

Court File No.: T-370-17

**FEDERAL COURT**

Proposed Class Proceeding

TODD EDWARD ROSS, MARTINE ROY and ALIDA SATALIC

Plaintiffs

- and -

HER MAJESTY THE QUEEN

Defendant

**SUPPLEMENTARY AGREEMENT**

**WHEREAS:**

- A. Canada and the Plaintiffs (collectively the "Parties") entered into a Final Settlement Agreement ("FSA") dated March 28, 2018;
- B. Pursuant to section **5.02(b)** of the **FSA**, the Parties agreed that the RMM Fund would be paid and administered under the terms of a supplementary agreement to be negotiated and executed by the Parties no later than seven days prior to the date of the Approval Hearing;
- C. The Parties wish to set out certain terms pertaining to the payment and administration of the RMM Fund, and to continue negotiations relating to the creation of an appropriate legal instrument to govern the transfer of funds to give effect to the Parties' intentions in the **FSA**;

- D. The Parties also wish to address additional matters with respect to the Administrator and the Assessor in this Supplementary Agreement; and
- E. The proposed Administrator and Assessor have agreed to carry out the duties assigned to each of them in the **FSA** as well as those set out in the respective Terms of Appointment attached hereto.

**NOW THEREFORE**, in consideration of the mutual agreements, covenants and undertakings set out in this agreement, the Parties agree with each other as follows:

### **Definitions**

Capitalized terms used in this Supplementary Agreement and not otherwise defined shall have the same meanings as contained in the **FSA**.

In this Supplementary Agreement, and schedules thereto:

**“Administrator”** means Deloitte LLP appointed by the Court to administer the claims process under the Final Settlement Agreement in accordance with these terms;

**“Assessor”** means the Honourable Marie Deschamps, C.C., Ad.e., appointed by the Court to assess the claims for compensation at level 4 of the **FSA**;

**“Class Member information”** means any information from any source whatsoever about an individual making an Individual Application in accordance with the **FSA**, whether approved or not; and

**“RMM non-governmental Panel Members”** means the RMM Panel Members described in paragraphs (a), (b), and (e) of clause **5.02(c)** of the **FSA**.

For the sake of clarity, numbering of clauses in this Supplementary Agreement continues from the conclusion of the **FSA**.

## SECTION EIGHTEEN

### ADMINISTRATOR

#### 18.01 Appointment of Deloitte LLP as Administrator

Pursuant to **section 8.02** of the **FSA**, the Parties mutually agree to the appointment by the Court of Deloitte LLP as Administrator.

In addition to the Administrator's duties set out in **section 8.03** and **Schedule "O"** of the **FSA** the Parties understand that the Administrator shall act in accordance with the Terms of Appointment attached hereto as **Annex "A"**, which forms part of this SA and which shall be incorporated in the Approval Order.

## SECTION NINETEEN

### ASSESSOR

#### 19.01 Terms of Appointment of Assessor

Pursuant to **section 8.02** of the **FSA**, the Parties have agreed that the Honourable Marie Deschamps C.C., Ad.e., shall be appointed as Assessor.

The Assessor shall act in accordance with **Schedule "O"** of the **FSA** and the Terms of Appointment attached hereto as **Annex "B"**, which forms part of this SA and which shall be incorporated in the Approval Order.

## SECTION TWENTY

### ADMINISTRATION OF RECONCILIATION AND MEMORIALIZATION MEASURES FUND

#### 20.01 Treatment of Funds

Plaintiffs and their counsel will determine the appropriate legal entity to receive, hold, invest and disburse the RMM funds and the required legal instruments creating the entity will be provided to the court for approval no later than 30 days prior to the Implementation Date.

#### 20.02 Administration of Reconciliation and Memorialization Measures Fund

Upon receipt of a request from the RMM Panel, and no earlier than 180 days from the date of the Approval Order, Canada shall pay the initial \$15,000,000 RMM Funds to Cambridge LLP in trust. Cambridge LLP as counsel for the Plaintiffs has agreed to receive the RMM Funds and transfer the RMM Funds pursuant to the instrument negotiated for this purpose.

