

## EMPLOYMENT AGREEMENT

This Employment Agreement (this "Agreement") is made effective the \_\_\_ day of \_\_\_\_\_, 2019

### BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA  
AS REPRESENTED BY THE MINISTER OF  
JUSTICE AND SOLICITOR GENERAL  
(the "Employer")**

- and -

**NANCY HENDERSON  
(the "Employee")**

### WHEREAS:

The Employer has the authority to employ the Director of the Alberta Human Rights Commission (the "Commission") appointed by the Lieutenant Governor in Council pursuant to section 18 of the *Alberta Human Rights Act* (the "Position"); and

The Employer and the Employee have agreed to enter into a fixed term employment agreement.

**NOW THEREFORE** in consideration of the promises and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Employer and the Employee agree as follows:

1. **POSITION AND TERM:**
  - 1.1. The Employer will employ the Employee in the Position.
  - 1.2. The Employee will report to the Chief of the Commission and Tribunals of the Alberta Human Rights Commission (the "Chief").
  - 1.3. As a condition precedent to this Agreement, and further to section 18 of the *Alberta Human Rights Act*, the Employee will be appointed by the Lieutenant Governor in Council to the Position pursuant to an Order in Council, which will be attached as Schedule A to this Agreement once issued (the "OC"). If the Employee is not appointed to the Position, this Agreement is void.
  - 1.4. Employment will start on February 19, 2019 and will continue until the end of the day on February 18, 2024 (the "Term") unless terminated earlier in accordance with this Agreement. This Agreement is for a fixed term and will not be combined with any prior employment agreements between the Employer and the Employee to create a contract

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of indefinite duration.

- 1.5. As a condition precedent to this Agreement, the Employee agrees to undertake a security clearance in accordance with the requirements of the Employer.
- 1.6. The Employee consents to the disclosure and release of personal information by the Employer for the purpose of conducting a security clearance to determine the Employee's suitability for employment. If additional consent is required, the Employee will provide the necessary consent to release personal information to the Employer when requested to enable disclosure to third parties the Employer deems necessary to assist in obtaining the security clearance.
- 1.7. If the Employer, in its sole discretion, finds the security screening to be unsatisfactory, this Agreement is void.

### 2. CONDUCT

- 2.1. The Employee will perform the duties of the Position in accordance with the *Alberta Human Rights Act* and all additional duties as directed by the Employer. The Employee will perform and discharge the Employee's duties in a manner which is in the best interests of the Commission and in accordance with its objectives as determined by the Chief.
- 2.2. The Employee agrees to devote the Employee's full attention and energy to the performance of the duties of the Position and to perform such duties faithfully, diligently and to the best of the Employee's abilities. The Employee will not be involved in any appointment, business, undertaking or employment other than employment under this Agreement ("**Concurrent Employment**") except with the prior written approval of the Employer. The Employer reserves the right to revoke approval for Concurrent Employment in its sole discretion.
- 2.3. The Employee agrees to comply with the *Code of Conduct for the Chief of the Commission and Tribunals, Director of the Commission and Members of the Commission (forming the Tribunal)* established by the Commission, as amended from time to time, and all other Acts, regulations, directives, guidelines, rules and policies that the Commission or the Employer may be subject to respecting the performance of the Position or the conduct of employees generally, including, but not limited to, rules governing conflicts of interest and restrictions on Concurrent Employment.

### 3. COMPENSATION:

- 3.1. The Employee will be paid a biweekly base salary of \$6,421.74 (the "**Base Salary**") less required deductions and withholdings, payable in accordance with the Employer's regular payroll services.
- 3.2. The Employee acknowledges and agrees that the Base Salary is subject to review and adjustment during the Term, in accordance with guidelines and policies issued by the Employer.

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**4. NO OTHER RIGHTS OR BENEFITS:**

- 4.1. The Employee will not be entitled to any of the rights or benefits afforded to employees of the public service of Alberta, except as provided in this Agreement and the *Employment Standards Code*.

