

***Purvis v Dell USA LP and Dell Canada Inc.***  
**Supreme Court of Nova Scotia Hfx No 500912**  
Proceeding under the *Class Proceedings Act*, SNS 2007, c 28

**SETTLEMENT AGREEMENT**

**Between**

**CHRISTOPHER PURVIS**

**and**

**DELL USA LP and DELL CANADA INC.**

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## RECITALS

### WHEREAS:

- A. The Defendants sell computer devices and related services, and in the past used the Service Provider to provide customer support services to customers.
- B. The Action was commenced by the Plaintiff in Nova Scotia on behalf of a proposed class alleging negligence, intrusion upon seclusion, and vicarious intrusion upon seclusion by agent in relation to the Data Thefts.
- C. The Defendants disputed liability and do not admit, by reaching the Settlement, any allegation in the Action, and deny all liability and assert that they have complete defences to the Action.
- D. The Parties through counsel have engaged in settlement discussions and negotiations with a view to resolving the Action, including attending a mediation on May 12, 2022.
- E. The Parties have reached this Settlement, and have entered into this Settlement Agreement, which embodies all of the terms and conditions of the Settlement between the Defendants and the Plaintiff, both individually and on behalf of the Settlement Class, subject to Court approval.
- F. The Defendants are entering into this Settlement Agreement to achieve a final resolution of all claims asserted or which could have been asserted by the Plaintiff and the Settlement Class in the Action, and to avoid further expense of protracted litigation.
- G. Class Counsel has reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiff's claims, having regard to the burdens and expense in prosecuting the Action, including the risks and uncertainties associated with certification, trial and appeals, and having regard to the value of the Settlement Agreement, has concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Class.
- H. The Parties intend and agree that the Settlement provides a simplified and convenient procedure for the Class in addressing the Data Thefts.

**NOW THEREFORE**, for the consideration set out in this Settlement Agreement, and subject to approval of the Court, the Parties agree to settle on the following terms:

**ARTICLE 1  
DEFINITIONS**

- (1) In this Settlement Agreement:
- (a) “**Action**” means the Halifax action styled *Christopher Purvis v Dell USA LP and Dell Canada Inc.*, commenced in the Supreme Court of Nova Scotia bearing Hfx No. 500912;
  - (b) “**Administration End Date**” means the date that is seven months after the Payment Date;
  - (c) “**Administration Expenses**” means all fees, disbursements, expenses, costs, and taxes owed to the Settlement Administrator for its services administering the Settlement;
  - (d) “**Administration Expenses Payment**” means the sum of \$100,000.00 to be paid by the Defendants towards the Administration Expenses, separate and apart from the Maximum Settlement Commitment;
  - (e) “**Base Payment**” means the sum of \$85.00 to be paid from the Maximum Base Fund to each member of the Settlement Class who completes a valid and timely Settlement Distribution Form in accordance with the Distribution Protocol;
  - (f) “**Certification and Settlement Approval Motion**” means the motion for an Order:
    - (i) certifying the Action for the purposes of settlement;
    - (ii) approving the Settlement Agreement;
    - (iii) approving the Phase II Notice and Phase II Notice Plan;
    - (iv) approving the Opt-Out Procedure and the Opt-Out Deadline;
    - (v) approving the Distribution Protocol;

