

**1986-1990 HEPATITIS C SETTLEMENT AGREEMENT**

**MADE AS OF**

**15 June 1999**

## **1986-1990 HEPATITIS C SETTLEMENT AGREEMENT**

THIS AGREEMENT is made as of 15 June 1999

B E T W E E N:

**THE ATTORNEY GENERAL OF CANADA** (“Canada”), **HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA** (“British Columbia”), **HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ALBERTA** (“Alberta”), **HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF SASKATCHEWAN** (“Saskatchewan”), **HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF MANITOBA** (“Manitoba”), **HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO** (“Ontario”), **LE GOUVERNEMENT DU QUEBEC** (“Québec”), **HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NEW BRUNSWICK** (“New Brunswick”), **HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NOVA SCOTIA** (“Nova Scotia”), **HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF PRINCE EDWARD ISLAND** (“PEI”), **HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NEWFOUNDLAND** (“Newfoundland”), **THE GOVERNMENT OF THE NORTHWEST TERRITORIES** (“Northwest Territories”), **THE GOVERNMENT OF NUNAVUT** (“Nunavut”), **THE GOVERNMENT OF THE YUKON TERRITORY** (“Yukon Territory”), (collectively, the “FPT Governments”),

- and -

**ANITA ENDEAN**, plaintiff in the British Columbia Transfused Class Action (the “British Columbia Transfused Plaintiff”), **MARTIN HENRY GRIFFEN** and **ANNA KARDISH**, plaintiffs in the

Ontario Transfused Class Action (the “Ontario Transfused Plaintiffs”), **DOMINIQUE HONHON**, plaintiff in the Québec Transfused Class Action (the “Québec Transfused Plaintiff”), **CHRISTOPHER FORREST MITCHELL**, plaintiff in the British Columbia Hemophiliac Class Action (the “British Columbia Hemophilia Plaintiff”), **JAMES KREPPNER**, and **BARRY ISAAC**, plaintiffs in the Ontario Hemophiliac Action (the “Ontario Hemophilia Plaintiffs”) and **DAVID PAGE**, plaintiff in the Québec Hemophiliac Class Action (the “Québec Hemophilia Plaintiff”) (collectively, the “Class Action Plaintiffs”).

WHEREAS:

- A.** On 21 June 1996 the Québec Transfused Plaintiff commenced Action No. 500-06-000016-960 in the Superior Court of the Province of Québec for the District of Montreal against Canada, Québec, the CRCS and others (the “Québec Transfused Class Action”); on 19 September 1996 the British Columbia Transfused Plaintiff commenced Action No. C965349 in the Vancouver Registry of the Supreme Court of British Columbia against Canada, British Columbia and the CRCS (the “British Columbia Transfused Class Action”); and on 10 February 1998 the Ontario Transfused Plaintiffs commenced Action No. 98-CV-141369 in the Ontario Court (General Division), at Toronto, against Canada, Ontario and the CRCS (the “Ontario Transfused Class Action”) (collectively, the “Transfused Class Actions”).
- B.** On 24 April 1998 the Ontario Hemophilia Plaintiffs commenced Action No. 98-CV-146405 in the Ontario Court (General Division), at Toronto, against the CRCS and Canada (the “Ontario Hemophiliac Class Action”); on 1 May 1998 the British Columbia Hemophilia Plaintiff commenced Action No. A981187 in the Vancouver Registry of the Supreme Court of British Columbia against the CRCS and Canada (the “British Columbia Hemophiliac Class Action”); and on 7 May 1998 the Québec Hemophilia Plaintiff commenced Action No. 500-06-000068-987 in the Superior Court of the Province of Québec for the District of Montréal against the CRCS, Canada and Québec (the “Québec Hemophiliac Class Action”) (collectively, the “Hemophiliac Class Actions”).
- C.** The FPT Governments deny the allegations raised in the Class Actions and nothing in this Agreement will be construed as an admission of liability by any FPT Government.
- D.** The FPT Governments and the Class Action Plaintiffs, subject to the Approval Orders, have agreed to settle the Class Actions upon the terms contained in this Agreement.

**E.** So as to be bound by the Approval Orders in the Ontario Transfused Class Action and the Ontario Hemophiliac Class Action, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, PEI, Newfoundland, the Northwest Territories, Nunavut and the Yukon Territory may intervene therein.

NOW THEREFORE THIS AGREEMENT WITNESSES that, in consideration of the premises and the covenants and agreements herein contained, the Parties agree that all actions, causes of actions, liabilities, claims and demands whatsoever of the Class Members in any way relating to or arising from, in the case of Transfused Class Members, the infection of a Primarily-Infected Person with HCV during the Class Period and, in the case of Hemophiliac Class Members, the infection of a Primarily-Infected Hemophiliac with HCV from Blood (including, in each case, the infection of a Secondarily-Infected Person) will be finally settled based on the terms and conditions set forth herein upon delivery of the Approval Orders:

## **ARTICLE ONE INTERPRETATION**

### **1.01 Definitions**

In this Agreement, in addition to the terms defined in the description of the Parties and in the recitals set out above:

**“Administrator”** means the administrator appointed by the Courts and its successors appointed from time to time pursuant to the provisions of Articles Five and Ten.

**“Agreement”** means this agreement, including its recitals and Schedules, as amended, supplemented or restated from time to time.

**“Approval Date”** means the date when the last Approval Order becomes final, provided there are no material differences in the Approval Orders.

**“Approval Orders”** means the judgments or orders of the Courts to be granted approving this Agreement as being a good faith, fair, reasonable and adequate settlement of the Class Actions pursuant to the class proceedings legislation in British Columbia, Ontario and Québec.

**“Arbitrator”** means a person appointed as an arbitrator by the Courts pursuant to the provisions of Article Ten hereof and Article Ten of a Plan.