#### 20.03 Transfer of Funds required for Government-led Projects

The RMM non-governmental Panel Members acknowledge that prior to Canada's commencement of government-led projects which have been identified in **sections 5.01(a), (b) and (c)** of the **FSA**, or otherwise, it will be necessary to disburse the sums required for these projects to Canada, for deposit in the Consolidated Revenue Fund, in accordance with agreements to be negotiated and executed by the Parties for this purpose, the terms of which shall specify the purposes for which the sums paid to Canada shall be disbursed by Canada.

No interest shall be paid or payable by Canada on the funds transferred to Canada for government-led projects and held in the Consolidated Revenue Fund.

#### 20.04 Payment of Residue of Designated Amount into RMM Fund, if any

Any Additional RMM Payment to be paid under **section 7.04** of the **FSA** shall be paid by the Administrator to Cambridge LLP in trust and transferred by Plaintiffs' counsel in the same manner as the initial RMM Fund.

**SECTION TWENTY-ONE**

**GENERAL**

**21.01 Entire FSA**

As set out in **section 17.03** of the **FSA**, the Parties confirm that the **FSA** executed on March 28, 2018, shall include this Supplementary Agreement, and together they form the entire agreement between the Parties.

**IN WITNESS WHEREOF** the Parties have executed this Supplementary Agreement.

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA, as represented by the Attorney General of Canada**

Signed this 15 day of June 2018

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA, as represented by the Attorney General of Canada**



**BY:** \_\_\_\_\_  
**ATTORNEY GENERAL OF CANADA**  
For the Defendant



**BY:** \_\_\_\_\_  
**ATTORNEY GENERAL OF CANADA**  
For the Defendant



**BY:** \_\_\_\_\_  
**ATTORNEY GENERAL OF CANADA**  
For the Defendan



BY: \_\_\_\_\_  
ATTORNEY GENERAL OF CANADA  
For the Defendant

THE PLAINTIFFS, as represented by Class Counsel

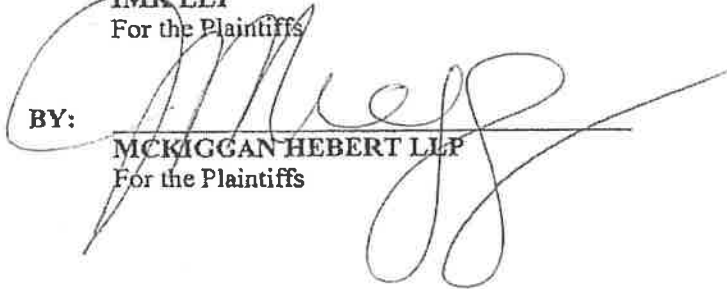


BY: \_\_\_\_\_  
KOSKIE MINSKY LLP  
For the Plaintiffs



BY: \_\_\_\_\_  
CAMBRIDGE LLP  
For the Plaintiffs

BY: Audrey Bactor for INK UP  
INK LLP  
For the Plaintiffs



BY: \_\_\_\_\_  
MCKIGGAN HEBERT LLP  
For the Plaintiffs

## ANNEX "A"

### Terms of Appointment of the Administrator

#### I. Definitions

1. In these Terms of Appointment, the following terms are defined:

**"Administrator"** means Deloitte LLP, appointed by the Court to administer the claims process under the Final Settlement Agreement in accordance with these terms;

**"Assessor"** means the Honourable Marie Deschamps, C.C., Ad.e., appointed by the Court to assess the claims for compensation at levels 4A and 4B of the Final Settlement Agreement;

**"Claimant"** means anyone who files an Individual Application for individual benefits under the Final Settlement Agreement;

**"Class Member information"** means any information from any source whatsoever about an individual making an Individual Application in accordance with the **FSA**, whether the Application is approved or not;

**"The Court"** means the Federal Court of Canada;

**"Final Settlement Agreement"** ("FSA") means the Final Settlement Agreement in the Federal Court matter *Ross, Roy, and Satalic v. Her Majesty the Queen*, Court File Number T-370-17, executed by the Parties March 28, 2018, including the Supplementary Agreement, and all respective schedules or annexes thereto, executed by the Parties on June 15, 2018;

**"Investment Directive"** means a plan to be agreed on by the Parties for investment of funds held by the Administrator;

**"Parties"** means Canada and the Plaintiffs; and

**"Plaintiffs' counsel"** means any of the persons listed in **Schedule "Q"** to the **FSA**, or such other person as may be determined by one of them in writing with notice to the Parties.