**5. BENEFITS:**

- 5.1. The Employee is eligible for the following benefits, which are subject to the rules and requirements of the *Public Service Employment Regulation*:
- 5.1.1. Paid annual vacation leave of thirty (30) days and vacation supplement of five (5) days;
  - 5.1.2. Paid holidays and special leave;
  - 5.1.3. Casual and general illness;
  - 5.1.4. Approved leaves of absence; and
  - 5.1.5. Christmas Closure.
- 5.2. The Employee may participate in the *1st Choice Benefits Program*, in accordance with the standard cost-sharing model for employees of the public service of Alberta. All issues relating to the eligibility to participate in this program and coverage issues will be determined by the administrator of the program. The Employer will not be liable in respect of eligibility or coverage decisions. The Employer will have the right to make changes to this program or obtain different coverage without providing the Employee with prior reasonable notice.
- 5.3. The Employee may participate in the Public Service Long Term Disability Income Continuance Plan ("LTDI"). All issues relating to eligibility to participate in this plan and coverage issues will be determined by the administrator of this plan. The Employer will not be liable in respect of eligibility or coverage decisions. The Employer will have the right to make changes to this plan or obtain different coverage without providing the Employee with prior reasonable notice. For additional certainty, the Employee is in a temporary position for the purposes of determining when benefits will terminate under the *Public Service Long Term Disability Income Continuance Plan Regulation*.
- 5.4. The Employee will be provided with a reserved parking stall which will be treated as a taxable benefit at current market value (where applicable).

**6. RETIREMENT BENEFITS**

- 6.1. The Employee is eligible to participate in the Management Employees Pension Plan ("MEPP") effective the start date of the Term.
- 6.2. Should the Employee cease to be eligible to continue to contribute to MEPP no further compensation will be provided in lieu of this benefit.

**7. BUSINESS EXPENSES:**

- 7.1. The Employee may be reimbursed for reasonable business expenses incurred while performing the duties of the Position. Reimbursement of business expenses will be in

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accordance with the following:

- 7.1.1. Travel and subsistence equivalent to those provided in the *Public Service Relocation and Employment Expenses Regulation*; and
- 7.1.2. Business expenses as provided in the Alberta Treasury Board and Finance *Travel, Meal and Hospitality Expenses Directive* (with the exception of section 3(2) of the directive), and is subject to the Alberta Treasury Board and Finance *Public Disclosure of Travel and Expenses Directive*.

### **8. PROFESSIONAL DEVELOPMENT:**

- 8.1. Subject to the prior approval of the Chief, and where appropriate for the nature of the Employee's duties in the Position and where operational factors permit, the Employer may pay on behalf of the Employee or reimburse the Employee for the costs of the following:
  - 8.1.1. The Employee's membership in the Law Society of Alberta (including transfer costs) and other professional and industry organizations; and
  - 8.1.2. The Employee's attendance at conferences, seminars or professional development programs.

### **9. RELOCATION EXPENSES:**

- 9.1. The Employee is eligible for relocation expenses and allowances as provided in the *Public Service Relocation and Employment Expenses Regulation*, up to a maximum of \$30,000.00 ("Relocation Assistance") upon providing receipts or satisfactory proof of payment.

### **10. TERMINATION FOR JUST CAUSE:**

- 10.1. The Employer may terminate this Agreement at any time without notice for just cause. For the purposes of this Agreement, "just cause" includes but is not limited to: theft; fraud; conduct contrary to or in breach of any obligation under Clause 2 (Conduct), Clause 14 (Notification of Criminal Charge or Other Offence), or Clause 17 (Confidential Information and Trade Secrets); dishonesty; failure to disclose requested information; or breach of fiduciary duties.
- 10.2. In the event of termination for just cause, no notice or pay in lieu of notice will be provided.

### **11. TERMINATION BY EMPLOYER:**

- 11.1. The Employer may terminate this Agreement at any time by giving written notice to the Employee as follows:
  - 11.1.1. If the Employer terminates this Agreement before February 18, 2021, the Employee will receive twenty-four (24) weeks' notice; and
  - 11.1.2. If the Employer terminates this Agreement on or after February 18, 2021, the

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Employee will receive four (4) weeks' notice for each full year of continuous service with the Employer to a maximum of fifty-two (52) weeks (the "Notice Period").

