

**SUPPLEMENTAL AGREEMENT made on October 1, 2019**

**BETWEEN:**

**CHERYL TILLER, MARY-ELLEN COPLAND, AND DAYNA ROACH,**

**as class action representative plaintiffs**

**Plaintiffs**

**and**

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA,  
represented by THE ATTORNEY GENERAL OF CANADA**

**Defendant**

**Terms of Appointment of the Administrator and Assessor**

**Definitions**

Capitalized or defined terms used in this Supplemental Agreement have the same meaning as the capitalized or defined terms in the Agreement.

In this Schedule:

**“Administrator”** means the Administrator appointed by the Court, Deloitte LLP;

**“Agreement”** means the Agreement signed by the parties on June 21, 2019, which includes this Supplemental Agreement;

**“Assessor”** means the Assessor appointed by the Court, the Honourable Louise Otis; AND

**“Supplemental Agreement”** means this Supplemental Agreement, which forms part of the Agreement.

## I. ADMINISTRATOR

### A. Appointment of Deloitte LLP as Administrator

1. Pursuant to section 6.041 of the Agreement, the Parties mutually agree to the appointment by the Court of Deloitte LLP as Administrator.
2. In addition to the Administrator's duties set out in the Agreement, including all schedules and appendices, the Parties understand that the Administrator shall act in accordance with this Supplemental Agreement, which shall be incorporated into the Approval Order.

### B. Professional Fees

#### Fee Structure

3. Canada shall pay the Administrator for administration services based on the following fee structure to a limitation of expenditure of \$3,000,000.00 exclusive of applicable taxes:

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

Overall Administration and Management for Administrator and Assessor (including Claims Process set up, ongoing reporting, trust account management, claimant support, support and set up offices and staff for the Assessors, and any work undertaken for these purposes prior to the approval of the Agreement, including any work undertaken prior to the Approval Date.	\$787,000
--	-----------

(b) **Variable fees** payable on a per claim basis

Primary Class Member Claims	\$280 per claim
Secondary Class Member Claims	\$90 per claim
Travel and Medical expense reimbursement; Reconsideration Requests	\$35 per claim

(c) **Variable fees** payable to support Assessors:

Hiring and payment of staff to support an Assessor	As reasonably required by Assessor
--	------------------------------------

Cost of meeting rooms for Assessor's interviews:

Administrator's offices	\$100/day
Outside offices	\$500/day max

Travel costs for Assessors' staff for claimant interviews and to meet with Administrator in accordance with Government of Canada National Joint Council Travel Directive

4. The Administrator must not perform any work that would result in Canada's liability exceeding the \$3,000,000.00 limitation of Canada's expenditure, except with the express written authorization of the Parties or, failing agreement, the authorization of the Court.
5. If, at any time, the Administrator considers that \$3,000,000.00 will be insufficient to complete the administration of the Agreement, the Administrator shall notify the Parties forthwith, identify the specific basis of the insufficiency, and shall not proceed to complete the administration of the Agreement without the prior express written authorization of the Parties or, failing agreement, the authorization of the Court.
6. The Administrator shall notify the Parties when the cost of services rendered reaches 70% of \$3,000,000.00.