2. Capitalized terms used in these Terms of Appointment and not otherwise defined shall have the same meanings as contained in the **FSA**.

#### II. General

##### A. Enforcement

3. For greater certainty, the obligations set out in these Terms of Appointment are enforceable as a court order.
4. Any Party to the **FSA** or any other person with authorization of the Court may seek enforcement of the obligations contained herein.

**B. Language of work**

5. The Administrator must provide services in both official languages. All communications between the Administrator and claimants will be in the official language of the claimant's choice.

**III. Claims Administration Process**

**A. Development of Claims Process**

6. The Administrator shall develop an administrative process to administer the claims of potential class members pursuant to **section 8.03** and **Schedule "O"** to the **FSA**. In addition to the obligations set out in **section 8.03** and **Schedule "O"**, the Administrator will:
  - (a) Establish and manage a trust account to administer settlement funds as set out in Part IV;
  - (b) Develop a process acceptable to the Parties to receive claims in writing, by mail, and by fillable pdf via fax or scanned email, at the choice of claimants;
  - (c) Provide information and respond to inquiries concerning the claims process;
  - (d) Create and maintain an accessible website that provides information about the settlement and claims process, provides contact information and includes terms of use governing the claimants' use of the website, including the Administrator's privacy policy;
  - (e) Create a secure claims management platform that allows claimants, Canada, and the Assessor to submit information and review files as required;
  - (f) Ensure completeness of the claims and contact claimants where information is incomplete;
  - (g) Acknowledge receipt of claims;
  - (h) Liaise with Canada to obtain claimants' records and other information;
  - (i) Prepare the files of claims for exceptional harm (at levels 4A and 4B) in a manner acceptable to the Assessor and transmit files to the Assessor in a timely manner;
  - (j) Keep accurate and complete records to allow for verification, audit, or review as required by the **FSA** and **SA**;



- (k) Provide reports to the Parties as set out in **Schedule "O"** and Part VIII below.

**B. Coordination with the Assessor**

7. The Administrator shall coordinate with the Assessor to ensure that its process and product are designed to ensure efficient administration of the Assessor's mandate.
8. Such coordination with the Assessor or her designates shall begin as soon as is reasonably practicable and shall continue throughout the administration of the **FSA** as may be reasonably required from time to time.

**IV. Administration of Trust Account**

**A. Payments of Designated and Enhanced Amounts**

9. Amounts payable by Canada in respect of individual compensation pursuant to **section 7.03** of the **FSA**, including the Designated Amount and/or the Enhanced Amount, as the case may be, shall be paid to the Administrator in trust for the purposes of the **FSA** in accordance with **sections 7.03(a)** and **7.03(d)** of the **FSA**.
10. If the event contemplated by **section 7.04** of the **FSA** occurs, the Administrator will transfer the Additional RMM Payment to the entity established pursuant to **section 20.02** of the Supplementary Agreement, which funds shall be held in trust to be used for Reconciliation and Memorialization Measures.

**B. Establishment of Bank Account**

11. Prior to receipt of the initial payment of the Designated Amount, the Administrator shall open an interest-bearing account at a Schedule I bank ("Account").

**C. Investment of Account**

12. Upon receipt of the Designated Amount, and the Enhanced Amount, if the latter is paid, the Administrator shall immediately deposit the funds into the Account, shall hold the funds in the Account and shall invest the funds in accordance with **sections 14 and 15** of these Terms of Appointment until such time as the Administrator is authorized to disburse the funds in accordance with the **FSA** and these Terms of Appointment.
13. The Administrator shall disburse the funds in the Account solely for the purposes of and in accordance with the provisions of the **FSA**, and these Terms of Appointment. No other disbursement is permitted without an order of the Court made on notice to or on consent of the Parties.
14. The amounts received from Canada shall be allocated in two funds as follows:

- (a) The Designated Amount of \$50 million; and
  - (b) The Enhanced Amount of up to \$60 million, if paid.
15. The Administrator shall invest the Designated Amount and the Enhanced Amount, if the latter is paid, in accordance with the Investment Directive as if they were one fund but shall keep accounting records and account as if the monies were two separate funds.

