

**COUR SUPÉRIEURE**  
(Chambre des actions collectives)

CANADA  
PROVINCE DE QUÉBEC  
DISTRICT DE MONTRÉAL

N° : 500-06-000632-121

DATE : Le 5 juillet 2019

---

**SOUS LA PRÉSIDENTICE DE : L'HONORABLE GÉRARD DUGRÉ, J.C.S.**

---

**OPTION CONSOMMATEURS**

*Représentante*

c.

**LG CHEM LTD ET ALS**

*Défenderesses*

-et-

**FONDS D'AIDE AUX ACTIONS COLLECTIVES**

*Mise en cause*

-et-

**BELLEAU LAPOINTE, S.E.N.C.R.L.**

*Avocats de la Représentante*

---

**JUGEMENT SUR LA DEMANDE POUR APPROBATION DE LA TRANSACTION LG CHEM**

---

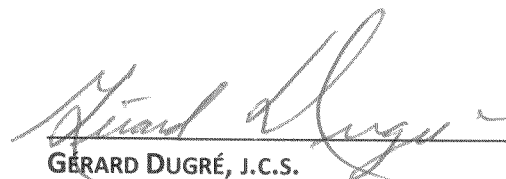
- [1] **LE TRIBUNAL** est saisi d'une *Demande pour approbation de transactions et des honoraires et déboursés des Avocats de la Représentante*;
- [2] **CONSIDÉRANT** les allégations au soutien de la demande;
- [3] **CONSIDÉRANT** les pièces R-1 à R-7;
- [4] **CONSIDÉRANT** les représentations faites par les parties lors de l'audition;
- [5] **CONSIDÉRANT** l'article 590 du Code de procédure civile du Québec;

**JG2163**

**POUR CES MOTIFS, LE TRIBUNAL :**

- [6] **ACCUEILLE** la présente *Demande pour approbation de transactions et des honoraires et déboursés des Avocats de la Représentante*;
- [7] **DECLARES** that the definitions set forth in the Settlement Agreement, Exhibit R-1, apply to and are incorporated into this Judgment and, as a consequence, shall form an integral part thereof, being understood that the definitions are binding on the Parties to the Settlement Agreement;
- [8] **DECLARES** that in the event of a conflict between this Judgment and the Settlement Agreement, the Judgment shall prevail;
- [9] **APPROVES** the Settlement Agreement pursuant to Article 590 of the *Code of Civil Procedure* and **DECLARES** that, subject to all of the other provisions of this Judgment, the Settlement Agreement is valid, fair, reasonable and in the best interest of the Quebec Settlement Class Members, and constitutes a transaction within the meaning of Article 2631 of the *Civil Code of Quebec*, binding all Parties and all members described therein;
- [10] **DECLARES** that the Settlement Agreement shall be implemented in accordance with its terms, but subject to the terms of this Judgment;
- [11] **DECLARES** that, subject to the other provisions of this Judgment, the Settlement Agreement, in its entirety (including the preamble, the definitions, schedules and addendum), is attached to this Judgment as Schedule A and shall form an integral part of the Judgment;
- [12] **ORDERS AND DECLARES** that effective immediately upon the Effective Date, and in consideration of payment of the Settlement Amount, and for other valuable considerations set forth in the Settlement Agreement, the Releasors forever and absolutely release the Releasees and forever discharge the Releasees from the Released Claims that any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have;
- [13] **ORDERS AND DECLARES** that upon the Effective Date, the Quebec Proceeding shall be declared settled out of court, without costs as against the Settling Defendants and the Parties shall sign and file a notice of settlement with the Quebec Court;
- [14] **DECLARES** that the Quebec Plaintiff and the Quebec Settlement Class Members expressly waive and renounce the benefit of solidarity against the Non-Settling Defendants or any other person with respect to the facts, deeds or other conduct of the Releasees relating to the Released Claims;

- [15] **DECLARES** that the Quebec Plaintiff and Settlement Class Members shall henceforth only be able to claim and recover damages, including punitive damages, interests and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) attributable to the conduct of the Non-Settling Defendants, the sales by the Non-Settling Defendants, and/or other applicable measure of proportionate liability of the Non-Settling Defendants;
- [16] **DECLARES** that any claims in warranty, recursory action, forced intervention or any other claim or joinder of parties to obtain any contribution or indemnity from the Releasees or relating to the Released Claims shall be inadmissible and void in the context of the Quebec Proceeding;
- [17] **DECLARES** that the ability of Non-Settling Defendants to seek discovery from the Settling Defendants shall be determined according to the provisions of the *Code of Civil Procedure of Quebec*, and the Settling Defendants shall retain and reserve all of their rights to oppose such discovery under the *Code of Civil Procedure of Quebec*;
- [18] **ORDERS AND DECLARES** that this Judgment, including the Settlement Agreement, shall be binding on every Quebec Settlement Class Member who has not validly opted-out of the action;
- [19] **DECLARES** that this Court retains an ongoing supervisory role for the purpose of implementing, administering and enforcing the Settlement Agreement, and subject to the terms and conditions set out in the Settlement Agreement;
- [20] **DECLARES** that this Court retains an exclusive jurisdiction over the Quebec Proceeding, the Parties thereto and Class Counsel Fees in this Proceeding;
- [21] **ORDERS** that this Judgment is contingent upon the approval of the Settlement Agreement by the Ontario Court in the Proceedings and the dismissal of the British Columbia Proceeding as against the Settling Defendants, and that this Judgment shall have no force and effect unless and until such an order and dismissal are made;
- [22] **LE TOUT** sans frais.

  
GÉRARD DUGRÉ, J.C.S.

Me Maxime Nasr  
Me Jean-Philippe Lincourt  
**BELLEAU LAPOINTE, S.E.N.C.R.L.**  
Pour la Demanderesse

Me Nicholas Rodrigo  
**DAVIES WARD PHILLIPS & VINEBERG**  
Pour les Défenderesses LG Chem Ltd. et LG Chem America Inc.

Me Vincent De L'Étoile  
Me Annie Gallant  
**LANGLOIS AVOCATS**  
Pour les Défenderesses Panasonic Corporation, Panasonic Corporation of North America, Panasonic  
Canada Inc., Sanyo Electric Co. Ltd. et Sanyo North America Corporation

**ME FRIKIA BELOGBI**  
Pour la Mise en cause Fonds d'aide aux actions collectives

**LITHIUM ION BATTERIES CLASS ACTIONS  
NATIONAL SETTLEMENT AGREEMENT**

Made as of October 1, 2018

Between

**KHURRAM SHAH, ALPINA HOLDINGS INC.,  
JONATHAN CRUZ and OPTION CONSOMMATEURS**

(the “Plaintiffs”)

and

**LG CHEM, LTD. and LG CHEM AMERICA, INC.**

(the “Settling Defendants”)

**LITHIUM ION BATTERIES CLASS ACTIONS  
NATIONAL SETTLEMENT AGREEMENT**

**TABLE OF CONTENTS**

RECITALS .....	1
SECTION 1 - DEFINITIONS .....	3
SECTION 2 - SETTLEMENT APPROVAL .....	11
2.1 Best Efforts .....	11
2.2 Motions for Approval .....	11
2.3 Pre-Motion Confidentiality .....	11
SECTION 3 - SETTLEMENT BENEFITS .....	12
3.1 Payment of Settlement Amount .....	12
3.2 Taxes and Interest .....	13
SECTION 4 - COOPERATION .....	14
4.1 Extent of Cooperation .....	14
4.2 Limits on Use of Documents .....	19
SECTION 5 - OPTING-OUT .....	21
5.1 Procedure .....	21
SECTION 6 - NON-APPROVAL OR TERMINATION OF SETTLEMENT AGREEMENT .....	23
6.1 Right of Termination.....	23
6.2 If Settlement Agreement is Terminated.....	25
6.3 Survival of Provisions After Non-Approval of Settlement Agreement.....	27
SECTION 7 - RELEASES AND DISMISSALS .....	27
7.1 Release of Releasees .....	27
7.2 Release by Releasees .....	27
7.3 Covenant Not To Sue.....	28
7.4 No Further Claims.....	28
7.5 Dismissal of the Proceedings.....	29

7.6	Dismissal of Other Actions .....	29
7.7	Claims Against Other Entities Reserved.....	29
7.8	Material Term .....	29
SECTION 8 - BAR ORDER AND DECLARATION OF RENUNCIATION .....		30
8.1	Ontario Bar Order .....	30
8.2	Quebec Declaration of Renunciation of Benefit of Solidarity.....	33
8.3	Material Term .....	34
SECTION 9 - EFFECT OF SETTLEMENT .....		35
9.1	No Admission of Liability .....	35
9.2	Agreement Not Evidence .....	35
9.3	No Further Litigation .....	36
SECTION 10 - CERTIFICATION OR AUTHORIZATION FOR SETTLEMENT ONLY .....		37
10.1	Settlement Class and Common Issue.....	37
SECTION 11 - NOTICE TO SETTLEMENT CLASSES .....		37
11.1	Notices Required.....	37
11.2	Form and Distribution of Notices .....	38
SECTION 12 - ADMINISTRATION AND IMPLEMENTATION .....		38
12.1	Mechanics of Administration.....	38
12.2	Distribution Protocol.....	38
SECTION 13 - CLASS COUNSEL FEES, DISBURSEMENTS AND ADMINISTRATION EXPENSES.....		39
13.1	Court Approval for Class Counsel Fees and Disbursements.....	39
13.2	Responsibility for Fees, Disbursements and Taxes .....	39
13.3	Administration Expenses .....	39
SECTION 14 - MISCELLANEOUS .....		40
14.1	Motions for Directions.....	40

14.2	Headings, etc.....	40
14.3	Computation of Time.....	40
14.4	Ongoing Jurisdiction.....	41
14.5	Governing Law .....	42
14.6	Entire Agreement .....	42
14.7	Amendments .....	42
14.8	Binding Effect.....	42
14.9	Counterparts.....	43
14.10	Negotiated Agreement .....	43
14.11	Language.....	43
14.12	Transaction.....	43
14.13	Recitals.....	44
14.14	Schedules .....	44
14.15	Acknowledgements.....	44
14.16	Authorized Signatures.....	44
14.17	Notice .....	45
14.18	Date of Execution .....	46