#### **Invoicing and Payment Schedule**

7. In consideration of the Administrator satisfactorily completing all of its obligations under the Agreement, Canada shall pay the Administrator's professional fees in accordance with these terms, or any further terms as may be required by Canada and agreed to by the Parties in writing, on a monthly basis, for the work covered by the invoice where:
  - (a) an accurate and complete invoice and any other documents required by the Agreement have been submitted in accordance with invoicing instructions to be provided by Canada prior to the first billing period; and
  - (b) all documents have been verified by Canada.
8. Within 30 days of the Approval Order, Canada will issue payment of \$308,575.00 to the Administrator towards the fixed fees. The balance of fixed fees shall be paid monthly, in the amount of \$26,575.00, subject to the Administrator meeting the requirements of sections 7 and 17 of this Supplemental Agreement, commencing 60 days from the date of the Approval Order, for eighteen months. If the claims process has not completed after eighteen months, the monthly payments of fixed fees shall be reduced to \$20,000.00, subject to the Administrator meeting the requirements of sections 7 and 17 of this Supplemental Agreement, until the claims process is completed. If the Approval Order is appealed, no monthly payments, or no further monthly payments, will be made unless and until all appeals are final and the Approval Order is not set aside.
9. Subject to the Administrator meeting the requirements of sections 7 and 17 of this Supplemental Agreement, Canada will pay the variable fees incurred by the Administrator on a monthly basis, commencing within 30 days of the Approval Order, until the completion of the claims process. If the Approval Order is appealed, no monthly payments, or no further monthly payments, will be made unless and until all appeals are final and the Approval Order is not set aside.
10. Fees set out above include all services rendered. No additional compensation or any other expense shall be payable.

**C. Confidentiality**

11. The Administrator shall treat Class Member information and records as confidential and shall restrict access to such records to a need-to-know basis.
12. The Administrator must obtain from all its employees or sub-contractors who have access to Class Member information, a signed non-disclosure agreement, in the following form before they are given access to any claimant information by the Administrator:

**NON-DISCLOSURE AGREEMENT**

In the course of my work as an employee or subcontractor of Deloitte LLP, pursuant to the order of the Federal Court in Court File No.T-1673-17,

\_\_\_\_\_, may be given access to information by or on behalf of claimants or Canada in connection with the Tiller Class Action claims process. Such information may include information that is confidential or proprietary to third parties, and information conceived, developed or produced by Deloitte LLP or the Assessor the Honourable Louise Otis (and any additional Assessors). For the purposes of this Non-Disclosure Agreement, information includes but is not limited to: any documents, instructions, guidelines, data, material, advice or any other information whether received orally, in printed form, recorded electronically, or otherwise, and whether or not labeled as proprietary or sensitive, that is disclosed to a person or that a person becomes aware of during the performance of the Tiller Class Action Claims Process administered by Deloitte LLP.

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

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

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

---

Name (printed)

---

Signature

13. The Administrator shall ensure that all Class Member information is stored in a secure location and that only authorized persons who have signed the non-disclosure agreement are permitted to access the information. Printed material will be stored in a locked container in an area that is subject to continuous monitoring by the Administrator.
14. The Administrator shall not store, record, transmit or accept transmission of Class Member information electronically except in accordance with a manner and on devices approved by the Parties or, failing agreement, the Court.
15. The Administrator shall promptly notify the Parties of any incident or concern that confidential information has been disclosed to or otherwise obtained by unauthorized persons.
16. Information shall be returned or destroyed in accordance with the Agreement or as may otherwise be directed by the Court.

**D. Reporting**

17. The Administrator shall report to the Parties monthly commencing 30 days from the Implementation Date, and shall provide the following information:
  - (a) Trust account reconciliation;
  - (b) Communications update (calls and emails);
  - (c) Number of request for reconsideration of Level 2 determinations;
  - (d) Number of requests for extension of time;
  - (e) Number of claims received by Administrator;
  - (f) Number of claims sent to Assessor;
  - (g) Number of determinations made by Assessor;

- (h) Number of claims rejected by Assessor; and
- (i) Administrator/Assessor Fees.