**D. Application of Interest and Taxes**

16. Any interest that accrues on the Designated Amount or the Enhanced Amount while on deposit in the Account, shall first be credited against any trust management fees incurred.
17. For all taxes payable on any excess interest, net of expenses, which is earned in the Account in a calendar year or otherwise in relation to the Designated Amount or Enhanced Amount, the Administrator shall pay such taxes out of the funds held in the Account.
18. Any remaining amounts, after taxes are paid, shall be returned to Canada.

**V. Professional Fees**

**A. Fee Structure**

19. Canada shall pay the Administrator for administration services based on the following fee structure to a limitation of expenditure of \$2,000,000 exclusive of applicable taxes:

(a) **Fixed fees** as follows:

Claims Intake and Review, including any work undertaken for this purpose prior to the approval of the FSA	\$530,000
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Overall Administration and Management (including management of opt-outs, ongoing reporting, trust account management, claimant support, and any work undertaken for these purposes prior to the approval of the FSA)	\$220,000
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<b>Total</b>	<b>\$750,000</b>
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(b) **Variable fees** payable on a per claim basis

Claims intake (all claims)	\$70.00 per claim
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Claims review (individual compensation only)	\$160.00 per claim
Claims to Assessor (Level 4A, Level 4B) or Exceptions Committee	\$160.00 per claim
Citation/apology (individual reconciliation only)	\$50.00 per claim

20. The Administrator must not perform any work that would result in Canada's liability exceeding the \$2,000,000 limitation of Canada's expenditure, except with the express written authorization of the Parties or, failing agreement, the authorization of the Court.
21. If, at any time, the Administrator considers that \$2,000,000 will be insufficient to complete the administration of the FSA, the Administrator shall notify the Parties forthwith, identify the specific basis of the insufficiency and shall not proceed to complete the administration of the FSA without the prior express written authorization of the Parties or, failing agreement, the authorization of the Court.
22. The Administrator shall notify the Parties when the cost of services rendered reaches 70% of \$2,000,000.

#### **B. Invoicing and Payment Schedule**

23. In consideration of the Administrator satisfactorily completing all of its obligations under the FSA and these Terms of Appointment, Canada shall pay the Administrator's professional fees in accordance with these terms or any further terms as may be required by Canada and agreed to by the Parties in writing, on a monthly basis, for the work covered by the invoice where:
  - (a) An accurate and complete invoice and any other documents required by the FSA have been submitted in accordance with invoicing instructions to be provided by Canada prior to the first billing period; and
  - (b) All documents have been verified by Canada.
24. Upon approval by the Court of the Final Settlement Agreement, Canada will issue payment of \$300,000 to the Administrator towards the fixed fees, and the balance of fixed fees shall be paid monthly, in the amount of \$50,000, subject to section 16 of these Terms of Appointment, commencing 120 days from the date of the Approval Order, for six months. After the sixth month, monthly payments of fixed fees shall be reduced to \$25,000, subject to section 16 of these Terms of Appointment, for a further six months.
25. Fees set out above include all services rendered; no additional compensation for annual leave, statutory holidays, sick leave, travel, overhead, or any other expense shall be payable.

## VI. Confidentiality

26. The Administrator shall treat Class Member information and records in accordance with sections 16.01 and 16.02 of the FSA.
27. The Administrator must obtain from all its employees or sub-contractors who have access to Class Member information, a signed non-disclosure agreement, in the following form before they are given access to any claimant information by the Administrator:

### NON-DISCLOSURE AGREEMENT

In the course of my work as an employee or subcontractor of Deloitte, pursuant to the order of the Federal Court in Court File No. T-370-17, I, \_\_\_\_\_, may be given access to information by or on behalf of claimants or Canada in connection with the LGBTQ Class Action claims process. Such information may include information that is confidential or proprietary to third parties, and information conceived, developed or produced by Deloitte as part of its mandate. For the purposes of this Non-Disclosure Agreement, information includes but is not limited to: any documents, instructions, guidelines, data, material, advice or any other information whether received orally, in printed form, recorded electronically, or otherwise and whether or not labeled as proprietary or sensitive, that is disclosed to a person or that a person becomes aware of during the performance of the LGBTQ Class Action Claims Process administered by Deloitte.

