includes documentation of, among other things, the identity of the inmate, the activities engaged in, the time out of cell, and whether the inmate refused to engage in an activity.
- f. Defendants shall adopt or amend one or more Policies (defined below) consistent with the terms of this section II.

### **III. RECREATION AND PROGRAMMING FOR SMI INMATES IN RHU AND SAU**

- a. Defendants shall offer daily outdoor recreation for SMI inmates at specific times that are predictable and rotating (i.e. occur at different times of day according to pre-set schedules made accessible to the inmates in advance).
- b. Defendants shall offer structured activities and programming to SMI inmates at specific times that are predictable and rotating (i.e. occur at different times of day according to pre-set schedules made accessible to the inmates in advance). These activities may include, but are not limited to, the following:
  - i. Group meals;
  - ii. Educational opportunities;
  - iii. Hygiene instruction;
  - iv. Exercise and athletics;
  - v. Arts and crafts;
  - vi. Movies with discussion sessions;
  - vii. Book clubs;
  - viii. Guided meditation;
  - ix. Yoga;
  - x. Cognitive behavioral programs; and
  - xi. Inmate-led courses.

- c. To the extent Defendants determine that an SMI inmate must be held out of group recreation and activities, Defendants shall develop a written plan for the SMI inmate's eventual return to group recreation and activities, including without limitation incentives for accomplishing certain milestones or refraining from specific behavior for a set period of time, into the SMI inmate's individual treatment plan. The inmate shall have the same rights in development of this plan as the inmate has in development of their individual treatment plan (see Section V(d), *infra*).

#### **IV. AMENDMENT OF DOC AND MSP POLICIES**

- a. Within three months (3) of the Effective Date, to the extent any State of Montana Department of Corrections Policy Directives (collectively, "DOC Policies") or Department of Corrections Montana State Prison Operational Procedures (collectively, "MSP Policies," and together with the DOC Policies, the "Policies") contain terms that are inconsistent with the terms of this Agreement, this Agreement shall control.
- b. Where necessary Defendants will adopt new Policies or amend existing Policies to conform to the terms of this Agreement within six (6) months of the Effective Date. DOC and MSP shall comply at all times with the Policies, as amended.
- c. Amendments to Policies shall at a minimum and without limitation include the following:
  - i. Defendants shall add clarification to Policies in which "Qualified Mental Health Professional" and/or "QMHP" is used that the term is not to be interpreted to include Mental Health Technicians.
  - ii. Defendants shall adopt a formal written policy addressing water abuse by SMI inmates that shall provide, among other things, that (A) if a staff member determines that water abuse by an SMI inmate has been demonstrated or is a reasonable and imminent concern, then access to running water in the SMI inmate's cell will be limited to 5-10 minutes hourly for toileting and clean up between the hours of 6:00 am MT to 10:00 pm MT, and as needed overnight, and (B) in such instances, MSP staff will provide a paper cup for drinking, toilet paper and paper towels as reasonably requested by the inmate. If an SMI inmate's water is turned off, the SMI inmate shall be provided with water upon request as necessary for hygiene and drinking purposes.
  - iii. Defendants shall adopt a formal written policy stating that prior to a planned use of force, Defendants shall assign either a QMHP not involved in the conflict with the SMI inmate or another person

trained in crisis intervention to attempt a de-escalation of the conflict and eliminate the need to use force against the SMI inmate. However, a planned use of force may be implemented without the involvement of a QMHP or person trained in crisis intervention if such a person is not available on site and circumstances dictate an immediate planned use of force, provided that the planned use of force is videotaped.

iv. Disciplinary detention of SMI inmates:

1. Defendants shall conduct a mental health evaluation or screening before implementing disciplinary detention of an SMI inmate to determine if an infraction by an SMI inmate is a manifestation of the SMI inmate's mental illness. If the infraction is a manifestation of the SMI inmate's mental illness, the SMI inmate should not be subjected to discipline for that behavior. If the infraction is not a manifestation of the SMI inmate's mental illness, then the SMI inmate may be placed in disciplinary detention, provided that punishment may not include placement into conditions of confinement less than the minimum standards set forth in this Agreement. The degree of discipline and length of time in disciplinary detention shall be determined on a case-by-case basis that includes the input of a QMHP. A behavior is a manifestation of an inmate's disability if the behavior was caused by or has a direct and substantial relationship to the inmate's SMI. The results of this manifestation determination shall be documented in writing and shall include:

- a. Identification of the individual(s) who conducted the manifestation determination review;
- b. Identification of any documents reviewed in the determination; and
- c. Identification of any other sources of information utilized to make the determination.