- (vi) dismissing the Action effective upon the Payment Date, with prejudice and without costs;
- (vii) approving the Representative Plaintiff Honorarium; and
- (viii) granting other relief the Parties request;
- (g) “**Class**” and “**Class Members**” mean the 14,179 individuals to whom the Defendants sent notices of the Data Thefts on April 2, 2018 and January 25, 2019;
- (h) “**Class Counsel**” means Wagners;
- (i) “**Class Counsel Disbursements**” means the disbursements (taxes included) incurred by Class Counsel prosecuting the Action;
- (j) “**Class Counsel Fee**” means Class Counsel’s fee (taxes included) for prosecuting the Action;
- (k) “**Court**” means the Supreme Court of Nova Scotia;
- (l) “**Data Thefts**” means the theft of customer information from the Service Provider and the use of that information by third parties to carry out targeted tech support scam calls, as publicly disclosed by the Defendants on April 2, 2018 and January 25, 2019;
- (m) “**Defendants**” means Dell USA LP and Dell Canada Inc.;
- (n) “**Distribution Protocol**” means the distribution protocol attached as Schedule “D”;
- (o) “**Effective Date**” means the date when the Court’s Order approving this Settlement Agreement becomes a Final Order;
- (p) “**Eligible Economic Loss Claim**” means a claim by a member of the Settlement Class for:
  - (i) a fraudulent credit card charge or other banking charge or financial loss incurred as a result of the Data Thefts; and/or

- (ii) costs incurred to remediate or replace computers or technological equipment as a result of the Data Thefts;
- (q) **“Eligible Economic Loss Claim Payment”** means the sum, not exceeding \$3,000.00, to be paid from the Maximum Economic Loss Fund to a Settlement Class Member who, in the opinion of the Settlement Administrator, has proven an Eligible Economic Loss Claim in accordance with the Distribution Protocol;
- (r) **“Excess Administration Expenses”** means any portion of Administration Expenses that exceeds the Administration Expenses Payment and which shall be paid from the Maximum Settlement Commitment;
- (s) **“Execution Date”** means the date on which the last Party signs the Settlement Agreement;
- (t) **“Fee Approval Motion”** means the motion for an Order approving the:
  - (i) Class Counsel Fee; and
  - (ii) Class Counsel Disbursements;
- (u) **“Final Order”** means an Order after the later of: (i) the time for appeal has expired, and (ii) any appeals have been resolved;
- (v) **“Final Report”** means the Settlement Administrator’s report to the Parties, which shall include details regarding:
  - (i) the number of Class Members who opted-out of the Action;
  - (ii) the number of Class Members who could not be contacted;
  - (iii) the number of Class Members who were contacted but did not submit a Settlement Distribution Form and did not opt-out of the Action;
  - (iv) the number of Settlement Distribution Forms received; and
  - (v) the number and total sum of Base Payments and Eligible Economic Loss Claim Payments issued.

- (w) **“Maximum Base Fund”** means the all-inclusive sum, not to exceed \$1,205,215.00, committed by the Defendants for Base Payments;
- (x) **“Maximum Economic Loss Fund”** means the all-inclusive sum, not to exceed \$215,000.00, committed by the Defendants for Eligible Economic Loss Claim Payments;
- (y) **“Maximum Settlement Commitment”** means the all-inclusive sum, not to exceed \$2,000,000.00, committed by the Defendants in full and final settlement of the claims against the Defendants, inclusive of the Maximum Base Fund, Maximum Economic Loss Fund, Class Counsel Fee, Class Counsel Disbursements, Representative Plaintiff Honorarium and any Excess Administration Expenses;
- (z) **“Net Settlement Funds”** means the amount available from the Maximum Base Fund and Maximum Economic Loss Fund to be distributed to Settlement Class Members as Base Payments and Eligible Economic Loss Claim Payments and to pay any Excess Administration Expenses, after deducting the Class Counsel Fee, Class Counsel Disbursements, and Representative Plaintiff Honorarium;
- (aa) **“Opt-Out Deadline”** means the date 60 calendar days after the date of implementation of the Phase II Notice Plan;
- (bb) **“Opt-Out Form”** means the form attached as Schedule “B” to the Draft Order Approving Certification and Settlement (Schedule “B” to this Agreement);
- (cc) **“Opt-Out Procedure”** means the procedure set out in section 4.3 of this Settlement Agreement for Class Members to opt-out of the Action should they wish to exclude themselves from the Settlement Class;
- (dd) **“Order”** means an order or judgment of the Court;
- (ee) **“Parties”** means the Plaintiff and the Defendants;
- (ff) **“Payment Date”** means the date that the Settlement Administrator first distributes payment to the Settlement Class Members, which shall be no later than 10 calendar



days after the Settlement Administrator receives the Settlement Transfer Amount from the Defendants;