I shall not reproduce, copy, use, divulge, release or disclose, in whole or in part, in whatever manner or form, any information described above to any person other than a person employed by Canada or Plaintiffs' counsel and only as I have been expressly authorized to do and on a need to know basis in accordance with the Court order. I shall safeguard the same and take all necessary and appropriate measures, including those set out in any written or oral instructions jointly by Canada and Plaintiffs' counsel, to prevent the disclosure of, access to or use of this information in contravention of this Non-Disclosure Agreement.

I shall use any information provided to the Administrator by a claimant or on behalf of Canada solely for the purpose of the claims process and I have no right of ownership whatsoever with respect to this information.

I agree that the obligation of this agreement will continue in force and in perpetuity, notwithstanding the termination or voiding of this FSA.

\_\_\_\_\_  
Name (printed)

\_\_\_\_\_  
Signature

28. The Administrator shall ensure that all Class Member information is stored in a secure location and that only authorized persons who have signed the non-disclosure agreement are permitted to access the information. Printed material will be stored in a locked container in an area that is subject to continuous monitoring by the Administrator.

29. The Administrator shall not store or record Class Member information electronically except in accordance with a manner and on devices approved by the Parties or, failing agreement, the Court.
30. The Administrator shall promptly notify the Parties of any incident or concern that confidential information has been disclosed to or otherwise obtained by unauthorized persons.
31. Information shall be returned or destroyed in accordance with the FSA or as may otherwise be directed by the Court.

## **VII. Reporting**

32. The Administrator shall report to the Court within 90 days of the expiry of the Claims Period pursuant to **sections 65 and 66 of Schedule "O" to the FSA.**
33. The Administrator shall report to the Parties monthly pursuant to **section 64 of Schedule "O" of the FSA**, and shall provide the following additional reports:

### **Monthly Reports:**

- (a) Opt Out Status Reports (for 90 day opt out period);
- (b) Payments Report;
- (c) Trust Account Report;
- (d) Claims – status of reviews (i.e. # intake, # sent to Canada, # ready for review, # reviewed);
- (e) Communications update (calls and emails);
- (f) Canada Pride Citation and Apology Letter Requests;
- (g) Exception Claims, by category;
- (h) Claims Accepted by Administrator – by attestation;
- (i) Claims Accepted by Administrator – support provided by Claimant, no documentation from Canada;
- (j) Claims Accepted by Administrator – documentation provided by Canada, no documentation from claimant;
- (k) Rejected Claims (i.e. previous settlement; no records provided by Canada or Claimant);

### **Final Reports**

- (a) Update items in the 90 day report;
- (b) Opt Outs;
- (c) Payments Report;
- (d) Trust Account Report;
- (e) Canada Pride Citation and Apology Letters awarded;
- (f) Communications Update;
- (g) Exceptions by Attestation approved by Exceptions Committee;
- (h) Exceptions Claims outside class period approved by Exceptions Committee;
- (i) Claims Accepted by Administrator – by attestation;
- (j) Claims Accepted by Administrator – support provided by Claimant, no documentation from Canada;
- (k) Claims Accepted by Administrator – documentation provided by Canada, no documentation from claimant;
- (l) Rejected Claims (i.e. previous settlement; no records provided by Canada or Claimant); and
- (m) Administrator/Assessor Fees.

### VIII. Insurance

34. The Administrator must obtain, maintain in full force and effect throughout the duration of the administration of the claims process, pay for and renew, the following insurance extending to, and in amounts commensurate with, the Administrator's obligations under the **FSA**:
- (a) Commercial General Liability Insurance in an amount not less than \$2,000,000 per accident or occurrence and in the annual aggregate. Canada is to be added as an additional insured, but only with respect to liability arising out of the Administrator's performance of its obligations under the **FSA**. The interest of Canada must be stated in the policy as follows: Canada, as represented by the Department of Justice, Canada.
  - (b) Errors and Omissions Liability Insurance in an amount not less than \$1,000,000 per loss and in the annual aggregate, inclusive of defence costs; and
  - (c) Comprehensive Crime Insurance. Loss Payee must be stated in the policy as follows: Canada as its interest may appear or as it may direct.