**“Auditors”** means the auditors appointed by the Courts and their successors appointed from time to time pursuant to the provisions of Articles Eight and Ten.

**“Blood”** means Blood as defined in the Transfused HCV Plan or, in relation to hemophiliacs, as defined in the Hemophiliac HCV Plan.

**“Business Day”** means a day other than a Saturday or a Sunday or a day observed as a holiday under the laws of the Province or Territory in which the person to whom notice is given is situated or the federal laws of Canada applicable in the said Province or Territory.

**“Claim”** means a claim made and a claim that may be made in the future pursuant to the provisions of a Plan.

**“Class Action Counsel”** means the respective counsel for each of the Class Action Plaintiffs.

**“Class Actions”** means, collectively, the British Columbia Transfused Class Action, the Ontario Transfused Class Action (which includes all Class Members as defined in the Transfused HCV Plan who are not included in the British Columbia Transfused Class Action or the Québec Transfused Class Action), the Québec Transfused Class Action, the British Columbia Hemophiliac Class Action, the Ontario Hemophiliac Class Action (which includes all Class Members as defined in the Hemophiliac HCV Plan who are not included in the British Columbia Hemophiliac Class Action or the Québec Hemophiliac Class Action) and the Québec Hemophiliac Class Action.

**“Class Members”** means, collectively, the Transfused Class Members and the Hemophiliac Class Members.

**“Class Period”** means the period from and including 1 January 1986 to and including 1 July 1990.

**“Contribution Amount”** has the meaning set out in Section 1.01 of the Funding Agreement.

**“Courts”** means, collectively, the Supreme Court of British Columbia, the Superior Court of Justice for Ontario and the Superior Court of Québec.

**“CRCS”** means The Canadian Red Cross Society and its successors.

**“Disbursements”** has the meaning set out in Section 1.01 of the Funding Agreement.

**“Family Members”** means the Family Members as defined in both of the Plans.

**“Federal Government”** means the government of Canada.

**“Fund Counsel”** means the counsel appointed by the Courts and its successors appointed from time to time pursuant to the provisions of Articles Seven and Ten.

**“Funding Agreement”** means an agreement in the form attached hereto as Schedule D.

**“HCV”** means the Hepatitis C virus.

**“Hemophiliac Class Members”** means Class Members as defined in the Hemophiliac HCV Plan.

**“Hemophiliac HCV Plan”** has the meaning set out in Section 3.02.

**“HIV”** means the human immunodeficiency virus.

**“HIV Secondarily-Infected Persons”** means persons who are entitled to receive compensation under the Program.

**“Investment Advisors”** means the investment advisors appointed by the Courts and their successors appointed from time to time pursuant to the provisions of Article Ten.

**“Joint Committee”** means a committee of four persons comprised of one Class Action Counsel from each of the Transfused Class Actions and one Class Action Counsel from the Hemophiliac Class Actions.

**“Parties”** means each of the FPT Governments, the British Columbia Transfused Plaintiff, the Ontario Transfused Plaintiffs, the Québec Transfused Plaintiff, the British Columbia Hemophilia Plaintiff, the Ontario Hemophilia Plaintiffs and the Québec Hemophilia Plaintiff.

**“Plans”** means, collectively, the Hemophiliac HCV Plan and the Transfused HCV Plan.

**“Primarily-Infected Person”** has the meaning set out in Section 1.01 of the Transfused HCV Plan.

**“Primarily-Infected Hemophiliac”** has the meaning set out in Section 1.01 of the Hemophiliac HCV Plan.

**“Program”** means the program described in Schedule C hereto which devolved from the Federal/Provincial/Territorial Assistance Program for HIV Secondarily-Infected Persons announced by the FPT Governments on 15 December 1998.

**“Provinces”** means, collectively, British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, PEI and Newfoundland.

**“Referee”** means a person appointed as a referee by the Courts pursuant to the provisions of Article Ten hereof and Article Ten of a Plan.

**“Releasees”** means, individually and collectively,

- (a) each of the FPT Governments,
- (b) each of the past, present, and future ministers and employees of each FPT Government,
- (c) each of the past and present agents of each FPT Government,
- (d) the Canadian Blood Agency,
- (e) the Canadian Blood Committee or its members,
- (f) each operator of a hospital or health care facility at which a Primarily-Infected Person or Primarily-Infected Hemophiliac received or took Blood, or a HCV Infected Person received treatment, care or advice in any way relating to or arising from the infection of the HCV Infected Person with HCV,
- (g) each health caregiver who treated or provided care or advice to a HCV Infected Person in any way relating to or arising from the infection of the HCV Infected Person with HCV, and
- (h) any person engaged in the business of collecting, manufacturing, purchasing, processing, supplying or distributing Blood,

including their respective past, present, and future parent, subsidiary and affiliated corporations, employees, agents, officers, directors, shareholders, volunteers, representatives, executors, administrators, successors and assigns. Each of the FPT Governments is a trustee for the purpose of asserting the benefit of the covenants set forth in Section 11.01 for those persons listed in (b) to (h) inclusive and holds the benefit of those covenants on their behalf as well as on its own behalf. For greater certainty, the CRCS is not a Releasee.

**“Secondarily-Infected Person”** has the meaning set out in Section 1.01 of the Transfused HCV Plan or the Hemophiliac HCV Plan, as applicable.

**“Settlement Amount”** has the meaning set out in Section 1.01 of the Funding Agreement.

**“Term”** means the period from and including the Approval Date to the date when this Agreement is terminated pursuant to the provisions of Section 12.03.

**“Territories”** means, collectively, the Northwest Territories, Nunavut and the Yukon Territory.

**“Transfused Class Members”** means Class Members as defined in the Transfused HCV Plan.

**“Transfused HCV Plan”** has the meaning set out in Section 3.01.

**“Trust”** has the meaning set out in Section 1.01 of the Funding Agreement.

**“Trust Fund”** means the trust fund to be established pursuant to the Funding Agreement.

**“Trustee”** means the trustee appointed by the Courts and its successors appointed from time to time pursuant to the provisions of Articles Six and Ten.