2. Whenever separate detention cells are available, Defendants will place SMI inmates in disciplinary detention in different blocks from non-SMI inmates. However, if an SMI inmate is allowed to serve his disciplinary detention time on blocks A or B of the SAU, nothing in this provision is intended to prohibit the housing of death row inmates on Level 5 of the administrative step-down program with SMI inmates.

v. Restrictive Housing Step-Down Program, MSP Policy 3.5.1, section III.D:

1. The step-down program (i.e. the path toward returning to general population) for SMI inmates shall be separate and apart from the existing four-level (Levels 1-4) program outlined in MSP Policy 3.5.1. The separate step-down program protocol for SMI inmates (Level 5) will be outlined in Policy.
2. Written policy will reflect that the step-down program for an SMI inmate will consist of an individualized assessment as to whether the inmate is capable of transitioning or returning to general population and a series of milestones tailored to the inmate's individual needs and condition the satisfaction of which will allow the inmate to transition toward, and eventually into, general population housing.
3. A QMHP shall incorporate into each SMI inmate's step-down plan privileges for achieving certain progress milestones. Defendants may also establish conditions under which the SMI inmate would have privileges rescinded.

vi. Suicide Prevention and Risk Management:

1. Upon observation or receipt of evidence that an inmate is at risk of severe self-harm or suicide, Defendants shall place the inmate in a room that complies with the provisions of this Agreement, with features and privileges compatible with the inmate's level of risk. Removals to a more restrictive confinement based on a dire, imminent safety need must be time-limited to the period during which the dire, imminent safety need or other crisis is actively present and persisting and shall be terminated once the need or crisis is abated, allowing a reasonable amount of time for an appropriate assessment by a QMHP.
2. Once a QMHP has determined that the inmate has stabilized, the inmate shall be allowed to take a shower and thereafter to place a phone call to a recipient of the inmate's choosing. These activities shall be documented.
3. Inmates determined to be at risk of severe self-harm or suicide shall be classified as either (i) "Constant Watch", meaning they must be observed in-person by a staff member at all times until their risk level allows them to be reclassified to Close Watch (as defined herein) or, if constant observation is not possible, then the inmate must be observed in-person by a staff member at irregular intervals no less than four minutes apart, or (ii) "Close Watch", meaning the inmate must be observed in-person by a staff person at irregular intervals no less frequent than 15 minutes apart.

4. For purposes of Close Watch and Constant Watch, video monitoring may be used, but not as a substitute for in-person observation.
5. All self-harm or suicide risk assessment shall be performed by a QMHP. If a non-QMHP staff person conducts an initial suicide screening, the staff person will immediately report the event that gave rise to the screening to a QMHP and ensure the inmate is safe either in his cell or an alternative placement pending an assessment by a QMHP.
6. QMHPs will develop an individualized suicide prevention plan for each inmate who is determined to be at risk of severe self-harm or suicide. For those inmates who have been so determined prior to their incarceration at MSP, this plan will be created when the inmate is admitted to MSP.
7. Defendants shall review and modify an inmate's suicide prevention plan as necessary to meet the inmate's therapeutic needs as determined and documented in writing by a QMHP.
8. Inmates determined to be at sufficient risk of severe self-harm or suicide to be placed on Close Watch or Constant Watch shall be allowed, to the extent approved by the Classification Review Committee (CRC) as that term is currently defined in MSP operation procedure, which is to include a QMHP's clinical assessment, each of the following:
  - a. Visitations and phone calls;
  - b. Daily out-of-cell interaction with a QMHP;
  - c. Continued access to mail, e-mail, in-cell activities such as tablets and music, and mental health therapy; and
  - d. Continued access to items to meet basic needs such as eyeglasses, walkers, underwear and socks, and hearing aid and hearing aid batteries.
9. If an inmate is on Constant Watch for seven consecutive days, then a QMHP should consult with the treatment team and determine whether escalated treatment is necessary, including without limitation whether the SMI inmate should be transferred to a care facility outside MSP.

## **V. TREATMENT PLANS**

- a. Defendants shall cause its QMHPs to develop and implement a written individual treatment plan for each individual housed at MSP who is designated as an SMI inmate.