35. If the policies are written on a claims-made basis, coverage must be in place for a period of at least 12 months after the completion or termination of the administration mandate.

36. The following endorsement must be included in all policies:

*Notice of Cancellation: The Insurer will provide Canada and the Plaintiffs' counsel with thirty (30) days written notice of cancellation.*

37. Neither compliance nor failure to comply with the insurance requirements set out herein shall relieve the Administrator of its liabilities and obligations under the **FSA**.

38. Litigation Rights: Notwithstanding that the Administrator is not an agent of the Crown, pursuant to subsection 5(d) of the *Department of Justice Act*, S.C. 1993, c. J-2, s. 1, if a suit is instituted for or against Canada which the insurer would, but for this clause, have the right to pursue or defend on behalf of Canada as an additional insured under the Administrator's insurance policy, the insurer must promptly contact the Attorney General of Canada to agree on legal strategies by sending a letter, by registered mail or by courier, with an acknowledgement of receipt to:

Christine Mohr  
Senior General Counsel  
Department of Justice Canada  
120 Adelaide Street West, Suite #400  
Toronto, Ontario M5H 1T1  
Phone: (647) 256-7538  
Email: christine.mohr@justice.gc.ca

39. Canada reserves the right to co-defend any action brought against the Administrator or Canada. All expenses incurred by Canada to co-defend such actions will be at Canada's expense. If Canada decides to co-defend any action brought against the Administrator or it, and Canada does not agree to a proposed settlement agreed to by the Administrator's insurer and the plaintiff(s) that would result in the settlement or dismissal of the action against Canada, then Canada will be responsible to the Administrator's insurer for any difference between the proposed settlement amount and the amount finally awarded or paid to the plaintiffs (inclusive of costs and interest) on behalf of Canada.

## ANNEX "B"

### Terms of Appointment of the Assessor

#### I. Definitions

1. In these Terms of Appointment, the following terms are defined:

**"Administrator"** means Deloitte LLP, appointed by the Court to administer the claims process under the Final Settlement Agreement in accordance with these terms;

**"Assessor"** means the Honourable Marie Deschamps, C.C., Ad.e., appointed by the Court to assess the claims for compensation at levels 4A and 4B of the Final Settlement Agreement;

**"Claimant"** means anyone who files an Individual Application for individual benefits under the Final Settlement Agreement;

**"Class Member information"** means any information from any source whatsoever about an individual making an Individual Application in accordance with the **FSA**, whether the application is approved or not;

**"The Court"** means the Federal Court of Canada;

**"Final Settlement Agreement"** ("FSA") means the Final Settlement Agreement in the Federal Court matter *Ross, Roy, and Satalic v. Her Majesty the Queen*, Court File Number T-370-17, executed by the Parties March 28, 2018, including the Supplementary Agreement, and all respective schedules or annexes thereto, executed by the Parties on June 15, 2018;

**"Parties"** means Canada and the Plaintiffs; and

**"Plaintiffs' counsel"** means any of the persons listed in **Schedule "Q"** to the **FSA**, or such other person as may be determined by one of them in writing with notice to the Parties.

2. Capitalized terms used in these Terms of Appointment and not otherwise defined shall have the same meanings as contained in the **FSA**.

#### II. General

##### A. Language of work

3. The Assessor must provide services in both official languages. All communications between the Assessor and claimants will be in the official language of the claimant's choice.



### III. Claims Assessment Process

#### A. Assessment of Claims

4. The Assessor shall, with the assistance of counsel for the Parties, develop an assessment process to assess the Level 4 claims of eligible class members pursuant to and consistent with **Schedule "O"** of the **FSA**.
5. In addition to making the assessment decisions contemplated in **Schedule "O"** for all Level 4 claims, the Assessor will also perform the following tasks:
  - (a) Provide information and respond to inquiries concerning the claims process;
  - (b) Participate in the training required to access the website created by the Administrator to review claimants' files and to communicate decisions to the Administrator;
  - (c) Liaise with the Administrator for the purposes of coordinating the administration and assessment process;
  - (d) Provide the questionnaire to be sent by the Administrator to Level 4 claimants;
  - (e) Receive from the Administrator the complete claimants' records and other information, and request the Administrator to seek additional information where necessary;
  - (f) At her own discretion communicate with claimants directly;
  - (g) Keep accurate and complete records to allow for verification, audit, or review as required by the **FSA** and **SA**; and
  - (h) Provide reports to the Parties as set out in **Schedule "O"** below.