**LITHIUM ION BATTERIES CLASS ACTIONS  
NATIONAL SETTLEMENT AGREEMENT**

**RECITALS**

A. WHEREAS the Proceedings have been commenced by the BC Plaintiff in British Columbia, the Quebec Plaintiff in Quebec and the Ontario Plaintiffs in Ontario;

B. AND WHEREAS the BC and Ontario Proceedings allege that the Settling Defendants participated in an unlawful conspiracy to fix, raise, maintain, and/or stabilize the price of Lithium Batteries and/or Lithium Battery Products in Canada from at least January 1, 2000 until at least January 1, 2012, contrary to Part VI of the *Competition Act* and the common law;

C. AND WHEREAS the Quebec Proceeding alleges that the Settling Defendants participated in an unlawful conspiracy to fix, raise, maintain, and/or stabilize the price of Lithium Batteries and/or Lithium Battery Products in Quebec from February 24, 2004 until September 30, 2008, contrary to Part VI of the *Competition Act* and the civil law;

D. AND WHEREAS by Orders dated March 27, 2018, the Ontario Court approved the procedure for opting out of the Ontario Proceeding and, on June 7, 2018, the Quebec Court approved the procedure for opting out of the Quebec Proceeding;

E. AND WHEREAS the Settling Defendants and Releasees do not admit, through the execution of this Settlement Agreement or otherwise, any allegation of unlawful conduct alleged in the Proceedings, or in any Other Actions, and otherwise deny all liability and assert that they have complete defences in respect of the merits of the Proceedings and any Other Actions or otherwise;

F. AND WHEREAS despite their belief that they are not liable in respect of the claims as alleged in the Proceedings and any Other Actions and have good and reasonable defences in respect of jurisdiction and the merits, the Settling Defendants are entering into this Settlement Agreement in order to achieve a final and nationwide resolution of all claims asserted or which could have been asserted against the Releasees by the Plaintiffs and the Settlement Class Members in the Proceedings and any Other Actions, and to avoid further expense, inconvenience, the distraction of burdensome and protracted litigation, and the risks associated with trials and appeals;

G. AND WHEREAS Counsel for the Settling Defendants and Class Counsel have engaged in arm's-length settlement discussions and negotiations, resulting in this Settlement Agreement with respect to the Proceedings and any Other Actions;

H. AND WHEREAS the Plaintiffs and Class Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiffs' claims, and having regard to the burdens and expense in prosecuting the Proceedings, including the risks and uncertainties associated with trials and appeals, and having regard to the value of the Settlement Agreement, the Plaintiffs and Class Counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiffs and the Settlement Classes they seek to represent;

I. AND WHEREAS the Plaintiffs, Class Counsel and the Settling Defendants agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by or evidence against the Releasees or evidence of the truth of any of the Plaintiffs' allegations against the Releasees, which allegations are expressly denied by the Releasees;

J. AND WHEREAS the Parties therefore wish to, and hereby do, finally resolve on a national basis, without admission of liability, all of the Proceedings and any Other Actions as against the Releasees;

K. AND WHEREAS the Ontario and Quebec Plaintiffs assert that they are adequate class representatives for the Settlement Classes and will seek to be appointed representative plaintiffs in their respective Proceeding;

L. WHEREAS the Settling Defendants do not hereby attorn to the jurisdiction of the Courts or any other court or tribunal in respect of any civil, criminal or administrative process except to the extent they have previously done so in the Proceedings and as is expressly provided in this Settlement Agreement with respect to the Proceedings;

M. AND WHEREAS the Parties consent to certification or authorization (i) of the Ontario and Quebec Proceedings as class proceedings, (ii) of the Settlement Classes and (iii) of a Common Issue in respect of each of the Ontario and Quebec Proceedings as against the Settling

Defendants for the sole purpose of implementing this Settlement Agreement and contingent on approvals by the Ontario and Quebec Courts as provided for in this Settlement Agreement, on the express understanding that such certification or authorization shall not derogate from the respective rights of the Parties in the event that this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason;

N. AND WHEREAS as a result of their settlement discussions and negotiations, the Settling Defendants and the Plaintiffs have entered into this Settlement Agreement, which embodies all of the terms and conditions of the settlement between the Settling Defendants and the Plaintiffs, both individually and on behalf of the Settlement Classes they seek to represent, subject to approval of the Ontario and Quebec Courts; and

O. AND WHEREAS the Parties intend to pursue the approval of this Settlement Agreement first through the Ontario Court;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Ontario Proceeding and BC Proceeding be settled and dismissed as against the Settling Defendants only, and the Quebec Proceeding be declared settled out of court as against the Settling Defendants, all without costs as to the Plaintiffs, the Settlement Classes they seek to represent and the Settling Defendants, subject to the approval of the Ontario and Quebec Courts, on the following terms and conditions:

#### **SECTION 1 - DEFINITIONS**

For the purpose of this Settlement Agreement only, including the recitals and schedules hereto:

- (1) *Administration Expenses* means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiffs, Class Counsel or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of notices and the costs of claims administration, but excluding Class Counsel Fees and Class Counsel Disbursements.

- (2) **Approval Hearings** means the hearings for the Ontario and Quebec Courts' approval of the settlement provided for in this Settlement Agreement.
- (3) **BC Counsel** means Camp Fiorante Matthews Mogerman.
- (4) **BC Court** means the Supreme Court of British Columbia.
- (5) **BC Plaintiff** means Jonathan Cruz.
- (6) **BC Proceeding** means the proceeding commenced by the BC Plaintiff before the BC Court that is identified in Schedule "A" to this Settlement Agreement.
- (7) **Claims Administrator** means the firm proposed by Class Counsel and appointed by the Ontario and Quebec Courts to administer the Settlement Amount in accordance with the provisions of this Settlement Agreement and the Distribution Protocol, and any employees of such firm.
- (8) **Class Counsel** means BC Counsel, Ontario Counsel and Quebec Counsel.
- (9) **Class Counsel Disbursements** include the disbursements and applicable taxes incurred by Class Counsel in the prosecution of the Proceedings, as well as any adverse costs awards issued against the Plaintiffs in any of the Proceedings.
- (10) **Class Counsel Fees** means the fees of Class Counsel, and any applicable taxes or charges thereon, including any amounts payable by Class Counsel or the Settlement Class Members to any other body or Person, including the Fonds d'aide aux actions collectives in Quebec, as a result of the Settlement Agreement.
- (11) **Class Period** means January 1, 2000 to January 1, 2012.
- (12) **Common Issue** means: Did the Settling Defendants conspire to fix, raise, maintain, and/or stabilize the price of Lithium Batteries and/or Lithium Battery Products directly or indirectly in Canada during the Class Period? If so, what damages, if any, did Settlement Class Members suffer?
- (13) **Counsel for the Settling Defendants** means Davies, Ward, Phillips & Vineberg LLP.

(14) **Courts** means the BC Court, the Ontario Court and the Quebec Court.

(15) **Defendants** means the entities named as defendants in any of the Proceedings as set out in Schedule "A" to this Settlement Agreement, and any Persons added as defendants in the Proceedings in the future. For greater certainty, Defendants includes, without limitation, the Settling Defendants and Settled Defendants.

(16) **Distribution Protocol** means the plan for distributing the Settlement Amount and accrued interest, in whole or in part, as proposed by Class Counsel and as approved by the Ontario and Quebec Courts.

(17) **Documents** means all papers, computer or electronic records, or other materials within the scope of Rule 1.03(1) and Rule 30.01(1) of the Ontario *Rules of Civil Procedure* and any copies, reproductions or summaries of the foregoing, including microfilm copies and computer images.

(18) **Effective Date** means the date of the second Final Order.

(19) **Execution Date** means the date on the cover page as of which the Parties have executed this Settlement Agreement.

(20) **Excluded Person** means each Defendant, the directors and officers of each Defendant, the subsidiaries or affiliates of each Defendant, the entities in which each Defendant or any of that Defendant's subsidiaries or affiliates have a controlling interest and the legal representatives, heirs, successors and assigns of each of the foregoing, and those Persons who validly and timely opt-out of the Proceedings in accordance with the orders of the applicable Court.

(21) **Final Order** means the final order issued and entered by each of the Ontario and Quebec Courts in respect of the approval of this Settlement Agreement.

(22) **LGC Disclosure** means: (a) the Documents and any related translations produced by the Settling Defendants in the U.S. Litigation, (b) responses to written interrogatories and any related translations served by the Settling Defendants in the U.S. Litigation, (c) transcripts of all depositions and live testimony of current or former employees, officers or directors of the

Settling Defendants, including all exhibits thereto and any related translations, taken in the U.S. Litigation, and (d) Documents and related translations produced by the Settling Defendants to the United States Department of Justice concerning the allegations raised in the Proceedings, all of the foregoing to be withheld or redacted as necessary to comply with the U.S. Protective Order.

(23) ***Lithium Batteries*** means cylindrical, prismatic or polymer batteries that are rechargeable and use lithium ion technology, excluding lithium-ion rechargeable batteries designed for use in automobiles or other vehicles.

(24) ***Lithium Battery Products*** means the following products that contain Lithium Batteries: notebook or laptop computers, cellular phones including smartphones (excluding cellular phones acquired as part of a cellular phone service contract), tablet computers, e-book readers, MP3 players, personal digital assistants, handheld GPS, handheld video players and/or lithium ion battery packs.

(25) ***Non-Settling Defendant*** means a Defendant that is not the Settling Defendants or a Settled Defendant, and includes any Defendant that terminates its own settlement agreement in accordance with its terms or whose settlement otherwise fails to take effect for any reason, whether or not such settlement agreement is in existence at the Execution Date.