18. Canada may also undertake site visits to verify any records provided.

#### **E. Insurance**

19. The Administrator must obtain, maintain in full force and effect throughout the duration of the administration of the claims process, pay for and renew, the following insurance extending to, and in amounts commensurate with, the Administrator's obligations under the Agreement:
- (a) Commercial General Liability Insurance in an amount not less than \$2,000,000.00 per accident or occurrence and in the annual aggregate. Canada is to be added as an additional insured, but only with respect to liability arising out of the Administrator's performance of its obligations under the Agreement. The interest of Canada must be stated in the policy as follows: Canada, as represented by the Department of Justice, Canada.
  - (b) Errors and Omissions Liability Insurance in an amount not less than \$1,000,000.00 per loss and in the annual aggregate, inclusive of defence costs; and
  - (c) Comprehensive Crime Insurance. Loss Payee must be stated in the policy as follows: Canada as its interest may appear or as it may direct.
20. If the policies are written on a claims-made basis, coverage must be in place for a period of least 12 months after the completion or termination of the administration mandate.
21. The following endorsement must be included in all policies:
- Notice of Cancellation: The Insurer will provide Canada and the Plaintiffs' counsel with thirty (30) days written notice of cancellation.*
22. Neither compliance nor failure to comply with the insurance requirements set out herein shall relieve the Administrator of its liabilities and obligations under the Agreement.
23. **Litigation Rights:** Notwithstanding that the Administrator is not an agent of the Crown, pursuant to subsection 5(d) of the *Department of Justice Act*, S.C. 1993, c. J-2, s. 1, if a suit is instituted for or against Canada which the insurer would, but for this clause, have the right to pursue or defend on behalf of Canada as an additional insured under the Administrator's insurance policy, the insurer must promptly contact the Attorney General of Canada to agree on legal strategies by sending a letter, by registered mail or by courier, with an acknowledgement of receipt to:

Department of Justice Canada  
900 – 840 Howe Street  
Vancouver BC V6Z 2S9  
Attn: Regional Director General's Office

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

## II. ASSESSOR

### A. Appointment of the Honourable Louise Otis as Assessor

25. Pursuant to section 6.01 of the Agreement, the Parties mutually agree to the appointment by the Court of the Honourable Louise Otis as Assessor.
26. In addition to the Assessor's duties set out in the Agreement, the Parties understand that the Assessor shall act in accordance with this Supplemental Agreement, which shall be incorporated into the Approval Order.

### B. Professional Fees

#### Fee Structure

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

Assessor	\$350 per hour
Office disbursements not provided by the Administrator	As reasonably required
Administrative Assistant	\$35 per hour
Research Assistant	\$150 per hour

28. The Assessor must not incur fees for assessment services, or perform assessment services, that would result in Canada's liability for assessment services exceeding \$1,000,000.00, except with the express written authorization of the Parties or, failing agreement, the authorization of the Court.

29. If, at any time, the Assessor considers that \$1,000,000.00 will be insufficient to complete the administration of assessment services for the Agreement, the Assessor shall notify the Parties forthwith.
30. The Assessor shall notify the Parties when the cost of services rendered reaches 70% of \$1,000,000.00.

#### **Invoicing and Payment Schedule**

31. Canada shall pay all of the fees of the Assessor in accordance with these terms or any further terms as may be agreed by the Parties in writing, on a monthly basis for the work covered by the invoice where:
  - (a) an accurate and complete invoice and any other documents required by the Agreement have been submitted in accordance with invoicing instructions to be provided by Canada prior to the first billing period; and
  - (b) all documents have been verified by Canada.

#### **Travel to be Reasonably Limited**

32. Where an in-person interview is necessary, the Assessor may either travel to meet the claimant or request that a claimant travel to a location identified by the Assessor.
33. A claimant who is required by the Assessor to travel more than 50 kilometres from his or her place of residence to attend an interview is entitled to be reimbursed for travel expenses by Canada in accordance with the Government of Canada National Joint Council Travel Directive. Reimbursement of expenses shall be paid by the Administrator in accordance with Schedule B, Claims Process.
34. Where the Assessor is required to travel, the Assessor must use best efforts to maximize the number of claimants interviewed per trip undertaken. The Assessor will limit the number of persons travelling with the Assessor to one member of the Assessor's or Administrator's staff and a consultant or subject matter expert, if required.
35. Where travel is required for the Assessor's duties, expenses shall be billed to Canada as part of the Assessor's fees on the basis of rates established in the Government of Canada National Joint Council Travel Directive.

#### **No other amounts payable**

36. Fees as set out above include all services rendered. No additional compensation for any other expense shall be payable.