- (gg) **“Phase I Notice”** means the form of notice attached as Schedule “B” to the Draft Order Approving Phase I Notice (Schedule “A” to this Agreement) informing the Class of the Certification and Settlement Approval Motion;
- (hh) **“Phase I Notice Approval Motion”** means the motion to obtain approval of the Phase I Notice and Phase I Notice Plan and the appointment of the Settlement Administrator, which the Parties will seek to be conducted in writing;
- (ii) **“Phase I Notice Approval Order”** means the Order approving the Phase I Notice, Phase I Notice Plan and the appointment of the Settlement Administrator, attached as Schedule “A”;
- (jj) **“Phase II Notice”** means the form of notice, attached as Schedule “C” to the Draft Order Approving Certification and Settlement (Schedule “B” to this Agreement), informing the Class of the:
  - (i) Certification;
  - (ii) Settlement Agreement, and informing them they can visit Class Counsel’s website to read the Settlement Agreement;
  - (iii) Opt-Out Procedure and the Opt-Out Deadline; and
  - (iv) Class Counsel Fee, Class Counsel Disbursements, and Representative Plaintiff Honorarium;
- (kk) **“Plaintiff”** means Christopher Purvis;
- (ll) **“Released Claims”** means any and all claims, demands, actions, suits, causes of action, whether class, individual, representative or otherwise in nature, whether personal or subrogated, damages of any kind (including compensatory, punitive or other damages) whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, Administration Expenses, penalties, and lawyers’ fees

(including the Class Counsel Fee and Class Counsel Disbursements), known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity, that the Releasors, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have or hereafter can, shall or may have, relating in any way to any conduct occurring anywhere, from the beginning of time to the date hereof relating to any conduct alleged (or which could have been alleged) in the Action including, without limitation, any such claims which have been asserted, would have been asserted, or could have been asserted, directly or indirectly, whether in Canada or elsewhere, as a result of or in connection with, related to, or arising from, any conduct described in the Action on account of, arising out of, resulting from, the Data Thefts;

- (mm) “**Releasees**” means the Defendants and their former, present, and future, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, principals, insurers, and all other persons, partnerships or corporations with whom any of the former have been, are now, or may become affiliated, and all of their respective past, present and future officers, directors, employees, stockholders, shareholders, agents, trustees, and representatives; and the predecessors, successors, purchasers, heirs, executors, administrators, and assigns of each of the foregoing;
- (nn) “**Releasors**” means the Plaintiff and the Settlement Class and their individual successors, heirs, executors, administrators, trustees, and assigns;
- (oo) “**Representative Plaintiff Honorarium**” means an amount to be approved by the Court, not to exceed \$3,000.00, to be paid to the Plaintiff for his role prosecuting the Action;
- (pp) “**Service Provider**” means the third-party company used in the past by the Defendants to provide customer support services to customers;
- (qq) “**Settlement**” means the settlement provided for in this Settlement Agreement;
- (rr) “**Settlement Administrator**” means RicePoint or such other third-party administrator agreed upon by the parties and approved by the Court;

- (ss) “**Settlement Class**” and “**Settlement Class Member**” means the Class except any Class Member who validly opts-out of the Action; and
- (tt) “**Settlement Distribution Form**” means the document attached as Schedule “E”.

**ARTICLE 2  
PHASE I NOTICE**

**2.1 Phase I Notice Approval Motion**

- (1) The Plaintiff shall, as soon as is reasonably practicable after the Execution Date, take steps to serve and file the Phase I Notice Approval Motion seeking the draft order in the form attached as Schedule “A”.
- (2) The Phase I Notice shall be disseminated in accordance with the Phase I Notice Plan.