(26) ***Notice of Hearing*** means the form or forms of notice, agreed to by the Plaintiffs and the Settling Defendants, or such other form or forms of notice as may be approved by the Ontario and Quebec Courts, which inform the Settlement Class of: (i) the certification or authorization of the Ontario and Quebec Proceedings as class proceedings for settlement purposes; (ii) the dates and locations of the Approval Hearings; (iii) the principal elements of the Settlement Agreement; (iv) the process by which Settlement Class Members may object to the settlement; (v) the process by which Settlement Class Members may opt-out of the Proceedings, if applicable; and (vi) the Opt-Out Deadline, if applicable.

(27) ***Ontario Counsel*** means Siskinds LLP and Sotos LLP.

(28) ***Ontario Court*** means the Ontario Superior Court of Justice.

- (29) **Ontario Plaintiffs** means Khurram Shah and Alpina Holdings Inc.
- (30) **Ontario Proceeding** means the proceeding commenced by the Ontario Plaintiffs before the Ontario Court as identified in Schedule “A” to this Settlement Agreement.
- (31) **Ontario Settlement Class** means the settlement class in respect of the Ontario Proceeding that is defined in Schedule “A” to this Settlement Agreement.
- (32) **Opt-Out Deadline** means the date which is sixty (60) days after the date on which the Notice of Hearing is first published.
- (33) **Other Actions** means actions or proceedings, other than the Proceedings, relating to some or all of the Released Claims commenced by a Settlement Class Member either before or after the Effective Date, including but not limited to *Retallick v. LG Chem, Ltd.* et al, Saskatchewan Court of Queen’s Bench (Regina Centre), Court File No. 979 of 2014.
- (34) **Party or Parties** means the Plaintiffs, Settlement Class Members (where appropriate) and the Settling Defendants.
- (35) **Person** means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, trustee, executor, beneficiary, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity and their heirs, predecessors, successors, representatives, or assignees.
- (36) **Plaintiffs** means the BC Plaintiff, the Ontario Plaintiffs, and the Quebec Plaintiff.
- (37) **Proceedings** means the BC Proceeding, the Ontario Proceeding and the Quebec Proceeding as defined in Schedule “A” to this Settlement Agreement.
- (38) **Proportionate Liability** means that proportion of any judgment that, had the Settling Defendants not settled, the Ontario Court would have apportioned to the Releasees.

(39) **Purchase Price** means the sale price paid by Settlement Class Members for Lithium Batteries and Lithium Battery Products purchased in Canada during the Class Period, less any rebates, delivery or shipping charges, taxes and any other form of discounts.

(40) **Quebec Counsel** means Belleau Lapointe, LLP.

(41) **Quebec Court** means the Superior Court of Quebec.

(42) **Quebec Plaintiff** means Option consommateurs.

(43) **Quebec Proceeding** means the proceeding commenced by the Quebec Plaintiff before the Quebec Court identified in Schedule "A" to this Settlement Agreement.

(44) **Quebec Settlement Class** means the settlement class in respect of the Quebec Proceeding that is identified in Schedule "A" to this Settlement Agreement.

(45) **Released Claims** means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, including any claims for consequential, subsequent or follow-on harm that arises after the Class Period, damages of any kind (including compensatory, punitive or other damages) whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses (including Administration Expenses), penalties, and lawyers' fees (including Class Counsel Fees), known or unknown, foreseen or unforeseen, suspected or unsuspected, actual or contingent, asserted or unasserted, accrued or unaccrued and liquidated or unliquidated, in law, under statute or in equity, that any of the Releasers ever had, now have or hereafter can, shall or may have, arising from or relating in any way to the purchase, pricing, sale, discounting, or offering of Lithium Batteries or any products containing Lithium Batteries sold directly or indirectly in Canada during the Class Period, including but not limited to, those claims that are based on, arise under or relate to allegations of an unlawful or anticompetitive conspiracy to fix, raise, maintain, and/or stabilize the price of Lithium Batteries and/or any products containing Lithium Batteries or relating to any conduct alleged or which could have been alleged in the Proceedings. However, nothing herein shall be construed to release (a) any claims based on negligence, personal injury, breach of contract, bailment, failure to deliver lost goods, damaged or delayed goods, product defects, securities or other similar claims that relate



to Lithium Batteries and/or products containing Lithium Batteries and that do not relate to alleged anticompetitive conduct; and (b) claims brought (whether before or after the Effective Date) relating to purchases of Lithium Batteries and/or products containing Lithium Batteries outside of Canada.

(46) **Releasees** means, jointly and severally, individually and collectively, the Settling Defendants, and all of their respective present and former, direct and indirect, parents, owners, subsidiaries, divisions, affiliates, associates (as defined in the *Canada Business Corporations Act*, RSC 1985, c. C-44), partners, joint ventures, franchisees, dealers, insurers, and all other Persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and all of their respective past, present and future officers, directors, employees, agents, mandataries, shareholders, attorneys, trustees, servants and representatives, members, managers and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing, excluding always the Non-Settling Defendants and any affiliates of the Non-Settling Defendants.

(47) **Releasors** means, jointly and severally, individually and collectively, the Plaintiffs and the Settlement Class Members, on behalf of themselves and any Person or entity claiming by or through them as a parent, subsidiary, affiliate, predecessor, successor, shareholder, partner, director, owner of any kind, agent, principal, employee, contractor, attorney, heir, executor, administrator, insurer, devisee, assignee, or representative of any kind.

(48) **Settled Defendants** means:

- (a) NEC Corporation, NEC Tokin Corporation, Samsung SDI Co., Ltd, Samsung SDI America, Inc., Sony Corporation, Sony Energy Devices Corporation, Sony Electronics, Inc. and Sony of Canada Ltd. provided their respective settlement agreements are finally approved by the Ontario and Quebec Courts, as applicable, and become effective in accordance with their terms; and
- (b) any Defendant that executes its own settlement agreement whether before or after this Settlement Agreement, which settlement agreement is finally approved by the necessary Courts and becomes effective in accordance with its terms.

- (49) **Settlement Agreement** means this agreement, including the recitals and schedules.
- (50) **Settlement Amount** means the sum of three million nine hundred thousand U.S. dollars (USD \$3,900,000).
- (51) **Settlement Class** means, in respect of each of the Ontario and Quebec Proceedings, the settlement class defined in Schedule A.
- (52) **Settlement Class Member** means a member of a Settlement Class.
- (53) **Settling Defendants** means LG Chem, Ltd. and LG Chem America, Inc.
- (54) **Trust Account** means a guaranteed investment vehicle, liquid money market account or equivalent security with a rating equivalent to or better than that of a Canadian Schedule I bank (a bank listed in Schedule I of the *Bank Act*, SC 1991, c 46) held at a Canadian financial institution under the control of Siskinds LLP or the Claims Administrator, once appointed, for the benefit of the Settlement Class Members or the Settling Defendants, as provided for in this Settlement Agreement.
- (55) **U.S. Litigation** means the class action proceeding pending in the United States District Court for the Northern District of California, under the caption *In Re: Lithium Ion Batteries Antitrust Litigation*, 13-MDL-2420, and includes all actions transferred by the Judicial Panel for Multidistrict Litigation for coordination, all actions pending such transfer, and all actions that may be transferred in the future.
- (56) **U.S. Protective Order** means the Stipulated Protective Order governing the production and exchange of confidential information issued in the U.S. Litigation on May 17, 2013.
- (57) **U.S. Settlement Agreements** means any settlement reached with the Settling Defendants in the U.S. Litigation.

## **SECTION 2 - SETTLEMENT APPROVAL**

### **2.1 Best Efforts**

(1) The Parties shall use their best efforts to implement this settlement and to secure the final dismissal with prejudice of the Ontario Proceeding and BC Proceeding as against the Settling Defendants and a notice of settlement out of court of the Quebec Proceeding as against the Settling Defendants.

### **2.2 Motions for Approval**

(1) As soon as practical after the Settlement Agreement is executed, the Ontario and Quebec Plaintiffs shall bring motions before the Ontario and Quebec Courts for orders certifying or authorizing the Ontario and Quebec Proceedings, as applicable, as a class proceeding (for settlement purposes) as against the Settling Defendants, and then approving this Settlement Agreement. The Ontario motions shall be filed first and, to the extent practicable, heard before the Quebec motions.

(2) The form of orders referred to in section 2.2(1) shall be as agreed to by the Ontario and Quebec Plaintiffs and Settling Defendants or in such form or manner as approved by the Ontario and Quebec Courts.

(3) This Settlement Agreement shall only become final on the Effective Date.

### **2.3 Pre-Motion Confidentiality**

(1) Until the first of the motions required by section 2.2 is brought, the Parties shall keep all of the terms of the Settlement Agreement confidential and shall not disclose them without the prior consent of Counsel for the Settling Defendants or Class Counsel, as the case may be, except as required for the purposes of financial reporting or the preparation of financial records (including tax returns and financial statements), as otherwise required by law, or as otherwise required to give effect to the terms of this Settlement Agreement.

### SECTION 3 - SETTLEMENT BENEFITS

#### 3.1 Payment of Settlement Amount

(1) Within forty five (45) days of the Execution Date, the Settling Defendants shall pay the Settlement Amount to Siskinds LLP for deposit into the Trust Account, the details of which are attached in Confidential Schedule B. The Settlement Amount shall be converted into Canadian currency upon deposit into the Trust Account.

(2) The Settling Defendants shall deposit the Settlement Amount into the Trust Account by wire transfer. Siskinds LLP shall provide the necessary wire transfer information to Counsel for the Settling Defendants with reasonable advance notice so that the Settling Defendants have a reasonable period of time to comply with section 3.1(1) of this Settlement Agreement.

(3) The Settlement Amount and other consideration to be provided in accordance with the terms of this Settlement Agreement shall be provided in full satisfaction of the Released Claims against the Releasees.

(4) The Settlement Amount shall be all-inclusive of all amounts, including without limitation, interest, costs, Class Counsel Fees and Class Counsel Disbursements.

