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## SCHEDULE B

## HEMOPHILIAC HCV PLAN

**SCHEDULE B**  
**HEMOPHILIAC HCV PLAN**

**ARTICLE ONE**  
**INTERPRETATION**

**1.01 Definitions**

**“Administrator”** means the Administrator appointed from time to time by the Courts pursuant to the Settlement Agreement.

**“Approval Date”** means the date when the judgments or orders of the Courts approving the Settlement Agreement become final and, as a result, this Plan becomes effective.

**“Approved Dependant”** means a Dependant whose Claim made pursuant to Section 3.05 has been accepted by the Administrator.

**“Approved Family Member”** means a Family Member referred to in clause (a) of the definition of Family Member in this Section 1.01 whose Claim made pursuant to Section 3.06 has been accepted by the Administrator.

**“Approved HCV Infected Person”** means a HCV Infected Person whose Claim made pursuant to Section 3.01 or 3.02, as the case may be, has been accepted by the Administrator.

**“Approved HCV Personal Representative”** means a HCV Personal Representative whose Claim made pursuant to Section 3.04 has been accepted by the Administrator.

**“Arbitrator”** means a person appointed as an arbitrator by the Courts pursuant to the provisions of Section 10.02 hereof and Article Ten of the Settlement Agreement.

**“Average Industrial Wage in Canada”** means the Average Weekly Earnings (all Industries), as published in Statistics Canada’s on-line statistical data base created from The Canadian Socio-Economic Information Management System (CANSIM) data base or any successor data base, for the most recent period for which such information is published at the date the determination provided for in Section 4.02 or 6.01 is to be made.

**“Blood”** means whole blood and blood products including packed red cells, platelets, plasma (fresh frozen and banked), white blood cells and cryoprecipitate and clotting factor products including Factor VII, Factor VIII and Factor IX, supplied, directly or indirectly, by the Canadian Red Cross Society. Blood does not include Albumin 5%, Albumin 25%, Cytomegalovirus Immune Globulin, Hepatitis B Immune Globulin, Rh Immune Globulin,

Varicella Zoster Immune Globulin, Immune Serum Globulin, Tetanus Immune Globulin, Intravenous Immune Globulin (IVIG) and Antithrombin III (ATIII).

**“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.

**“Child”** includes:

- (a) an adopted child;
- (b) a child conceived before and born alive after his or her parent’s death; and
- (c) a child to whom a person has demonstrated a settled intention to treat as a child of his or her family;

but does not include a foster child placed in the home of a HCV Infected Person for valuable consideration.

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

**“Class Action Counsel”** has the meaning set out in Section 1.01 of the Settlement Agreement.

**“Class Members”** means, collectively, all Primarily-Infected Hemophiliacs, all Secondly-Infected Persons, all HCV Personal Representatives and all Family Members but excludes, for greater certainty, all persons who opt out of a Class Action.

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

**“Cohabit”** means to live together in a conjugal relationship, whether within or outside marriage.

**“Compensable HCV Drug Therapy”** means interferon or ribavirin, used alone or in combination, or any other treatment that has a propensity to cause adverse side effects and that has been approved by the Courts for compensation.

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

**“Dependant”** means a Family Member of a HCV Infected Person referred to in clauses (a) and (c) of the definition of a Family Member in this Section 1.01 to whom that HCV Infected

Person was providing support or was under a legal obligation to provide support on the date of the HCV Infected Person's death.

**"EAP"** means the HIV Extraordinary Assistance Plan announced by the government of Canada on 14 December 1989.

**"Family Member"** means:

- (a) the Spouse, Child, Grandchild, Parent, Grandparent or Sibling of a HCV Infected Person;
- (b) the Spouse of a Child, Grandchild, Parent or Grandparent of a HCV Infected Person;
- (c) a former Spouse of a HCV Infected Person;
- (d) a Child or other lineal descendant of a Grandchild of a HCV Infected Person;
- (e) a person of the opposite sex to a HCV Infected Person who Cohabited for a period of at least one year with that HCV Infected Person immediately before his or her death;
- (f) a person of the opposite sex to a HCV Infected Person who was Cohabiting with that HCV Infected Person at the date of the HCV Infected Person's death and to whom that HCV Infected Person was providing support or was under a legal obligation to provide support on the date of the HCV Infected Person's death; and
- (g) any other person to whom a HCV Infected Person was providing support for a period of at least three years immediately prior to the HCV Infected Person's death.

unless any person described above opts out of the Class Action in which he or she would otherwise be a Class Member.

**"FPT Governments"** means, collectively, (i) the government of Canada, (ii) the governments of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland (collectively, the **"Provinces"**) and (iii) the governments of the Northwest Territories, Nunavut and the Yukon Territory (collectively, the **"Territories"**).

**"Fund Counsel"** has the meaning set out in Section 1.01 of the Settlement Agreement.

**"Grandchild"** means the Child of a Child.

**“Grandparent”** means the Parent of a Parent.

**“Guardian”** includes a litigation guardian, guardian *ad litem* and other representative of a minor or mentally incompetent in litigation proceedings.

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

**“HCV Antibody Test”** means a blood test performed in Canada using a commercially available assay acceptable to the Administrator demonstrating that the HCV antibody is present in the blood of a person.

**“HCV Infected Person”** means a Primarily-Infected Hemophiliac or a Secondarily-Infected Person.

**“HCV Personal Representative”** means the Personal Representative of a HCV Infected Person (whether deceased, a minor or mentally incompetent) who does not opt out of a Class Action.

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

**“HIV Secondarily-Infected Person”** means a person who is entitled to receive compensation under the Program attached as Schedule C to the Settlement Agreement.

**“Joint Committee”** has the meaning set out in Section 1.01 of the Settlement Agreement.

**“MPTAP”** means the HIV Multi-Provincial/Territorial Assistance Program announced by the governments of the Provinces and Territories on 15 September 1993.

**“Nova Scotia Compensation Plan”** means the Nova Scotia HIV Assistance Program introduced in 1993 which provides financial assistance and other benefits to persons infected in Nova Scotia by HIV through the Canadian blood supply.

**“Opted-Out HCV Infected Person”** means an Opted-Out Primarily-Infected Hemophiliac or a person who would otherwise be a Secondarily-Infected Person but is not because he or she opts out of the Class Action in which he or she would otherwise be a Class Member.

**“Opted-Out Primarily-Infected Hemophiliac”** means a person who would otherwise be a Primarily-Infected Hemophiliac but is not because he or she opts out of the Class Action in which he or she would otherwise be a Class Member.

**“Parent”** includes a person who has demonstrated a settled intention to treat a Child as a child of his or her family.

**“PCR Test”** means a polymerase chain reaction test result from a commercially available assay acceptable to the Administrator demonstrating that HCV is present in a sample of blood of the person.

**“Pension Index”** has the meaning set out in Section 7.02.

**“Personal Representative”** includes, if a person is deceased, an executor, administrator, estate trustee, trustee or liquidator of the deceased or, if the person is a minor or mentally incompetent, the tutor, committee, Guardian or curator of the person.

**“Plan”** means this Hemophiliac HCV Plan including its Appendices, as amended, supplemented or restated from time to time.

**“Primarily-Infected Hemophiliac”** means a person who (i) has or had a congenital clotting factor defect or deficiency including a defect or deficiency in Factors V, VII, VIII, IX, XI, XII, XIII or von Willebrand factors, (ii) received or took Blood during the Class Period and (iii) is or was infected with HCV unless:

- (a) such person used non-prescription intravenous drugs, and such person has failed to establish on the balance of probabilities that he or she was infected for the first time with HCV by Blood; or
- (b) such person opts out of the Class Action in which he or she would otherwise be a Class Member.

**“Prime Rate”** means the rate of interest per annum established and reported by the Bank of Montreal, or such other bank as the Courts may direct, to the Bank of Canada from time to time as a reference rate of interest for the determination of interest rates that the Bank of Montreal, or such other bank as the Courts may direct, charges to customers of varying degrees of creditworthiness in Canada for Canadian dollar loans made by it in Canada.

**“Referee”** means a person appointed as a referee by the Courts pursuant to the provisions of Section 10.02 and Article Ten of the Settlement Agreement.