## **1.02 Headings**

The division of this Agreement into Articles and Sections and the insertion of a table of contents and headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement. The terms “herein”, “hereof”, “hereunder” and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles, Sections and Schedules are to Articles, Sections and Schedules of this Agreement.

## **1.03 Extended Meanings**

In this Agreement words importing the singular number include the plural and *vice versa*, words importing any gender include all genders and words importing persons include individuals, partnerships, associations, trusts, unincorporated organizations, corporations and governmental authorities. The term “including” means “including without limiting the generality of the foregoing”.

## **1.04 No Contra Proferentem**

The Parties acknowledge that their respective legal counsel have reviewed and participated in settling the terms of this Agreement and they agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting party is not applicable in interpreting this Agreement.

## **1.05 Statutory References**

In this Agreement, unless something in the subject matter or context is inconsistent therewith or unless otherwise herein provided, a reference to any statute is to that statute as enacted on the date hereof or as the same may from time to time be amended, re-enacted or replaced and includes any regulations made thereunder.



### **1.06 Day for any Action**

If any day on or by which any action required to be taken hereunder is not a Business Day, such action must be taken on or by the next succeeding day which is a Business Day.

### **1.07 Final Order**

For the purposes of this Agreement a judgment or order becomes final when the time for appealing or seeking leave to appeal the judgment or order has expired without an appeal being taken or leave to appeal being sought or, in the event that an appeal is taken or leave to appeal is sought, when such appeal or leave to appeal and such further appeals as may be taken have been disposed of and the time for further appeal, if any, has expired.

### **1.08 Currency**

All references to currency herein are to lawful money of Canada.

### **1.09 Schedules**

The following are the Schedules to this Agreement:

- |            |   |                              |
|------------|---|------------------------------|
| Schedule A | - | Transfused HCV Plan;         |
| Schedule B | - | Hemophiliac HCV Plan;        |
| Schedule C | - | Program;                     |
| Schedule D | - | Funding Agreement; and       |
| Schedule E | - | Social Benefits Legislation. |

### **1.10 Obligations of the FPT Governments**

It is understood that the FPT Governments will not have any obligations relating to the ongoing operations of the Plans except for their obligations as set out in Article Four of this Agreement and in the Funding Agreement.

## **ARTICLE TWO PURPOSES AND EFFECT OF AGREEMENT**

### **2.01 Purposes**

The purposes of this Agreement are (i) to establish the Transfused HCV Plan and the Hemophiliac HCV Plan, (ii) to settle the Class Actions and (iii) to provide for payment by the FPT Governments of the Contribution Amount to the Trustee and the payment by the Trustee of the Disbursements, in accordance with and as provided in the Funding Agreement.

### **2.02 Binding Effect**

On the Approval Date this Agreement will become effective and be binding on and after the Approval Date on all the FPT Governments and all the Class Members including the Class Action Plaintiffs. Each Approval Order will constitute approval of this Agreement in respect of all Class Members (including minors and mentally incompetent persons) in each jurisdiction so that no additional court approval of any payment to be made to any Class Member will be necessary.

### **2.03 Effective in Entirety**

The Approval Orders must be issued with respect to this Agreement in its entirety (including all the Schedules) so that none of the provisions of this Agreement will become effective unless all the provisions of this Agreement become effective.

## **ARTICLE THREE PLANS AND PROGRAM**

### **3.01 Transfused HCV Plan**

On the Approval Date, the plan to provide compensation to persons who were infected with HCV through a Blood transfusion received in Canada during the Class Period and secondarily-infected spouses, secondarily-infected children and certain family members, all in the form attached hereto as Schedule A (the “Transfused HCV Plan”), will become effective.

### **3.02 Hemophiliac HCV Plan**

On the Approval Date, the plan to provide compensation to persons who are hemophiliacs, who received or took Blood during the Class Period and who were infected with HCV and secondarily-infected spouses, secondarily-infected children and certain family members, all in the form attached hereto as Schedule B (the “Hemophiliac HCV Plan”), will become effective.

### **3.03 Program**

The FPT Governments have established the Program to provide HIV Secondarily-Infected Persons with a lump-sum payment of \$240,000 per HIV Secondarily-Infected Person. Such payments will be made out of the Trust to a maximum of 240 payments. A description of the Program is set out in Schedule C attached hereto.

## **ARTICLE FOUR FPT GOVERNMENTS**

### **4.01 Funding Agreement**

The Parties will enter into the Funding Agreement.

### **4.02 Social Benefits**

(1) If a Class Member was receiving any medical, ancillary medical, health or drug benefits on 1 April 1999, the receipt of payments pursuant to a Plan will not affect the quantity, nature or duration of any corresponding benefits that any Class Member receives after such date except to the extent that such benefits are related to the Class Member's infection with HCV in which case they are recoverable exclusively under Sections 4.06 and 4.07 of the Plans.

(2) The receipt of any payments pursuant to a Plan will not affect the quantity, nature or duration of any social benefits or social assistance benefits payable to a Class Member pursuant to any legislation of any PT Government referred to in Schedule E hereto, provided that the receipt of loss of income or loss of support payments pursuant to Sections 4.02 and 6.01 of the Plans may have such an effect. The receipt of any payments pursuant to a Plan will not affect the quantity, nature or duration of any social benefits or social assistance benefits payable to a Class Member pursuant to any social benefit programs of the Federal Government such as old age security and Canada Pension Plan, as such payments either are not considered or, if considered, are otherwise exempted in the calculation of benefits under such legislation, provided that the receipt of loss of income or loss of support payments pursuant to Section 4.02 or 6.01 of a Plan may have such an effect.