(5) The Releasees shall have no obligation to pay any amount in addition to the Settlement Amount, for any reason, pursuant to or in furtherance of this Settlement Agreement or the Proceedings or any Other Actions.

(6) Once a Claims Administrator has been appointed, Siskinds LLP shall transfer control of the Trust Account to the Claims Administrator.

(7) Siskinds LLP and the Claims Administrator shall maintain the Trust Account as provided for in this Settlement Agreement. While in control of the Trust Account, Siskinds LLP and the Claims Administrator shall not pay out all or part of the monies in the Trust Account, except in accordance with this Settlement

Agreement, or in accordance with an order of the Ontario and Quebec Courts obtained after notice to the Parties.

### **3.2 Taxes and Interest**

(1) Except as hereinafter provided, all interest earned on the Settlement Amount in the Trust Account shall accrue to the benefit of the Settlement Classes and shall become and remain part of the Trust Account.

(2) Subject to section 3.2(3), all taxes payable on any interest which accrues on the Settlement Amount in the Trust Account or otherwise in relation to the Settlement Amount shall be paid from the Trust Account. Class Counsel or the Claims Administrator shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount in the Trust Account, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned by the Settlement Amount shall be paid from the Trust Account.

(3) The Settling Defendants shall have no responsibility to make any filings relating to the Trust Account and will have no responsibility to pay tax on any income earned by the Settlement Amount or pay any taxes on the monies in the Trust Account, unless this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason, in which case the interest earned on the Settlement Amount in the Trust Account or otherwise shall be paid to the Settling Defendants who, in such case, shall be responsible for the payment of all taxes on such interest not previously paid by Class Counsel or the Claims Administrator.

## SECTION 4 - COOPERATION

### 4.1 Extent of Cooperation

- (1) Within sixty (60) days of the Effective Date, or at a time mutually agreed upon by the Parties, and subject to any confidentiality order in the Proceedings and the other provisions of this Settlement Agreement, the Settling Defendants shall, insofar as such production has not already been made and production is not prohibited by law, use reasonable efforts to:
  - (a) Produce the LGC Disclosure;
  - (b) Identify by way of Bates stamp numbers, if such numbering already exists, any Settling Defendants' Documents within the LGC Disclosure that the Settling Defendants believe may support the claims currently made in the Ontario and Quebec Proceedings and/or that show the Settling Defendants' Lithium Batteries sales, pricing, capacity or production;
  - (c) Provide reasonable assistance to Class Counsel in understanding the Lithium Batteries transactional sales, production and cost data produced by the Settling Defendants in the LGC Disclosure, including a reasonable number of written and/or telephonic communications with Class Counsel; and
  - (d) Provide electronic copies, if available, of any Documents relating to the Settling Defendants' Canadian sales of Lithium Batteries which were considered by the Settling Defendants in the negotiation of this Settlement Agreement, if not already included in the LGC Disclosure.
- (2) The obligation to produce Documents pursuant to section 4.1(1) shall be a continuing obligation to the extent additional Documents are produced in the U.S. Litigation by the Settling Defendants following the initial productions pursuant to this Settlement Agreement.

(3) The Settling Defendants make no representation regarding and shall bear no liability with respect to the accuracy of or that they have, can or will produce a complete set of any of the Documents described in section 4.1(1), and the failure to do so shall not constitute a breach or violation of this Settlement Agreement.

(4) Documents provided to Class Counsel in accordance with section 4.1(1) shall, to the extent possible, be provided in the format agreed upon in the Discovery Plan implemented in the Ontario Proceeding.

(5) The Settling Defendants further agree, at the request of Class Counsel, upon reasonable notice, and subject to any legal restrictions, to make reasonable efforts to make available at a mutually convenient time, up to two (2) current employees of the Settling Defendants who have knowledge of the allegations in the Ontario and Quebec Proceedings to provide information regarding the allegations raised in the Ontario and Quebec Proceedings in a personal interview with Class Counsel and/or experts retained by Class Counsel. The employees shall be made available in Canada or such other place as agreed to by Counsel for the Settling Defendants and Class Counsel. Costs incurred by, and expenses of, the employees of the Settling Defendants in relation to such interviews and costs of an interpreter or otherwise related to foreign language translation in connection with such interviews shall be the responsibility of the Settling Defendants. If an employee refuses to provide information or otherwise cooperate, the Settling Defendants shall use reasonable efforts to make him/her available for an interview with Class Counsel and/or experts retained by Class Counsel. The failure of an employee to agree to make him or herself available, or to otherwise cooperate, with the Plaintiffs shall not constitute a violation of this Settlement Agreement. Any such interviews shall not exceed six hours.

(6) The Settling Defendants further agree to make reasonable best efforts to make available up to two (2) current employees of the Settling Defendants who have knowledge of the allegations in the Ontario and Quebec Proceedings to provide evidence at the trials of the Ontario and Quebec Proceedings in Canada,

or to provide an affidavit or declaration and attend at a cross-examination in support of summary judgment motions in the Ontario and Quebec Proceedings. The failure or refusal of any such employee to agree to make him or herself available, to provide testimony, to provide an affidavit or declaration, to attend at a cross-examination or to otherwise cooperate with the Plaintiffs shall not constitute a breach or violation of the obligations of the Settling Defendants under this Settlement Agreement, and shall not provide any basis for the termination of this Settlement Agreement, so long as the Settling Defendants comply with their obligations under this section.

(7) Subject to the rules of evidence, any court order with regard to confidentiality and the other provisions of this Settlement Agreement, the Settling Defendants agree to use reasonable efforts to provide affidavits for use at trial or otherwise in the Ontario and Quebec Proceedings for the purpose of supporting the submission into evidence in the Ontario and Quebec Proceedings of any information, transactional data and/or Documents provided by the Settling Defendants in accordance with this Settlement Agreement and for the prosecution of the Ontario and Quebec Proceedings. If, and only if, a Court should determine that affidavits are inadequate for the purpose of submitting into evidence such information, transactional data and/or Documents produced by the Settling Defendants, the Settling Defendants agree to use reasonable efforts to make available for testimony at trial or otherwise appropriate current employees of the Settling Defendants, as is reasonably necessary for the prosecution of the Ontario and Quebec Proceedings and, specifically, for the purpose of admitting into evidence such information, transactional data and/or Documents provided by the Settling Defendants pursuant to section 4.1 herein. The Plaintiffs will work to minimize any burden on the Settling Defendants pursuant to this section.

(8) Nothing in this Settlement Agreement shall require or be construed to require the Settling Defendants, or any of their present, former or future officers, directors or employees, to perform any act, including the transmittal or disclosure



of any information, which would violate the law of this or any other jurisdiction, or any court order (including the U.S. Protective Order).

(9) Nothing in this Settlement Agreement shall require, or shall be construed to require, the Settling Defendants or any representative or employee of the Settling Defendants to disclose or produce any Documents or information prepared by or for Counsel for the Settling Defendants, or that is not within the possession, custody or control of the Settling Defendants, or to disclose or produce any Documents or information in breach of any order, regulatory directive, rule or law of this or any jurisdiction, or subject to solicitor-client privilege, litigation privilege, or any other privilege, or to disclose or produce any information or Documents they obtained on a privileged or co-operative basis from any party to any action or proceeding who is not a Releasee.

(10) If any Documents protected by any privilege and/or any privacy law or other order, regulatory directive, rule or law of this or any applicable jurisdiction including but not limited to Canada and the United States are accidentally or inadvertently produced, such Documents shall be promptly returned to the Settling Defendants and the Documents and the information contained therein shall not be disclosed or used directly or indirectly, except with the express written permission of the Settling Defendants, and the production of such Documents shall in no way be construed to have waived in any manner any privilege or protection attached to such Documents.

(11) The Settling Defendants' obligations to cooperate as particularized in this section shall not be affected by the release provisions in section 7 of this Settlement Agreement. Unless this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, the Settling Defendants' obligations to cooperate shall cease at the date of the Plaintiffs' settlement with all Non-Settling Defendants, or final judgment in the Ontario and Quebec Proceedings against all Non-Settling Defendants.

(12) In the event that the Settling Defendants materially breach this section 4.1, the Ontario and Quebec Plaintiffs may move before the appropriate Court to enforce the terms of this Settlement Agreement.

(13) The Settlement Agreement does not abrogate any subpoena rights that the Plaintiffs have in respect of the current or former officers, directors and/or employees of the Settling Defendants.

(14) Subject to sections 4.1 (12) and (13), the provisions set forth in this section 4.1 are the exclusive means by which the Plaintiffs, the Settlement Class Members and Class Counsel may obtain discovery, information, or Documents from the Settling Defendants or their current or former officers, directors or employees. The Plaintiffs, the Settlement Class Members and Class Counsel agree that they shall not pursue any other means of discovery against, or seek to compel the evidence of, the Settling Defendants or their current or former officers, directors, employees, agents, or counsel, whether in Canada or elsewhere and whether under the rules or laws of this or any other Canadian or foreign jurisdiction.

(15) A material factor influencing the Settling Defendants' decision to execute this Settlement Agreement is their desire to limit the burden and expense of this litigation. Accordingly, the Plaintiffs and Class Counsel agree to exercise good faith in seeking cooperation from the Settling Defendants, agree not to seek information that is unnecessary, cumulative or duplicative and agree otherwise to avoid imposing undue, unreasonable or disproportionate burden or expense on the Settling Defendants.

(16) The scope of the Settling Defendants' cooperation under this Settlement Agreement shall be limited to the allegations asserted in the Proceedings as presently filed, subject to the requirements of 4.1(1).