- b. Any treatment plan developed in accordance with section V.a of this Agreement shall contain at least the following:
  - i. a statement of the nature of the inmate's mental health condition;
  - ii. a statement of the specific treatment needs of the inmate;
  - iii. an objective description of treatment goals, with a projected timetable for their attainment;
  - iv. measurable outcomes that will indicate the attainment of treatment goals;
  - v. a description and allocation of staff responsibility for attaining each treatment goal;
  - vi. all recommended unstructured and structured activities to be provided to the inmate; and
  - vii. a suicide safety plan with the input of the inmate, in cases where the inmate has shown signs that the inmate will engage in severe self-harm or attempt suicide.
- c. Overall development, implementation, and supervision of the treatment plan must be assigned to a QMHP.
- d. SMI inmates shall have the right:
  - i. to obtain a copy of their individual treatment plan;
  - ii. to ongoing participation, in a manner appropriate to the inmate's capabilities, in the planning of mental health services to be provided and in the revision of the treatment plan;
  - iii. to a reasonable explanation by a QMHP of the following, in terms and language appropriate to the inmate's condition and ability to understand:
    - 1. the inmate's general mental condition and, if given a physical examination, the inmate's physical condition;
    - 2. the objectives of treatment;
    - 3. the nature and significant possible adverse effects of recommended treatments;

4. the reasons why a particular treatment is considered appropriate;
5. the reasons why access to certain visitors may not be appropriate; and
6. not to receive treatment established pursuant to the treatment plan in the absence of the inmate's informed, voluntary, and written consent to the treatment, except treatment during an emergency situation if the treatment is pursuant to the written opinion of a QMHP and as permitted by law.

## **VI. STAFFING**

- a. Defendants believe current mental health staffing levels at the Montana State Prison satisfy, at a minimum, the industry standard of care and applicable law. That said, Defendants desire to provide additional mental health services to the mentally ill population at MSP. During the Executive Planning Process leading up to the 2023 legislative session, Defendants will request that the Governor's budget include the following FTE to be added in the department's base budget:
  - i. Three (3) additional licensed therapists;
  - ii. Three (3) additional mental health technicians; and
  - iii. Two (2) additional activities coordinators.
- b. Should these positions be included in the Governor's budget presented to the 2023 legislature, the parties will jointly support the request through the budget process.

## **VII. TRAINING**

- a. All correctional officers at MSP whose primary assignment requires them to work with SMI inmates in the Restrictive Housing Unit or Secure Adjustment Unit shall receive a minimum of 30 hours of training within the first year after the Effective Date or of their assignment (as applicable). Such training shall include:
  - i. The identification and custodial care of inmates with SMI;
  - ii. The definition of SMI;
  - iii. Symptoms of SMI;
  - iv. Interpreting and responding to symptomatic behaviors;

- v. Recognizing decompensation;
  - vi. Recognizing and responding to indications of suicidal thoughts, expressions and behaviors;
  - vii. Suicide prevention techniques, including without limitation proper monitoring of an inmate on Close Watch or Constant Watch and documentation of observations;
  - viii. Responding to mental health risks, including suicide intervention, self-harm intervention and cell extractions;
  - ix. Recognizing common side-effects of psychotropic medications;
  - x. Professional and humane treatment of SMI inmates;
  - xi. Motivational interviewing;
  - xii. Core Correctional Practices;
  - xiii. De-escalation techniques; and
  - xiv. Alternatives to discipline and use of force when working with SMI inmates
- b. All such correctional officers shall receive annual mental health and suicide prevention training totaling at least four hours per calendar year on mental health issues, with time to be allotted for additional training should it be made necessary by a significant policy change or change in applicable law.
  - c. To the extent adequate training materials on each of the above topics do not already exist, Defendants shall develop appropriate training materials that address those topics within six months of the Effective Date.
  - d. Within one year of the date of this Agreement, Defendants shall establish a peer support system under which SMI inmates and non-SMI inmates may volunteer to provide support to at-risk SMI inmates by engaging in activities with the SMI inmates. Defendants will identify or develop and implement research-based, peer-reviewed and appropriate training to inmates who volunteer and are accepted into the peer support program, including without limitation training on the topics listed in section VII.a of this Agreement.

## **VIII. MENTAL HEALTH SERVICES**

- a. Defendants will process all oral and written requests (“kites”) for mental health or medical services made by SMI inmates as set forth below.