- 11.2. In lieu of notice, the Employer may, in its sole discretion, pay the Employee an amount equal to the Base Salary for the Notice Period or a combination of notice and payment in lieu of notice.
  - 11.3. Where the Employer is providing payment in lieu of notice to the Employee, the Employer will pay an additional 16% of the amount paid in lieu of notice as compensation for loss of benefits.
  - 11.4. Upon receipt of notice or payment in lieu of notice of termination, the Employee agrees to sign a restrictive agreement and release that includes at least the following terms in substantially the same form as below:
    - 11.4.1. If, during the Notice Period, as defined in the Agreement, the Employee is employed or retained, directly or indirectly, on a fee for service basis by the Crown or a public agency as defined in the *Reform of Agencies, Boards, and Commissions Compensation Act*, then the Employee will repay the Employer forthwith at the completion of the Notice Period a portion of the amount paid pursuant to Clause 11 of the Agreement equal to the gross compensation paid by the Crown, public agency, or other entity during the Notice Period, less termination pay required by the *Employment Standards Code*.
    - 11.4.2. The Employee agrees that the conditions in this restrictive agreement and release are reasonable and agrees to accept the notice, or payment in lieu of notice, or any combination thereof in full satisfaction of any claims or actions, including any complaints under the *Employment Standards Code* or the *Alberta Human Rights Act*, that the Employee may have arising out of the employment under or termination of the Agreement and the Employee expressly agrees not to make any claims, file any complaints or commence an action for any amounts beyond the amounts set out in this restrictive agreement and release.
  - 11.5. The common law duty to mitigate the loss of employment will apply and the Employee agrees to make good faith efforts to mitigate any loss of employment. Should the Employee be successful in mitigating the loss of employment, it may reduce the Employer's liability for terminating employment under this Clause 11.
- 12. TERMINATION BY EMPLOYEE:**
- 12.1. The Employee may terminate this Agreement by providing at least eight (8) weeks' written notice to the Employer. If the Employee gives notice in accordance with this Clause, the Employer reserves the right to waive all or part of the notice period, in which case the Employee will be paid the Base Salary during the waived period.
  - 12.2. This Agreement will automatically end on the death of the Employee and no notice or pay in lieu of notice will apply.

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**13. NEW AGREEMENT:**

- 13.1. The Employer will provide the Employee with twenty-four (24) weeks' notice prior to the end of the Term regarding its intentions to reappoint the Employee to the Position. In the event the Employee is reappointed to the Position, the Employee will be subject to a new contract.

**14. NOTIFICATION OF CRIMINAL CHARGE OR OTHER OFFENCE:**

- 14.1. The Employee agrees to give immediate notice to the Employer if the Employee is charged with any offence under the *Criminal Code (Canada)* or the *Controlled Drugs and Substances Act (Canada)*, or if the Employee is charged with an offence under provincial or municipal legislation.

**15. EMPLOYER POLICIES AND PROCEDURES:**

- 15.1. The Employee will be subject to the policies and procedures of the Employer and Commission, currently in place or as may be established from time to time, except to the extent of any conflict with the provisions of this Agreement. In the event of a conflict between this Agreement and the policies and procedures of the Employer or Commission, this Agreement governs.

**16. MATERIALS:**

- 16.1. All files, forms, correspondence, memoranda, documents, manuals, software, electronic records and other materials pertaining to or used in connection with the business of the Commission, other than publicly available materials, (the "Materials") which come into the Employee's possession or control during the Employee's employment will, at all times, be and remain the property of the Employer.
- 16.2. The Employee will not make for the Employee's own use or for the use of anyone else, copies or reproductions of the Materials. The Employee, or the Employee's estate representative, will return all Materials upon the termination of this Agreement, however caused.

**17. CONFIDENTIAL INFORMATION AND TRADE SECRETS:**

- 17.1. Any confidential information or trade secrets acquired or created by the Employee in the performance of this Agreement, or any prior employment agreement with the Employer (the "Confidential Information"), will not be used or disclosed to anyone unless specifically approved by the Employer. Any benefits resulting from the development of the Confidential Information will accrue to the Employer and will be held in trust by the Employee for the Employer. For the purposes of this Agreement, Confidential Information includes any information, whether in writing or not, which is not generally known to the public, and which could, if used, communicated or divulged, cause damage or embarrassment, loss of reputation, or other harm to the Employer.
- 17.2. This duty not to release Confidential Information is in addition to the common law duty of confidentiality.

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17.3. The Employee acknowledges and agrees that the Employee's obligations of confidentiality owed to the Employer will survive the termination of this Agreement.

### 18. OWNERSHIP OF INTELLECTUAL PROPERTY:

18.1. All rights, title and interest in and to all intellectual property that may be conceived, created or developed during the course of employment of the Employee with the Employer (the "Intellectual Property") will belong solely to the Employer.

18.2. The Employee hereby waives all moral rights in any and all copyright works authorized or coauthored by the Employee in the performance of the Employee's duties and obligations under this Agreement. The Employee will execute a written waiver of moral right in any copyright works authored or coauthored by the Employee immediately upon the request of the Employer.

18.3. The Employee will execute such assignment and other documents as are required by the Employer to transfer all right, title and interest in and to all Intellectual Property to the Employer. In the event that the Employee fails to execute such assignment and other documents within ten (10) business days after a written request from the Employer, the Employee hereby appoints the Employer as the Employee's attorney to execute such assignment and other documents on behalf of the Employee.

18.4. The Employee will cooperate and render all assistance as may be reasonably requested by the Employer with respect to any applications, filings, or actions in relation to the Intellectual Property, including any applications for letters patent or for copyright or trade-mark registration, and any legal action or potential legal action which relates to the Intellectual Property. The Employer will reimburse the Employee for all reasonable expenses for such cooperation and assistance.

### 19. INJUNCTIVE RELIEF:

19.1. The Employee acknowledges the value of the Confidential Information as defined in Clause 17.1 to the Employer. The Employee further acknowledges that any material breach or threatened breach of any of the provisions contained in Clause 17 by the Employee may cause material and irreparable harm to the Employer which may not be reasonably or adequately compensated for by damages in an action at law.

19.2. The Employee therefore agrees that in the event of a breach or threatened breach of any of the provisions of Clause 17 by the Employee, the Employer shall be entitled to an injunction to prevent breaches of this Agreement, in addition to any other remedies it may be entitled to at law and in equity.

### 20. NOTICE OF PUBLICATION:

20.1. The Employee agrees that this Agreement and any records and information created or collected pursuant to the Employee's employment (including but not limited to the Employee's name, classification, salary, benefits or employment responsibilities) may be disclosed by the Employer or the Commission on the Employer's behalf. Decisions about disclosure are in the Employer's sole discretion and are subject to the law and any applicable policies of the Government of Alberta including, but not limited to, the *Public Sector Compensation Transparency Act*, and any related regulations, directives

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and guidelines.

### **21. ENTIRE AGREEMENT:**

- 21.1. This Agreement, including any payroll records, policies, programs or other interpretive materials referred to herein, sets forth the entire Agreement between the parties with respect to its subject matter and replaces any previous discussions, agreements and understandings of every kind and nature between them with respect to the employment of the Employee by the Employer and neither party will be bound by any term or condition other than as expressly set forth or provided for in this Agreement.
- 21.2. The parties understand and agree that there are other enactments, administrative directives and Orders in Council, which also impose duties and obligations on the parties and which may be amended from time to time without notice to the Employee. In the event of a conflict between this Agreement and any enactments, administrative directives and Orders in Council, the enactments, administrative directives and Orders in Council govern.
- 21.3. Acts, regulations, directives, codes, policies, authorities and guidelines referred to in this Agreement, may be amended, repealed or replaced from time to time without notice to the Employee.

### **22. SURVIVAL OF TERMS:**

- 22.1. Despite any other provision of this Agreement, those clauses which by their nature continue after the conclusion or termination of this Agreement will continue after such conclusion or termination, including:
  - 22.1.1. Clause 2 Conduct
  - 22.1.2. Clause 11 Termination by Employer
  - 22.1.3. Clause 16 Materials
  - 22.1.4. Clause 17 Confidential Information and Trade Secrets
  - 22.1.5. Clause 18 Ownership of Intellectual Property
  - 22.1.6. Clause 19 Injunctive Relief
  - 22.1.7. Clause 20 Notice of Publication
  - 22.1.8. Clause 24 Severability
  - 22.1.9. Clause 25 Waiver

### **23. AMENDMENT:**

- 23.1. The parties may by mutual agreement make written amendments to the terms of this Agreement.

### **24. SEVERABILITY:**

- 24.1. If a term of this Agreement is held to be invalid, illegal or unenforceable, that term is deemed to be severed and the remaining terms of this Agreement continue to operate.

### **25. WAIVER:**

- 25.1. The failure of either party to this Agreement to enforce any of its terms, provisions or



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covenants will not be construed as a waiver of the same or of the right of such party to enforce the same. Waiver by either party hereto of any breach by the other party of any terms of provisions of this Agreement will not operate as a waiver of any other breach or default.

**26. NOTICES, APPROVALS AND REQUESTS:**

- 26.1. Notices, approvals and requests referred to in this Agreement will be in writing and, if under Clauses 10, 11, 12, 13, 14, and 17 will be personally delivered or sent by registered mail to the Employer or Employee at the address provided below:

To the Employer:

Deputy Minister of Justice and Deputy Solicitor General  
2nd floor, Bowker Building  
9833 - 109 Street  
Edmonton, AB  
T5K 2E8

Email:

To the Employee:

Email:

and are deemed to have been given as follows:

26.1.1. If personally delivered, upon delivery; or

26.1.2. If by registered mail, on the third day after mailing.

- 26.2. All other notices, approvals and requests under this Agreement that are not referred to by Clause 26.1 may be given in accordance with Clause 26.1 or by email. If sent by email, such notices are deemed to have been given 72 hours after being sent.
- 26.3. The contact information for notices, approvals and requests may be changed by a notice to the other party.

**27. INDEPENDENT LEGAL ADVICE:**

- 27.1. The Employee hereby acknowledges and confirms that the Employee was advised by the Employer to obtain independent legal or other professional advice. By executing this Agreement, the Employee hereby confirms that the Employee had the opportunity to seek independent legal or professional advice and has either obtained such advice; or has waived the right to obtain such advice.

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**28. JURISDICTION:**

- 28.1. This Agreement will be interpreted in accordance with the laws in force in the Province of Alberta. The parties agree to submit and attorn to the jurisdiction of the courts of the Province of Alberta.

**29. HEADINGS:**

- 29.1. The clause headings in this Agreement have been included for convenience only and do not define, limit or enlarge the scope or meaning of this Agreement or any part of it.

**30. SINGULAR/PLURAL:**

- 30.1. In this Agreement words in the singular include the plural and words in the plural include the singular.

[THIS SPACE IS LEFT INTENTIONALLY BLANK]

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31. COUNTERPARTS:

31.1. This Agreement may be executed in any number of counterparts, and delivered in PDF format by email transmission or by facsimile. A signature by way of email or facsimile shall be as binding and effective as an original signature.

This Agreement is effective as of the date and year first above written.

EMPLOYEE:

Printed Name \_\_\_\_\_

Signature \_\_\_\_\_

Date February 12, 2019

WITNESS:

Printed Name \_\_\_\_\_

Signature \_\_\_\_\_

Date February 12, 2019

EMPLOYER:

Deputy Minister of Justice and Solicitor General

Signature \_\_\_\_\_

Date FEBRUARY 14, 2019

Printed Name \_\_\_\_\_

Signature \_\_\_\_\_

Date Feb 14/19