**“Secondarily-Infected Person”** means:

- (a) a Spouse of a Primarily-Infected Hemophiliac or Opted-Out Primarily-Infected Hemophiliac who is or was infected with HCV by such Primarily-Infected Hemophiliac or Opted-Out Primarily-Infected Hemophiliac provided the Claim of the Spouse is made:

- (i) before the expiration of three years from the date the Primarily-Infected Hemophiliac first makes a Claim, his or her HCV Personal Representative makes the first Claim on his or her behalf or the Opted-Out Primarily-Infected Hemophiliac opts out;
  - (ii) in accordance with the provisions of Section 3.04(1), where a HCV Personal Representative makes the first Claim on behalf of a Primarily-Infected Hemophiliac who is deceased; or
  - (iii) in accordance with the provisions of Section 3.07, where the Primarily-Infected Hemophiliac has not made a Claim; or
- (b) a Child of a HCV Infected Person or Opted-Out HCV Infected Person who is or was infected with HCV by such HCV Infected Person or Opted-Out HCV Infected Person;

but does not include:

- (c) such Spouse or Child, if he or she used non-prescription intravenous drugs, and fails to establish on the balance of probabilities that he or she is or was infected for the first time with HCV by:
  - (i) such Primarily-Infected Hemophiliac or Opted-Out Primarily-Infected Hemophiliac in the case of a Spouse; or
  - (ii) such HCV Infected Person or Opted-Out HCV Infected Person in the case of a Child; or
- (d) such Spouse or Child if he or she opts out of the Class Action in which he or she would otherwise be a Class Member.

**"Settlement Agreement"** means the agreement made as of 15 June 1999 between the FPT Governments and the plaintiffs in the Class Actions.

**"Sibling"** means a Child of one or both of the Parents of a HCV Infected Person.

**"Spouse"** means:

- (a) either of a man and a woman who,
  - (i) are married to each other;
  - (ii) have together entered into a marriage that is voidable or void, in good faith on the part of the person asserting a right under this Plan;
  - (iii) have Cohabited for at least two years; or

- (iv) have Cohabited in a relationship of some permanence if they are the natural Parents of a Child; or
- (b) either of two persons of the same sex who have lived together in a close personal relationship that would constitute a conjugal relationship if they were not of the same sex,
  - (i) for at least two years; or
  - (ii) in a relationship of some permanence if they are the Parents of a Child.

**“Term”** means the period commencing on the Approval Date and ending on the date that this Plan is terminated by the Courts.

**“Trust”** means the trust to be established by the FPT Governments pursuant to the Funding Agreement attached as Schedule D to the Settlement Agreement.

**“Trust Fund”** means the fund to be established by the FPT Governments pursuant to the Funding Agreement attached as Schedule D to the Settlement Agreement.

## **1.02 Headings**

The division of this Plan 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 Plan. The terms “hereof”, “hereunder” and similar expressions refer to this Plan 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 Plan.

## **1.03 Extended Meanings**

In this Plan 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, associates, trusts, unincorporated organizations, corporations and governmental authorities. The term “including” means “including without limiting the generality of the foregoing”.

## **1.04 Statutory References**

In this Plan, 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.



**1.05 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.

**1.06 Residence**

A Class Member is deemed to be resident in the Province or Territory where he or she ordinarily resides or, if the Class Member resides outside of Canada, in the Province or Territory where the relevant Primarily-Infected Hemophiliac or Opted-Out Primarily-Infected Hemophiliac first received or took Blood during the Class Period. An HCV Personal Representative will be deemed to be resident in the Province or Territory where the relevant HCV Infected Person, is or was deemed to be, resident.

**1.07 Currency**

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

**1.08 Appendices**

The following are the Appendices to this Plan:

- Appendix A - Social Benefits Legislation;
- Appendix B - Release;
- Appendix C - Reference Rules; and
- Appendix D - Arbitration Rules.

**ARTICLE TWO  
PURPOSE AND EFFECT OF PLAN**

**1.01 Purpose**

The purpose of this Plan is to provide compensation to Class Members on the terms and subject to the conditions set out herein.

**1.02 Binding Effect**

This Plan is binding on all Class Members.

**ARTICLE THREE  
REQUIRED PROOF FOR COMPENSATION**

**1.01 Claim by Primarily-Infected Hemophiliac**

(1) A person claiming to be a Primarily-Infected Hemophiliac must deliver to the Administrator an application form prescribed by the Administrator together with:

- (a) medical, clinical, laboratory, hospital, The Canadian Red Cross Society, Canadian Blood Services or Hema-Québec records demonstrating that (i) the claimant has or had a congenital clotting factor defect or deficiency and (ii) the claimant received or took Blood during the Class Period;
- (b) an HCV Antibody Test report, PCR Test report or similar test report pertaining to the claimant;
- (c) a statutory declaration of the claimant including a declaration (i) that he or she has never used non-prescription intravenous drugs, (ii) as to where the claimant first received or took Blood during the Class Period, and (iii) as to the place of residence of the claimant, both when he or she first received or took Blood during the Class Period and at the time of delivery of the application hereunder.

(2) Notwithstanding the provisions of Section 3.01(1)(a), if a claimant cannot comply with the provisions of Section 3.01(1)(a)(i) or (ii), the claimant must deliver to the Administrator corroborating evidence independent of the personal recollection of the claimant or any person who is a Family Member of the claimant establishing on a balance of probabilities that he or she has or had a congenital clotting factor defect or deficiency and received or took Blood during the Class Period.

(3) Notwithstanding the provisions of Section 3.01(1)(c), if a claimant cannot comply with the provisions of Section 3.01(1)(c) because the claimant used non-prescription intravenous drugs, then he or she must deliver to the Administrator other evidence establishing on a balance of probabilities that he or she was infected for the first time with HCV by Blood.

### **1.02 Claim by Secondarily-Infected Person**

(1) A person claiming to be a Secondarily-Infected Person must deliver to the Administrator an application form prescribed by the Administrator together with:

- (a) evidence demonstrating on the balance of probabilities that the claimant was infected with HCV for the first time by a Spouse who is a Primarily- Infected Hemophiliac or an Opted-Out Primarily-Infected Hemophiliac or by a Parent who is an HCV-Infected Person or an Opted-Out HCV Infected Person including a statutory declaration of the claimant declaring that he or she has never used non-prescription intravenous drugs;
- (b) an HCV Antibody Test report, a PCR Test report or similar test report pertaining to the claimant; and
- (c) the evidence required by Sections 3.01 and 3.03 in respect of his or her Spouse or Parent, as the case may be, unless the required evidence has already been delivered by the Spouse or Parent in respect of his or her personal Claim.

(2) Notwithstanding the provisions of Section 3.02(1)(a), if a claimant cannot comply with the provisions of Section 3.02(1)(a) because the claimant used non-prescription intravenous drugs, the claimant may still qualify for compensation if the claimant can deliver to the Administrator other evidence establishing on a balance of probabilities that the claimant was infected for the first time with HCV by his or her Spouse who is a Primarily-Infected Hemophiliac or Opted-Out Primarily-Infected Hemophiliac or Parent who is a HCV Infected Person or Opted-Out HCV Infected Person notwithstanding the claimant's non-prescription intravenous drug use.

### **1.03 Additional Proof**

If requested by the Administrator, a person claiming to be a HCV Infected Person must also provide to the Administrator:

- (a) all medical, clinical, hospital or other such records in his or her possession, control or power;
- (b) a consent authorizing the release to the Administrator of such medical, clinical, hospital records or other health information as the Administrator may request;
- (c) a consent to an independent medical examination;

- (d) income tax returns and other records and accounts pertaining to loss of income; and
- (e) any other information, books, records or accounts or consents to examinations as may be requested by the Administrator to determine whether or not a claimant is a HCV Infected Person or to process the Claim.

If any person refuses to provide any of the above information, documentation or other matters in his or her possession, control or power, the Administrator must not approve the Claim.

#### **1.04 Claim by HCV Personal Representative of HCV Infected Person**

(1) A person claiming to be the HCV Personal Representative of a HCV Infected Person who has died must deliver to the Administrator, within three years after the death of such HCV Infected Person or within two years after the Approval Date, whichever event is the last to occur, an application form prescribed by the Administrator together with:

- (a) proof that the death of the HCV Infected Person was caused by his or her infection with HCV;
- (b) unless the required proof has already been previously delivered to the Administrator:
  - (i) if the deceased was a Primarily-Infected Hemophiliac, the proof required by Sections 3.01 and 3.03; or
  - (ii) if the deceased was a Secondarily-Infected Person, the proof required by Sections 3.02 and 3.03; and
- (c) the original certificate of appointment of estate trustee, grant of probate or of letters of administration or notarial will (or a copy thereof certified to be a true copy by a lawyer or notary) or such other proof of the right of the claimant to act for the estate of the deceased as may be required by the Administrator.