- i. If an SMI inmate makes an oral request for a kite, Defendants must either provide materials for the SMI inmate to write the kite or draft the kite on the SMI inmate's behalf during the shift of the staff member who received the request.
  - ii. Nothing herein precludes Defendants from relaying requests for mental health or medical services to mental health and medical staff without requiring the submission of a written kite.
- b. Defendants' QMHPs shall make no fewer than three in-person rounds per week to all SMI inmates housed at RHU and SAU.

## **IX. PROHIBITION ON CERTAIN DISCIPLINARY PRACTICES**

- a. Under no circumstances shall a prisoner receive a disciplinary write-up for self-harm or conduct that is primarily associated with self-harm. Nothing in this provision prevents MSP from issuing a disciplinary write-up for infractions that are primarily associated with motives other than self-harm.
- b. An SMI inmate shall not be in a cell for more than 24 consecutive hours unless a QMHP makes a written determination that it would be unsafe to move the inmate or the inmate refuses to move. If an SMI inmate remains in a cell more than 24 consecutive hours, a QMHP will document the reasons he was not taken from his cell.
- c. Under no circumstances shall an SMI inmate be placed on a behavior management plan (as that term is defined in the Policies).
- d. An SMI inmate may not have water turned off in his cell as punishment for a disciplinary violation. A prisoner's water may be turned off for purposes of preventing the destruction of property or conditions hazardous to inmates or MSP staff, consistent with the policy to be developed pursuant to section IV.c.ii of this Agreement.
- e. SMI inmates shall not have their food restricted or altered as a means of discipline. An SMI inmate's food may only be restricted for purposes of ensuring the safety of the inmate, other inmates, or MSP staff. In the event that an SMI inmate is threatening harm to others or himself through the use of food utensils, the inmate may be provided with food he can eat with his fingers.

## **X. APPOINTMENT OF INDEPENDENT MONITOR**

- a. No later than two weeks following the Effective Date of this Agreement, the Parties will jointly select a neutral third party to serve as an independent monitor (the "Independent Monitor"). If no agreement can be made, the

Parties may each submit two candidates a designated third-party neutral, who will select the replacement Independent Monitor.

- b. The Independent Monitor shall not: (i) provide services to Plaintiffs or Defendants during the term of its monitorship and for a period of one year after the termination of the monitorship; (ii) be a former employee of any Party; (c) have any financial interest in any Party or in the Lawsuit; or (d) have served as a monitor, consulting expert, or testifying expert for any Party within the last three years.
- c. The Independent Monitor's duties, which shall be set forth in detail in a separate agreement between the Parties and the Independent Monitor, shall be to assess Defendants' compliance with the terms of this Agreement, including without limitation identifying actual or potential areas of substantial compliance, partial compliance, and non-compliance, and to bring these areas to the Parties' joint attention simultaneously.
- d. Inmates shall be allowed to send written communications to the Independent Monitor. Defendants and DRM shall jointly inform inmates of this right and provide instructions on how to transmit such communications.
- e. The Parties' agreement with the Independent Monitor shall include, without limitation, the following terms:
  - i. The initial term of the Independent Monitor shall begin on the date six (6) months following the Effective Date and continue for a period of one (1) year from that date (the "Initial Term"). Should the Independent Monitor, in their sole discretion, find good cause for an extension of the Initial Term, then the Independent Monitor shall serve for up to but not more than two additional one-year terms following the end of the Initial Term (the "Additional Term"). For purposes of this provision, good cause is defined as non-compliance with this Agreement. The Parties may jointly agree to extend the term of the Independent Monitor beyond the Initial Term or the Additional Term.
  - ii. The Defendants shall timely pay all reasonable fees and expenses incurred by the Independent Monitor, which the Independent Monitor shall invoice to Defendants on a monthly basis according to the terms of the agreement with the Independent Monitor.
  - iii. Upon 30 days' notice to Defendants, Defendants must provide the Independent Monitor with any requested documents, data, records, or information, unless such documents, data, records or information are protected from disclosure under the attorney-client privilege,

work product doctrine, the privacy/confidentiality rights of inmates and/or staff who have not provided a legally sufficient release, or their disclosure is otherwise prohibited by law.