**A. Confidentiality**

- 37. The Assessor shall treat claimant information and records as confidential and shall restrict access to such records to a need to know basis.
- 38. The Assessor must sign, and must obtain from all their employees or sub-contractors who have access to claimant information, a signed non-disclosure agreement, in the following form before they are given access to any claimant information.

**NON-DISCLOSURE AGREEMENT**

In the course of my work as an employee or subcontractor of (NAME OF ASSESSOR), pursuant to the order of the Federal Court in Court File No.T-1673-17,

I, \_\_\_\_\_, may be given access to information by or on behalf of claimants or Canada in connection with the Tiller Class Action claims process. Such information may include information that is confidential or proprietary to third parties, and information conceived, developed or produced by (NAME OF ASSESSOR) or Deloitte LLP as part of their mandate. For the purposes of this Non-Disclosure Agreement, information includes but is not limited to: any documents, instructions, guidelines, data, material, advice, or any other information whether received orally, in printed form, recorded electronically, or otherwise, and whether or not labeled as proprietary or sensitive, that is disclosed to a person or that a person becomes aware of during the performance of the Tiller Class Action Claims Process administered by Deloitte LLP.

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

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

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

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

\_\_\_\_\_  
Signature

39. Claimant information shall be stored in a secure manner to ensure that only authorized persons who have signed the non-disclosure agreement may access the information. Printed material will be stored in a locked container in an area that is subject to continuous monitoring or where access is restricted to persons having signed the non-disclosure agreement.
40. The Assessor shall not store, record, transmit, or receive claimant information electronically except in a manner and on devices approved by the Parties or, failing agreement, the Court.
41. The Assessor shall promptly notify the Parties of any incident or concern that confidential information has been disclosed to or otherwise obtained by unauthorized persons.

**B. Reporting**

42. The Assessor shall provide all information required by the Administrator in order for the Administrator to prepare its monthly reports.

**C. Powers and Immunity**

43. The Assessor shall have all the powers necessary for the performance of her or his duties in accordance with the Agreement and Schedules.
44. The Assessor and any person working for the Assessor in accordance with this appointment shall benefit from the public law immunity associated with judicial functions.

**D. Insurance**

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

Department of Justice Canada  
900 – 840 Howe Street  
Vancouver BC V6Z 2S9  
Attn: Regional Director General's Office

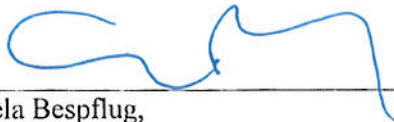
47. Canada reserves the right to co-defend any action brought against an Assessor or Canada. All expenses incurred by Canada to co-defend such actions will be at Canada's expense. If Canada decides to co-defend any action brought against the Assessor or it, and Canada does not agree to a proposed settlement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

### III. ELECTRONIC COMMUNICATIONS

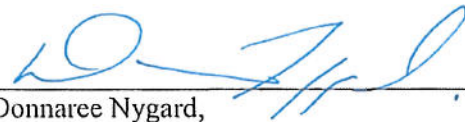
48. Where the Agreement refers to using fax or mail (registered or regular) to send or receive communications, including but not limited to claim forms, documents, and correspondence, the communications may also be sent electronically in the form and manner agreed upon by the Parties to the Agreement.

49. This agreement may be signed 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.

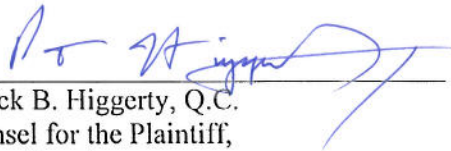
IN WITNESS WHEREOF the Parties have executed this Agreement this 1<sup>st</sup> day of October, 2019.



Angela Bessflug,  
Counsel for the Plaintiffs,  
Cheryl Tiller and Mary-Ellen Copland



Donnaree Nygard,  
Counsel for the Defendant,  
the Attorney General of Canada



Patrick B. Higgerty, Q.C.  
Counsel for the Plaintiff,  
Dayna Roach