#### B. Coordination with the Administrator

6. The Assessor will work with the Administrator to ensure that its process and product are designed to ensure the efficient administration of the Assessor's mandate.
7. Such coordination with the Administrator shall begin as soon as is reasonably practicable and shall continue throughout the administration of this **FSA** as may be reasonably required from time to time.

#### IV. Professional Fees

##### A. Fee Structure

8. Canada shall pay for assessment services based on the following fee structure:

Resource	Rate
Assessor	\$500 per hour
Counsel	\$800 per day (or such other rate as to be determined following agreement with counsel for the Parties)
Senior Administrative Assistant	\$310 per day

9. The Assessor must not perform any work that would result in Canada's liability exceeding \$1,500,000, except with the express written authorization of the Parties or, failing agreement, the authorization of the Court.
10. If, at any time, the Assessor considers that \$1,500,000 will be insufficient to complete the administration of the **FSA**, the Administrator shall notify the Parties forthwith.
11. The Assessor shall notify the Parties when the cost of services rendered reaches 80% of \$1,500,000.

##### B. Invoicing and Payment Schedule

12. Canada shall pay all of the fees of the Assessor and any persons in the employ of the Assessor relating to assessment, in accordance with these terms or any further terms as may be agreed by the Parties in writing, on a monthly basis for the work covered by the invoice where:
- (a) An accurate and complete invoice and any other documents required by the **FSA** have been submitted in accordance with invoicing instructions to be provided by Canada prior to the first billing period; and
  - (b) All documents have been verified by Canada.
13. Upon approval by the Court of the Final Settlement Agreement, Canada will pay the Assessor a deposit amount of \$250,000 to be credited against the fees charged for assessment.

**C. Travel**

*Travel to be reasonably limited*

14. The Assessor shall provide her own office space, technology, supplies and resources to conduct the work. The work will be carried out from the Assessor's place of business in Montreal.
15. Where the Assessor considers it necessary to interview a claimant, the Assessor shall consider whether a telephone interview is sufficient and appropriate.
16. Where the Assessor considers that an in-person interview is necessary, the Assessor may either travel to meet the claimant or request that a claimant travel to the Assessor's place of business.
17. A claimant who is required by the Assessor to travel more than 50 kilometres from his or her place of residence to attend an interview is entitled to be reimbursed for travel expenses by Canada in accordance with the Government of Canada National Joint Council Travel Directive. Reimbursement of expenses shall be paid by the Administrator from the Designated Amount.
18. Where the Assessor is required to travel, the Assessor must use best efforts to maximize the number of claimants interviewed per trip undertaken. The Assessor will limit the number of travellers to the person conducting the claims assessment, one member of the team, and a consultant or subject matter expert, if required.
19. Where travel is required for the Assessor's or her staff's duties, expenses shall be billed to Canada as part of the Assessment costs on the basis of rates established in the Government of Canada National Joint Council Travel Directive.
20. Costs associated with meeting rooms shall be reimbursed where interviews are conducted outside Montreal.
21. In order to reduce travel and work flow interruptions, the Assessor and the Parties, by mutual agreement, may convene telephone or video conferences in lieu of face-to-face meetings.

**D. No other amounts payable**

22. Fees as set out above include all services rendered. No additional compensation for annual leave, statutory holidays, sick leave, overhead, or any other expense shall be payable.