- iv. A release of information (“ROI”) provided to the Independent Monitor, DRM or Defendants shall be effective pursuant to the time period set forth in the ROI, if any, or until revoked. Nothing in this Agreement requires DRM, the Independent Monitor, or Defendants to obtain additional ROIs, whether an effective ROI has already been obtained from the individual or otherwise. Defendants shall require employees and contractors to cooperate fully with the Independent Monitor.
- v. If the Defendants refuse or delay the release of information to the Independent Monitor for any reason, they shall, concurrently with the refusal, provide the Independent Monitor with a written statement of the basis for withholding the information, including:
  - 1. A description of each item of data, records, or information withheld and the basis for withholding the items which is sufficiently descriptive to allow all parties to evaluate the claim; and
  - 2. in the case of denial for alleged lack of authorization, the name of the inmate or staff member or, if available, the address and telephone number of the legal guardian, conservator, or other legal representative of an individual with SMI.

A copy of such statement shall be provided to DRM via electronic transmission at the same time as it is provided to the Monitor.

- vi. Upon 30 days’ notice to Defendants, Defendants must permit the Independent Monitor access to employees and/or contractors for interviews. Nothing in this provision prevents Defendants from imposing reasonable parameters on such access so as not to substantially interfere with the ability of employees and/or contractors to perform their duties.
- vii. Upon two weeks’ notice to Defendants, the Independent Monitor may conduct a tour or inspection of MSP. In the case of the Independent Monitor’s investigation of a death or suspicion of an immediate threat to health or safety, such access shall be provided within 24 hours of the request. The Independent Monitor shall have access to all areas of MSP, including, without limitation all housing units and medical facilities of MSP. The Independent Monitor may conduct a tour or inspection of MSP for up to eight hours in a day,

up to 12 separate days during each 12-month period of the Independent Monitor's appointment. The days may, but need not, run consecutively. The Independent Monitor may interview inmates during the tours or inspections of MSP.

- viii. The Independent Monitor shall provide to all Parties a report outlining the Independent Monitor's assessment of Defendants' compliance with the terms of this Agreement, as follows: (A) within 90 days after the commencement of the Initial Term, and (B) every six months thereafter for as long as the Independent Monitor serves in that capacity. In any given reporting period other than the initial 90-day period, the Independent Monitor shall provide draft reports to the Parties no fewer than 30 days prior to the issuance of the final report for that reporting period. The parties shall provide comments, if any, to Monitor within ten (10) business days of receipt of the draft.
- ix. For the duration of the monitoring period, Defendants shall report inmate deaths to DRM and the Independent Monitor within 24 hours after notifying the inmate's next of kin of the death. Defendants shall also provide to DRM and Independent Monitor any incident reports, medical records, and any medical and/or mental health reports of the inmate created within 60 days of the inmate's death, provided Defendants may withhold or redact documents that implicate the privacy or confidentiality rights of inmates who are not DRM constituents and who have not provided a ROI to either DRM or the Independent Monitor, and may withhold or redact quality assurance data that is protected from disclosure by law.
- x. Nothing in this Agreement waives, alters, amends, or delegates to the Independent Monitor DRM's statutory authority to monitor DOC or MSP, access people with disabilities and their records, investigate allegations of abuse and neglect against individuals with disabilities, or create and publish reports about its work. DRM's access authority is independent of that of the Independent Monitor.
- xi. In the event the Independent Monitor cannot proceed with the Independent Monitor's duties, the Independent Monitor shall promptly notify the Parties in writing and shall continue to serve as Independent Monitor until the earlier of (A) 30 days from the date of service of written notice on the parties of the Independent Monitor's withdrawal, and (B) appointment of a replacement Independent Monitor. The Parties must agree to the selection of a replacement Independent Monitor within 30 days of receipt of written notice from the Independent Monitor. If no agreement can be made, the Parties may each submit two candidates to a designated

third-party neutral, who will select the replacement Independent Monitor.

- xii. Neither Party may unilaterally terminate the Independent Monitor. The Independent Monitor may be terminated by agreement of the Parties.
- xiii. In the event that the Independent Monitor alleges that Defendants have failed to substantially comply in some significant respect with this Agreement or the terms of the separate agreement with the Independent Monitor, the Independent Monitor shall provide Defendants and DRM with a written statement describing the alleged non-compliance. Defendants shall provide a written statement responding to same, with a copy to be served on DRM, within ten (10) business days from receipt of the Independent Monitor's statement.
- xiv. If, the Independent Monitor is not satisfied by the Defendants' written response, the Independent Monitor will so notify the Parties in writing within ten (10) business days from receipt of Defendants' response, and shall state the reason(s) for that conclusion.