**ARTICLE 3  
CERTIFICATION, SETTLEMENT, AND FEE APPROVAL**

**3.1 Certification and Settlement Approval Motion**

- (1) Following the Execution Date, the Plaintiff shall take steps to expeditiously schedule the Certification and Settlement Approval Motion seeking a draft order in the form attached as Schedule “B”.
- (2) Class Counsel will provide draft motion materials to the Defendants for comment at least 20 days before the applicable filing deadline. The Defendants will provide any comments to Class Counsel at least 7 days prior to the filing deadline.
- (3) The Certification and Settlement Approval Motion will seek to certify the Action for settlement purposes on the basis of the following sole common issue: “Are the Plaintiff and Class Members entitled to compensation?”

**3.2 Fee Approval Motion**

- (1) Class Counsel shall seek to have the Fee Approval Motion heard at the same time as the Certification and Settlement Approval Motion.

### **3.3 Defendants' Position on Motions**

- (1) The Defendants shall:
  - (a) cooperate with the Plaintiff in bringing the Certification and Settlement Approval Motion; and
  - (b) take no position on the Fee Approval Motion.

### **3.4 Date When Settlement Final**

- (1) This Settlement shall become final on the Effective Date.

### **3.5 Costs**

- (1) Each Party shall bear its own costs of the Certification and Settlement Approval Motion and Fee Approval Motion.

### **3.6 Pre-Motion Confidentiality**

- (1) Until materials to bring the Phase I Notice Approval Motion are served and filed, the Parties shall keep the terms of the Settlement Agreement confidential and shall not disclose them without the prior written consent of the Parties, except as:
  - (a) required for the purposes of financial reporting, communications with insurers or indemnitors, and/or the preparation of financial records (including tax returns and financial statements);
  - (b) necessary to give effect to its terms; or
  - (c) required by law.

## **ARTICLE 4 PHASE II NOTICE AND OPT-OUT**

### **4.1 Phase II Notice Dissemination by Settlement Administrator**

- (1) Within 10 days of the Effective Date, the Settlement Administrator shall implement the Phase II Notice Plan, disseminating the:

- (a) Phase II Notice, containing hyperlinks to the Opt-Out Form and Settlement Distribution Form.

#### **4.2 Mode of Dissemination**

- (1) The documents listed in section 4.1(1) shall be disseminated in accordance with the Phase II Notice Plan.

#### **4.3 Opt-Out Procedure**

- (1) As part of the Certification and Settlement Approval Motion, Class Counsel shall seek the Court's approval of the Distribution Protocol, including the Opt-Out Procedure.
- (2) Class Members who deliver a valid Opt-Out Form to the Settlement Administrator by the Opt-Out Deadline shall not be members of the Settlement Class and shall have no further right to participate in the Action or to share in the distribution of funds as a result of the Settlement.

#### **4.4 Reservations of Legal Rights**

- (1) The Defendants reserve all of their legal rights and defences with respect to any Class Member who validly opts-out from the Action.

### **ARTICLE 5 PAYMENTS**

#### **5.1 Administration Expenses Payment**

- (1) The Defendants will pay the Administration Expenses Payment to the Settlement Administrator in accordance with the timing required by the Settlement Administrator.

#### **5.2 Class Counsel Fee, Class Counsel Disbursements, and Representative Plaintiff Honorarium**

- (1) 20 days before the Effective Date, Class Counsel shall provide their wire transfer information and a completed United States Internal Revenue Service Form W-9 (or a completed United States Internal Revenue Service Form W-8BEN-E, W-8BEN, W-8ECI, W-8IMY, or W-8EXP, as applicable) to counsel for the Defendants.

- (2) Within 20 days after the Effective Date, the Defendants shall pay to Class Counsel the Court-approved amounts for the:
  - (a) Class Counsel Fee;
  - (b) Class Counsel Disbursements; and
  - (c) Representative Plaintiff Honorarium.
- (3) After the payment in section 5.2(2), the Defendants will notify the Settlement Administrator of the Net Settlement Funds.

### **5.3 Distribution Protocol**

- (1) The Distribution Protocol sets out the procedure by which the:
  - (a) Settlement Administrator will determine and make payments to Settlement Class Members from the Net Settlement Funds; and
  - (b) Defendants will make payments to the Settlement Administrator, not to exceed the Net Settlement Funds, to fund payments to Settlement Class Members and pay any Excess Administration Expenses.