## V. Confidentiality

23. The Assessor shall treat claimant information and records in accordance with **sections 16.01 and 16.02** of the **FSA**.
24. The Assessor must herself sign, and must obtain from all her employees or sub-contractors who have access to claimant information, a signed non-disclosure agreement, in the following form before they are given access to any claimant information by the Administrator:

### NON-DISCLOSURE AGREEMENT

In the course of my work as an employee or subcontractor of Deloitte, pursuant to the order of the Federal Court in Court File No. T-370-17, I, \_\_\_\_\_, may be given access to information by or on behalf of claimants or Canada in connection with the LGBTQ Class Action claims process. Such information may include information that is confidential or proprietary to third parties, and information conceived, developed or produced by Deloitte as part of its mandate. For the purposes of this Non-Disclosure Agreement, information includes but is not limited to: any documents, instructions, guidelines, data, material, advice or any other information whether received orally, in printed form, recorded electronically, or otherwise and whether or not labeled as proprietary or sensitive, that is disclosed to a person or that a person becomes aware of during the performance of the LGBTQ Class Action Claims Process administered by Deloitte.

I shall not reproduce, copy, use, divulge, release or disclose, in whole or in part, in whatever manner or form, any information described above to any person other than a person employed by Canada or Plaintiffs' counsel and only as I have been expressly authorized to do and on a need to know basis in accordance with the Court order. I shall safeguard the same and take all necessary and appropriate measures, including those set out in any written or oral instructions jointly by Canada and Plaintiffs' counsel, to prevent the disclosure of, access to or use of this information in contravention of this Non-Disclosure Agreement.

I shall use any information provided to the Administrator by a claimant or on behalf of Canada solely for the purpose of the claims process and I have no right of ownership whatsoever with respect to this information.

I agree that the obligation of this agreement will continue in force and in perpetuity, notwithstanding the termination or voiding of this FSA.

\_\_\_\_\_  
Name (printed)

\_\_\_\_\_  
Signature

25. Claimant information shall be stored in a secure manner to ensure that only authorized persons who have signed the non-disclosure agreement may access the information. Printed material will be stored in a locked container in an area that is subject to continuous

monitoring or where access is restricted to persons having signed the non-disclosure agreement.

26. The Assessor shall not store or record claimant information electronically except in a manner and on devices approved by the Parties or, failing agreement, the Court.
27. The Assessor shall promptly notify the Parties of any incident or concern that confidential information has been disclosed to or otherwise obtained by unauthorized persons.

## **VI. Reporting**

28. The Assessor shall report to the Parties monthly pursuant to **section 64 of Schedule "O"** of the **FSA**.
29. The Assessor shall provide all information required by the Administrator in order for the Administrator to prepare its Final Report to the Court within 90 days of the expiry of the Claims Period pursuant to **sections 65 and 66 of Schedule "O"** to the **FSA**.

## **VII. Powers and Immunity**

30. The Assessor shall have all the powers necessary for the performance of her duties in accordance with these Terms of Appointment.
31. The Assessor and any person working for the Assessor in accordance with this appointment shall benefit from the public law immunity associated with judicial functions.
32. No suit may be instituted against the Assessor or any person working for the Assessor without the permission of this Court.

## **VIII. Insurance**

33. The Assessor shall ensure that she carries adequate insurance considering the duties and risks associated with this appointment. All costs associated with such insurance shall be at the Assessor's expense.
34. **Litigation Rights:** Notwithstanding that the Assessor is not an agent of the Crown, pursuant to subsection 5(d) of the *Department of Justice Act*, S.C. 1993, c. J-2, s.1, if a suit is instituted for or against Canada which the Assessor's insurer would, but for this clause, have the right to pursue or defend on behalf of Canada as an additional insured under the Assessor's insurance policy, the insurer must promptly contact the Attorney General of Canada to agree on legal strategies by sending a letter, by registered mail or by courier, with an acknowledgement of receipt to:

Christine Mohr  
Senior General Counsel  
Department of Justice Canada  
120 Adelaide Street West, Suite #400  
Toronto, Ontario M5H 1T1  
Phone: (647) 256-7538  
Email: christine.mohr@justice.gc.ca

35. Canada reserves the right to co-defend any action brought against the Assessor or Canada. All expenses incurred by Canada to co-defend such actions will be at Canada's expense. If Canada decides to co-defend any action brought against the Assessor or it, and Canada does not agree to a proposed settlement agreed to by the Assessor's insurer and the plaintiff(s) that would result in the settlement or dismissal of the action against Canada, then Canada will be responsible to the Assessor's insurer for any difference between the proposed settlement amount and the amount finally awarded or paid to the plaintiffs (inclusive of costs and interest) on behalf of Canada.