(2) A person claiming to be the HCV Personal Representative of a HCV Infected Person who is a minor or incompetent must deliver to the Administrator an application form prescribed by the Administrator together with:

- (a) unless the required proof has already been previously delivered to the Administrator:

- (i) if the HCV Infected Person is a Primarily-Infected Hemophiliac, the proof required by Sections 3.01 and 3.03; or
  - (ii) if the HCV Infected Person is a Secondarily-Infected Person, the proof required by Sections 3.02 and 3.03; and
- (b) the court order or power (or a copy thereof certified to be a true copy by a lawyer or notary) or such other proof of the right of the claimant to act for the HCV Infected Person as may be required by the Administrator.

(3) Notwithstanding the provisions of Section 3.01(1)(b), if a deceased Primarily-Infected Hemophiliac died before 1 January 1999 and was not tested for the HCV antibody or HCV, the HCV Personal Representative of such deceased Primarily-Infected Hemophiliac may deliver, instead of the evidence referred to in Section 3.01(1)(b), evidence of any one of the following:

- (a) the Primarily-Infected Hemophiliac had tested positive for HIV prior to his or her death;
- (b) a liver biopsy consistent with HCV in the absence of any other cause of chronic hepatitis;
- (c) an episode of jaundice within three months of using or taking Blood in the absence of any other cause; or
- (d) a diagnosis of cirrhosis in the absence of any other cause.

For greater certainty, nothing in this Section will relieve any claimant from the requirement to prove that the death of the Primarily-Infected Hemophiliac was caused by his or her infection with HCV except as otherwise provided in Section 5.01(4).

(4) Notwithstanding the provisions of Section 3.02(1)(b), if the HCV Personal Representative of a deceased Secondarily-Infected Person cannot comply with the provisions of Section 3.02(1)(b), the HCV Personal Representative must deliver to the Administrator other evidence establishing on a balance of probabilities that such deceased Secondarily-Infected Person was infected with HCV.

(5) For the purposes of Sections 3.04 (1) and (2), the statutory declaration required by Sections 3.01(1)(c) and 3.02(1)(a) must be made by a person who is or was sufficiently familiar with the HCV Infected Person to declare that to the best of his or her knowledge, information and belief the HCV Infected Person did not use non-prescription intravenous drugs. If such a statutory declaration cannot be provided because the HCV Infected Person used non-prescription intravenous drugs, the HCV Personal Representative

must deliver to the Administrator evidence establishing on a balance of probabilities that the Primarily-Infected Hemophiliac was infected with HCV by Blood or the Secondarily-Infected Person was infected for the first time with HCV by his or her Spouse who is or was a Primarily-Infected Hemophiliac or Opted-Out Primarily-Infected Hemophiliac or by a Parent who is or was a HCV Infected Person or an Opted-Out HCV Infected Person.

(6) If requested by the Administrator, the HCV Personal Representative must also provide to the Administrator:

- (a) all medical, clinical, hospital or other such records in his or her possession, control or power;
- (b) a consent authorizing the release to the Administrator of such medical, clinical, hospital records or other health information as the Administrator may request;
- (c) a consent to an independent medical examination;
- (d) income tax returns and other records and accounts pertaining to loss of income; and
- (e) any other information, books, records or accounts or consents to examinations as may be requested by the Administrator to determine whether or not a person is a HCV Infected Person or to process the Claim.

If any HCV Personal Representative refuses to provide any of the above information, documentation or other matters in his or her possession, control or power, the Administrator must not approve the Claim.

#### **1.05 Claim by Dependant**

A person claiming to be a Dependant of a HCV Infected Person who has died must deliver to the Administrator, within two years after the death of such HCV Infected Person or within two years after the Approval Date or within one year after the claimant attaining his or her age of majority, whichever event is the last to occur, an application form prescribed by the Administrator together with:

- (a) proof as required by Sections 3.04(1)(a) and (b) (or, if applicable, Section 3.04(3) or (4)) and 3.04(5) and (6), unless the required proof has been previously delivered to the Administrator; and
- (b) proof that the claimant was a Dependant of the HCV Infected Person.

### **1.06 Claim by Family Member**

A person claiming to be a Family Member referred to in clause (a) of the definition of Family Member in Section 1.01 of a HCV Infected Person who has died must deliver to the Administrator, within two years after the death of such HCV Infected Person or within two years after the Approval Date or within one year after the claimant attaining his or her age of majority, whichever event is the last to occur, an application form prescribed by the Administrator together with:

- (a) proof as required by Sections 3.04(1)(a) and (b) (or, if applicable, Section 3.04(3) or (4)) and 3.04(5) and (6), unless the required proof has been previously delivered to the Administrator; and
- (b) proof that the claimant was a Family Member referred to in clause (a) of the definition of Family Member in Section 1.01 of the HCV Infected Person.

### **1.07 First Claim Deadline**

Except as otherwise expressly provided in this Agreement, no person may make a Claim for the first time under this Plan after 30 June 2010 unless:

- (a) the Claim is made within one year of the person attaining his or her age of majority; or
- (b) the Claim is made within the three year period following the date upon which the person first learned of his or her infection with HCV and the Court having jurisdiction over the person grants leave to the person to apply for compensation.

## **ARTICLE FOUR COMPENSATION TO APPROVED HCV INFECTED PERSONS**

### **1.01 Fixed Payments**

(1) Each Approved HCV Infected Person will be paid the amounts set out below as compensation for damages:

- (a) the amount of \$10,000 as compensation for damages upon his or her Claim being approved by the Administrator;
- (b) the amount of \$20,000, provided that payment of \$5,000 will be postponed and will only be paid in accordance with the provisions of Section 7.03(2), upon delivering to the Administrator a PCR Test report;
- (c) unless waived pursuant to the provisions of Section 4.01(3), the amount of \$30,000 upon delivering to the Administrator evidence demonstrating that he or she has (i) developed fibrous tissue in the portal areas of the liver with fibrous bands extending out from the portal area but without any bridging to other portal tracts or to central veins (i.e., non-bridging fibrous) or (ii) received Compensable HCV Drug Therapy or (iii) has met or meets a protocol for Compensable HCV Drug Therapy notwithstanding that such treatment was not recommended or, if recommended, has been declined;
- (d) the amount of \$65,000 upon delivering to the Administrator evidence demonstrating that he or she has developed (i) fibrous bands in the liver extending or bridging from portal area to portal area with the development of nodules and regeneration (i.e., cirrhosis), or (ii) in the absence of a liver biopsy demonstrating the presence of cirrhosis, a diagnosis of cirrhosis as follows:
  - A. hepato-splenomegaly and peripheral manifestations of liver disease such as gynecomastia in males, testicular atrophy, spider angiomas, protein malnutrition, palm or nail changes none of which are attributable to any cause other than cirrhosis; and/or
  - B. portal hypertension evidenced by splenomegaly, abnormal abdominal and chest wall veins, or esophageal varices, or ascites none of which are attributable to any cause but cirrhosis;and
  - C. abnormal tests blood tests for a minimum of three months demonstrating: which is caused by his or her HCV; and
    - a. polyclonal increase in gamma globulins on a serum protein electrophoresis with decreased albumin;



- b. significantly decreased platelet count not attributable to any other cause such as auto-immune causes; and
- c. prolonged INR or Prothrombin time not attributable to any other cause.

or (iii) porphyria cutanea tarda which has failed to respond to a trial of phlebotomy, drug therapy, or the treatment of HCV and which is causing significant disfigurement and disability or (iv) thrombocytopenia (low platelets) unresponsive to therapy, and which is associated with purpura or other spontaneous bleeding, or which results in excessive bleeding following trauma or a platelet count below  $30 \times 10^9$  per ml. or (v) glomerulonephritis not requiring dialysis, which in any such case is caused by his or her infection with HCV; and

- (e) the amount of \$100,000 upon delivering to the Administrator evidence demonstrating that he or she has had a liver transplant or has developed (i) decompensation of the liver or (ii) hepatocellular cancer or (iii) B-cell lymphoma or (iv) symptomatic mixed cryoglobulinemia or (v) glomerulonephritis requiring dialysis or (vi) renal failure, which in any case is caused by his or her infection with HCV.