## **XI. DISMISSAL OF THE LAWSUIT**

- a. Within five (5) business days of the date of the execution of an agreement to retain the Independent Monitor, DRM shall prepare, and the Parties shall file, a stipulation for dismissal of the Lawsuit, with prejudice and without any award of costs to either party.
- b. The Parties will cooperate to prepare and file any necessary motions to continue the deadlines and trial dates set forth in the Court's Order dated September 8, 2020 (Docket No. 61 in the Lawsuit), the Court's Order dated October 16, 2019 (Docket No. 48 in the Lawsuit) to the extent the deadlines in such Order remain applicable, and any other deadlines under the Federal Rules of Civil Procedure, the Court's local rules, or other applicable order, rule, or regulation.

## **XII. MISCELLANEOUS PROVISIONS**

- a. This Agreement is not contingent on Defendants receiving funding or any other contingencies.
- b. The Defendants, as representatives of an administrative agency of the State of Montana, and the signatories of this Agreement have full authority to enter into this Agreement on behalf of their respective agencies. The

signatories of this Agreement on behalf of DRM have full authority to execute this Agreement on behalf of DRM.

- c. Any notice required by this Agreement between the Parties must be in writing and shall be deemed given if delivered personally, including, but not limited to, by courier, by registered or certified mail (return receipt requested), or by e-mail (with receipt of confirmation) (“Notice”). Such Notice shall be deemed received on the date of personal delivery or e-mail and on the third business day following the date on which the notice is mailed by certified or registered mail. Any Notice under this paragraph shall be addressed to the respective Party at the following addresses or such other addresses that the Party has given written notice in accordance with the provisions of this paragraph:

DRM:  
Disability Rights Montana, Inc.  
Attn: Executive Director  
1022 Chestnut Street  
Helena, MT 59601

with a courtesy copy that shall not constitute notice to:

Foley & Lardner LLP  
Attn: Attorney Matthew D. Lee  
150 East Gilman Street  
Madison, WI 53703

Defendant(s):  
Montana Department of Corrections  
5 S Last Chance Gulch St.  
Helena, MT 59620

Montana State Prison  
400 Conley Lake Rd.  
Deer Lodge, MT 59722

with a courtesy copy that shall not constitute notice to:

Thomas J. Leonard  
Boone Karlberg  
201 West Main, Suite 300  
Missoula, MT 59802

- d. This Agreement represents the entire Agreement between the Parties with regard to the matters set forth herein, and is binding upon and inures to the

benefit of the successors and assigns of each, including all successors holding either Gootkin or Salmonsén's respective official positions.

- e. This Agreement may be amended only by a written instrument executed by all of the Parties or their successors or authorized representatives.
- f. The Parties each acknowledge that they have read and understand this Agreement, and that they have had the benefit of advice and counsel from attorneys of their own choosing.
- g. In entering into this Agreement, DRM acknowledges and understands that each Defendant is entering into this Agreement with no admission of any liability.
- h. This Agreement has been drafted with the assistance of counsel for each Party and shall not be construed in favor of or against any Party.
- i. Time is of the essence in the performance of this Agreement.
- j. In the event of proceedings to enforce any portion of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees and costs.
- k. If, subsequent to the Effective Date of this Agreement, any provision or term of this Agreement is held to be invalid, illegal, unenforceable or in conflict with the law in any jurisdiction, the validity and legality of the remaining provisions will not be affected or impaired thereby.
- l. This Agreement may be executed in counterparts, and a facsimile or .pdf signature shall be deemed to be, and shall have the same force and effect as, an original signature.
- m. Nothing in this Agreement precludes, diminishes, or restricts any authority granted to DRM by federal or state law as the protection and advocacy organization in Montana for persons with disabilities, including Serious Mental Illness.
- n. This Agreement is governed by the laws of the State of Montana, and the Parties agree that the district courts of Montana shall have exclusive jurisdiction over any dispute arising under this Agreement. The Parties consent to the personal jurisdiction of the district courts of Montana in any dispute arising under this Agreement.

**[signatures on next page]**

The Parties have put their signatures to the foregoing Agreement as of the Effective Date as defined herein.

Disability Rights Montana, Inc.,



By: Bernadette Franks-Ongoy  
Title: Executive Director  
Date: March 10, 2022

Brian A. Gootkin, in his capacity as  
Director of the Montana Department of  
Corrections

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Jim Salmonsens, in his capacity as  
Warden of Montana State Prison

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_