### **4.03 No Additional Liability**

On and after the Approval Date, the only obligations and liabilities of any of the FPT Governments, including their respective past, present and future ministers and employees and their past and present agents, and their respective successors, under this Agreement are their obligations and liabilities under this Article Four and the Funding Agreement. For greater certainty, none of the FPT Governments will be liable to provide any additional funds if the amount of funds to be provided by the FPT Governments pursuant to this Article Four and the

Funding Agreement are insufficient to make all the payments to be made pursuant to this Agreement including, for greater certainty, the Plans and the Funding Agreement.

## **ARTICLE FIVE THE ADMINISTRATOR**

### **5.01 Appointment of Administrator**

The Courts will appoint an Administrator to administer the Plans with such powers, rights, duties and responsibilities as are determined by the Joint Committee and approved by the Courts.

### **5.02 Administrator's Duties**

Subject to obtaining the approval of the Courts, the Administrator's duties and responsibilities will include the following:

- (a) establishing and staffing "The 1986-1990 Hepatitis C Claims Centre";
- (b) developing, installing and implementing systems and procedures for receiving, processing, evaluating and making decisions respecting Claims including making all necessary inquiries (including consulting medical personnel) to determine the validity of any Claim and requiring any claimant to have a medical examination;
- (c) reporting to the Joint Committee and the Courts respecting Claims received and being administered;
- (d) providing personnel in such reasonable numbers as are required for the performance of its duties, and training and instructing them;
- (e) keeping or causing to be kept accurate accounts of its activities and its administration of the Plans, preparing such financial statements, reports and records as are required by the Joint Committee, Fund Counsel and the Courts, in form and content as directed by the Courts, and submitting them to the Joint Committee, Fund Counsel and the Courts monthly or so often as the Courts direct;
- (f) receiving and responding to all enquiries and correspondence respecting Claims, supplying claim forms, reviewing and evaluating all Claims, making decisions in respect of Claims, giving notice of its decision, receiving compensation payments on behalf of the Class Members out of the Trust and forwarding the compensation in accordance with the provisions of the Plans within a reasonable period of time and communicating with a claimant, in either English or French, as the claimant elects;

- (g) assisting in the completion of claim forms and attempting to resolve any disputes with claimants;
- (h) maintaining a database with all information necessary to permit the Courts to evaluate the financial viability and sufficiency of the Trust Fund from time to time; and
- (i) such other duties and responsibilities as the Courts may from time to time by order direct.

### **5.03 Decisions of the Administrator**

The Administrator will give notice of its decision in respect of a Claim to a claimant promptly after the decision is made. A decision of the Administrator in respect of a Claim will, subject to the claimant's right to refer the decision to a Referee or an Arbitrator pursuant to provisions of the Plans, be final and binding upon the claimant and the Administrator.

### **5.04 Fees**

The fees, disbursements and other costs of the Administrator will be paid out of the Trust in a time, in a manner and in an amount approved by the Courts.

## **ARTICLE SIX THE TRUSTEE**

### **6.01 Appointment of Trustee**

The Courts will appoint a Trustee to act as the trustee of the Trust with such powers, rights, duties and responsibilities as the Courts direct. Without limiting the generality of the foregoing, the duties and responsibilities of the Trustee will include its duties and responsibilities as set out in the Funding Agreement and the Trustee will be obliged to act in accordance with the provisions of the Funding Agreement.

## **6.02 Fees**

The fees, disbursements and other costs of the Trustee will be paid out of the Trust in a time, in a manner and in an amount approved by the Courts.

## **ARTICLE SEVEN FUND COUNSEL**

### **7.01 Appointment of Fund Counsel**

The Courts will appoint Fund Counsel with such powers, rights, duties and responsibilities as the Courts direct. Without limiting the generality of the foregoing, the duties and responsibilities of the Fund Counsel will include:

- (a) defending decisions made by the Administrator;
- (b) defending and advancing the interests of the Trust;
- (c) receiving financial statements and actuarial and other reports relating to the financial sufficiency of the Trust Fund from time to time; and
- (d) if deemed necessary or desirable by Fund Counsel, making applications to the Courts pursuant to Section 10.01.

### **7.02 Fees**

The fees, disbursements and other costs of the Fund Counsel will be paid out of the Trust in a time, in a manner and in an amount approved by the Courts.

## **ARTICLE EIGHT THE AUDITORS**

### **8.01 Appointment of Auditors**

The Courts will appoint Auditors with such powers, rights, duties and responsibilities as the Courts direct. Without limiting the generality of the foregoing, the duties and responsibilities of the Auditors will include (i) to audit the accounts of the Administrator for the Plans and the Trust in accordance with generally accepted auditing standards on an annual basis and (ii) to file

the financial statements of the Administrator for the Plans and the Trust together with the Auditors' report thereon with the Courts and deliver a copy thereof to the Joint Committee, the Trustee and the Fund Counsel within 60 days after the end of each financial year of the Plans and the Trust.

## **8.02 Fees**

The fees, disbursements and other costs of the Auditors will be paid out of the Trust in a time, in a manner and in an amount approved by the Courts.

# **ARTICLE NINE JOINT COMMITTEE**

## **9.01 Appointment of Joint Committee**

The Courts will appoint a Joint Committee with such powers, rights, duties and responsibilities as the Courts direct.

## **9.02 Joint Committee's Duties**

Without limiting the generality of the foregoing, the duties and responsibilities of the Joint Committee will include:

- (a) recommending from time to time persons for appointment by the Courts pursuant to the provisions of Article Ten;
- (b) establishing protocols, which must be approved by the Courts, for the Administrator, Trustee, Referees and Arbitrators for the administration of this Agreement and for the processing and payment of Claims, and rescinding or amending any of such protocols with the approval of the Courts;
- (c) receiving and assessing information received from the Administrator, the Trustee, the Auditors and Fund Counsel and applying to the Courts for advice and direction;
- (d) retaining actuaries to determine the financial sufficiency of the Trust Fund from time to time;
- (e) receiving advice from the Investment Advisors on the investment of the assets of the Trust; and
- (f) making applications to the Courts pursuant to Section 10.01(1).