(2) Each Approved HCV Infected Person who delivers to the Administrator evidence demonstrating that he or she has developed fibrous tissue in the portal areas of the liver with fibrous bands bridging to other portal areas or to central veins but without nodular formation or nodular regeneration (i.e., bridging fibrous) will be entitled to be paid (i) the compensation pursuant to Sections 4.01(1)(a) and (b) to the extent that he or she has not already received those amounts and (ii), unless waived pursuant to the provisions of Section 4.01(3), the compensation pursuant to Section 4.01(1)(c) to the extent that he or she has not already received that amount.

(3) If an Approved HCV Infected Person described in Section 4.01(1)(c) delivers to the Administrator proof that his or her infection with HCV has caused the Approved HCV Infected Person to be regularly unable to perform:

- (a) the substantial duties of his or her usual employment, occupation or profession such that the Approved HCV Infected Person works no more than 20% of his or her usual work week; or
- (b) the substantial household duties that he or she would normally provide in his or her home such that the Approved HCV Infected Person performs no more than 20% of the household services that he or she would normally provide;

he or she may waive payment of the amount of \$30,000 payable pursuant to Section 4.01(1)(c) and elect to be paid instead the compensation provided for under Section 4.02 or 4.03, as the case may be. This election must be made by notice in writing in the form prescribed by the Administrator delivered to the Administrator at any time prior to receipt of the said \$30,000. A person who has elected to receive the compensation payable under Section 4.02 or 4.03 is not entitled to be paid the said amount of \$30,000 pursuant to Section 4.01(1)(c) at any time thereafter under any circumstances whatsoever.

(4) The amounts payable under Section 4.01(1) are cumulative. For example, an Approved HCV Infected Person who proves that he or she has a condition described in Section 4.01(1)(d) will be entitled to be paid the \$10,000 referred to in Section 4.01(1)(a), the \$15,000 and the postponed amount up to \$5,000 referred to in Section 4.01(1)(b) and, unless waived pursuant to the provisions of Section 4.01(2), the \$30,000 referred to in Section 4.01(1)(c), as well as the \$65,000 referred to in Section 4.01(1)(d).

(5) The evidence to be delivered pursuant to this Article Four is such medical evidence as is generally accepted by the medical profession and approved by the Courts provided that evidence that a Primarily-Infected Hemophiliac who is an Approved HCV Infected Person has developed a condition referred to in Section 4.01(1)(c)(i), (d) or (e) or 4.01(2) may be established on a balance of probabilities by the delivery of the opinion of a medically qualified expert based on non-invasive testing and diagnosis.

## **1.02 Compensation for Loss of Income**

(1) Each Approved HCV Infected Person who normally had Earned Income (as defined below, except as provided in Section 4.02(2)(f)) who:

- (a) elects to be paid compensation for loss of income instead of \$30,000 pursuant to Section 4.01(3); or
- (b) delivers to the Administrator:
  - (i) evidence demonstrating the he or she has developed fibrous tissue in the portal areas of the liver with fibrous bands bridging to other portal areas or to central veins but without nodular formation or nodular regeneration (i.e., bridging fibrous);
  - (ii) the evidence referred to in Section 4.01(1)(d); or
  - (iii) the evidence referred to in Section 4.01(1)(e); and

who delivers to the Administrator proof satisfactory to the Administrator that his or her infection with HCV caused loss of income will be paid compensation for past, present and future loss of income.

(2) Each Approved HCV Infected Person who is entitled to receive compensation for past, present or future loss of income caused by his or her infection with HCV will be paid, subject to the provisions of Section 7.03, an amount each calendar year equal to 70% of his or her Annual Loss of Net Income for such year until he or she attains the age of 65 years determined in accordance with the following provisions:

- (a) "Annual Loss of Net Income" for a year means the excess of the Approved HCV Person's Pre-claim Net Income for such year over his or her Post-claim Net Income for such year.
- (b) "Pre-claim Net Income" of an Approved HCV Infected Person for a year means an amount determined as follows:
  - (i) an amount equal to the average of the person's three highest consecutive years of Earned Income preceding the HCV Infected Person's entitlement to compensation under this Section 4.02 multiplied by the ratio that the Pension Index for the year bears to the Pension Index for the middle year of the foregoing three consecutive years, or, if the Approved HCV Infected Person or the Administrator demonstrates on a balance of probabilities that his or her Earned Income for such year would have been higher or lower than such average but for the HCV Infected Person's Infection with HCV, such higher or lower amount, (the applicable amount being hereinafter referred to as the "Pre-claim Gross Income"), provided that the amount determined under this Section 4.02(2)(b)(i) will not exceed \$75,000 multiplied by the ratio that the Pension Index for the year bears to the Pension Index for 1999, minus
  - (ii) the Ordinary Deductions that would be payable by the Approved HCV Infected Person on the amount determined under Section 4.02(2)(b)(i) on the assumption that such amount was the Approved HCV Infected Person's only income for such year.
- (c) "Post-claim Net Income" of an Approved HCV Infected Person for a year means an amount determined as follows:
  - (i) the total of (A) the Approved HCV Infected Person's Earned Income for the year or, if the Administrator demonstrates on a balance of probabilities that the Approved HCV Infected Person's Earned Income

for such year would have been higher than such amount but for the person claiming a level of impairment greater than the person's actual level of impairment, such Earned Income as determined by the Administrator (B) the amount paid or payable to the person in respect of the Canada Pension Plan or the Québec Pension Plan on account of illness or disability for the year, (C) the amount paid or payable to the person in respect of Unemployment Insurance and/or Employment Insurance for the year, (D) the amount paid or payable to the person for income replacement under a sickness, accident or disability insurance plan for the year, and (E) the amount paid or payable to the person pursuant to the EAP, MPTAP and/or the Nova Scotia Compensation Plan, (such total being hereinafter referred to as the "Post-claim Gross Income"), provided that the amount determined under this Section 4.02(2)(c)(i) will not exceed the proportion of the amount determined under Section 4.02(2)(b)(i) for such year that the Approved HCV Infected Person's Post-claim Gross Income for such year is of such person's Pre-claim Gross Income for such year, minus

- (ii) the Ordinary Deductions that would be payable by the Approved HCV Infected Person on the amount determined under Section 4.02(2)(c)(i) on the assumption that such amount were such person's only income for such year.
  
- (d) "Earned Income" means taxable income for the purposes of the *Income Tax Act* (Canada) from an office or employment or from the carrying on of an active business and any taxable income for purposes of the *Income Tax Act* (Canada) of a corporation from the carrying on of an active business to the extent that the person establishes to the satisfaction of the Administrator that the person has a significant shareholding in such corporation and that such income is reasonably attributable to the activities of such person.
  
- (e) "Ordinary Deductions" means income taxes, Unemployment Insurance and/or Employment Insurance and Canada Pension Plan and/or Québec Pension Plan deductions applicable in the Province or Territory where the person is resident.
  
- (f) Notwithstanding any of the foregoing, an Approved HCV Infected Person who was not working prior to his or her infection with HCV and who was infected either before he or she attains 18 years of age or, if the person had attained 18 years of age, while the person was in full-time attendance at an accredited education institution in Canada and at a time when the person was yet to enter the workforce on a permanent and full-time basis, will be deemed to have Pre-claim Gross Income for the year which includes the date he or she

attains 18 years of age and each subsequent year or, if the person had already attained 18 years of age, the year of completion of full-time attendance at an accredited education institution and each subsequent year, in an amount equal to the then most recently available Average Industrial Wage in Canada (such amount will be prorated for the year in which the person attains 18 years of age or completes full-time attendance at an accredited education institution for the number of days in the year in which the person has attained 18 years of age or completes full-time attendance at an accredited education institution), or, if such person demonstrates on a balance of probabilities that his or her Earned Income for such year would have been higher than such amount, such higher amount.

- (g) For the purposes of all income tax calculations required under this Section 4.02(2), the only deductions and tax credits that apply to the Approved HCV Infected Person which will be taken into account will be his or her alimony and maintenance payments deduction, basic personal tax credit, married person's or equivalent to married tax credit, disability tax credit, Unemployment or Employment Insurance premium tax credit and Canada Pension Plan or the Québec Pension Plan contribution tax credit.