### **5.4 No Further Payments**

- (1) The Defendants will make no payments other than for:
  - (a) the Administration Expenses Payment;
  - (b) the Class Counsel Fee, Class Counsel Disbursements, and Representative Plaintiff Honorarium; and
  - (c) funding Base Payments and Eligible Economic Loss Claim Payments and any Excess Administration Expenses, in amounts not to exceed, in aggregate, the Net Settlement Funds.

## **5.5 Maximum Settlement Commitment**

- (1) In making the payments under sections 5.4(1)(b) and 5.4(1)(c), the Defendants shall not be obligated to pay more, in aggregate, than the Maximum Settlement Commitment.

## **ARTICLE 6 STEPS TO GIVE EFFECT TO SETTLEMENT AGREEMENT**

### **6.1 Reasonable Efforts**

- (1) The Parties shall take all reasonable steps to give effect to this Settlement Agreement and to secure its approval and the prompt, complete and final dismissal to take effect on the Payment Date with prejudice of the Action on a without costs basis as against the Defendants, including cooperating with the Plaintiff's efforts to obtain the approvals and Orders required from the Court and the implementation of this Settlement Agreement.
- (2) Each Party shall bear its own costs in relation to any steps contemplated in or taken in accordance with this section.

### **6.2 Action in Abeyance**

- (1) Other than the Phase I Notice Approval Motion, Certification and Settlement Approval Motion, the Fee Approval Motion, and any motion under sections 6.1 or 11.1, unless otherwise agreed, the Parties agree to hold in abeyance all steps in the Action unless the Settlement Agreement is terminated in accordance with its terms.

## **ARTICLE 7 RELEASES AND DISMISSALS**

### **7.1 Release of the Releasees**

- (1) On the Effective Date, and in consideration of the Maximum Settlement Commitment and for other valuable consideration set forth in this Settlement Agreement, the Releasers forever and absolutely release, relinquish, and discharge the Releasees from the Released Claims.

- (2) The Parties acknowledge that the Plaintiff and Settlement Class Members 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 new or different facts.
- (3) Except as provided herein, this Settlement Agreement does not settle, compromise, release or limit in any way whatsoever any claim by the Settlement Class against any person other than the Releasees.
- (4) The effect of the Release in this Article is subject to the Parties' rights of termination set out in this Settlement Agreement.

## **7.2 No Further Claims**

- (1) After the Effective Date, the Releasors shall not, in respect of any Released Claim, institute, continue, maintain, intervene in, or assert, either directly or indirectly, in Nova Scotia or elsewhere, on their own behalf or on behalf of any class or any other person, any proceeding, cause of action, claim or demand against the Releasees, or any other person who may claim contribution or indemnity, or other claims over, for relief from the Releasees, whether pursuant to statute or at common law or equity. 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.
- (2) Class Counsel is not, as of the date of this Settlement Agreement, representing and will not in future represent plaintiffs in any other proceeding against the Defendants related to any matter which was or could have been raised in the Action.

## **7.3 Material Term**

- (1) Without in any way limiting the ability of the Parties to assert that other terms in this Settlement Agreement are material terms, the releases and reservation of rights contemplated in this section shall be considered a "**Material Term**" of the Settlement



Agreement and the failure of the Court to approve the releases and/or reservation of rights contemplated herein shall give rise to a right of termination under section 9.1.