Decisions of the Joint Committee will require the approval of all members of the Joint Committee.

### **9.03 Fees**

The fees, disbursements and other costs of the Joint Committee will be paid out of the Trust in a time, in a manner and in an amount approved by the Courts.

## **ARTICLE TEN SUPERVISION BY THE COURTS**

### **10.01 Supervising Role of the Courts**

(1) The Courts will issue judgments or orders in such form as is necessary to implement and enforce the provisions of this Agreement and will supervise the ongoing performance of this Agreement including the Plans and the Funding Agreement. Without limiting the generality of the foregoing, the Courts will:

- (a) appoint and, if necessary, remove the Administrator;
- (b) appoint and, if necessary, remove the Trustee;
- (c) appoint and, if necessary, remove the Fund Counsel;
- (d) appoint and, if necessary, remove the Auditors;
- (e) appoint and, if necessary, remove any member of the Joint Committee;
- (f) appoint and, if necessary, remove any Referee or Arbitrator;
- (g) appoint and, if necessary, remove any Investment Advisor;
- (h) approve, rescind or amend the protocols submitted by the Joint Committee or any Class Action Counsel;
- (i) on application of any Party or the Joint Committee made within 180 days after (i) 31 December 2001 and (ii) each third anniversary of such date, and on application of the Joint Committee or any Class Action Counsel or the Fund Counsel made at any time, assess the financial sufficiency of the Trust Fund and determine, among other things, (A) whether the restrictions on payments of amounts in full in the Plans should be varied or removed in whole or in part, and (B) whether the terms of the Plans should be amended due to a financial insufficiency or anticipated financial insufficiency of the Trust Fund;
- (j) hear motions opposing confirmation of any Referee's reports;



(k) on application of the Joint Committee, approve the terms of investment guidelines for the assets of the Trust;

(l) on application of the Administrator, Fund Counsel, the Auditors, any Class Action Counsel, the Joint Committee or the Trustee, provide advice and direction;

(m) approve any amendment or supplement to, or restatement of, this Agreement agreed to in writing by the FPT Governments and the Joint Committee;

(n) approve any costs incurred or to be incurred in administering this Agreement including, for greater certainty, the Plans, the Program (up to a maximum of \$2 million) and the Funding Agreement and the defence costs payable out of the Trust pursuant to Section 11.02 hereof; and

(o) declare this Agreement to be terminated and, if applicable, order that any assets remaining in the Trust Fund be the sole property of and transferred to the FPT Governments.

(2) All matters to be determined by the Courts pursuant to Section 10.01(1) will take effect only upon the date when the last judgment or order of the Courts becomes final without any material differences in the three judgments or orders.

## **ARTICLE ELEVEN RELEASES**

### **11.01 Releases**

The Approval Orders will declare that:

(a) each Class Member has released each of the Releasees from any and all actions, causes of actions, liabilities, claims and demands whatsoever of every nature or kind for damages, contribution, indemnity, costs, expenses and interest which any such Class Member ever had, now has or may hereafter have in any way relating to or arising from (i) in the case of each Transfused Class Member, the infection of a Primarily-Infected Person with HCV during the Class Period or (ii) in the case of each Hemophiliac Class Member, the infection of a Primarily-Infected Hemophiliac with HCV from Blood (including, in each case, the infection of a Secondarily-Infected Person) whether such claims were made or could have been made in any proceeding including the Class Actions;

(b) the Class Members, separately and severally, fully, finally and forever release each of the Releasees, separately and severally, and in each and every capacity that such

actions, causes of actions, liabilities, claims or demands may be asserted against any Releasee;

(c) the Class Members are deemed to agree that they will not make any claim or demand or take any actions or proceedings against any Releasee or any other person in which any claim could arise against any Releasee for damages and/or contribution and/or indemnity and/or other relief over under the provisions of the *Negligence Act* (Ontario) or its counterpart in other jurisdictions, the common law or any other statute of Ontario or any other jurisdiction in any way relating to or arising from (i) in the case of each Transfused Class Member, the infection of a Primarily-Infected Person with HCV during the Class Period, or (ii) in the case of each Hemophiliac Class Member, the infection of a Primarily-Infected Hemophiliac with HCV from Blood (including, in each case, the infection of a Secondarily-Infected Person), provided that the foregoing excludes the CRCS;

(d) at the option of the FPT Governments or their representatives, each Class Member receiving payment under one of the Plans will either,

- (i) pursue any claims as described in Section 11.01(c) that the Class Member has against the CRCS, and assign to the FPT Governments the proceeds received by the Class Member from any such claims, or
- (ii) within the *Companies' Creditors Arrangement Act* (Canada) proceedings relating to the CRCS, prove, vote and otherwise act to promote those claims as described in Section 11.01(c) that the Class Member has against the CRCS in accordance with directions given to the Class Member by the FPT Governments or their representatives, or, at the request of the FPT Governments or their representatives grant to the FPT Governments and their representatives such proxies or other forms of assignment as are necessary for the FPT Governments to vote and otherwise act to promote any such claim of the Class Member, or
- (iii) enter into a release of all of such claims against the CRCS substantially in the form of the releases attached as appendices to the Plans.

(e) the FPT Governments' obligations and liabilities pursuant to Article Four hereof and the Funding Agreement constitute the consideration for the releases and other matters referred to in Sections 11.01(a) to (d) inclusive and such consideration is in full and final settlement and satisfaction of any and all claims referred to therein and the Class Members are limited to the compensation payable pursuant to the Plans as funded, in whole or in part, pursuant to the Funding Agreement as their only recourse on account of any and all such actions, causes of actions, liabilities, claims and demands.

## **11.02 Claims by Opt-Outs and Others**

If any person who opts out of a Class Action or any Class Member who is not bound by the provisions of this Agreement or any other person who claims over or brings a third party claim makes any claim or demand or takes any action or proceeding against any FPT Government in any way relating to or arising from (i) in the case of a Transfused Class Member, the infection of a Primarily-Infected Person with HCV during the Class Period or, (ii) in the case of a Hemophiliac Class Member, the infection of a Primarily-Infected Hemophiliac with HCV from Blood (including, in each case, the infection of a Secondarily-Infected Person), the amount payable by a FPT Government to the person who opts out of a Class Action or Class Member who is not bound by the provisions of this Agreement or person who claims over or brings a third party claim pursuant to either a final judgment of a court in a contested action or a settlement approved by one of the Courts and an amount equal to one-third of the defence costs (including costs of counsel, disbursements and applicable taxes) arising out of any action (whether an FPT Government has been successful in defending the action or not) or settlement and approved by one of the Courts will be paid out of the Trust.

## **11.03 Dismissal of Actions**

Each of the Class Actions will be dismissed on the Approval Date in accordance with the terms of the Approval Orders.

## **11.04 Cessation of Litigation**

(1) Upon execution of this Agreement, the Class Action Plaintiffs and Class Action Counsel will cooperate with the FPT Governments to obtain approval of this Agreement and general participation by Class Members in the Plans.

(2) Each Class Action Counsel will undertake, within five Business Days after the Approval Date, not to commence or assist or advise on the commencement or continuation of any action or proceeding against any of the Releasees, or against any person who may claim contribution or indemnity from any of the Releasees in any way relating to or arising from (i) in the case of a Transfused Class Member, the infection of a Primarily-Infected Person with HCV during the Class Period or (ii) in the case of a Hemophiliac Class Member, the infection of a Primarily-Infected Hemophiliac with HCV from Blood (including, in each case, the infection of a Secondarily-Infected Person), provided that nothing in the Agreement will prevent any Class Action Counsel from advising any person to obtain independent legal advice before deciding whether to opt out of a Class Action.

(3) Each Class Member who has commenced any action or proceeding as described in Section 11.04(2), other than the Class Actions, must consent to a dismissal of such action or proceeding without costs before receiving any payment under a Plan.

## **ARTICLE TWELVE CONDITIONS, AMENDMENT AND TERMINATION**

### **12.01 Agreement Conditional**

This Agreement will not be effective unless and until it is approved by the Court in each of the Class Actions, and if such approvals are not granted without any material differences therein, this Agreement will be thereupon terminated and none of the Parties will be liable to any of the other Parties hereunder.

### **12.02 Amendments**

Except as expressly provided in this Agreement, no amendment or supplement may be made to the provisions of this Agreement and no restatement of this Agreement may be made unless agreed to by the FPT Governments and all members of the Joint Committee in writing and any such amendment, supplement or restatement is approved by the Courts without any material differences.

### **12.03 Termination**

(1) This Agreement will continue in full force and effect until the date on which the Courts have declared this Agreement to be terminated.

(2) Any of the FPT Governments or the Joint Committee may apply for a declaration pursuant to Section 12.03(1).

(3) After this Agreement is terminated by the Courts, any assets remaining in the Trust will be the sole property of and transferred to the FPT Governments.

## **ARTICLE THIRTEEN GENERAL**

### **13.01 Notices**

Any notice or other communication to be given in connection with this Agreement will be given in writing and will be given by personal delivery or by electronic communication addressed to the recipient as follows:

(a) to The Attorney General of Canada:

Justice Canada, Department of Health  
Brooke Claxton Building, 2nd Floor

Tunney's Pasture  
P. O. Box: Postal Locator: 0902D  
Ottawa, Ontario  
K1A 0K9

Attention: Senior General Counsel  
Facsimile No.: (613) 957-1327

(b) to Her Majesty the Queen In Right of the Province of British Columbia:

c/o Ministry of the Attorney General  
6th Floor, 1001 Douglas Street  
Victoria, B.C.  
V8W 2C5

Attention: Supervising Counsel  
Facsimile No.: (250) 356-9154

(c) to Her Majesty the Queen In Right of the Province of Alberta:

c/o Alberta Justice  
Civil Law Branch, 5th Floor  
9833 - 109th Street  
Edmonton, Alberta  
T5K 2E8

Attention: Minister of Health and Wellness  
Facsimile No.: (780) 415-0961

Attention: Minister of International and Intergovernmental  
Relations

(d) to Her Majesty the Queen In Right of the Province of Saskatchewan:

c/o Saskatchewan Justice  
Civil Law Division  
9th Floor  
1874 Scarth Street  
Regina, Saskatchewan  
S4P 3V7

Attention: Darryl Bogdasavich, Q.C.  
Facsimile No.: (306) 787-0581

- (e) to Her Majesty the Queen In Right of the Province of Manitoba:

Manitoba Justice  
Suite 730  
405 Broadway  
Winnipeg, Manitoba  
R3C 3L6

Attention: Director of Legal Services  
Facsimile No.: (204) 948-2041

- (f) to Her Majesty the Queen In Right of Ontario:

c/o Ministry of the Attorney General for Ontario  
Director, Crown Law Office Civil  
8th Floor, 720 Bay Street  
Toronto, Ontario  
M5G 2K1

Facsimile No.: (416) 326-4181

- (g) to Le Gouvernement du Québec:

c/o La Procureure Générale du Québec  
1 est, rue Notre-Dame, 8 ièrne étage  
Montreal, Québec  
H2Y 1B6