### **1.03 Compensation for Loss of Services in the Home**

(1) Each Approved HCV Infected Person who normally performed household duties in his or her home and who:

- (a) elects to be paid compensation for the loss of such services instead of \$30,000 pursuant to Section 4.01(3); or
- (b) delivers to the Administrator:
  - (i) evidence demonstrating he or she has developed fibrous tissue in the portal areas of the liver with fibrous bands bridging to other portal areas or to central veins but without nodular formation or nodular regeneration (i.e., bridging fibrous);
  - (ii) the evidence referred to in Section 4.01(1)(d); or
  - (iii) the evidence referred to in Section 4.01(1)(e); and

who delivers to the Administrator proof satisfactory to the Administrator that his or her infection with HCV caused his or her inability to perform his or her household duties will be paid compensation for loss of such services.

(2) The amount of the compensation for the loss of services in the home pursuant to Section 4.03(1) is \$12 per hour to a maximum of \$240 per week.

(3) Notwithstanding any of the provisions hereof, an Approved HCV Infected Person cannot claim compensation for loss of income and compensation for loss of services in the home for the same period.

#### **1.04 Compensation for Costs of Care**

An Approved HCV Infected Person who establishes to the satisfaction of the Administrator that on the balance of probabilities he or she has any of the conditions referred to in Section 4.01(1)(e) and delivers to the Administrator evidence satisfactory to the Administrator that he or she has incurred costs for care due to such condition that are not recoverable by or on behalf of the claimant under any public or private health care plan is entitled to be reimbursed for all reasonable costs so incurred provided:

- (a) the amount of compensation payable for care costs in any calendar year cannot exceed \$50,000;
- (b) the care was recommended by the claimant's treating physician;
- (c) the amount of compensation will not include any costs described in Sections 4.03 or 4.06; and
- (d) if the costs are incurred outside of Canada, the amount of compensation cannot exceed the lesser of the amount of compensation payable if the costs had been incurred in the Province or Territory where the claimant resides or is deemed to reside and the actual costs.

#### **1.05 Compensation for HCV Drug Therapy**

An Approved HCV Infected Person who delivers evidence satisfactory to the Administrator that he or she has received Compensable HCV Drug Therapy is entitled to be paid \$1,000 for each completed month of therapy.

#### **1.06 Compensation for Uninsured Treatment and Medication**

An Approved HCV Infected Person who delivers to the Administrator evidence satisfactory to the Administrator that he or she has incurred or will incur costs for generally accepted treatment and medication due to his or her HCV infection which are not recoverable by or on behalf of the claimant under any public or private health care plan is entitled to be reimbursed for all reasonable past, present or future costs so incurred, to the extent that such costs are not costs of care or compensation for loss of services in the home, provided:

- (a) the costs were incurred on the recommendation of the claimant's treating physician; and
- (b) if the costs are incurred outside of Canada, the amount of compensation cannot exceed the lesser of the amount of compensation payable if the costs had been incurred in the Province or Territory where the claimant resides or is deemed to reside and the actual costs.

#### **1.07 Compensation for Out-of-Pocket Expenses**

An Approved HCV Infected Person who delivers to the Administrator evidence satisfactory to the Administrator that he or she has incurred or will incur out-of-pocket expenses due to his or her HCV infection that are not recoverable by or on behalf of the claimant under any public or private health care plan is entitled to be reimbursed for all reasonable costs so incurred provided:

- (a) out-of-pocket expenses will include (i) expenses for travel, hotels, meals, telephone and other similar expenses attributable to seeking medical advice or generally accepted medication or treatment due to his or her HCV infection and (ii) medical expenses incurred in establishing a Claim; and
- (b) the amount of the expenses cannot exceed the amount therefor in the guidelines in the Regulations issued under the *Financial Administration Act* (Canada) from time to time.

#### **1.08 Compensation for HIV Infected Persons**

(1) An Approved HCV Infected Person who is also a HIV Secondarily-Infected Person may not receive any compensation under this Article Four unless and until his or her entitlement to compensation hereunder exceeds a total of \$240,000 and then he or she will be entitled to be compensated for all amounts payable under this Article Four in excess of \$240,000.

(2) Notwithstanding any of the provisions of this Plan (including Section 4.08(1)), a Primarily-Infected Hemophiliac who is an Approved HCV Infected Person who is also infected with HIV may elect to be paid \$50,000 in full satisfaction of all his or her past, present or future Claims pursuant to this Plan (including all potential Claims of his or her Dependents or other Family Members pursuant to Article Six) but such payment will not affect the personal Claim of a Spouse or Child who is also a HCV Infected Person. Evidence that an Approved HCV Infected Person has received payments under MPTAP or EAP or the Nova Scotia Compensation Plan will be proof that he or she also has HIV.

#### **1.09 Compensation is Inclusive**

For greater certainty, the amounts payable to Approved HCV Infected Persons under this Article Four are inclusive of any prejudgment interest or other amounts that may be claimed by Approved HCV Infected Persons.

### **ARTICLE FIVE COMPENSATION TO APPROVED HCV PERSONAL REPRESENTATIVES**

#### **1.01 Compensation if Deceased Prior to 1 January 1999**

(1) If a HCV Infected Person died prior to 1 January 1999 and his or her HCV Personal Representative delivers to the Administrator the evidence required under Article Three within the period set out in Section 3.04, the Approved HCV Personal Representative is entitled to be reimbursed for the uninsured funeral expenses incurred up to a maximum of \$5,000 and, subject to the provisions of Sections 5.01(2) and (3), the Approved HCV Personal Representative will be paid the amount of \$50,000 in full satisfaction of any and all Claims that the deceased HCV Infected Person would have had under this Plan if he or she had been alive on or after 1 January 1999. This \$50,000 payment to the Approved HCV Personal Representative is in addition to the Claims of Dependents and other Family Members pursuant to Article Six and will not affect the personal Claim of a Spouse or Child who is also a HCV Infected Person.

(2) Instead of payment pursuant to Section 5.01(1), if a HCV Infected Person died prior to 1 January 1999 and his or her HCV Personal Representative delivers to the Administrator the evidence required under Article Three within the period set out in Section 3.04 and the Approved HCV Personal Representative of such HCV Infected Person and all the deceased HCV Infected Person's Dependents and other Family Members having Claims



under this Plan agree to be paid \$120,000 in full satisfaction of all their Claims pursuant to this Plan (including all potential Claims pursuant to Article Six), such amount will be paid jointly to them, but such payment will not affect the personal Claim of a Spouse or Child who is also a HCV Infected Person.

(3) Notwithstanding the provisions of Section 5.01(1) and (2), if the deceased HCV Infected Person was also an HIV Secondarily-Infected Person who died prior to 1 January 1999, no amount will be payable pursuant to Section 5.01(1) unless, and then only to the extent that, the Claims of the Approved HCV Personal Representative and the deceased HCV Infected Person's Dependants and other Family Members pursuant to Article Six exceed an aggregate of \$240,000, and no amount will be payable pursuant to Section 5.01(2).

(4) Instead of payment pursuant to either Section 5.01(1) or (2), if a Primarily-Infected Hemophiliac was also infected with HIV and died prior to 1 January 1999 and his or her HCV Personal Representative and all the deceased Primarily-Infected Hemophiliac's Dependants and other Family Members having Claims under this Plan agree to be paid \$72,000 in full satisfaction of all their Claims pursuant to this Plan (including all Claims pursuant to Article Six), such amount will be paid jointly to them upon receipt of the following:

- (a) the original certificate of appointment of estate trustee, grant of probate or of letters of administration or notarial will (or a copy thereof certified to be a true copy by a lawyer or notary) or such other proof of the right of the claimant to act for the estate of the deceased as may be required by the Administrator;
- (b) the evidence referred to in Section 3.01(1)(a);
- (c) the evidence referred to in Section 3.04(3)(a), (b), (c) or (d);
- (d) a statutory declaration referred to in Section 3.04(4); and
- (e) any evidence required by the Administrator pursuant to Section 3.04(5).

Such payment will not affect the personal Claim of a Family Member who is also a HCV Infected Person.

## **1.02 Compensation if Deceased After 1 January 1999**

(1) If a HCV Infected Person died or dies on or after 1 January 1999 and the evidence required under Article Three has been submitted to the Administrator by him or her prior to his or her death or by his or her HCV Personal Representative after his or her death and within the period set out in Section 3.04, the Approved HCV Personal Representative will be paid (i) the uninsured funeral expenses incurred up to a maximum of \$5,000 and (ii)

whether or not the evidence required under Section 3.04(1)(a) is provided, the amount of all Claims payable under Article Four to which the deceased HCV Infected Person would have been entitled for the period up to his or her death if he or she had not died (to the extent such amounts have not otherwise been paid pursuant to this Plan), but such payments are in addition to the Claims of Dependents and Family Members pursuant to Article Six and will not affect the personal Claim of a Family Member who is also a HCV Infected Person.