## **ARTICLE 8 EFFECT OF SETTLEMENT**

### **8.1 No Admission of Liability or Concessions**

- (1) The Plaintiff and the Defendants expressly reserve all of their rights if the Settlement is not approved, is terminated, or otherwise fails to take effect for any reason.
- (2) This Settlement Agreement, whether or not it is implemented, anything contained in it, any and all negotiations, discussions, documents, and communications associated with this Settlement Agreement, and any action taken to implement this Settlement Agreement, shall not be deemed, construed, or interpreted to be an admission or concession by the:
  - (a) Defendants of any fact, fault, omission, wrongdoing or liability, or the truth of any of the claims or allegations made or which could have been made against them in the Action, or the application of the applicable laws to any of the claims made in the Action, or of any weakness in the defences of the Defendants to any of the claims or allegations made or which could have been made against them in the Action; or
  - (b) Plaintiff, Class Counsel or the Class of any weakness in the claims of the Plaintiff and the Class.

### **8.2 Agreement Not Evidence or Presumption**

- (1) This Settlement Agreement, whether or not it is implemented, and anything contained herein, and any and all negotiations, discussions, documents, communications, and proceedings associated with this Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any pending or future civil, quasi-criminal, criminal or administrative action or disciplinary investigation or proceeding in any jurisdiction as evidence, a presumption, concession, or admission of anything save as set out in section 8.2(2).

- (2) Notwithstanding section 8.2(1), this Settlement Agreement may be referred to or offered as evidence:
- (a) to obtain the Orders or directions from the Court contemplated by this Settlement Agreement;
  - (b) in a proceeding to enforce the Settlement Agreement;
  - (c) to defend against the assertion of Released Claims; or
  - (d) as required by law.

## **ARTICLE 9 TERMINATION**

### **9.1 Right of Termination**

- (1) The Parties shall each have the right to terminate this Settlement Agreement by delivering a written notice within 30 days of one of the following events:
- (a) the Court:
    - (i) declines to approve this Settlement Agreement and that decision becomes a Final Order;
    - (ii) approves a settlement that is, in the opinion of any Party, materially inconsistent with the terms of this Settlement Agreement, including without limitation a settlement that excludes a Material Term or approves a Material Term with substantial amendment; or
    - (iii) approves this Settlement Agreement but the Order is reversed on appeal and the reversal becomes a Final Order;
  - (b) the Defendants fail to make payments in accordance with the Distribution Protocol; or
  - (c) the Plaintiff makes public the terms of the Settlement Agreement in breach of section 3.6

- (2) If an event described in section 9.1(1)(a) occurs, the Parties agree to make best efforts to attempt to resolve any issues in furtherance of resolution of the Action on such modified terms as may be required to obtain the Court's approval.
- (3) Any Order, ruling or determination made or rejected by the Court with respect to the Class Counsel Fee, Class Counsel Disbursements or Representative Plaintiff Honorarium shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not provide a basis for the termination of this Settlement Agreement.
- (4) Any Order, ruling or determination made or rejected by the Court that modifies the Maximum Settlement Commitment, the Phase I Notice Plan, or the Phase II Notice Plan, shall be deemed to be a material modification of this Settlement Agreement, providing a basis for the termination of this Settlement Agreement.
- (5) Except as provided for in section 9.4(2), if a Party exercises the right to terminate, the Settlement Agreement shall be null and void and have no further force or effect, and 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.

## **9.2 Steps Required on Termination**

- (1) If this Settlement Agreement is terminated after the Court has heard or decided a motion contemplated herein, the Plaintiff shall, within 30 days of either Party delivering a written notice of termination, on notice to the other Parties, bring a motion to the Court for an Order:
  - (a) declaring this Settlement Agreement null and void and of no force or effect except for the provisions listed in section 9.4(2); and
  - (b) setting aside all prior Orders related to the Settlement.
- (2) Subject to section 9.4(2), the Parties shall consent to the Order(s) sought in any motion made under section 9.2.

### **9.3 Notice of Termination**

- (1) If this Settlement Agreement is terminated after dissemination of the Phase I or Phase II Notice, notice of the termination will be given to the Class.