Attention: Robert Monette  
Facsimile No.: (514) 873-7074

- (h) to Her Majesty the Queen In Right of the Province of New Brunswick:

c/o Department of Justice  
Legal Services Branch  
Room 444, Centennial Building  
670 King Street  
P. O. Box 6000  
Fredericton, New Brunswick  
E3B 5H1

Attention: William A. Anderson

Facsimile No.: (506) 453-3275

- (i) to Her Majesty the Queen In Right of the Province of Nova Scotia:

Department of Health  
P. O. Box 488  
Halifax, Nova Scotia  
B3J 2R8

Attention: Deputy Minister of Health  
Facsimile No.: (902) 424-0559

- (j) to Her Majesty the Queen In Right of the Province of Prince Edward Island:

Department of Community Affairs and Attorney General  
P. O. Box 2000, 11 Kent Street, 1st Floor  
Charlottetown, Prince Edward Island  
C1A 7N8

Attention: Adele MacLeod  
Facsimile No.: (902) 368-4563

- (k) to Her Majesty the Queen In Right of the Province of Newfoundland:

Department of Justice  
Confederation Building  
P. O. Box 8700  
St. John's, Newfoundland  
A1B 4J6

Attention: Mrs. Lynn Spracklin, Q.C.  
Deputy Attorney General  
Facsimile No.: (709) 729-2129

- (l) to The Government of the Northwest Territories:

Government of the Northwest Territories  
Legislative Assembly (2)  
P. O. Box 1320  
Yellowknife, Northwest Territories  
X1A 2L9

Attention: The Honourable Floyd Roland  
Minister of Health and Social Services  
Facsimile No.: (867) 873-0399

- (m) to The Government of Nunavut:

Department of Justice  
Government of Nunavut  
P. O. Box 800  
Iqaluit, NT  
X0A 0H0

Attention: Nora Sanders  
Deputy Minister of Justice  
Facsimile No.: (867) 979-5977

- (n) to The Government of the Yukon Territory:

c/o Yukon Justice  
Legal Services, 2nd Floor  
Andrew Philipsen Law Centre  
2130 Second Avenue  
Whitehorse, Yukon  
Y1A 5C3

Attention: Director of Legal Services  
Facsimile No.: (867) 393-6379

- (o) to Anita Endean:

c/o Camp Church & Associates  
4th Floor, Randall Building  
555 West George Street  
Vancouver, British Columbia  
V6B 1Z5



Attention: J.J. Camp, Q.C.  
Facsimile No.: (604) 689-7554

(p) to Martin Henry Griffen and Anna Kardish:

c/o Gignac, Sutts  
600 Westcourt Place  
251 Goyeau Street  
Windsor, Ontario  
N9A 6V4

Attention: Harvey T. Strosberg, Q.C.  
Facsimile No.: (519) 258-9527

(q) to Dominique Honhon:

c/o Pierre R. Lavigne  
220-440 Laurier Avenue, West  
Ottawa, Ontario  
K1R 7X6

Facsimile No.: (613) 782-2445

and to:

Marchand, Magnan, Melanson, Forget  
Ste. 1640  
600 rue de la Gauchetiere  
Montreal, Québec  
H3B 4L8

Attention: Michel Savonitto  
Facsimile No.: (514) 861-0727

(r) to Christopher Forrest Mitchell:

c/o Blake, Cassels & Graydon  
Three Bentall Centre, Suite 2600  
595 Burrard Street  
Vancouver, British Columbia  
V7X 1L3

Attention: Marvin R. V. Storrow

Facsimile No.: (604) 631-3309

(s) to James Kreppner and Barry Isaac:

c/o Hodgson Tough Shields DesBrisay O'Donnell  
36 Toronto Street, Suite 550  
Toronto, Ontario  
M5C 2C5

Attention: Bonnie A. Tough  
Facsimile No.: (416) 304-6406

(t) to David Page:

c/o Petit Blaqui re Dagenais  
5929, Transcanadienne, Suite 230  
Ville St-Laurent, Qu bec  
H4T 1Z6

Attention: Jean Blaqui re  
Facsimile No.: (514) 744-8003

or to such other address, individual or electronic communication number as a Party may from time to time advise by notice given pursuant to this Section. Any notice or other communication will be exclusively deemed to have been given, if given by personal delivery, on the day of actual delivery thereof and, if given by electronic communication, on the day of transmittal thereof if transmitted during normal business hours of the recipient and on the Business Day during which such normal business hours next occur if not so transmitted.

### **13.02 Entire Agreement**

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and cancels and supersedes any prior or other understandings and agreements between the Parties with respect thereto. There are no representations, warranties, terms, conditions, undertakings, covenants or collateral agreements, express, implied or statutory between the Parties with respect to the subject matter hereof other than as expressly set forth in this Agreement.

### **13.03 Class Action Counsel Fees**

The fees, disbursements, costs, GST and other applicable taxes of Class Action Counsel will be paid out of the Trust. Fees will be fixed by the Court in each Class Action on the basis of

a lump sum, hourly rate, hourly rate increased by a multiplier or otherwise, but not on the basis of a percentage of the Settlement Amount.

#### **13.04 Benefit of the Agreement**

This Agreement will enure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and assigns of the Parties.

#### **13.05 Counterparts**

This Agreement may be executed in English or French in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same Agreement.

IN WITNESS WHEREOF the Parties have executed this Agreement.

|                              |   |                                     |
|------------------------------|---|-------------------------------------|
| SIGNED, SEALED AND DELIVERED | ) | THE ATTORNEY GENERAL OF CANADA      |
| in the presence of:          | ) |                                     |
|                              | ) |                                     |
|                              | ) |                                     |
|                              | ) | By: _____                           |
|                              | ) | Name:                               |
|                              | ) | Office:                             |
|                              | ) | HER MAJESTY THE QUEEN IN THE RIGHT  |
|                              | ) | OF THE PROVINCE OF BRITISH COLUMBIA |
|                              | ) |                                     |
|                              | ) |                                     |
|                              | ) | By: _____                           |
|                              | ) | Name:                               |
|                              | ) | Office:                             |
|                              | ) |                                     |
|                              | ) | HER MAJESTY THE QUEEN IN THE RIGHT  |
|                              | ) | OF THE PROVINCE OF ALBERTA          |
|                              | ) |                                     |
|                              | ) |                                     |
|                              | ) | By: _____                           |
|                              | ) | Name:                               |
|                              | ) | Office:                             |
|                              | ) |                                     |
|                              | ) | And: _____                          |
|                              | ) | Name:                               |
|                              | ) | Title:                              |
|                              | ) |                                     |

) HER MAJESTY THE QUEEN IN THE RIGHT  
) OF THE PROVINCE OF SASKATCHEWAN

)

)

) By: \_\_\_\_\_

) Name:

) Office:

)

) HER MAJESTY THE QUEEN IN THE RIGHT  
) OF THE PROVINCE OF MANITOBA

)

)

) By: \_\_\_\_\_

) Name:

) Office:

)

) HER MAJESTY THE QUEEN IN RIGHT  
) OF ONTARIO

)

)

) By: \_\_\_\_\_

) Name:

) Office:

)

) LE GOUVERNEMENT DU QUEBEC

)

)

) By: \_\_\_\_\_

) Name:

) Office:

)

)

) And: \_\_\_\_\_

) Name:

) Office:

)

) HER MAJESTY THE QUEEN IN THE RIGHT  
) OF THE PROVINCE OF NEW BRUNSWICK

)

)

) By: \_\_\_\_\_

) Name:

) Office:

)  
 ) HER MAJESTY THE QUEEN IN THE RIGHT  
 ) OF THE PROVINCE OF NOVA SCOTIA  
 )

)  
 ) By: \_\_\_\_\_  
 ) Name:  
 ) Office:  
 )

) HER MAJESTY THE QUEEN IN THE RIGHT  
 ) OF THE PROVINCE OF PRINCE EDWARD  
 ) ISLAND  
 )

)  
 ) By: \_\_\_\_\_  
 ) Name:  
 ) Office:  
 )

) HER MAJESTY THE QUEEN IN THE RIGHT  
 ) OF THE PROVINCE OF NEWFOUNDLAND  
 )

)  
 ) By: \_\_\_\_\_  
 ) Name:  
 ) Office:  
 )

) And: \_\_\_\_\_  
 ) Name:  
 ) Office:  
 )

) THE GOVERNMENT OF  
 ) THE NORTHWEST TERRITORIES  
 )

)  
 ) By: \_\_\_\_\_  
 ) Name:  
 ) Office:  
 )

) THE GOVERNMENT OF NUNAVUT  
 )

)  
 ) By: \_\_\_\_\_  
 ) Name:  
 ) Office:  
 )  
 ) THE GOVERNMENT OF THE YUKON )

TERRI  
TORY

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 ) By: \_\_\_\_\_  
 ) Name:  
 ) Office:  
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 Anita Endean )

Anita Endean  
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 as to the signature of )  
 Martin Henry Griffen )

Martin Henry Griffen  
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 as to the signature of )  
 Anna Kardish )

Anna Kardish  
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 as to the signature of )  
 Dominique Honhon )

Dominique Honhon  
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 as to the signature of )  
 Christopher Forrest Mitchell )

Christopher Forrest Mitchell  
 )

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|                        | ) |                |
|                        | ) |                |
| _____                  | ) | _____          |
| as to the signature of | ) | James Kreppner |
| James Kreppner         | ) |                |
|                        | ) |                |
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|                        | ) |                |
|                        | ) |                |
|                        | ) |                |
| _____                  | ) | _____          |
| as to the signature of | ) | Barry Isaac    |
| Barry Isaac            | ) |                |
|                        | ) |                |
|                        | ) |                |
|                        | ) |                |
|                        | ) |                |
|                        | ) |                |
| _____                  | ) | _____          |
| as to the signature of | ) | David Page     |
| David Page             | ) |                |

**SCHEDULE E**  
**SOCIAL BENEFITS LEGISLATION**

Newfoundland:

*Social Assistance Act*, RSN 1990 cS-17 as amended

Nova Scotia:

*Social Assistance Act*, R.S., c.432

*Family Benefits Act*, R.S., c.158

*Disabled Persons' Allowance Act*, R.S. 1954, c.70

Prince Edward Island:

*Welfare Assistance Act*

New Brunswick:

*Family Income Security Act*

Québec:

*Loi sur La Securite du Revenu*

(Act respecting income security) LRQ cS. 3.1.1.

Ontario:

*Social Assistance Reform Act, 1997*, S.O. 1997, c.25

*Ontario Works Act, 1997*, S.O. 1997, c.25

*Ontario Disability Support Program Act, 1997*, S.O. 1997, c.25

Manitoba:

*The Employment and Income Assistance Act*, CCSM, E-98

*The Municipal Act*, CCSM, M225

Saskatchewan:

*Saskatchewan Assistance Act*



Alberta:

*Social Development Act*, R.S.A. 1980, cs-16

*Assured Income for the Severely Handicapped Act*, R.S.A. 1980 CA-48

*Widows Pension Act*, S.A. 1983, W-75

British Columbia:

*B.C. Benefits (Income Assistance) Act*, R.S. c.27

*B.C. Benefits (Youth Works) Act*, R.S. c. 28

*Disability Benefits Program Act*, R.S. c.97

Yukon:

*Social Assistance Act*

North West Territories & Nunavut:

*Social Assistance Act*, R.S. N.W.T. 1988 cs-10 as duplicated for Nunavut by s. 29(1) of the *Nunavut Act*

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