(2) Notwithstanding the provisions of Section 5.02(1), if the deceased HCV Infected Person was also a HIV Secondarily-Infected Person, no amount will be payable pursuant to Section 5.02(1) unless, and then only to the extent that, the Claims of the Approved HCV Personal Representative and the deceased HCV Infected Person's Dependents and other Family Members pursuant to Article Six exceed an aggregate of \$240,000.

**ARTICLE SIX  
COMPENSATION TO APPROVED DEPENDANTS AND  
APPROVED FAMILY MEMBERS**

**1.01 Compensation to Approved Dependants**

(1) If a HCV Infected Person dies and the death was caused by his or her infection with HCV, the Approved Dependants of such HCV Infected Person will be entitled to be compensated for their loss of support. The loss of support is an amount each calendar year equal to 70% of his or her Annual Loss of Net Income for such year until he or she would have attained the age of 65 years determined in accordance with Section 4.02(2) provided, however, that the annual amount payable under this provision will be reduced by an amount equal to 30% of the net amount as calculated to allow for the personal living expenses of the HCV Infected Person, and provided further that, for purposes of calculating the annual amount payable under this provision, "Post-claim Net Income" will be computed without reference to clauses (A), (C) and (D) of the definition of "Post-claim Net Income" and that the words "the person" and "on account of illness or disability for the year" in clause (B) and the words "the person" in clause (E) of the definition of "Post-claim Net Income" will be replaced with the words "the Dependants as a result of the death of the person"

(2) If a HCV Infected Person dies and the death was caused by his or her infection with HCV, the Approved Dependants of such HCV Infected Person living with such HCV Infected Person at the time of his or her death will be entitled to be compensated for the loss of the services of the HCV Infected Person in the home at the rate of \$12 per hour to a maximum of \$240 per week.

(3) The amounts payable pursuant to Sections 6.01(1) or (2) will be allocated as the Approved Dependants may agree, or failing any agreement, as the Administrator so determines based on the extent of support received by each of the Dependants prior to the death of the HCV Infected Person. Notwithstanding any of the provisions hereof, the Approved Dependants of a HCV Infected Person whose death was caused by his or her infection with HCV cannot claim compensation for loss of support and compensation for the loss of services in the home for the same period.

### **1.02 Compensation to Approved Family Members**

Each Approved Family Member of a HCV Infected Person whose death was caused by his or her infection with HCV will be paid the applicable amount set out below for loss of guidance, care and companionship:

- (a) \$25,000 for the Spouse;
  
- (b) \$15,000 for each Child under the age of 21 years at the date of death of the HCV Infected Person;
  
- (c) \$5,000 for each Child 21 years or older at the date of the death of the HCV Infected Person;
  
- (d) \$5,000 for each Parent;
  
- (e) \$5,000 for each Sibling;
  
- (f) \$500 for each Grandparent; and
  
- (g) \$500 for each Grandchild.

The above amounts may be reduced on a proportionate basis pursuant to the provisions of Section 5.01(3) or 5.02(2) if the relevant deceased HCV Infected Person was also a HIV Secondly-Infected Person.

### **1.03 Limitation**

Dependants and other Family Members of a HCV Infected Person will only be entitled to make Claims pursuant to Sections 6.01 and 6.02 (or, in lieu thereof, under Section 5.01(2) or (3)) and they will not be entitled to make any other Claims or to any additional or other compensation. Nothing in this Section will affect the personal Claim of a Spouse or Child who is also a HCV Infected Person.

**ARTICLE SEVEN  
ADJUSTMENT OF COMPENSATION PAYMENTS**

**1.01 Periodic Re-assessment by Administrator**

(1) An Approved HCV Infected Person or the Approved Dependants may apply to the Administrator to have the compensation payable pursuant to Article Four or Section 6.01, respectively, re-assessed periodically but not more frequently than every two years unless the Administrator is satisfied that there are exceptional circumstances that require a more frequent re-assessment.

(2) The Administrator may at any time and from time to time re-assess the compensation payable to any Approved HCV Infected Person or the Approved Dependants if the Administrator determines that there has been a material change in circumstances.

**1.02 Compensation Indexed to Pension Index**

The amount of all of the payments to be made pursuant to Articles Four (other than Sections 4.02, 4.06 and 4.07), Five and Six will be adjusted on the first day of January of each calendar year during the Term commencing on 1 January 2000 to the amounts set out in those Articles multiplied by the ratio that the Pension Index as defined in the *Canada Pension Plan Act* for the calendar year of such adjustment bears to that Pension Index for 1999.

**1.03 Periodic Re-assessment by Courts**

(1) The Joint Committee must apply to the Courts within 180 days after (i) 31 December 2001 and (ii) each third anniversary of such date to determine whether, among other things, the restriction on the payment of \$5,000 in Section 4.01(1)(b), the 70% limitation in Sections 4.02 and 6.01 and the \$75,000 limitation in Sections 4.02 and 6.01 should be amended (i.e., either increased or decreased) or removed in whole or in part.

(2) If the Courts decide to amend the restrictions referred to in Section 7.03(1) to increase the amount of any payment, then the amendment will be made strictly in accordance with the following priorities:

- (a) firstly, the Plan will be amended by deleting the restriction upon payment contained in Section 4.01(1)(b) requiring the postponement of payment of \$5,000 and by providing that the full amount of \$20,000 will be paid. Each person entitled to receive a payment that has been postponed for his or her account in accordance with Section 4.01(1)(b) will thereupon be paid the

amount postponed plus interest thereon at the Prime Rate commencing on the date of payment of the \$15,000 under Section 4.01(1)(b);

- (b) secondly, after the amendment referred to in Section 7.03(2)(a) has been made and all amounts payable under that Section have been paid, the Plan will then be amended by deleting the words "70% of" from Sections 4.02 and 6.01 and substituting the percentage that is to be recovered. Thereafter, these restrictions will again be amended until such time as they are deleted. Each person who previously received compensation pursuant to Section 4.02 or 6.01 will be paid the difference between the amount that he or she received and the amount that he or she would have received had the substituted percentage been in place, together with interest on the difference at the Prime Rate commencing on the date of payment of the reduced amount, as amended from time to time; and
- (c) thirdly, after the amendments referred to in Sections 7.03(2)(a) and (b) have been made and all amounts payable under those Sections have been paid, the Plan will then be amended by amending or deleting the words "provided that the amount determined under this Section 4.02(2)(b)(i) will not exceed \$75,000 multiplied by the ratio that the Pension Index for the year bears to the Pension Index for 1999" in the definition of "Pre-claim Net Income" in Section 4.02(2)(b) and the words "provided that the amount determined under this Section 4.02(2)(c)(i) will not exceed the proportion of the amount determined under Section 4.02(2)(b)(i) for such year that the Approved HCV Infected Person's Post-claim Gross Income for such year is of such person's Pre-claim Gross Income for such year" in the definition of "Post-claim Net Income" in Section 4.02(2)(c). Thereafter, such restriction will again be amended until such time as it is deleted. Once an amendment has been made, each person who previously received compensation pursuant to Section 4.02 or 6.01 will be paid the difference between the amount that he or she received and the amount that he or she would have received had the amendment or deletion been in place, together with interest on the difference at the Prime Rate commencing on the date of payment of the reduced amount, as varied from time to time.

(3) Notwithstanding the provisions of Section 7.03(1), in the event of a material change in circumstances, the Joint Committee, any Class Action Counsel or the Fund Counsel may apply to the Courts at any time to assess the financial viability and sufficiency of the Trust Fund and whether the restriction on the payment of \$5,000 under Section 4.01(1)(b), the 70% limitation in Sections 4.02 and 6.01 and the \$75,000 limitation in Sections 4.02 and 6.02 should be amended (i.e., either increased or decreased) or removed in whole or in part.

#### **1.04 Interest**

Interest will not accrue on amounts payable under this Plan except as specifically provided in Section 7.03(2). Interest payable under this Plan must be calculated on the basis of simple interest, not compound interest. There will be no interest paid on the Pension Index adjustment component of any payment.

#### **1.05 Set-Off**

In the absence of fraud, any amount paid pursuant to this Plan is not refundable in the event that it is later determined that the recipient was not entitled to receive or be paid all or part of the amount so paid, but the recipient may be required to account for any amount that he or she was not entitled to receive against any future payments that he or she would otherwise be entitled to receive pursuant to this Plan.

#### **7.06 Payments to Public Trustee**

Notwithstanding any of the other provisions of this Plan, any amount payable to a minor or mentally incompetent person hereunder will be paid to the Public Trustee or Public Curator or such other person as the law provides in the Province or Territory where the minor or mentally incompetent person resides or is deemed to reside. The Public Trustee or Public Curator or such other person as the law provides will determine the manner of payment of such amount to or for the benefit of the minor or mentally incompetent person.

### **ARTICLE EIGHT CHARACTER OF PAYMENTS**

#### **1.01 Canadian Income Taxes**

The amount of compensation paid to or received by a Class Member pursuant to this Plan will not be required to be included in the taxable income of the recipient thereof under the *Income Tax Act* (Canada) or the income tax act of any Province or Territory, provided, however, that this provision will not apply in respect of any amount of compensation paid to or reserved by a person other than the person that, but for any assignment of any amount of compensation payable under this Plan, would be the person entitled to the compensation under this Plan or in respect of any tax payable under Part XIII of the *Income Tax Act* (Canada) or the equivalent provisions of the income tax act of any Province or Territory by any Class Member or any amount required to be withheld by the Trustee or Administration on account of such tax in respect of any compensation paid or received under this Plan.

#### **1.02 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 this 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 this Plan as provided in Sections 4.06 and 4.07.

(2) The receipt of any payments pursuant to this 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 Provincial or Territorial Government referred to in Appendix A hereto provided that the receipt of loss of income or loss of support payments pursuant to Section 4.02 or 6.01 may have such an effect. The receipt of any payments pursuant to this 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 government of Canada 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 may have such an effect.

(3) Any benefit conferred under Section 8.02(1) or (2) cannot be assigned by the Class Member.

### **1.03 Collateral Benefits**

(1) If a Class Member is or was entitled to be paid compensation under this Plan and is or was also entitled to be paid compensation payable under an insurance policy or other plan or claim in any way relating to or arising from the infection of a HCV Infected Person with HCV, the compensation under this Plan will be reduced by the amount of the compensation that the Class Member is entitled to be paid under the insurance policy or other plan or claim.

(2) Notwithstanding the provisions of Section 8.03(1), life insurance payments received by any Class Member will not be taken into account for any purposes whatsoever under this Plan.

### **1.04 Subrogation**

No subrogation payment of any nature or kind will be paid, directly or indirectly, under this Plan, and without restricting the generality of this provision:

- (a) no FPT Government and no department of an FPT Government providing employment insurance, health care, hospital, medical and prescription services, social assistance or welfare will be paid under this Plan;
- (b) no municipality and no department of a municipality will be paid under this Plan;
- (c) no person exercising a right of subrogation will be paid under this Plan; and
- (d) no claimant will be paid compensation if the claim is being asserted as a subrogated Claim or if the claimant will hold any money paid under this Plan in trust for any other party exercising a right of subrogation, or, except as provided in Section 8.02, if a payment under this Plan will lead to a reduction in other payments for which the claimant would otherwise qualify.

#### **1.05 No Assignment**

Any amount payable under this Plan cannot be assigned without the written consent of the Administrator.

### **ARTICLE NINE ADMINISTRATION**

#### **1.01 Administrator**

The Administrator will be responsible for the processing of all Claims and for obtaining funds from the Trustee on behalf of Class Members under this Plan and distributing such funds as compensation payable to Class Members under this Plan. No payments will be made to any Class Member under this Plan unless and until the Class Member, or if the Class Member is deceased, a minor or mentally incompetent, his or her Personal Representative, duly executes and delivers to the Administrator a valid and binding release in the form attached to this Plan as Appendix B and consents to the dismissal without costs to any party of any action or other proceeding in any way relating to or arising from the infection of a Primarily-Infected Hemophiliac with HCV from Blood (including the infection of a Secondarily-Infected Person) commenced against any Releasee (as defined in the form of release attached hereto as Appendix B) including the Class Actions as provided in the Approval Orders as defined in the Settlement Agreement.



## **ARTICLE TEN DISPUTE RESOLUTION**

### **1.01 Reference to Referee or Arbitrator**

A person making a Claim may, within 30 days after he or she receives notice of the Administrator's decision respecting his or her Claim, refer that decision to, at his or her option, a Referee or an Arbitrator by filing with the Administrator a notice requiring a reference or arbitration and setting out the objection to its decision and the reasons in support of the objection. If no notice requiring a reference or arbitration is filed within the 30 day period, the Administrator's decision will be automatically confirmed and be final and binding.

### **1.02 Rosters of Referees and Arbitrators**

The Courts will appoint rosters of Referees and of Arbitrators. The rosters of Referees and of Arbitrators will include persons resident in each of the Provinces and Territories. Each Referee and Arbitrator will be paid only for the actual services he or she performs and in accordance with a tariff established by the Courts. The fees and disbursements of the Referees and Arbitrators will be paid out of the Trust in a time, in a manner and in an amount approved by the Courts. Each Referee and Arbitrator may exercise all of the jurisdiction and powers granted to him or her hereunder.

### **1.03 Forwarding Claims**

Upon receipt of a notice requiring a reference or arbitration, the Administrator will forward to a Referee or Arbitrator, as the case may be, in the Province or Territory where the claimant resides or is deemed to reside and to the Fund Counsel the following:

- (a) a copy of the Claim and the notice requiring a reference or arbitration, as the case may be;
- (b) a copy of all the written submissions and material in support of the submissions and other evidence pertaining to the Claim in the possession of the Administrator;
- (c) a copy of the Administrator's decision; and
- (d) such other information or material as the Referee, Arbitrator or Fund Counsel may request.

**1.04 Conduct of Reference and Arbitration**

(1) A reference will be conducted in accordance with the provisions of Appendix C hereto.

(2) An arbitration will be conducted in accordance with the provisions of Appendix D hereto.

**1.05 Payment of Claims**

After a decision of a Referee or Arbitrator becomes final and binding, any amount directed to be paid will be paid promptly.

## APPENDIX A

### 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*

## APPENDIX B

### FULL AND FINAL RELEASE

In this Release:

“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 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,
- (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 this Release for those persons listed in (b) to (h) inclusive and holds the benefit of this Release on their behalf as well as on its own behalf. For greater certainty, the CRCS is not a Releasee.

“Releasor” means the undersigned on behalf of the undersigned and his or her heirs, administrators, executors, Personal Representatives and successors.

In this Release initially capitalized terms not defined in this Release have the meanings set out in the Settlement Agreement, including its Schedules. 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".

THIS RELEASE WITNESSES that in consideration of the right of the Releasor to participate in the Hemophiliac HCV Plan and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged:

### **1. Direct Release**

(a) The Releasor fully and forever releases, acquits and discharges each of the Releasees from any and all actions, causes of action, liabilities, claims and demands, whatsoever of every nature or kind for damages, contribution, indemnity, costs, expenses and interest which the Releasor ever had, now has or may hereafter have in any way relating to or arising from the infection of a Primarily-Infected Hemophiliac with HCV from Blood (including the infection of a Secondarily-Infected Person) whether such claims were made or could have been made in any proceeding including the Class Actions as provided in the Approval Orders.

(b) The Releasor agrees that the same consideration is in full and final settlement and satisfaction of any and all such claims now and in the future.

### **2. Cessation of Litigation**

(a) The Releasor hereby consents to the dismissal without costs of any claim or proceeding of any kind directly or indirectly against any Releasee in any way relating to or arising from the infection of a Primarily-Infected Hemophiliac with HCV from Blood (including the infection of a Secondarily-Infected Person) including the Class Actions as provided in the Approval Orders. A Releasee may not claim the benefit of any of the provisions of this Release unless and until the Releasee consents to the dismissal without costs of such claim or proceeding to be so dismissed by the Releasor.

(b) The Releasor undertakes not to now or at any time hereafter:

- (i) commence;
- (ii) assist in;
- (iii) acquiesce in; or
- (iv) permit the Releasor's name to be used in

any claim or proceeding of any kind directly or indirectly against any Releasee in any way relating to or arising from the infection of a Primarily-Infected Hemophiliac with HCV from Blood (including the infection of a Secondarily-Infected Person).

### 3. Complete Bar

The Releasor agrees that this Release is a complete defence to any claim or proceeding of any kind brought by the Releasor directly or indirectly against any Releasee in any way relating to or arising from the infection of a Primarily-Infected Hemophiliac with HCV from Blood (including the infection of a Secondarily-Infected Person) and this Release will forever be a complete bar to the commencement or prosecution of any such claim or proceeding, and the Releasor does hereby consent to the dismissal without costs of any such future claim or proceeding.

### 4. Claims For Contribution or Indemnity

The Releasor undertakes not to make any claim or demand or take any actions or proceedings against any Releasee or any other person in any way relating to or arising from the infection of a Primarily-Infected Hemophiliac with HCV from Blood (including the infection of a Secondarily-Infected Person). For greater certainty, the Releasor will not make any claim or demand or take any actions or proceedings 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 this or any other jurisdiction in any way relating to or arising from the infection of a Primarily-Infected Hemophiliac with HCV from Blood (including the infection of a Secondarily-Infected Person) and the Releasor also hereby consent to a dismissal without costs of any such claim or proceeding which results in such a claim being made, provided that the foregoing excludes claims against the CRCS.

### 5. Claims Against the CRCS

At the option of the FPT Governments or their representatives, the Releasor will either,

- (a) pursue his or her claims against the CRCS in any way relating to or arising from the infection of a Primarily-Infected Hemophiliac with HCV from Blood (including the infection of a Secondarily-Infected Person), and assign to the FPT Governments the proceeds received by the Releasor from any such claims, or
- (b) within the *Companies' Creditors Arrangement Act* (Canada) proceedings relating to the CRCS, prove, vote and otherwise act to promote such claims that the Releasor has against the CRCS in accordance with directions given to the Releasor 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 Releasor, or

- (c) enter into a release of all of such claims against the CRCS substantially in the form of this Release.

THE RELEASOR HEREBY ACKNOWLEDGES that this Release is made with a denial of liability by the Releasees and nothing in it nor any action of any Releasee will be construed as an admission of liability by any Releasee.

THE RELEASOR HEREBY DECLARES that the Releasor has had the opportunity to seek independent legal advice with respect to the terms and effect of this Release and the undersigned fully understands and accepts each and every term and condition of this Release and that this Release is given voluntarily for the purpose of making a full and final compromise and settlement of all claims and other matters in any way relating to or arising from the infection of a Primarily-Infected Hemophiliac with HCV from Blood (including the infection of a Secondarily-Infected Person) whether such claims were made or could have been made in any proceeding including the Class Actions.

THIS RELEASE will be governed by and construed in accordance with the laws of the Province of ● and the laws of Canada applicable therein.

IN WITNESS WHEREOF the undersigned has executed this Release.

DATED ●, 19●.

SIGNED, SEALED AND DELIVERED )  
 in the presence of: )  
 )  
 )  
 )

\_\_\_\_\_ (s)  
 ●

Witness



## **APPENDIX C**

### **REFERENCE RULES**

#### **1. Powers of Referee**

A Referee will have the power:

- (a) to establish the procedure to be followed during the reference;
- (b) to determine the location where the reference will be considered;
- (c) to order production of documents and examinations for discovery, if necessary;
- (d) to summon and enforce the attendance of witnesses and to compel them to give oral or written evidence on oath in the same manner as a court of record in civil cases;
- (e) to accept oral or written evidence as the Referee in his or her discretion considers proper, whether admissible in a court of law or not;
- (f) to mediate the differences at any stage in the proceedings and, if mediation is unsuccessful, to continue with the reference; and
- (g) to determine the subject matter of the reference and, in the exercise of his or her discretion, to award costs, in accordance with a tariff to be established by the Courts.

#### **1. Conduct of Reference**

The only parties to the reference will be the claimant and the Fund Counsel. The Referee must adopt the simplest, least expensive and most expeditious manner of conducting the reference. The Referee must begin the reference within 30 days after being appointed. The language of the reference will be in English or French, as requested by the claimant.

#### **2. Report of Referee**

The Referee must give a written report within 30 days of the completion of the reference which will be automatically confirmed and be final and binding unless the claimant serves and files a notice of motion with the Court having jurisdiction in the Class Action in which he or she is a Class Member opposing confirmation within 30 days of the delivery of the Referee's report, provided, however, that if the amount in issue is less than \$10,000 the

Referee will be deemed to have carried on an arbitration and the report will be deemed to be an arbitration award.

**3. Appearances on a Motion Opposing Confirmation of a Referee's Report**

The claimant, the Fund Counsel and each Class Action Counsel will each have the right, but not the obligation, to appear on any motion and oppose or support confirmation of a Referee's report.

## APPENDIX D



### ARBITRATION RULES

#### Jurisdiction and Scope

1. The Arbitrator will apply the rules and procedures of the *Arbitration Act* of the Province or Territory in which the Arbitration is conducted, if any, to any Arbitration conducted hereunder except to the extent they are modified by the express provisions of these Rules.
2. Each party acknowledges that it will not apply to the courts of any jurisdiction to attempt to enjoin, delay, impede or otherwise interfere with or limit the scope of the Arbitration or the powers of the Arbitrator; provided, however, that the foregoing will not prevent either party from applying to the courts for a determination with respect to any matter or challenge provided for in the *Arbitration Act* referred to in Section 1 of these Rules.
3. Each party further acknowledges that the award of the Arbitrator will be final and conclusive and there will be no appeal therefrom whatsoever to any court, tribunal or other authority.
4. The Arbitrator has the jurisdiction to deal with all matters relating to an appeal from a decision of the Administrator (a "Dispute") including, without limitation, the jurisdiction:
  - (a) to determine any question of law, including equity;
  - (b) to determine any question of fact, including questions of good faith, dishonesty or fraud;
  - (c) to determine any question as to the Arbitrator's jurisdiction;
  - (d) to request that the parties enter into arbitration;
  - (e) to order any party to furnish further details, whether factual or legal, of that party's case;
  - (f) to proceed with the Arbitration notwithstanding the failure or refusal of any party to comply with these Rules or with the Arbitrator's orders or directions or to attend any meeting or hearing, but only after giving that party written notice that the Arbitrator intends to do so;
  - (g) to receive and take into account such written or oral evidence tendered by the parties as the Arbitrator determines is relevant, whether or not admissible in law;

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- (h) to make one or more interim awards including, without limitation, orders to secure any amount relating to the Dispute; and
- (i) to order the parties to produce to the Arbitrator and to each other for inspection and to supply copies of any documents or classes of documents in their possession, power or control that the Arbitrator determines to be relevant.

### **Place of Arbitration**

1. The Arbitration will be conducted in the Province or Territory in which the claimant resides at a location determined from time to time by the Arbitrator pursuant to Section 6 of these Rules.

### **Meetings**

2. The Arbitrator will determine the time, date and location of meetings for the Arbitration and will give all the parties 15 days' prior written notice of such meetings.

3. The parties to the Arbitration will be the Claimant and the Fund Counsel. The claimant may be represented or assisted by any person during the Arbitration. Where the claimant is represented by another person, the claimant will provide notice in writing of such representation to the Fund Counsel and to the Arbitrator at least five days prior to any Arbitration proceeding.

4. The award of the Arbitrator must be made within 30 days of the completion of the Arbitration.

### **Disclosure/Confidentiality**

5. All information disclosed, including all statements made and documents produced, in the course of the Arbitration will be held in confidence and no party will rely on, or introduce as evidence in any subsequent proceeding, any admission, view, suggestion, notice, response, discussion or position of either the claimant or the Fund Counsel or any acceptance of a settlement proposal or recommendation for settlement made during the course of the Arbitration, except (i) as required by law or (ii) to the extent that disclosure is reasonably necessary for the establishment or protection of a party's legal rights against a third party or to enforce the award of the Arbitrator or to otherwise protect a party's rights under these Rules.

### **Miscellaneous**

6. The parties may modify any period of time provided for in these Rules by mutual agreement.
7. The language of the Arbitration will be English or French, as requested by the claimant.
8. Nothing contained in these Rules prohibits a party hereto from making an offer of settlement relating to a Dispute during the course of an Arbitration.
9. In determining the allocation between the parties of the costs of the Arbitration, the Arbitrator may invite submissions as to costs and may consider, among other things, an offer of settlement made by a party to the other party prior to or during the course of an Arbitration. The Arbitrator, in the exercise of his or her discretion, may award costs in accordance with a tariff to be established by the Courts.
10. The award will be rendered in writing and will contain a recital of the facts upon which the award is made and the reasons therefor.



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