### **9.4 Effect of Termination**

- (1) If the Settlement Agreement is terminated in accordance with its terms:
  - (a) the Parties will be restored to their respective positions prior to the execution of this Settlement Agreement, except as expressly provided for herein;
  - (b) this Settlement Agreement will have no further force or effect and no effect on the rights of the Parties except as specifically provided for herein;
  - (c) this Settlement Agreement will not be introduced into evidence or otherwise referred to in any litigation against the Defendants.
- (2) Notwithstanding the provisions of section 9.4, if this Settlement Agreement is terminated, the provisions of sections 3.6, 8.1, 8.2, 9.1(2), 9.1(5), 9.2, 9.3, 9.4, 9.5, 9.6, 11.1, 11.3, 11.4, 11.5, 11.6, 11.7, 11.10, 11.11, 11.15, and 11.17, and the definitions applicable thereto (but only for the limited purpose of the interpretation of those sections), shall survive termination and shall continue in full force and effect. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately, except pursuant to section 9.4(3).
- (3) In the event of termination by either Party, the Parties shall seek direction from the Court as to responsibility between the Parties for payment of any and all Administration Expenses incurred up to that date or to be reasonably incurred, including any Administration Expenses associated with disseminating notice of termination, except in the following circumstances:
  - (a) If the Defendants fail to make payment in accordance with the Distribution Protocol, all Administration Expenses incurred up to that date shall be payable by the Defendants to the Settlement Administrator; and

- (b) If the Plaintiff makes public the terms of the Settlement Agreement in breach of section 3.6, all Administration Expenses incurred up to that date shall be payable by the Plaintiff to the Settlement Administrator.

## **9.5 Disputes Relating to Termination**

- (1) If there is a dispute about the termination of this Settlement Agreement, the Parties agree that the Court shall determine the dispute on a motion made by a Party on notice to the other Parties.

## **9.6 Handling of Confidential Information in the Event of Termination**

- (1) In the event of termination, it is understood and agreed that all documents and information exchanged by the parties in order to reach the Settlement are and remain subject to settlement privilege.
- (2) In the event of termination, within 30 days of the notice of termination being delivered or the Order described in section 9.2(1) being issued (if applicable), Class Counsel and the Defendants and their counsel shall destroy all documents or other materials provided by the other party or containing or reflecting information derived from such documents for the purposes of reaching and implementing this Settlement. Class Counsel and the Defendants and their counsel shall provide the other party with a written certification of such destruction. Nothing contained in this section shall be construed as requiring any party to destroy any of its work product. However, any documents or information provided by the Parties or Class Counsel in connection with this Settlement Agreement may not be disclosed to any person in any manner, or used, directly or indirectly, by Class Counsel, the Defendants or their counsel or any other person in any way for any reason, without the express prior written permission of the applicable party. Class Counsel, the Defendants and their counsel shall take reasonable steps and precautions to ensure and maintain the confidentiality of such documents, information and any work product of the party that discloses such documents and information.

**ARTICLE 10**  
**REPORTING BY SETTLEMENT ADMINISTRATOR AND CLASS COUNSEL**

**10.1 Administrator's Report**

- (1) As outlined in the Distribution Protocol, the Settlement Administrator shall provide the Administrator's Report to the Parties.

**10.2 Final Report of Settlement Administrator**

- (1) On the Administration End Date the Settlement Administrator shall provide the Final Report to the Parties.

**10.3 Report to Court**

- (1) Class Counsel shall, within 90 days after the Administration End Date, provide to the Court via letter a report providing information about the distribution of the Net Settlement Funds.

**ARTICLE 11**  
**MISCELLANEOUS**

**11.1 Motions for Directions**

- (1) Any of the Parties may apply to the Court for directions in respect of the interpretation, implementation and administration of this Settlement Agreement.
- (2) All motions contemplated by this Settlement Agreement shall be on notice to the Parties.

**11.2 Modification by the Court**

- (1) Subject to the right to terminate this Settlement Agreement under section 9.1, to the extent any term in this Settlement Agreement is modified by the Court, such modification shall take precedence over this Settlement Agreement, which shall continue to be valid and enforceable to the fullest extent permitted by law.