#### **4.2 Limits on Use of Documents**

(1) It is understood and agreed that all Documents and information made available or provided by the Settling Defendants to the Plaintiffs and Class Counsel under this Settlement Agreement shall be used only in connection with the prosecution of the claims in the Proceedings, and shall not be used directly or indirectly for any other purpose, except to the extent that the Documents or information are or become publicly available. For greater certainty, the Quebec Plaintiff can use the Documents and information produced by the Settling Defendants in the Ontario Proceeding for the purpose of prosecuting the claims in the Quebec Proceeding from and after the Execution Date, subject to the obligations under this Settlement Agreement, including those set out in section 4.2(4). Once a confidentiality order is issued in the Ontario Proceeding, Quebec Counsel shall obtain a parallel confidentiality order from the Quebec Court as soon as is reasonably possible. The Plaintiffs and Class Counsel agree they will not disclose the Documents and information provided by the Settling Defendants beyond what is reasonably necessary for the prosecution of the Proceedings or as otherwise required by law, except to the extent that the Documents or information are or become publicly available. Subject to the foregoing, Class Counsel shall take reasonable precautions to ensure and maintain the confidentiality of such Documents and information, and of any work product of Class Counsel that discloses such Documents and information.

(2) If the Plaintiffs intend to produce or file in the Proceedings any Documents or other information provided by the Settling Defendants as cooperation under the Settlement Agreement (and such disclosure is not otherwise prohibited by the Settlement Agreement) which were designated as Confidential or Highly Confidential under the U.S. Protective Order or which, at the time of being provided, were marked or designated by the Settling Defendants as “Confidential — Subject to Procedure Under Section 4.2(2) of the Settlement Agreement,” and there is not already a confidentiality order issued in the Proceedings that applies to the Documents and information provided as

cooperation by the Settling Defendants, Class Counsel shall provide the Settling Defendants with an advance description of the Documents or other information sought to be produced or filed at least thirty (30) days in advance of the proposed production or filing, in order that the Settling Defendants may intervene for the purposes of obtaining a sealing or confidentiality order or similar relief. The Plaintiffs and Class Counsel shall not produce or file the confidential information or Documents until the Settling Defendants' motion has been decided and all applicable appeal periods have expired except, so as not to delay prosecution of the Proceedings, Class Counsel may provide, on an interim basis, Documents or information to counsel for the Non-Settling Defendants provided that counsel for the Non-Settling Defendants agree and give assurances that they will keep the Documents or information on an external-counsel only basis until the Settling Defendants' motion has been decided and all applicable appeal periods have expired.

(3) In the event that a Person requests disclosure of Documents or information provided by the Settling Defendants as cooperation under this Settlement Agreement which were designated as Confidential or Highly Confidential under the U.S. Protective Order or which, at the time of being provided, were marked or designated by the Settling Defendants as "Confidential — Subject to Procedure Under Section 4.2(2) of the Settlement Agreement", whether or not the Person applies for an order requiring the Plaintiffs to disclose or produce any Documents or other information, and there is not already a confidentiality order issued in the Proceedings that applies to the Documents and information provided as cooperation by the Settling Defendants, Class Counsel shall provide notice to the Settling Defendants promptly upon becoming aware of it in order that the Settling Defendants may intervene to oppose such disclosure or production. In no circumstances shall the Plaintiffs or Class Counsel apply for or consent to such an application for disclosure or production. The Plaintiffs and Class Counsel shall not disclose the confidential information or Documents until the Settling Defendants' motion has been decided and all applicable appeal periods have expired, except: (i) to the extent such information or Documents are or become

otherwise publicly available; (ii) as ordered to do so by a Court; or (iii) in the event that the Person making the request is a Non-Settling Defendant, so as not to delay prosecution of the Proceedings, Class Counsel may provide, on an interim basis, Documents or information to counsel for the Non-Settling Defendant provided that counsel for the Non-Settling Defendant agrees and give assurances that it will keep the Documents or information on an external-counsel only basis until the Settling Defendants' motion has been decided and all applicable appeal periods have expired.

(4) Notwithstanding any other provision of this Settlement Agreement, until such time as a confidentiality order is in place in the Ontario and Quebec Proceedings that applies to the Documents and information provided as cooperation by the Settling Defendants, Class Counsel shall treat any Documents received from the Settling Defendants and designated as Confidential or Highly Confidential in accordance with the provisions of the U.S. Protective Order. Once a confidentiality order(s) is issued in the Ontario and Quebec Proceedings, that order(s) shall govern any Documents and information received from the Settling Defendants.

## **SECTION 5 - OPTING-OUT**

### **5.1 Procedure**

(1) If Settlement Class Members have not previously been afforded an opportunity to opt-out of the Proceedings, Class Counsel will seek approvals from the Ontario and Quebec Courts of the following opt-out process as part of the orders certifying or authorizing the Ontario and Quebec Proceedings as class proceedings for settlement purposes:

- (a) Persons in Canada (excluding Quebec) seeking to opt-out of the Ontario Proceeding must do so by sending a written election to opt-out, signed by the Person or the Person's designee, by pre-paid mail, courier, fax or email to Class Counsel at an address to be identified in the Notice of Hearing. Persons in Quebec seeking to

opt-out of the Quebec Proceeding must do so by sending a written election to opt-out, signed by the Person or the Person's designee, to the Quebec Court clerk.

- (b) An election to opt-out sent by mail or courier will only be valid if it is postmarked on or before the Opt-Out Deadline to the designated address in the Notice of Hearing. Where the postmark is not visible or legible, the election to opt-out shall be deemed to have been postmarked four (4) business days prior to the date that it is received by Class Counsel.
- (c) The written election to opt-out must contain the following information in order to be valid:
  - (A) the Person's full name, current address and telephone number;
  - (B) if the Person seeking to opt-out is a corporation, the name of the corporation and the position of the Person submitting the request to opt-out on behalf of the corporation;
  - (C) a statement to the effect that the Person wishes to be excluded from the Proceedings; and
  - (D) only in respect of Persons in Canada (excluding Quebec) seeking to opt-out of the Ontario Proceeding, the reason(s) for opting out.
- (d) Any putative Settlement Class Member who validly opts-out of the Proceedings shall be excluded from the Proceedings and the Settlement Class and shall no longer participate or have the opportunity to participate in the Proceedings or to share in the distribution of any funds received as a result of a judgment or settlement in the Proceedings in the future.

- (e) Any putative Settlement Class Member who does not validly opt-out in the manner and time prescribed above, shall be deemed to have elected to participate in the Proceedings and no further right to opt-out of the Proceedings will be provided in the future.
- (f) Within thirty (30) days of the Opt-Out Deadline, Ontario Class Counsel shall provide to the Defendants in the Ontario Proceeding a report containing the names of each Person who has validly and timely opted out of the Ontario Proceeding, the reasons for the opt-out, if known, and a summary of the information delivered by such Persons pursuant to section 5.1(1)(a).
- (g) Quebec Class Members who have commenced an Other Action or commence an Other Action and fail to discontinue such Other Action by the Opt-Out Deadline shall be deemed to have opted out.

## **SECTION 6 - NON-APPROVAL OR TERMINATION OF SETTLEMENT AGREEMENT**

### **6.1 Right of Termination**

- (1) In the event that:
  - (a) the Ontario or Quebec Court declines to certify or authorize the Ontario or Quebec Proceeding, as applicable, for settlement purposes as against the Settling Defendants or does so in a materially modified form;
  - (b) the Ontario Court or BC Court declines to dismiss the Ontario or BC Proceeding, as applicable, as against the Settling Defendants, or the Quebec Court declines to declare settled out of court the Quebec Proceeding as against the Settling Defendants;
  - (c) the Ontario or Quebec Court declines to approve this Settlement Agreement or any material part hereof;

- (d) the Ontario or Quebec Court approves this Settlement Agreement in a materially modified form;
- (e) the Ontario or Quebec Court issues a settlement approval order that is materially inconsistent with the terms of the Settlement Agreement; including that the Ontario settlement approval order does not include the following language:

(1) THIS COURT ORDERS that, upon the Effective Date, each member of the Ontario Settlement Class shall be deemed to have consented to the dismissal as against the Releasees of any Other Actions he, she or it has commenced, without costs and with prejudice, and

(2) THIS COURT ORDERS that, upon the Effective Date, each Other Action commenced in Ontario by any member of the Ontario Settlement Class shall be and is hereby dismissed against the Releasees, without costs and with prejudice.

- (f) any orders approving this Settlement Agreement made by the Ontario or Quebec Courts do not become Final Orders;
- (g) the Settlement Amount is not paid in accordance with section 3.1(1); or
- (h) the Ontario and/or Quebec Court does not approve an opt-out procedure the same as or substantially similar to the procedure set out in Section 5.1 of this Settlement Agreement.

the Plaintiffs and the Settling Defendants shall each have the right to terminate this Settlement Agreement (except that only the Settling Defendants shall have the right to terminate under subsection (b) above and only the Plaintiffs shall have the right to terminate under subsection (g) above) by delivering a written notice pursuant to section 14.17, within thirty (30) days following an event described above.

- (2) Except as provided for in section 6.3, if the Settling Defendants or the Plaintiffs exercise their right to terminate, the Settlement Agreement shall be null



and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation or in any other way for any reason.

(3) Any order, ruling or determination made (or rejected) by any Court with respect to Class Counsel Fees or Document confidentiality shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not provide any basis for the termination of this Settlement Agreement.

## **6.2 If Settlement Agreement is Terminated**

(1) If this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason:

- (a) no motion to certify or authorize the Ontario or Quebec Proceeding as a class proceeding on the basis of this Settlement Agreement, or to approve this Settlement Agreement, which has not been decided, shall proceed;
- (b) the Parties will cooperate in seeking to have any issued order certifying or authorizing a Proceeding as a class proceeding on the basis of the Settlement Agreement or approving this Settlement Agreement set aside and declared null and void and of no force or effect, and any Person shall be estopped from asserting otherwise;
- (c) any prior certification or authorization of the Ontario or Quebec Proceeding as a class proceeding on the basis of this Settlement Agreement, including the definitions of the Settlement Class and the Common Issue, shall be without prejudice to any position that any of the Parties or Releasees may later take on any issue in the Proceedings or any Other Actions or other litigation; and
- (d) within ten (10) days of such termination having occurred, Class Counsel shall destroy all Documents and other materials provided

by the Settling Defendants pursuant to this Settlement Agreement or containing or reflecting information derived from such Documents or other materials received from the Settling Defendants and, to the extent Class Counsel has disclosed any Documents or information provided by the Settling Defendants to any other Person, shall endeavor to recover and destroy such Documents or information. Class Counsel shall provide Counsel for the Settling Defendants with a written certification by Class Counsel of such destruction. Nothing contained in this section 6.2 shall be construed to require Class Counsel to destroy any of their work product. However, any Documents or information provided by the Settling Defendants, or received from the Settling Defendants in connection with this Settlement Agreement, may not be disclosed to any Person in any manner or used, directly or indirectly, by Class Counsel or any other Person in any way for any reason, without the express prior written permission of the Settling Defendants. Class Counsel shall take appropriate steps and precautions to ensure and maintain the confidentiality of such Documents and information and any work product of Class Counsel derived from such Documents or information.

(2) If the Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, Siskinds LLP shall, within thirty (30) business days of the written notice advising that the Settlement Agreement has been terminated in accordance with its terms, return to the Settling Defendants the Settlement Amount, plus all accrued interest thereon, less taxes paid on interest, less any costs actually incurred or payable with respect to the notices required by section 11.1, and less any costs of translation required by section 14.11 that have actually been incurred or are payable.

**6.3 Survival of Provisions After Non-Approval of Settlement Agreement**

(1) If this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, the provisions of sections 3.2(3), 6.1(2), 6.2, 9.1, 9.2 and 11.1 and the definitions and schedules applicable thereto shall survive the termination and continue in full force and effect. The definitions and schedules shall survive only for the limited purpose of the interpretation of sections 3.2(3), 6.1(2), 6.2, 9.1, 9.2 and 11.1 within the meaning of this Settlement Agreement, but for no other purposes. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

**SECTION 7- RELEASES AND DISMISSALS**

**7.1 Release of Releasees**

(1) Upon the Effective Date, subject to section 7.3 and in consideration of payment of the Settlement Amount, and for other valuable consideration set forth in the Settlement Agreement, the Releasers forever and absolutely release the Releasees from the Released Claims that any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have.

(2) The Plaintiffs and Settlement Class Members acknowledge that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true regarding the subject matter of the Settlement Agreement, and it is their intention to release fully, finally and forever all Released Claims and, in furtherance of such intention, this release shall be and remain in effect notwithstanding the discovery or existence of different facts.

**7.2 Release by Releasees**

(1) Upon the Effective Date, each Releasee forever and absolutely releases each of the other Releasees from any and all claims for contribution or indemnity with respect to the Released Claims.

### **7.3 Covenant Not To Sue**

(1) Notwithstanding section 7.1, upon the Effective Date, for any Settlement Class Members resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the Releasors do not release the Releasees, but instead covenant and undertake not to make any claim in any way or to threaten, commence, institute, prosecute, participate in, maintain or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims, whether on their own behalf or as part of any putative, purported or certified class of purchasers or consumers.

### **7.4 No Further Claims**

(1) Upon the Effective Date, Releasors shall not now or hereafter institute, provide assistance for, continue, maintain, intervene in or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any action, proceeding, cause of action, claim or demand against any Releasee or any other Person who may claim contribution or indemnity or other claims over relief from any Releasee, whether pursuant to the *Negligence Act*, RSO 1990, c. N. 1 or other legislation or at common law or equity, in respect of any Released Claim, except for the continuation of the Ontario and Quebec Proceedings against the Non-Settling Defendants or named or unnamed co-conspirators that are not Releasees or, if the Ontario and Quebec Proceedings are not certified or authorized with respect to the Non-Settling Defendants, the continuation of the claims asserted in the Ontario and Quebec Proceedings on an individual basis or otherwise against any Non-Settling Defendant or named or unnamed co-conspirator that is not a Releasee. For greater certainty and without limiting the generality of the foregoing, the Releasors shall not assert or pursue a Released Claim, against any Releasee under the laws of any foreign jurisdiction.

**7.5 Dismissal of the Proceedings**

(1) On the Effective Date, the BC Proceeding and the Ontario Proceeding shall be dismissed, with prejudice and without costs, as against the Settling Defendants.

(2) Upon the Effective Date, the Quebec Proceeding shall be declared settled out of court, without costs, as against the Settling Defendants, and the Parties shall sign and file a notice of settlement out of court with the Quebec Court.

**7.6 Dismissal of Other Actions**

(1) Upon the Effective Date, each Ontario Settlement Class Member shall be deemed to irrevocably consent to the dismissal, without costs, with prejudice and without reservation, of his, her or its Other Actions against the Releasees.

(2) Upon the Effective Date, all Other Actions commenced by an Ontario Settlement Class Members shall be dismissed against the Releasees, without costs, with prejudice and without reservation, and Class Counsel (i) shall, at their cost, obtain orders from the Ontario and BC Courts confirming same in respect of all Other Actions commenced in British Columbia and Ontario, and (ii) if requested by the Settling Defendants, take the reasonably necessary steps to seek an order finally staying or dismissing or otherwise finally resolving any Other Actions commenced in a province other than British Columbia and Ontario.

**7.7 Claims Against Other Entities Reserved**

(1) Except as provided herein, this Settlement Agreement does not settle, compromise, release or limit in any way whatsoever any claim by Settlement Class Members against any Person other than the Releasees.

**7.8 Material Term**

(1) For the avoidance of doubt and without in any way limiting the ability of the Parties to assert that other terms in this Settlement Agreement are material terms (subject to section 6.1(3)), the releases, covenants, dismissals, granting of

consent, and reservations of rights contemplated in this section 7 shall be considered a material term of the Settlement Agreement and the failure of any Court to approve the releases, covenants, dismissals, granting of consent, and reservations of rights contemplated herein shall give rise to a right of termination pursuant to section 6.1 of the Settlement Agreement.

## **SECTION 8 - BAR ORDER AND DECLARATION OF RENUNCIATION**

### **8.1 Ontario Bar Order**

(1) The Plaintiffs, Class Counsel and the Settling Defendants agree that the Ontario order approving this Settlement Agreement must include a bar order from the Ontario Court providing for the following:

- (a) all claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Proceedings or any Other Actions, or otherwise, by any Non-Settling Defendant, any named or unnamed co-conspirator that is not a Releasee, any Settled Defendant or any other Person or party against a Releasee, or by a Releasee against any Non-Settling Defendant, any named or unnamed co-conspirator that is not a Releasee, any Settled Defendant, or any other Person or party, are barred, prohibited and enjoined in accordance with the terms of this section (unless such claim is made in respect of a claim by a Person who has validly opted out of the Proceedings);
- (b) if the Ontario Court ultimately determines that a claim for contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise is a legally recognized claim:

(A) the Ontario Plaintiffs and Settlement Class Members shall not be entitled to claim or recover from the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person

or party that is not a Releasee that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise;

(B) the Ontario Plaintiffs and Settlement Class Members shall limit their claims against the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee to include only, and shall only seek to recover from the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee, those claims for damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest, and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) attributable to the aggregate of the several liability of the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee to the Ontario Plaintiffs and Ontario Settlement Class Members, if any, and, for greater certainty, the Ontario Settlement Class Members shall be entitled to claim and seek to recover on a joint and several basis as between the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee, if permitted by law; and

(C) the Ontario Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the Ontario Proceeding, whether or not the Releasees remain in the Ontario Proceeding or appear at the trial or other disposition, and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the relevant

Proceeding and any determination by the Ontario Court in respect of the Proportionate Liability of the Releasees shall only apply in the relevant Proceeding and shall not be binding on the Releasees in any other proceeding;

- (c) for the purposes of sections 8.1(d)-(i), “Non-Settling Defendants” refers to the Non-Settling Defendants that are named as Defendants in the Ontario Proceeding;
- (d) a Non-Settling Defendant may, on application to the Ontario Court determined as if the Settling Defendants remained parties to the Ontario Proceeding, and on at least twenty (20) days’ notice to Counsel for the Settling Defendants, and not to be brought unless and until the Ontario Proceeding against the Non-Settling Defendants has been certified and all appeals or times to appeal certification have been exhausted, seek orders for the following:
  - (D) documentary discovery and an affidavit of Documents from the Settling Defendants in accordance with the Ontario *Rules of Civil Procedure*;
  - (E) oral discovery of a representative of the Settling Defendants, the transcript of which may be read in at trial;
  - (F) leave to serve a request to admit on the Settling Defendants in respect of factual matters; and/or
  - (G) the production of a representative of the Settling Defendants to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.
- (e) the Settling Defendants retain all rights to oppose any application brought pursuant to section 8.1(1)(d), including any such application brought at trial seeking an order requiring the Settling Defendants to produce a



representative to testify at trial. Moreover, nothing herein restricts the Settling Defendants from seeking a protective order to maintain confidentiality and protection of proprietary information in respect of Documents to be produced and/or for information obtained from discovery in accordance with section 8.1(1)(d);

- (f) on any application brought pursuant to section 8.1(1)(d), the Ontario Court may make such orders as to costs and other terms as it considers appropriate;
- (g) to the extent that such an order is granted and discovery is provided to a Non-Settling Defendant, a copy of all discovery provided, whether oral or documentary in nature, shall be provided by the Settling Defendants to Class Counsel within ten (10) days of such discovery being provided to a Non-Settling Defendant, excluding copies of any Documents or information already provided by the Settling Defendants to Class Counsel;
- (h) the Ontario Court will retain an ongoing supervisory role over the discovery process and the Settling Defendants will attorn to the jurisdiction of the Ontario Court for this purpose; and
- (i) a Non-Settling Defendant may effect service of the application(s) referred to in section 8.1(1)(d) on a Settling Defendant by service on Counsel for the Settling Defendants in the Ontario Proceeding.

## **8.2 Quebec Declaration of Renunciation of Benefit of Solidarity**

(1) The Plaintiffs, Class Counsel and the Settling Defendants agree that the Quebec order approving this Settlement Agreement must include a declaration by the Quebec Court that the Quebec Plaintiff and Settlement Class Members have renounced the benefit of solidarity. The declaration obtained will provide the following:

- (a) the Quebec Plaintiff and Settlement Class Members expressly waive and renounce the benefit of solidarity against the Non-Settling Defendants or any other Person with respect to the facts, deeds or other conduct of the Releasees relating to the Released Claims;
- (b) the Quebec Plaintiff and Settlement Class Members shall henceforth only be able to claim and recover damages, including punitive damages, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) attributable to the conduct of the Non-Settling Defendants, the sales by the Non-Settling Defendants, and/or other applicable measure of proportionate liability of the Non-Settling Defendants;
- (c) any claims in warranty, recursory action, forced intervention or any other claim or joinder of parties to obtain any contribution or indemnity from the Releasees or relating to the Released Claims shall be inadmissible and void in the context of the Quebec Proceeding; and
- (d) the ability of Non-Settling Defendants to seek discovery from the Settling Defendants shall be determined according to the provisions of the *Code of Civil Procedure of Quebec*, and the Settling Defendants shall retain and reserve all of their rights to oppose such discovery under the *Code of Civil Procedure of Quebec*.

### **8.3 Material Term**

- (1) For the avoidance of doubt and without in any way limiting the ability of the Parties to assert that other terms in this Settlement Agreement are material terms (subject to section 6.1(3)), the Parties acknowledge that the bar orders and the declaration of renunciation of the benefit of solidarity contemplated herein shall be considered a material term of the Settlement Agreement and the failure of the Ontario or Quebec Court to approve the bar orders or to declare the

renunciation of the benefit of solidarity contemplated herein shall give rise to a right to termination pursuant to section 6.1 of the Settlement Agreement.

## **SECTION 9 - EFFECT OF SETTLEMENT**

### **9.1 No Admission of Liability**

(1) The Plaintiffs and the Releasees expressly reserve all of their rights if this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason. Further, whether or not this Settlement Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, Documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by the Releasees, or of the truth of any of the claims or allegations contained in the Proceedings or any Other Actions or any other pleading filed by the Plaintiffs.

### **9.2 Agreement Not Evidence**

(1) The Parties agree that, whether or not it is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, Documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to approve and/or enforce this Settlement Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law or as provided in this Settlement Agreement.

### **9.3 No Further Litigation**

(1) No Class Counsel, nor anyone currently or hereafter employed by, or a partner with Class Counsel, may directly or indirectly participate or be involved in or in any way assist with respect to any claim made or action commenced by any Person against the Releasees that relates to or arises from the Released Claims, except in relation to the continued prosecution of the Ontario and Quebec Proceedings against any Non-Settling Defendant or unnamed co-conspirators that are not Releasees or, if the Ontario and Quebec Proceedings are not certified or authorized, the continuation of the claims asserted in the Ontario and Quebec Proceedings on an individual basis or otherwise against any Non-Settling Defendant or unnamed co-conspirator that is not a Releasee. Moreover, neither Class Counsel, nor anyone currently or hereafter employed by, or a partner with Class Counsel, may divulge to anyone for any purpose, or use for any purpose, any information obtained in the course of the Proceedings or the negotiation and preparation of this Settlement Agreement, except to the extent that such information is or becomes otherwise publicly available or unless ordered to do so by a court in Canada, or in the case of information obtained in the course of the Proceedings, for the purposes of the continued prosecution of the Ontario and Quebec Proceedings against any Non-Settling Defendant or unnamed co-conspirators that are not Releasees or, if the Ontario and Quebec Proceedings are not certified or authorized, the continuation of the claims asserted in the Ontario and Quebec Proceedings on an individual basis or otherwise against any Non-Settling Defendant or unnamed co-conspirator that is not a Releasee.

(2) For greater certainty, section 9.3(1) shall be inoperative to the extent that it is inconsistent with BC Counsel's obligations under section 3.2-10 of the Law Society of British Columbia's *Code of Professional Conduct for British Columbia*.

**SECTION 10 - CERTIFICATION OR  
AUTHORIZATION FOR SETTLEMENT ONLY**

**10.1 Settlement Class and Common Issue**

(1) The Parties agree that the Ontario and Quebec Proceedings shall be certified or authorized as class proceedings as against the Settling Defendants solely for purposes of settlement of the Proceedings and the approval of this Settlement Agreement by the Ontario and Quebec Courts, and such certification or authorization shall not be used or relied on as against the Settling Defendants for any other purpose.

(2) The Plaintiffs agree that, in the motions for certification or authorization of the Ontario and Quebec Proceedings as class proceedings for settlement purposes and for the approval of this Settlement Agreement, the only common issue that they will seek to define is the Common Issue and the only classes that they will assert are the Settlement Classes.

(3) The Parties agree that the certification or authorization of the Ontario and Quebec Proceedings as against the Settling Defendants for the purpose of implementing the Settlement Agreement, shall not derogate in any way from the rights of the Plaintiffs as against the Non-Settling Defendants or any other Person that is not a Releasee, except as expressly set out in this Settlement Agreement.

**SECTION 11- NOTICE TO SETTLEMENT CLASSES**

**11.1 Notices Required**

(1) The proposed Settlement Classes shall be given the following notices: (i) the Notice of Hearing; (ii) notice if this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect; and (iii) such further notice as may be directed by the Ontario or Quebec Courts. Copies of the notices shall be sent by direct mail or email to Persons who have commenced an Other Action and their counsel of record.

## **11.2 Form and Distribution of Notices**

(1) The form of notices referred to in section 11.1(1) and the manner and extent of publication and distribution shall be as agreed to by the Plaintiffs and Settling Defendants or in such form or manner as approved by the Ontario and Quebec Courts.

## **SECTION 12 - ADMINISTRATION AND IMPLEMENTATION**

### **12.1 Mechanics of Administration**

(1) Except to the extent provided for in this Settlement Agreement, the mechanics of the implementation and administration of this Settlement Agreement and the Distribution Protocol shall be determined by the Ontario and Quebec Courts on motions brought by Class Counsel.

(2) The Settling Defendants shall not have any responsibility, financial obligations or liability whatsoever with respect to (i) the administration of the Settlement Agreement, including the Distribution Protocol, and (ii) the investment, distribution or administration of monies in the Trust Account including, but not limited to, Administration Expenses and Class Counsel Fees.

### **12.2 Distribution Protocol**

(1) After the Effective Date, at a time wholly within the discretion of Class Counsel, but on notice to the Settling Defendants, Class Counsel will make an application seeking orders from the Ontario and Quebec Courts approving the Distribution Protocol.

(2) The Distribution Protocol shall require Settlement Class Members seeking compensation to give credit for any compensation received through other proceedings or in private out-of-class settlements, unless by such proceedings or private out-of-class settlements the Settlement Class Member's claim was released in its entirety, in which case the Settlement Class Member shall be deemed ineligible for any further compensation.

**SECTION 13- CLASS COUNSEL FEES, DISBURSEMENTS  
AND ADMINISTRATION EXPENSES**

**13.1 Court Approval for Class Counsel Fees and Disbursements**

(1) Class Counsel may seek the Ontario and Quebec Courts' approval to pay Class Counsel Disbursements and Class Counsel Fees contemporaneous with seeking approval of this Settlement Agreement. Class Counsel Disbursements and Class Counsel Fees shall be reimbursed and paid solely out of the Trust Account after the Effective Date.

(2) In the event that some of the funds remain in the Trust Account after payment of Class Counsel Disbursements, Class Counsel Fees, Administrative Expenses, and implementation of the Distribution Protocol, Class Counsel shall seek direction from the Ontario and Quebec Courts regarding the distribution of the remaining funds.

(3) Class Counsel reserve the right to bring motions to the Ontario and Quebec Courts for reimbursement out of the Trust Account for any future Class Counsel Disbursements.

**13.2 Responsibility for Fees, Disbursements and Taxes**

(1) The Settling Defendants shall not be liable for any Class Counsel Fees, Class Counsel Disbursements or taxes of any of the lawyers, experts, advisors, agents, or representatives retained by Class Counsel, the Plaintiffs or the Settlement Class Members, any amounts to which the Fonds d'aide aux actions collectives in Quebec may be entitled, or any lien of any Person on any payment to any Settlement Class Member from the Settlement Amount.

**13.3 Administration Expenses**

(1) Except as provided herein, Administration Expenses may only be paid out of the Trust Account after the Effective Date.

(2) Notwithstanding section 13.1(1) and 13.3(1), Class Counsel shall pay the costs of the notices required by section 11.1(1) and any costs of translation

required by section 14.11 from the Trust Account, as they become due and such payments may be made before the Effective Date. Subject to section 6.2(2), the Settling Defendants shall not have any responsibility for the costs of the notices or translation.

## **SECTION 14 - MISCELLANEOUS**

### **14.1 Motions for Directions**

(1) Class Counsel or the Settling Defendants may apply to the Courts as may be required for directions in respect of the interpretation, implementation and administration of this Settlement Agreement. Unless a Court orders otherwise, motions for directions that do not relate solely to matters affecting the BC Proceeding or the Quebec Proceeding shall be determined by the Ontario Court.

(2) All motions contemplated by this Settlement Agreement shall be on notice to the Parties.

### **14.2 Headings, etc.**

(1) In this Settlement Agreement:

(a) the division of the Settlement Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement; and

(b) the terms “this Settlement Agreement”, “hereof”, “hereunder”, “herein”, and similar expressions refer to this Settlement Agreement and not to any particular section or other portion of this Settlement Agreement.

### **14.3 Computation of Time**

(1) In the computation of time in this Settlement Agreement, except where a contrary intention appears,



- (a) where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
- (b) only in the case where the time for doing an act expires on a holiday as “holiday” is defined in the *Rules of Civil Procedure*, RRO 1990, Reg 194, the act may be done on the next day that is not a holiday.

#### **14.4 Ongoing Jurisdiction**

(1) Each of the Courts shall retain exclusive jurisdiction over each Proceeding commenced in its jurisdiction and the Parties in that Proceeding, except that the Ontario Court will have jurisdiction over the Class Counsel Fees in the BC Proceeding.

(2) No Party shall ask a Court to make any order or give any direction in respect of any matter of shared jurisdiction unless that order or direction is conditional upon a complementary order or direction being made or given by the other Court(s) with which it shares jurisdiction over that matter.

(3) Notwithstanding sections 14.4(1) and 14.4(2), the Ontario Court shall exercise jurisdiction with respect to implementation, administration, interpretation and enforcement of the terms of this Settlement Agreement, and the Plaintiffs, Settlement Class Members and Settling Defendants attorn to the jurisdiction of the Ontario Court for such purposes. Issues related to the administration of the Settlement Agreement, the Trust Account, and other matters not specifically related to the claim of a Quebec Settlement Class Member shall be determined by the Ontario Court.

#### **14.5 Governing Law**

(1) Subject to section 14.5(2), this Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

(2) Notwithstanding section 14.5(1), for matters relating specifically to the BC or Quebec Proceeding, the BC or Quebec Court, as applicable, shall apply the law of its own jurisdiction and the laws of Canada applicable therein.

#### **14.6 Entire Agreement**

(1) This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

#### **14.7 Amendments**

(1) This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto, and any such modification or amendment must be approved by the Court with jurisdiction over the matter to which the amendment relates.

#### **14.8 Binding Effect**

(1) This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiffs, the Settling Defendants, the Settlement Class Members, the Releasors, the Releasees and all of their successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiffs shall be binding upon all Releasors and each and every covenant and agreement made herein by the Settling Defendants shall be binding upon all of the Releasees.

#### **14.9 Counterparts**

(1) This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile or electronic/PDF signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

#### **14.10 Negotiated Agreement**

(1) This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

#### **14.11 Language**

(1) The Parties acknowledge that they have required and consented that this Settlement Agreement and all related Documents be prepared in English; les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en anglais. Nevertheless, if required by a Court, Class Counsel and/or a translation firm selected by Class Counsel shall prepare a French translation of the Settlement Agreement, the cost of which shall be paid from the Settlement Amount. In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall govern.

#### **14.12 Transaction**

(1) This Settlement Agreement constitutes a transaction in accordance with Articles 2631 and following of the *Civil Code of Quebec*, and the Parties are hereby renouncing to any errors of fact, of law and/or of calculation.

**14.13 Recitals**

(1) The recitals to this Settlement Agreement are true and form part of the Settlement Agreement.

**14.14 Schedules**

(1) The schedules annexed hereto form part of this Settlement Agreement.

**14.15 Acknowledgements**

- (1) Each of the Parties hereby affirms and acknowledges that:
- (a) he, she or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;
  - (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel;
  - (c) he, she or the Party's representative fully understands each term of the Settlement Agreement and its effect; and
  - (d) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party, beyond the terms of this Settlement Agreement, with respect to the first Party's decision to execute this Settlement Agreement.

**14.16 Authorized Signatures**

(1) The Plaintiffs, BC Counsel, Quebec Counsel and Sotos LLP represent and warrant that they have provided a written direction to Siskinds LLP to enter into the terms and conditions of, and to execute, this Settlement Agreement on their behalf, and that Siskinds LLP is fully authorized and directed to do so in respect of all Plaintiffs, BC Counsel, Quebec Counsel and Sotos LLP.

(2) Siskinds LLP represents that it is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement on behalf of the Parties and law firms identified above its signatures.

**14.17 Notice**

(1) Where this Settlement Agreement requires a Party to provide notice or any other communication or Document to another, such notice, communication or Document shall be provided by email, facsimile or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

**For the Plaintiffs and for Class Counsel in the Proceedings:**

Charles M. Wright and Linda Visser  
**Siskinds LLP**  
**Barristers and Solicitors**  
**680 Waterloo Street**  
**London, ON N6A 3V8**

Telephone: 519-672-2121  
Facsimile: 519-672-6065  
Email: charles.wright@siskinds.com  
linda.visser@siskinds.com

Maxime Nasr  
**Belleau Lapointe, LLP**  
**306, Place d'Youville**  
**Office B-10**  
**Montreal, Quebec H2Y 2B6**

Telephone: 514-987-6700  
Facsimile: 514-987-6886  
Email: mnasr@belleaulapointe.com

David Sterns and Jean Marc Leclerc  
**Sotos LLP**  
**Barristers and Solicitors**  
**180 Dundas Street West, Suite 1250**  
**Toronto, ON M5G 1Z8**

Telephone: 416-977-0007  
Facsimile: 416-977-0717  
Email: dsterns@sotosllp.com  
jleclerc@sotosllp.com

Reidar Mogerman and David Jones  
**Camp Fiorante Matthews Mogerman**  
**Barristers and Solicitors**  
**#400-856 Homer Street**  
**Vancouver, BC V6B 2W5**

Telephone: 604-689-7555  
Facsimile: 604-689-7554  
Email: rmogerman@cfmlawyers.ca  
djones@cfmlawyers.ca

**For Settling Defendants:**

Sandra Forbes  
**Davies Ward Phillips & Vineberg LLP**  
**155 Wellington Street West**  
**Toronto, ON M5V 3J7**

Telephone: 416-863-5574  
Facsimile: 416-863-0871  
Email: sforbes@dwpv.com

**14.18 Date of Execution**

(1) The Parties have executed this Settlement Agreement as of the date on the cover page.

**KHURRAM SHAH and ALPINA HOLDINGS INC.**, on their own behalf and on behalf of the Ontario Settlement Class, by their counsel

Name of Authorized Signatory: Linda Visser

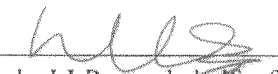
Signature of Authorized Signatory:   
Siskinds LLP  
Ontario Counsel

Name of Authorized Signatory: Linda Visser

Signature of Authorized Signatory:   
Siskinds LLP, on behalf of Sotos LLP  
Ontario Counsel

**JONATHAN CRUZ**, by his counsel

Name of Authorized Signatory: Linda Visser

Signature of Authorized Signatory:   
Siskinds LLP, on behalf of Camp Fiorante Matthews  
Mogerman  
BC Counsel

**OPTION CONSOMMATEURS**, on its own behalf and on behalf of the Quebec Settlement Class, by its counsel

Name of Authorized Signatory: Linda Visser

Signature of Authorized Signatory: [Handwritten Signature]

Siskinds LLP, on behalf of Belleau Lapointe, LLP  
Quebec Counsel

**LG CHEM, LTD. AND LG CHEM AMERICA, INC.**, by their counsel

Name of Authorized Signatory: SANDEA FORBES

Signature of Authorized Signatory: [Handwritten Signature]

Davies Ward Phillips & Vineberg LLP

Vineberg LLP  
per [Handwritten Initials]

**SCHEDULE A – PROCEEDINGS**

<b>Proceeding</b>	<b>Plaintiffs</b>	<b>Defendants</b>	<b>Settlement Class</b>
Ontario Superior Court of Justice Court File No. CV-13-483540-00CP (the “Ontario Proceeding”)	Khurram Shah and Alpina Holdings Inc.	LG Chem, Ltd., LG Chem America, Inc., Panasonic Corporation, Panasonic Corporation of North America, Panasonic Canada Inc., Sanyo Electric Co., Ltd., Sanyo North America Corporation, Sanyo Energy (U.S.A.) Corporation, Sony Corporation, Sony Energy Devices Corporation, Sony Electronics, Inc., Sony of Canada Ltd., Samsung SDI Co., Ltd., Samsung SDI America, Inc., Samsung Electronics Canada Inc., Hitachi, Ltd., Hitachi Maxell, Ltd., Maxell Corporation of America, Maxell Canada, GS Yuasa Corporation, NEC Corporation, NEC Tokin Corporation, NEC Canada, Toshiba Corporation, Toshiba America Electronic Components, Inc., and Toshiba of Canada Limited	All Persons in Canada who purchased Lithium Batteries and/or Lithium Battery Products in Canada during the Class Period, except the Excluded Persons and Persons who are included in the Quebec Settlement Class.
Superior Court of Quebec (District of Montreal), File No. 500-06-000632-121 (the “Quebec Proceeding”)	Option consommateurs	LG Chem Ltd., LG Chem America, Inc., Panasonic Corporation, Panasonic Corporation of North America, Panasonic Canada Inc., Sanyo Electric Co., Ltd., Sanyo North America Corporation, Sony Corporation, Sony of Canada Ltd., Sony Energy Devices Corporation, Sony Electronics, Inc., Samsung SDI Co., Ltd. Samsung	All Persons in Quebec who purchased Lithium Batteries and/or Lithium Battery Products in Canada during the Class Period, except the Excluded Persons.



Proceeding	Plaintiffs	Defendants	Settlement Class
		SDI America, Inc., Hitachi, Ltd., Hitachi Canada, Ltd., Hitachi Maxell, Ltd., Maxell Corporation of America	
British Columbia Supreme Court File No. VLC-S-S-128141 (Vancouver Registry) (the "BC Proceeding")	Jonathan Cruz	LG Chem Ltd., LG Chem America, Inc., Panasonic Corp., Panasonic Corporation of North America, Sanyo Electric Co., Ltd., Sanyo North America Corporation, Panasonic Canada Inc., Samsung SDI Co. Ltd., Samsung SDI America, Inc., Samsung SDI Mexico, S.A. de C.V., Samsung SDI (Hong Kong) Ltd., Tianjin Samsung SDI Co., Ltd., Shanghai Samsung SVA Electronic Devices Co., Ltd., Samsung Electronics Canada Inc., Sony Corporation, Sony Energy Devices Corporation, Sony Electronics Inc., Sony of Canada Ltd., Hitachi, Ltd., Hitachi Canada, Ltd., Hitachi-Maxell Ltd., Maxell Corporation of America and Maxell Canada	

**CONFIDENTIAL SCHEDULE "B"**  
**Siskinds LLP Trust Account**

[REDACTED]

[REDACTED]