

Court File No.: CV-14-50851300-CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N

**LBP HOLDINGS LTD.,**

Plaintiff

and

**ALLIED NEVADA GOLD CORP., SCOTT A. CALDWELL, ROBERT M. BUCHAN,  
CORMARK SECURITIES INC., and DUNDEE SECURITIES LIMITED**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**SETTLEMENT AGREEMENT**  
Made as of the 13th day of January, 2021

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## SETTLEMENT AGREEMENT

### SECTION 1 – RECITALS

#### 1.1 WHEREAS:

A. The Plaintiff commenced the Action alleging omissions of material facts relating to Allied Nevada Gold Corp.’s (n/k/a Hycroft Mining Corporation and hereinafter “Hycroft”) business practices and operations as represented in a prospectus to sell common shares through a secondary public offering, dated May 9, 2013, with a distribution period ending May 17, 2013;

B. The Plaintiffs and the Defendants have negotiated a Settlement of the Action that is subject to and conditional upon approval by the Court;

C. The Defendants deny liability in respect of the claims alleged in the Action and expressly disclaim any wrongdoing or liability of any kind whatsoever including through the execution of this Agreement;

D. By order dated October 24, 2017 (the “Certification Order”), the Action has been certified against Hycroft and the Individual Defendants;

E. By reasons dated January 6, 2020, the Superior Court of Justice, Divisional Court, ordered that the Action be certified against Dundee Securities Ltd. (now known as Echelon Wealth Partners Inc.) and Cormark Securities Inc. (collectively, the “Underwriter Defendants”), but the Certification Order has not yet been amended to include the Underwriter Defendants;

F. The Plaintiff and the Defendants, through counsel, have engaged in hard-fought and extensive arm’s-length settlement discussions and negotiations in respect of the Action through a mediation with Joel Wiesenfeld, an experienced securities class action mediator;

G. As a result of these settlement discussions and negotiations, the Parties have entered into this Agreement, which embodies all of the terms and conditions of the Settlement among the Parties, both individually and on behalf of the Class and subject to approval of the Court;

H. The Parties have negotiated and entered into the Agreement to fully, definitively and permanently resolve, settle and release and discharge all claims asserted, or which could have been asserted, against the Defendants by the Plaintiff on its own behalf and/or on behalf of the Class it seeks to represent, or by a third party for contribution and indemnity in respect of a claim asserted against the Defendants by the Plaintiff, and to avoid the further expense, inconvenience, and

burden of this litigation and avoid the risks inherent in uncertain, complex and protracted litigation, and thereby to put to rest this controversy;

I. The Plaintiff has agreed to accept this Settlement, in part, because of the Settlement Amount to be provided by the Contributing Parties under the Agreement (as defined below), as well as the attendant risks of litigation in light of the potential defences that may be asserted by the Defendants; and

J. The Plaintiff and Class Counsel have reviewed and fully understand the terms of the Agreement and, based on their analyses of the facts and law applicable to the Plaintiff, and having regard to the burdens and expense in prosecuting the Action, including the risks and uncertainties associated with trials and appeals, have concluded that this Settlement is fair, reasonable and in the best interests of the Plaintiff and the Class. The Parties therefore wish to, and hereby do, finally resolve, without admission of liability, the Action as against the Defendants.

**NOW THEREFORE**, in consideration of the covenants, agreements, promises 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 Action be settled in accordance with the terms of this Agreement, subject to the approval of the Settlement by the Court, and that all Released Claims against the Releasees which any Releasor shall or may have or assert against any of the Releasees be forever extinguished and released on the following terms and conditions:

## SECTION 2 – DEFINITIONS

### 2.1 Definitions

For the purposes of the Agreement, including the Recitals and Schedules hereto:

1. **Action** means the action *LBP Holdings Ltd. v. Allied Nevada Gold Corp., Scott A. Caldwell, Robert M. Buchan, Cormark Securities Inc., and Dundee Securities Limited*, brought in the Court under Court File No. CV-14-50851300-CP.

2. **Administration Expenses** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable relating to approval, implementation and administration of the Settlement including the costs of translating, publishing and delivering notices and the fees, disbursements and taxes paid to the Administrator, the Referee, the Transfer Agent (see Sections 7 and 15.3 of the Agreement) and any other expenses approved by the Court which shall all be paid from the Settlement Amount. For greater certainty, Administration Expenses include the Non-Refundable Expenses but do not include Class Counsel Fees.

3. **Administrator** means the third-party firm appointed by the Court to administer the Agreement after the Settlement is approved by the Court, and any employees of such firm.
4. **Agreement** means this agreement, including the Recitals and Schedules hereto.
5. **Authorized Claimant** means any Class Member who has been approved for compensation by the Administrator.
6. **Claim Form** means the form or forms to be approved by the Court, which, when completed and submitted in a timely manner to the Administrator, enables a Class Member to apply for compensation pursuant to this Agreement.
7. **Claims Bar Deadline** means the date by which each Class Member must file a completed Claim Form and all required Supporting Documents with the Administrator which date shall be set out in the Second Notice and which shall be at least one hundred twenty days (120) days after the date on which the Second Notice is last published.
8. **Class or Class Members** means all persons, other than Excluded Persons, who acquired common shares of Hycroft pursuant to the secondary public offering (“SPO”) by way of a final short form prospectus dated May 9, 2013, during its distribution period ending May 17, 2013, and continued to hold those common shares until July 22, 2013.
9. **Class Counsel** means Morganti & Co., P.C., now known as Kim Spencer McPhee Barristers, P.C. (“KSM”).
10. **Class Period** means May 9, 2013 to the close of trading on July 21, 2013.
11. **Class Counsel Fees** means the fees, disbursements, costs, HST, and other applicable taxes or charges of Class Counsel and a *pro rata* share of all interest earned on the Settlement Amount to the date of payment, as approved by the Court.
12. **Contributing Parties** means the Defendants and any applicable insurer(s) funding the Settlement.
13. **Court** means the Ontario Superior Court of Justice.
14. **CPA** means the *Class Proceedings Act, 1992*, SO 1992, c 6, as amended.
15. **Defendants** means Hycroft, the Individual Defendants, and the Underwriter Defendants.

16. **Eligible Shares** means Shares purchased pursuant to the prospectus to sell common shares dated May 9, 2013 under a distribution period ending May 17, 2013, and held until July 22, 2013.

17. **Effective Date** means the date on which the Second Order becomes a final order and the time for any appeals has expired.

18. **Escrow Account** means the interest-bearing Canadian currency trust account with one of the Canadian Schedule 1 banks or a liquid money market account or equivalent security with a rating equivalent to, or better than, that of an interest-bearing account in a Canadian Schedule 1 bank in Ontario, subject to the terms of this Agreement, and then transferred to the control of the Administrator on or after the Effective Date.

19. **Escrow Settlement Amount** means the Settlement Amount plus any interest accruing thereon as a result of investment thereof after payment of all Non-Refundable Expenses.

20. **Excluded Persons** means Hycroft and the Underwriters and their subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors and assigns, and any member of the Individual Defendants' immediate families and any entity in which any of the foregoing has or had an interest during the distribution period for the Prospectus, or at any time that a document incorporated by reference in the Prospectus was released, and United States citizens or residents who acquired Hycroft's securities in the SPO in a trade under the U.S. prospectus.

21. **First Motion** means the motions brought before the Court, for orders:

- (i) amending the Certification Order to include certification for settlement purposes as against the Underwriter Defendants;
- (ii) setting the date for the hearing of the Second Motion;
- (iii) approving the form of the First Notice;
- (iv) approving and authorizing publication and dissemination of the First Notice pursuant to the Plan of Notice;
- (iv) approving the Opt-Out Form;
- (vi) appointing KSM to control the Escrow Account subject to the terms of this Agreement; and

- (vii) appointing Paul Battaglia of Trilogy Class Action Services to serve as O&O Administrator.
22. **First Notice** means notice to the Class in a form to be approved by the Court, which shall substantially be in accordance with the notice at Schedule “B”.
23. **First Order** means the order made by the Court granting the relief sought on the First Motion, substantially in the form of the order at Schedule “A”.
24. **Hycroft** means Hycroft Mining Corporation, formerly d/b/a Allied Nevada Gold Corp.
25. **Individual Defendants** means Scott A. Caldwell and Robert Buchan.
26. **Non-Refundable Expenses** means certain administration expenses stipulated in section 4.1(1) of the Agreement to be paid from the Settlement Amount.
27. **O&O Administrator** means the third-party firm appointed by the Court to receive and report on objections and opt-outs to the Settlement, if any, before the Settlement is approved, and any employees of such firm.
28. **Opt-Out Deadline** means the date to be specified in the First Notice which shall be at least 60 days after the date on which the First Notice is last published in the Newspapers.
29. **Opt-Out Form** means the documents, as approved by the Court, in English which shall substantially be in accordance with the documents at Schedule G, that if properly completed and submitted by a Class Member to the O&O Administrator before the expiry of the Opt-Out Deadline, excludes that Class Member from the Class, the Action and participation in the Settlement.
30. **Opt-Out Party** means any person who would otherwise be a Class Member who validly opts-out of the Action.
31. **Opt-Out Threshold** means the confidential threshold stated in the Settlement Term Sheet, which if exceeded gives the Defendants the option to withdraw from and terminate the Agreement as further explained in Section 11.4 herein.
32. **Opting Out** means properly completing and submitting an Opt-Out Form and all necessary Supporting Documents specified in Section 11.2 of the Agreement before the expiry of the Opt-Out Deadline.

33. **OSA** means the Ontario *Securities Act*, RSO 1990, c. S.5, as amended.
34. **Parties** means the Plaintiff and the Defendants.
35. **Plaintiff** means LBP Holdings Ltd.
36. **Plan of Allocation** means the plan, as approved by the Court, which shall substantially be in accordance with the plan at Schedule “F.”
37. **Plan of Notice** means the plan for disseminating the First Notice and the Second Notice to the Class, as approved by the Court, which shall substantially be in accordance with the plan attached as Schedule “C”.
38. **Referee** means Avram Joseph of Avram Joseph Law, or such other person or persons appointed by the Court to serve in that capacity.
39. **Released Claims** (or **Released Claim** in the singular) means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, for damages whenever and wherever incurred, and rights and liabilities of any nature whatsoever, including interest, costs, expenses, administration expenses, penalties, Class Counsel Fees and lawyers’ fees, whether known or unknown, suspected or unsuspected, in law, under statute, in equity, at common law or civil law, or under any other law, rule or regulation that the Releasers, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have as against the Releasees relating or connected in any way to the purchase, sale, retention, pricing, marketing or distributing of Shares, or to any conduct alleged, or that could have been alleged, in the Action, including, without limitation, any such claims that have been asserted, would have been asserted or could have been asserted in any forum whether in Canada or elsewhere, as a result of or in any way connected with the purchase, retention or sale, or lack of purchase or sale, of Shares in the Class Period.
40. **Releasees** means the Defendants and their past and present affiliates, and subsidiaries, including with respect to Dundee Securities Ltd. and Echelon Wealth Partners Inc., each of their current and former parents, affiliates and subsidiaries, and each of their respective current and former insurers, reinsurers, insurance brokers, directors, officers, partners, employees, agents, trustees, servants, parents, consultants, underwriters, lenders, advisors, lawyers, representatives, successors, predecessors, assigns and each of their respective heirs, executors, administrators, guardians, estates, trustees, successors and assigns as is applicable.
41. **Releasers** means, jointly and severally, the Plaintiff, the Class Members (excluding those who validly opt-out), including any person having a legal and/or beneficial interest in the Shares

purchased or acquired by these Class Members and their respective predecessors, affiliates, subsidiaries, directors, officers, employees, partners, parents, agents, trustees, servants, consultants, underwriters, lenders, shareholders, advisors, representatives, lawyers, heirs, executors, administrators, guardians, estate trustees, successors and assigns, as the case may be.

42. **Second Motion** means the motions brought in the Court for an order:

- (i) approving the Settlement;
- (ii) appointing the Administrator and the Referee;
- (iii) approving the Second Notice;
- (iv) approving the Plan of Allocation;
- (v) approving the Claim Form;
- (vi) setting the Claims Bar Deadline;
- (vii) dismissing the Action without costs and with prejudice; and
- (viii) approving Class Counsel Fees.

43. **Second Notice** means notice to the Class in a form to be approved by the Court, which shall substantially be in accordance with the notice at Schedule “E.”

44. **Second Order** means the order made by the Court granting the relief sought on the Second Motion, substantially in the form of the order at Schedule “D.”

45. **Settlement** means the settlement provided for in this Agreement.

46. **Settlement Amount** means USD \$4,375,000, inclusive of the Administration Expenses, Class Counsel Fees, interest, taxes and any other costs or expenses related to the Action or the Settlement.

47. **Settlement Term Sheet** means the settlement term sheet executed by the Parties on January 13, 2021.

48. *Shares* means common shares of Hycroft issued pursuant to the secondary public offering by way of a final short form prospectus dated May 9, 2013 during the distribution period ending May 17, 2013.

49. *Transfer Agent* means Computershare Trust Company and Computershare Investor Services Inc.

50. *Underwriter Defendants* means Cormark Securities Inc. and Dundee Securities Ltd. (now known as Echelon Wealth Partners Inc.)

## SECTION 3 – THE MOTIONS

### 3.1 Nature of Motions

1. The Parties shall use their best efforts to implement the Agreement and to secure the prompt, complete and final resolution of the Action, including a final dismissal of the Action, without costs and with prejudice as against the Defendants.

2. The First Motion shall be brought as soon as is reasonably possible following the execution of this Agreement. The Defendants shall consent to the First Order provided that it is substantially in the form at Schedule “A.”

3. Following the determination of the First Motion, the First Notice shall be published in accordance with section 10.1 of this Agreement.

4. Following the determination of the First Motion, the Second Motion will be brought and the Defendants shall consent to the Second Order provided that it is substantially in the form at Schedule “D.”

5. Following the determination of the Second Motion, provided that the Settlement is approved by the Court, the Second Notice shall be published in accordance with section 10.2 of this Agreement.

## SECTION 4 – NON-REFUNDABLE EXPENSES

### 4.1 Payments

1. Expenses reasonably incurred for the following purposes shall be the Non-Refundable Expenses, and shall be payable from the Escrow Account, when incurred:

- (i) the costs incurred in connection with establishing and operating the Escrow Account;
- (ii) the costs incurred for translating and disseminating the First Notice and the Second Notice;
- (iii) the costs of the O&O Administrator in connection with receiving objections and Opt-Out Forms and reporting to the Court to a maximum of \$10,000 for fees, plus reasonable and documented disbursements and HST;
- (iv) the costs incurred in translating the Settlement Agreement and Opt-Out Form;
- (v) if necessary, the costs incurred in disseminating notice to the Class that the Agreement has been terminated; and
- (vi) if the Court appoints the Administrator and thereafter the Agreement is terminated by the Defendants pursuant to section 12 of this Agreement, the costs reasonably incurred by the Administrator for performing the services required to prepare to implement the Settlement, including any mailing expenses, to a maximum of \$35,000.

2. Class Counsel shall account to the Court and the Parties for all payments it makes from the Escrow Account. In the event that the Agreement is terminated, this accounting shall be delivered no later than ten (10) days after such termination.

#### **4.2 Disputes Concerning Non-Refundable Expenses**

Any dispute concerning the entitlement to or quantum of Non-Refundable Expenses shall be dealt with by a motion to the Court on notice to the Parties. The Contributing Parties shall have standing in respect of such a motion, should they deem it appropriate to intervene or otherwise make representations.

### **SECTION 5 – THE SETTLEMENT AMOUNT**

#### **5.1 Payment of Escrow Settlement Amount**

1. The Contributing Parties, or any of them, shall pay the Settlement Amount to KSM, in trust, within forty-five (45) calendar days of execution of this Agreement which will deposit it in the Escrow Account, which shall be held to the order of the Contributing Parties and shall be paid out upon the Settlement becoming final in accordance with section 13 of this Agreement.

2. Amounts paid by the Defendants' insurers are properly paid under the applicable policies on behalf of the Insured, Allied Nevada Gold (now Hycroft) and accordingly, reduce the available limits of loss under those respective policies.

## **5.2 Interim Investment of Escrow Account**

After the Effective Date, the Administrator shall invest the Settlement Amount in a liquid money market account or equivalent security with a rating equivalent to, or better than that of an interest bearing account in a Canadian Schedule 1 bank and shall not pay out any amount from the Escrow Account, except in accordance with the terms of this Agreement and any applicable Court Order.

## **5.3 Taxes on Interest**

1. Except as provided in section 5.3(2), all taxes payable on any interest which accrues in relation to the Settlement Amount, shall be solely the Class' responsibility and shall be paid by Class Counsel or the Administrator, as appropriate, from the Escrow Settlement Amount, or by the Class as the Administrator considers appropriate, and the Contributing Parties shall have no liability for any taxes payable on the interest.

2. If the Administrator or Class Counsel returns any portion of the Settlement Amount plus accrued interest to the Contributing Parties pursuant to the provisions of this Agreement, the taxes payable on the interest portion of the returned amount shall be the responsibility of the Contributing Parties.

## **SECTION 6 – NO REVERSION**

Unless the Agreement is terminated as provided herein or otherwise by the Court, the Contributing Parties shall not, under any circumstances, be entitled to the repayment of any portion of the Settlement Amount and then only to the extent of and in accordance with the terms provided herein.

## **SECTION 7 - DISTRIBUTION OF THE ESCROW SETTLEMENT AMOUNT**

If the Settlement becomes final as contemplated by section 13, the Administrator shall distribute the Settlement Amount out of the Escrow Account in accordance with the following priorities:

- (i) to pay all of the costs and expenses reasonably and actually incurred in connection with the provision of notices, locating Class Members for the sole purpose of providing

notice to them, and soliciting Class Members to submit a Claim Form (including the notice expenses reasonably and actually incurred by the Transfer Agent in connection with the provision of notice of this Settlement to Class Members);

(ii) to pay all of the costs and expenses reasonably and actually incurred by the Administrator and the Referee, relating to determining eligibility, the filing of Claim Forms, processing Claim Forms, resolving disputes arising from the processing of Claim Forms and administering and distributing the Settlement Amount;

(iii) to pay any taxes required by law to be paid to any governmental authority; and

(iv) to pay a share of the balance of the Escrow Settlement Amount to each Authorized Claimant in proportion to his/her/its claim as recognized in accordance with the Plan of Allocation.

## SECTION 8 – EFFECT OF SETTLEMENT

### **8.1 No Admission of Liability**

Neither this Agreement, nor anything contained herein, shall be interpreted as a concession or admission of wrongdoing or liability by the Releasees, or as a concession or admission by the Releasees of the truthfulness or merit of any claim or allegation asserted in the Action. Neither the Agreement, nor anything contained herein, shall be used or construed as an admission by the Releasees of any fault, omission, liability or wrongdoing in connection with the matters alleged in the Action or any oral or written statement, release or written document or financial report. The Defendants expressly deny any and all allegations of fault, liability, wrongdoing or damages whatsoever.

### **8.2 Agreement Not Evidence**

1. Whether or not the Agreement is terminated, the Parties agree that neither the Agreement, nor anything contained herein, nor any of the negotiations or proceedings connected with it, nor any related document, nor any other action taken to carry out the Agreement shall be referred to, offered as evidence or received in evidence in any current or future civil, criminal, quasi-criminal, regulatory or administrative action or proceeding in any jurisdiction as any presumption, concession or admission:

(i) of the validity of any claim that has been or could have been asserted in the Action by the Plaintiff against the Defendants, or the deficiency of any defence that has been or could have been asserted in the Action;

- (ii) of wrongdoing, fault, neglect or liability by the Defendants; and
- (iii) that the consideration to be given hereunder represents the amount that could be or would have been recovered in the Action after trial.

2. Notwithstanding section 8.2(1), this Agreement may be referred to or offered as evidence in a proceeding to approve or enforce the Agreement, to defend against the assertion of Released Claims, and as otherwise required by law.

### **8.3 Best Efforts**

The Parties shall use their best efforts to implement the terms of this Agreement. The Parties agree to hold in abeyance all steps in the Action, including all discovery, other than proceedings provided for in this Agreement, the First Motion, the Second Motion and such other proceedings required to implement the terms of this Agreement, until the date the Settlement becomes final in accordance with section 13 or the termination of the Agreement.

## **SECTION 9 – CERTIFICATION AND SETTLEMENT APPROVAL**

### **9.1 Certification and Settlement Approval**

The Defendants will consent to the amendment of the Certification Order to include the Underwriter Defendants pursuant to the *CPA*, for the purposes of Settlement only.

## **SECTION 10 – NOTICE TO THE CLASS**

### **10.1 First Notice**

Class Counsel shall cause the First Notice to be published and disseminated in accordance with the Plan of Notice and the costs of doing so shall be paid as a Non-Refundable Expense as provided in section 4.1(1)(b) of this Agreement.

### **10.2 Second Notice**

Class Counsel shall cause the Second Notice to be published and disseminated in accordance with the Plan of Notice and the costs of so doing shall be paid as a Non-Refundable Expense as provided in section 4.1(1)(b) of this Agreement.

### **10.3 Report to the Court**

Forthwith after the publication and dissemination of each of the notices required by this section, Class Counsel shall file with the Court affidavits confirming that the notices have been published and disseminated in accordance with the Agreement and the Plan of Notice, as appropriate, or order of the Court.

#### **10.4 Notice of Termination**

If the Agreement is terminated after the Second Notice has been published and disseminated, a notice of the termination will be given to the Class. Class Counsel will cause the notice of termination, in a form approved by the Court, to be published and disseminated as directed by the Court, and the costs of so doing shall be paid as a Non-Refundable Expense as provided in section 4.1(1)(v) of this Agreement.

### **SECTION 11 – OPTING OUT**

#### **11.1 Potential Opt-Outs**

The Plaintiff, Defendants and Class Counsel represent and warrant that:

- (i) they will not encourage or solicit any Class Member to opt-out of the Class; and
- (ii) they will not represent any Class Member who opts out of the Class.

#### **11.2 Opt-Out Procedure**

1. Each Class Member who wishes to opt-out must submit a properly completed Opt-Out Form, along with true copies of (i) all trade confirmation slips in respect of transactions in the Shares during the Class Period (and ten days after the end of the Class Period), or (ii) all monthly statements with information concerning transactions in the Shares during the Class Period (and ten days after the end of the Class Period) (“Supporting Documents”) to the O&O Administrator on or before the Opt-Out Deadline.

2. If a Class Member fails to submit a properly completed Opt-Out Form and/or all required Supporting Documents before the Opt-Out Deadline, the Class Member shall not have opted-out of the Action, subject to any order of the Court to the contrary, and will in all respects be subject to, and bound by, the provisions of this Agreement and the releases contained herein, and any orders made in the Action.

3. The Opt-Out Deadline shall not be extended unless the Court orders otherwise.

4. All Opt-Out Parties will be excluded from any and all rights and obligations arising from the Settlement. Class Members who do not opt-out shall be bound by the Settlement and the terms of this Agreement regardless of whether he/she/it files a Claim Form or receives compensation from the Settlement.

### **11.3 Notification of Number of Opt-Outs**

Within five (5) days after the Opt-Out Deadline, the O&O Administrator shall report to the Court and to the Parties as to the number of Opt-Out Parties, the number of Eligible Shares held by each Opt-Out Party, a summary of the information delivered by each Opt-Out Party and the total number of Eligible Shares held by the Opt-Out Parties.

### **11.4 Effect of Exceeding the Opt-Out Threshold, Conditions Precedent and Right to Terminate**

1. Notwithstanding any other provision in this Agreement, the Defendants shall have the option to withdraw from and terminate the Agreement, and to render the Agreement null and void in the event that persons or entities eligible to participate in the settlement of the Action opt-out of the Class with the result that the aggregate number of shares exceeds the Opt-Out Threshold, provided that notice of the election to terminate is provided by Counsel for the Defendants to Class Counsel within ten (10) business days of Class Counsel notifying counsel for the Defendants of the number of Shares associated with the Opt-Out Parties pursuant to Section 11.3, after which date the right to terminate the Agreement will have expired.

2. If the Opt-Out Threshold is not exceeded, the Defendants' right to terminate this Agreement pursuant to the provisions of this Section is inoperative and of no force and effect.

3. The Opt-Out Threshold as stated in the Settlement Term Sheet and will be kept confidential by the Parties and their counsel, and may be shown to the Court solely for purposes of the Second Motion but shall not be otherwise disclosed by the Parties and their counsel, unless disclosure is ordered by the Court or the Defendants provide prior written consent to disclosure.

## **SECTION 12 – TERMINATION OF THE AGREEMENT**

### **12.1 General**

1. The Defendants may terminate this Agreement only if:

- (i) the First Order is not granted by the Court substantially in accordance with the form at Schedule "A";

- (ii) the Second Order (excluding approval of Class Counsel Fees) is not granted by the Court substantially in accordance with the form at Schedule “D”; or
  - (iii) the Second Order is reversed on appeal and the reversal becomes final.
2. The failure of the Court to approve in full the request by Class Counsel for Class Counsel Fees shall not be grounds to terminate this Agreement.
3. In the event this Agreement is terminated in accordance with its terms, or is not approved by the Court, or any Second Order is reversed, vacated or terminated by any appellate court and/or the Second Orders do not become final:
- (i) the Parties will be restored to their respective positions prior to the execution of this Agreement;
  - (ii) the Parties will consent to orders setting aside any order amending the Certification Order to add the Underwriter Defendants for the purposes of implementing this Agreement;
  - (iii) the Agreement will have no further force and effect and no effect on the rights of the Parties;
  - (iv) the amended certification of the Action will be deemed to have been without prejudice to any position that the Underwriter Defendants may later take on any issue in the Action;
  - (v) any amounts paid for establishing and operating the Escrow Account, publishing and disseminating the Settlement Agreement, the First Notice, the Second Notice and the Termination Notice, if any, and to the O&O Administrator, the Administrator and the Referee pursuant to section 4.1(1) of this Agreement are non-recoverable from the Plaintiff and the Class Members;
  - (vi) the Settlement Amount will be returned to the Contributing Parties less any Non-Recoverable Expenses that have already been properly incurred; and
  - (vii) this Agreement will not be introduced into evidence or otherwise referred to in any litigation or proceeding against the Defendants.
4. Notwithstanding the provisions of section 12.1(3)(iii) of this Agreement, if this Agreement is terminated, the provisions of this section and sections 2, 4, 5.2, 5.3, 8.1, 8.2, 8.3, 10.3, 12.1(3),

12.1(4), 12.2, 12.3, 15.1(2), 15.4(2), 15.5(2), 18.1, 18.2, 18.3, 18.4, 18.5, 18.6(2), 18.7, 18.8, 18.9, 18.10, 18.11, 18.12, 18.13, 18.14, 18.15 and the recitals and schedules applicable thereto shall survive termination and shall continue in full force and effect.

## **12.2 Allocation of Monies in the Escrow Account Following Termination**

1. The Administrator and Class Counsel shall account to the Court for the amounts maintained in the Escrow Account. If the Agreement is terminated, this accounting shall be delivered no later than ten (10) days after such termination.

2. If the Agreement is terminated, the Defendants shall, within thirty (30) days after termination, apply to the Court for an order:

- (i) declaring the Agreement null and void and of no force or effect except for the provisions of those sections listed in section 12.1(4) of this Agreement;
- (ii) requiring the notice of termination to be sent out to the Class Members and, if so, the form and method of disseminating such a notice;
- (iii) setting aside, *nunc pro tunc*, all prior orders or judgments entered in accordance with the terms of the Agreement; and
- (iv) authorizing the payment to the Contributing Parties, apportioned *pro rata* based on their respective contributions directly or indirectly, to the Escrow Account, as the case may be, of:
  - (a) all funds received by KSM from any of the Contributing Parties and not yet paid into the Escrow Account pursuant to section 4.1 of this Agreement; and
  - (b) all funds in the Escrow Account, including accrued interest, minus any amounts paid out of the Escrow Account as Non-Refundable Expenses in accordance with the terms of the Agreement.

## **12.3 Disputes Relating to Termination**

If there are any disputes about the termination of the Agreement, the Court shall determine any dispute by motion on notice to the Parties. The Contributing Parties shall be granted standing in respect of any such motion,.

## SECTION 13 – DETERMINATION THAT THE SETTLEMENT IS FINAL

1. The Settlement shall be considered final on the Effective Date.
2. Within ten (10) days after the Effective Date, Class Counsel shall transfer the Escrow Account to the Administrator.

## SECTION 14 – RELEASES AND JURISDICTION OF THE COURT

### **14.1 Release of Releasees**

As of the Effective Date, provided that the Settlement Amount has been deposited into the Escrow Account, the Releasers in exchange for and in consideration of the foregoing, and inasmuch as the terms and conditions of the Settlement are approved by the Court, forever and absolutely release the Releasees from the Released Claims.

### **14.2 No Further Claims**

Notwithstanding sections 2.1 (41) and 2.1 (42) of this Agreement:

1. As of the Effective Date and provided that the Settlement Amount has been deposited into the Escrow Account, the Releasers and Class Counsel shall not now or hereafter institute, continue, maintain 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 (including on behalf of any Opt-Out Party), any action, suit, cause of action, claim or demand against any Releasee or any other person (including but not limited to any of the Defendants' auditors, investment bankers and underwriters) who may claim contribution or indemnity from any Releasee in respect of any Released Claim or any matter related thereto.
2. For greater certainty, the Releasers and Class Counsel acknowledge that they may subsequently discover facts adding to those they knew as at January 13, 2021, but nonetheless agree that on the Effective Date, they shall have fully, definitively and permanently settled, waived and released and discharged all claims, no matter if they were unknown, unsuspected, not disclosed, and regardless of the subsequent discovery of facts different from those they are currently aware of. By means of the Settlement, the Releasers waive any right they might have under any statute, rule or regulation, the common law, civil law, in equity or otherwise, to disregard or avoid the release and discharge of the unknown claims and bar against the commencement of new claims for any reason whatsoever and expressly relinquish any such right and each Class Member shall be deemed to have waived and relinquished such right.

3. The Releasors agree to this waiver of their own volition, with full knowledge of its consequences and that this waiver was negotiated and constitutes a key element of the Settlement.

### **14.3 Dismissal of the Action**

Except as otherwise provided in the Agreement and the Second Order, and as a condition of Settlement, the Action shall be dismissed without costs and with prejudice as against the Defendants.

## **SECTION 15 – ADMINISTRATION**

### **15.1 Appointment of the Administrator**

1. The Court will appoint the Administrator to serve until further order of the Court, to implement the Agreement and the Plan of Allocation, on the terms and conditions and with the powers, rights, duties and responsibilities set out in the Agreement and in the Plan of Allocation.

2. If the Agreement is terminated, the Administrator's fees, disbursements and taxes will be fixed as set out in section 4.1(1)(vi) of this Agreement.

3. If the Settlement becomes final as contemplated by section 13 of this Agreement, the Court will fix the Administrator's compensation and payment schedule.

### **15.2 Appointment of the Referee**

1. The Court will appoint the Referee with the powers, duties and responsibilities set out in the Agreement and the Plan of Allocation.

2. The fees, disbursements and taxes of the Referee will be fixed by the Court and shall not exceed \$25,000, exclusive of disbursements and HST. When directed by the Court, the Administrator will pay the Referee from the Escrow Settlement Amount.

### **15.3 Claims Process**

1. In order to seek payment from the Settlement Amount, a Class Member must submit a completed Claim Form to the Administrator, in accordance with the provisions of the Plan of Allocation, on or before the Claims Bar Deadline and any Class Member who fails to do so shall not share in any distribution made in accordance with the Plan of Allocation unless the relevant court orders otherwise.

2. In order to remedy any deficiency in the completion of a Claim Form, the Administrator may require and request that additional information be submitted by a Class Member who submits a Claim Form. Such Class Members shall have until the later of thirty (30) days from the date of the request from the Administrator or the Claims Bar Deadline to rectify the deficiency. Any person who does not respond to such a request for information within the thirty (30) day period shall be forever barred from receiving any payments pursuant to the Settlement, subject to any order of the relevant court to the contrary as provided in section 15.5(4) of this Agreement, but will in all other respects be subject to, and bound by, the provisions of the Agreement and the releases contained herein.

#### **15.4 Disputes Concerning the Decisions of the Administrator**

1. In the event that a Class Member disputes the Administrator's decision, whether in whole or in part, the Class Member may appeal the decision to the Referee in accordance with the provisions in the Plan of Allocation. The decision of the Referee will be final with no right of appeal.

2. No action shall lie against the Releasees, the Defendants, the Defendants' counsel, Class Counsel, the Administrator or the Referee for any decision made in the administration of the Agreement and Plan of Allocation without an order from the Court authorizing such an action.

#### **15.5 Conclusion of the Administration**

1. Following the Claims Bar Deadline, and in accordance with the terms of this Agreement, the Plan of Allocation, and such further order of the Court, as may be necessary, or as circumstances may require, the Administrator shall distribute the Escrow Settlement Amount to Authorized Claimants.

2. No claims or appeals shall lie against the Releasees, the Defendants, the Defendants' counsel, Class Counsel, the Administrator or the Referee based on distributions made substantially in accordance with the Agreement and the Plan of Allocation.

3. If the Escrow Settlement Account is in a positive balance in an amount greater than 10% of the net Settlement Amount (whether by reason of tax refunds, un-cashed cheques or otherwise) after one hundred eighty (180) days from the date of distribution of the Escrow Settlement Amount to the Authorized Claimants, the Administrator shall, if economically feasible, allocate and distribute such balance among Authorized Claimants in an equitable fashion up to the limit of each authorized claimant's actual loss. If there is a balance in the Escrow Settlement Account after each Authorized Claimant is paid up to his/her/its actual loss, or if an amount equal to or less than 10%

of the net Settlement Amount remains undistributed, the remaining funds shall be paid *cy près* to a recipient mutually agreed upon by the Parties and/or approved by the Court.

4. Upon the conclusion of the administration, or at such other time(s) as the Court directs, the Administrator shall report to the Court on the administration and shall account for all monies it has received, administered and disbursed and obtain an order from the Court discharging it as Administrator.

## SECTION 16 – THE PLAN OF ALLOCATION

The Defendants shall have no standing to oppose the approval of the Plan of Allocation, or to make submissions to the Court in respect of it.

## SECTION 17 – CLASS COUNSEL FEES

### **17.1 Motion for Approval of Class Counsel Fees**

1. At the Second Motion, Class Counsel shall seek the approval of Class Counsel Fees to be paid as a first charge on the Settlement Amount. Class Counsel are not precluded from making additional applications to the Court for expenses incurred as a result of implementing the terms of the Agreement. All amounts awarded on account of Class Counsel Fees shall be paid from the Settlement Amount.

2. The Defendants acknowledge that they are not parties to the motion concerning the approval of Class Counsel Fees, they will have no involvement in the approval process to determine the amount of Class Counsel Fees, and they will not make any submissions to the Court concerning Class Counsel Fees.

3. Any order or proceeding relating to Class Counsel Fees, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel this Agreement or affect or delay the finality of the Second Order and the Settlement of the Action as provided herein.

### **17.2 Payment of Class Counsel Fees**

Forthwith after the Settlement becomes final, as contemplated in section 13 of this Agreement, KSM shall pay to Class Counsel the Class Counsel Fees approved by the Court from the Escrow Account.

## SECTION 18 – MISCELLANEOUS

### **18.1 Motions for Directions**

1. Any one or more of the Parties, the Contributing Parties, Class Counsel, the Administrator or the Referee may apply to the Court for directions in respect of any matter in relation to this Agreement, subject to the terms hereof.
2. All motions contemplated by this Agreement shall be on notice to the Parties.

### **18.2 Defendants Have No Responsibility or Liability for Administration**

Except for the obligation to pay the Settlement Amount, none of the Releasees, the Defendants, or the Defendants' counsel shall have any responsibility for or any liability whatsoever with respect to the administration or implementation of the Agreement and Plan of Allocation, including, without limitation, the processing and payment of claims by the Administrator.

### **18.3 Headings, etc.**

1. In this Agreement:
  - (i) the division of this Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of the Agreement;
  - (ii) the terms “the Agreement”, “this Agreement”, “herein”, “hereto” and similar expressions refer to the Agreement and not to any particular section or other portion of this Agreement;
  - (iii) unless otherwise indicated, all amounts referred to are in lawful money of Canada;  
and
  - (iv) “person” means any legal entity including, but not limited to, individuals, corporations, sole proprietorships, general or limited partnerships, limited liability partnerships or limited liability companies.

2. In the computation of time in the Agreement, except where a contrary intention appears:
  - (i) where there is a reference to a number of days between two events, they 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
  - (ii) only in the case where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

#### **18.4 Governing Law**

1. The Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario.
2. The Court shall exercise jurisdiction with respect to all issues related to this Agreement including implementation, administration, interpretation and enforcement of the terms of this Agreement.

#### **18.5 Entire Agreement**

This 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 Agreement, unless expressly incorporated herein. This Agreement may not be modified or amended except in writing and on consent of all Parties and any such modification or amendment must be approved by the Court.

#### **18.6 Binding Effect**

1. If the Settlement is approved by the Court and becomes final as contemplated in section 13 of this Agreement, the Agreement shall be binding upon, and enure to the benefit of the Plaintiff, the Class Members, the Defendants, the Releasees, the Releasers, the Contributing Parties and all of their respective heirs, executors, predecessors, successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiff shall be binding upon all Releasers and each and every covenant and agreement made herein by the Defendants shall be binding upon all of the Releasees.

2. The persons signing this Agreement represent and warrant (as applicable) that:
- (i) he/she has all requisite corporate power and authority to execute, deliver and perform the Agreement and to consummate the transaction contemplated hereby on his/her own behalf;
  - (ii) the execution, delivery, and performance of the Agreement and the consummation of the Action contemplated herein have been duly authorized by all necessary corporate action;
  - (iii) the Agreement has been duly and validly executed and delivered by him/her and constitutes legal, valid, and binding obligations; and
  - (iv) he/she agrees to use his/her best efforts to satisfy all conditions precedent to the Effective Date.

#### **18.7 Survival**

The representations and warranties contained in this Agreement shall survive its execution and implementation.

#### **18.8 Negotiated Agreement**

This Agreement and the Settlement have been the subject of negotiations and many discussions among the Parties. Each of the undersigned 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 drafters of the Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Agreement.

#### **18.9 Confidentiality**

The Parties agree that prior to the filing of the First Motion or public disclosure of the Settlement by the Defendants, whichever comes first: (1) this Settlement Agreement, its terms, and the Settlement Amount are and shall be treated as confidential and shall not be disclosed, described, or characterized to any other person, entity, publication or member of the media, except

as may be required by law, judicial process, or order of a court, to enforce the terms of the Settlement Agreement, or as otherwise agreed by the Parties; and (2) any Party intending to disclose such information as may be required by law, judicial process or order of a court, will notify the other of its intention and give the non-disclosing party a reasonable opportunity to object. The Parties agree not to disclose the substance of the negotiations that led to this Settlement Agreement including the merits of any positions taken by any Party except as necessary to provide the Court with information necessary to consider approval of the Settlement. Notwithstanding the foregoing, any Defendant or Defendants may disclose such information to a regulatory authority if it determines that disclosure is warranted.

#### **18.10 Recitals and Schedules**

1. The recitals and schedules to this Agreement are material and integral parts hereof and are fully incorporated into, and form part of, the Agreement.
2. The schedules to this Agreement are:
  - (i) Schedule “A” – First Order
  - (ii) Schedule “B” – First Notice
  - (iii) Schedule “C” – Plan of Notice
  - (iv) Schedule “D” – Second Order
  - (v) Schedule “E” – Second Notice
  - (vi) Schedule “F” – Plan of Allocation
  - (vii) Schedule “G” – Opt-Out Form

#### **18.11 Acknowledgements**

Each of the Parties hereby represents, affirms and acknowledges that:

- (i) he, she or its representative has the authority to bind the Party with respect to the matters set forth herein and has read and understood the Agreement;
- (ii) the terms of the Agreement and the effects thereof have been fully explained to him, her or its representative by his, her or its counsel; and

(iii) he, she or its representative fully understands each term of the Agreement and its effect.

### **18.12 Authorized Signatures**

Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, the Agreement on behalf of the Party for whom he or she is signing.

### **18.13 Counterparts**

The Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same Agreement, and a facsimile signature shall be deemed an original signature for purposes of executing the Agreement.

### **18.14 No French Translation**

The Parties acknowledge that they have required and consented that the 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.

### **18.15 Notice**

Any notice, instruction, motion for court approval or motion for directions or court orders sought in connection with the Agreement or any other report or document to be given by any of the Parties to any of the other Parties shall be in writing and delivered personally, by facsimile or e-mail during normal business hours, or sent by registered or certified mail, or courier postage paid as follows:

#### **For the Plaintiff:**

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**Kim Spencer McPhee Barristers, P.C.**

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