### **11.3 Computation of Time**

- (1) In this Settlement Agreement, unless a contrary intention appears, time shall be computed as follows:
  - (a) where there is a reference to a number of days it means calendar days;
  - (b) 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
  - (c) in the case where the time for doing an act expires on a day listed in Rule 94.02(1) of the *Nova Scotia Civil Procedure Rules*, Royal Gaz Nov 19, 2008, the act may be done on the next weekday when the office of the Court prothonotary is open.

### **11.4 Ongoing Jurisdiction**

- (1) The Parties agree that the Court shall retain jurisdiction with respect to implementation, administration, interpretation and enforcement of the terms of this Settlement Agreement.

### **11.5 Governing Law**

- (1) This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Nova Scotia and the laws of Canada applicable therein.

### **11.6 Severability**

- (1) Subject to section 11.6(2) any provision hereof that is held to be inoperative, unenforceable or invalid in any jurisdiction shall be severable from the remaining provisions which shall continue to be valid and enforceable to the fullest extent permitted by law.
- (2) The following are not severable:

- (a) Material Terms; and
- (b) any term giving rise to a right of termination as set out in section 9.1;

### **11.7 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 the Settlement, unless expressly incorporated herein.

### **11.8 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 after the Certification and Settlement Approval Motion must be approved by the Court, subject to the direction of the Court.

### **11.9 Binding Effect**

- (1) If the Settlement is approved by the Court and becomes final, this Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiff, the Settlement Class, the Defendants, the Releasees and the Releasors or any of them, 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 Releasors and each and every covenant and agreement made herein by the Defendants shall be binding upon all of the Releasees.

### **11.10 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 signature shall be deemed an original signature for purposes of executing this Settlement Agreement.



### **11.11 Negotiated Agreement**

- (1) This Settlement Agreement and the underlying Settlement have been the subject of arm's-length negotiations and discussions among the Parties, through counsel. Each of the Parties 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.

### **11.12 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.
- (2) Nevertheless, if required to by the Court, Class Counsel and/or a translation firm selected by Class Counsel shall prepare a French translation of the Settlement Distribution Form, the Opt-Out Form, the Phase I Notice, and the Phase II Notice, the cost of which shall be an Administration Expense. In the event of any dispute as to the interpretation of this Settlement Agreement, only the English version shall govern.

### **11.13 Currency**

- (1) All monetary amounts in this Settlement Agreement are in Canadian dollars.

### **11.14 Recitals**

- (1) The recitals to this Settlement Agreement are incorporated into, and form part of, this Settlement Agreement.

### **11.15 Acknowledgements**

- (1) The Parties affirm and acknowledge that:

- (a) they or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has reviewed this Settlement Agreement;
- (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to them or the Party's representative by their counsel;
- (c) they 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 the Settlement Agreement, with respect to the first Party's decision to execute this Settlement Agreement.

#### **11.16 Authorized Signatures**

- (1) Each of the undersigned represents that they are fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement on behalf of the Parties identified above their respective signatures and their law firms.

#### **11.17 Notice**

- (1) Any notice, instruction, motion for court approval or motion for directions or Orders sought in connection with this Settlement Agreement or any other report or document to be given by any Party to any other Party shall be in writing and delivered by email, or overnight letter to:

**For the Plaintiff, the Class, the Settlement Class, or Class Counsel:**

Wagners  
1869 Upper Water Street  
Historic Properties, Suite PH301  
Halifax, NS B3J 1S9

Raymond Wagner, KC  
Maddy Carter  
Kate Boyle

**For the Defendants:**

Torys LLP  
79 Wellington St. West  
TD South Tower, 33<sup>rd</sup> floor  
Toronto, ON M5K 1N2

Molly M Reynolds  
Tel: (416) 865-8135  
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[raywagner@wagners.co](mailto:raywagner@wagners.co)

[mcarter@wagners.co](mailto:mcarter@wagners.co)

[kboyle@wagners.co](mailto:kboyle@wagners.co)

Class Counsel

Email: [mreynolds@torys.com](mailto:mreynolds@torys.com)

Counsel for the Defendants

This Settlement Agreement is executed by: