

**ONTARIO
SUPERIOR COURT OF JUSTICE**

The Honourable Madam

Justice Rady

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)

Tuesday, the 24th day

of July, 2012

BETWEEN

CROSSLINK TECHNOLOGY INC.

Plaintiff

- and -

BASF CANADA, BASF CORPORATION, BASF A.G., BAYER INC.,
BAYER A.G., BAYER MATERIAL SCIENCE LLC, BAYER CORPORATION,
DOW CHEMICAL COMPANY, DOW CHEMICAL CANADA INC.,
HUNTSMAN INTERNATIONAL LLC, LYONDELL CHEMICAL COMPANY,
RHODIA, RHODIA INC., and RHODIA CANADA INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION made by the plaintiff for an Order certifying this action as a class proceeding for settlement purposes as it relates to the defendant Huntsman International LLC ("Huntsman"), approving the Settlement Agreement entered into with Huntsman, and dismissing this action as against Huntsman was heard this day at the Court House, 80 Dundas Street, London, Ontario.

WHEREAS notice of certification and settlement approval in the Proceedings was provided pursuant to Orders of the Ontario Court dated March 11, 2008 and of the Quebec Court dated July 2, 2009, and whereas pursuant to those Orders, the deadline to opt out of the Proceedings expired on August 31, 2009 for persons in Canada who purchased Polyether Polyol Products between January 1, 2002 and December 31, 2003;

ON READING the materials filed, including the settlement agreement attached to this Order as Schedule A (the "Settlement Agreement") and on hearing submissions of counsel for the plaintiff and counsel for Huntsman:

1. **THIS COURT ORDERS** that for the purposes of this Order the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that this action be certified as a class proceeding as against Huntsman for settlement purposes only.
3. **THIS COURT ORDERS** that the Settlement Class be defined as:

All persons in Canada who purchased Polyether Polyol Products during the Class Period, except the Excluded Persons and Persons who are included in the Quebec Settlement Class.
4. **THIS COURT ORDERS** that Crosslink Technology Inc. be appointed as the representative plaintiff for the Settlement Class.
5. **THIS COURT ORDERS** that the following issue is common to the Settlement Class:

Did Huntsman agree with other manufacturers of Polyether Polyol Products to fix, raise, maintain or stabilize the prices of, or allocate markets and customers for, Polyether Polyol Products in Canada during the Class Period?
6. **THIS COURT ORDERS** that paragraphs 2 to 5 of this Order, including the certification of this action against the Settling Defendant and the definitions of Settlement Class, Class Period and Common Issue, are without prejudice to any position a Non-Settling Defendant may take in this or any subsequent proceeding on the issue of certification as against the Non-Settling Defendant. For greater certainty, no person may cite or rely upon paragraphs 2 to 5 of this Order, the certification as against the Settling Defendant, or any reasons given by the Court in support of the same, as authority in support of, or in opposition to, any position taken by a party to any motion for certification against the Non-Settling Defendants in this or any other proceeding.
7. **THIS COURT ORDERS** that the settlement as set forth in the Settlement Agreement is fair, reasonable and in the best interests of the members of the Settlement Class.
8. **THIS COURT ORDERS** that the Settlement Agreement is approved pursuant to s. 29 of the *Class Proceedings Act, 1992* and shall be implemented in accordance with its terms.

9. **THIS COURT ORDERS** that the Settlement Agreement, in its entirety, forms part of this Order and the terms thereof shall be enforceable as part of this Order.
10. **THIS COURT ORDERS** that, subject to paragraph 13 below, this Order and the Settlement Agreement are binding upon the Plaintiff, the Settlement Class Members (including those persons who are minors or mentally incapable), and Huntsman, and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of this action.
11. **THIS COURT ORDERS** that members of the Settlement Class shall be eligible to opt-out of this action only if they purchased Polyether Polyol Products during the earlier part of the class period (January 1, 1999 to December 31, 2001) or during the later part of the class period (January 1, 2004 to December 31, 2004), but did not make any purchases during the January 1, 2002 to December 31, 2003 period. No further right to opt out of the action will be provided.
12. **THIS COURT ORDERS** that members of the Settlement Class who are eligible to opt-out of this action can do so by sending a written election to opt-out to Class Counsel, postmarked on or before the date which is forty-five (45) days from the date of the first publication of the summary notice attached hereto as Schedule "B". The written election to opt-out must include the information specified in the long-form notice attached hereto as Schedule "C".
13. **THIS COURT ORDERS** that any member of the Settlement Class who validly opts out of this action will not be bound by the Settlement Agreement and shall no longer participate or have the opportunity to participate in this action.
14. **THIS COURT ORDERS** that, upon the Effective Date, the Releasors have released and shall be conclusively deemed to have fully, finally and forever released the Releasees from any and all claims 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 the Released Claims.

15. **THIS COURT ORDERS** that, upon the Effective Date, each Releasor shall consent and be deemed to have consented to the dismissal of any Other Actions he, she or it has commenced against the Releasees, without costs and with prejudice.
16. **THIS COURT ORDERS** that, upon the Effective Date, each Other Action commenced in Ontario by any Releasor shall be and is hereby dismissed against the Releasees without costs and with prejudice.
17. **THIS COURT ORDERS** that, upon the Effective Date, each Releasor is barred and enjoined from filing, commencing, prosecuting, intervening or continuing any proceeding, claim or demand, directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, against (i) any Releasee in connection with the Released Claims; or (ii) any other person, partnership, corporation or other entity that may claim contribution or indemnity or other relief over against any of the Releasees, whether pursuant to the *Negligence Act*, R.S.O. 1990, c. N.1 or other legislation or at common law or equity in connection with the Released Claims. However, nothing herein shall be construed to bar the continuation of this action by the Plaintiff and Settlement Class Members against the Non-Settling Defendants.
18. **THIS COURT ORDERS** that, upon the Effective Date, the Releasees have released and shall be conclusively deemed to have fully, finally and forever released each other from any and all claims for contribution and indemnity that said Releasees, 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 the Released Claims.
19. **THIS COURT ORDERS** that the use of the terms “Releasors” and “Released Claims” in this Order does not constitute a release of claims by those Releasors who are resident in any province or territory where the release of one tortfeasor is the release of all tortfeasors.
20. **THIS COURT ORDERS** that, upon the Effective Date, each Releasor who is resident in a province or territory where the release of one tortfeasor is a release of all tortfeasors covenants and undertakes not to make any claim in any way nor to threaten, commence

or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.

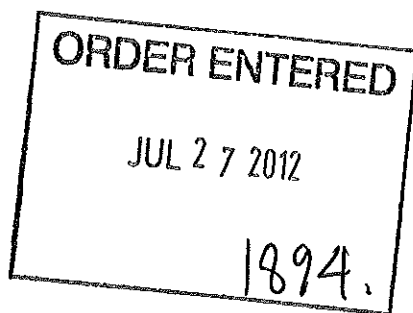
21. **THIS COURT ORDERS** that, upon the Effective Date, all claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity or in any other capacity, inclusive of interest, costs, expenses, class administration expenses, penalties, legal fees and taxes, relating to the Released Claims, which were or could have been brought, by any Non-Settling Defendant or any other person or party, against all or any of the Releasees, or by a Releasee against any Non-Settling Defendant, are barred, prohibited, and enjoined in accordance with the terms of this Order (unless such claim is made in respect of a claim by a person who has validly opted-out of this action).
22. **THIS COURT ORDERS** that if the Ontario Court ultimately determines that there is a right of contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise:
 - (a) the Plaintiff and Class Members shall not be entitled to claim or recover from the Non-Settling Defendants that portion of any damages (including putative damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to s. 36 of the *Competition Act*) that corresponds with the Proportionate Liability of Huntsman proven at trial or otherwise; and
 - (b) this Court shall have full authority to determine the Proportionate Liability of Huntsman at the trial or other disposition of this action, whether or not Huntsman appear at the trial or other disposition and the Proportionate Liability of Huntsman shall be determined as if Huntsman is a party to this action and any determination by this Court in respect of the Proportionate Liability of Huntsman shall only apply in this action, and shall not be binding on Huntsman in any other proceedings.
23. **THIS COURT ORDERS** that nothing in this order is intended to or shall limit, restrict or affect any arguments which the Non-Settling Defendants may make regarding the reduction of any assessment of damages, restitutionary award, disgorgement of profits or judgment against them in this action.
24. **THIS COURT ORDERS** that if this action has been certified and all appeals have been exhausted or the time to appeal has passed without an appeal having been launched, a

Non-Settling Defendant may, on motion to this Court determined as if Huntsman remained a party to this action and on at least thirty (30) days notice to counsel for Huntsman, seek orders for the following:

- (a) documentary discovery and an affidavit of documents in accordance with the *Rules of Civil Procedure* from Huntsman;
 - (b) oral discovery of a representative of Huntsman, the transcript of which may be read in at trial;
 - (c) leave to serve a request to admit on Huntsman in respect of factual matters; and/or
 - (d) the production of a representative of Huntsman to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.
25. **THIS COURT ORDERS** that Huntsman shall retain all rights to oppose any motion brought under paragraph 24 of this Order, and on any such motion the Court may make such orders as to costs and other terms as it considers appropriate
26. **THIS COURT ORDERS** that a Non-Settling Defendant may effect service of the motion(s) referred to in paragraph 24 above on Huntsman by service on its counsel of record in this action.
27. **THIS COURT ORDERS** that for purposes of the enforcement of this Order, this Court will retain an ongoing supervisory role and Huntsman will attorn to the jurisdiction of this Court for these purposes, including paragraph 24 herein.
28. **THIS COURT ORDERS** that, except as provided herein, the Order does not affect any claims or causes of action that any Settlement Class Member has or may have against the Non-Settling Defendants.
29. **THIS COURT ORDERS** that Huntsman has no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement.
30. **THIS COURT ORDERS** that the Settlement Amount be held in trust for the benefit of the Settlement Class, pending further orders of the Court.

31. **THIS COURT ORDERS** that the summary and long-form of the notice of settlement approval are hereby approved substantially in the form attached respectively hereto as Schedules "B" and "C".
32. **THIS COURT ORDERS** that the method of dissemination of the summary and long-form of the notice of settlement approval is hereby approved substantially in the form attached hereto as Schedule "D" and that the notice of settlement approval shall be distributed in accordance with the method of dissemination.
33. **THIS COURT ORDERS** that this action be dismissed as against Huntsman without costs and with prejudice.
34. **THIS COURT ORDERS** that approval of the Settlement Agreement is contingent upon approval by the Quebec Court and if such approval is not secured in Quebec, this Order shall be null and void and without prejudice to the rights of the parties to proceed with this action, and any agreement between the parties incorporated in this Order shall be deemed in any subsequent proceedings to have been made without prejudice.

Date:



A handwritten signature in cursive script, appearing to read "The Honourable Justice Rady".

The Honourable Justice Rady

SCHEDULE “A”

**CANADIAN
POLYETHER POLYOL PRODUCTS CLASS ACTION
NATIONAL SETTLEMENT AGREEMENT**

Made as of April 11, 2012

Between

CROSSLINK TECHNOLOGY INC. AND ANNE JOHNSON
(the “Plaintiffs”)

and

HUNTSMAN INTERNATIONAL LLC
(the “Settling Defendant”)

**CANADIAN POLYETHER POLYOLS CLASS ACTION
NATIONAL SETTLEMENT AGREEMENT**

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**CANADIAN POLYETHER POLYOL PRODUCTS CLASS ACTION
NATIONAL SETTLEMENT AGREEMENT**

RECITALS

- A. WHEREAS all defined terms used herein shall have the meaning set out in section 1 below;
- B. WHEREAS the Proceedings have been commenced by the Plaintiffs in Ontario and Quebec under each province's respective class proceedings legislation, which allege that the Settling Defendant participated in an unlawful conspiracy to raise, fix, maintain or stabilize the prices of Polyether Polyol Products in Canada and/or to allocate markets and customers for the sale of Polyether Polyol Products in Canada, contrary to Part VI of the *Competition Act*;
- C. WHEREAS notice of certification and settlement approval (in respect of a settlement with Bayer Inc., Bayer A.G., Bayer Material Science LLC, and Bayer Corporation) in the Proceedings was provided pursuant to Orders of the Ontario Court dated March 11, 2008 and of the Quebec Court dated July 2, 2009, and whereas pursuant to those Orders, the deadline to opt out of the Proceedings expired on August 31, 2009 for putative members of the Class who purchased Polyether Polyol Products between January 1, 2002 and December 31, 2003;
- D. WHEREAS putative class members shall only be eligible to opt-out of the Proceedings if they did not purchase Polyether Polyol Products between January 1, 2002 and December 31, 2003.
- E. WHEREAS the Settling Defendant denies the Plaintiffs' allegations and does not admit, through the execution of this Settlement Agreement or otherwise, any allegation of unlawful conduct alleged in the Proceedings and would assert affirmative defences to the Plaintiffs' claim;
- F. 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, the Plaintiffs and Class Counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiffs and the classes they seek to represent;

G. WHEREAS, despite its belief that it is not liable in respect of the allegations as alleged in the Proceedings, or at all, and that it has good defences thereto, the Settling Defendant is entering into this Settlement Agreement in order to achieve a final and nation-wide resolution of all claims asserted or which could have been asserted against it by the Plaintiffs in the Proceedings, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;

H. WHEREAS the Parties therefore wish to, and hereby do, finally resolve on a national basis, without admission of liability, all of the Proceedings as against the Settling Defendant;

I. WHEREAS for the purposes of settlement only and contingent on approvals by the Courts as provided for in this Settlement Agreement, the Parties have consented to certification or authorization of the Proceedings as class proceedings and have consented to a Settlement Class and a Common Issue in each of the Proceedings subject to the terms expressed herein;

J. WHEREAS the Plaintiffs assert that they are adequate class representatives for the Settlement Classes and will seek to be appointed representative plaintiffs in their respective Proceedings,

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 Proceedings, as to the Settling Defendant only, be settled and dismissed on the merits with prejudice, without costs as to the Plaintiffs, the classes they seek to represent or the Settling Defendant, subject to the approval of the 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) *Account* means an interest bearing trust account under the control of Ontario Counsel at a Canadian Schedule 1 bank in Ontario.

- (2) ***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 but excluding Class Counsel Fees.
- (3) ***Class Counsel*** means Ontario Counsel and Quebec Counsel.
- (4) ***Class Counsel Fees*** means the fees, disbursements, costs, HST and/or GST and other applicable taxes or charges of Class Counsel, including any obligations for contributions that any Plaintiff, Settlement Class or Quebec Counsel may have to the Fonds.
- (5) ***Class Period*** means January 1, 1999 up to and including December 31, 2004.
- (6) ***Common Issue*** in each Proceeding means: Did the Settling Defendant agree with other manufacturers of Polyether Polyol Products to fix, raise, maintain or stabilize the prices of, or allocate markets and customers for, Polyether Polyol Products in Canada during the Class Period?
- (7) ***Courts*** means the Ontario Court and the Quebec Court.
- (8) ***Defendants*** means the individuals and entities named as defendants in the Proceedings.
- (9) ***Deposit Date*** means the date which is twenty (20) business days following execution of this Settlement Agreement.
- (10) ***Document*** is defined to be synonymous in meaning and equal in scope to the usage of this term in Rule 30.01 of the Ontario *Rules of Civil Procedure*, including, without limitation, electronic or computerized data compilations. A draft or non-identical copy is a separate document within the meaning of this term.
- (11) ***Effective Date*** means the date when Final Orders have been received from all Courts approving this Settlement Agreement.
- (12) ***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, the legal representatives, heirs, successors and assigns of each of the foregoing, and any Persons who previously opted out of the proceeding.

- (13) ***Final Order*** means a final judgment or final approval order entered by a Court in respect of the certification or authorization of a Proceeding as a class proceeding and the approval of this Settlement Agreement once the time to appeal such judgment or final approval order has expired without any appeal being taken, if an appeal lies, or once there has been a final disposition of all appeals.
- (14) ***Fonds*** means the Fonds d'aide aux recours collectifs in Quebec.
- (15) ***Non-Settling Defendant*** means a Defendant that is not a Settling Defendant or a Settled Defendant, or any Defendant that terminates its own settlement agreement in accordance with its terms, whether or not such settlement agreement is in existence at the Execution Date.
- (16) ***Ontario Counsel*** means Siskinds LLP.
- (17) ***Ontario Court*** means the Ontario Superior Court of Justice.
- (18) ***Ontario Settlement Class*** means all Persons in Canada who purchased Polyether Polyol Products during the Class Period, except the Excluded Persons and Persons who are included in the Quebec Settlement Class.
- (19) ***Other Actions*** means actions or proceedings, other than the Proceedings, relating to Released Claims commenced by a Settlement Class Member either before or after the Effective Date.
- (20) ***Parties*** means the Plaintiffs and the Settling Defendant.
- (21) ***Person*** means an individual, corporation, 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.

- (22) *Plaintiffs* means Crosslink Technology Inc. and Anne Johnson, individually and collectively.
- (23) *Polyether Polyol Products* means polyether polyols, monomeric or polymeric diphenylmethane diisocyanate (MDI), and/or toluene diisocyanates (TDI), whether sold separately or in a combined form with or without other chemicals added thereto (including polyether polyol systems), and products that directly or indirectly contain or are derived from polyether polyols, MDI and TDI. The "Polyether Polyol Products" shall include, but not be limited to, certain products sold under the general trade names identified in Schedule A hereto.
- (24) *Proceedings* means Ontario Court File No. 50305CP (London) and Quebec Court (District of Québec) File No. 200-06-000069-065.
- (25) *Proportionate Liability* means the proportion of any judgment that, had the Settling Defendant not settled, a court or other arbiter would have apportioned to the Settling Defendant and/or Releasees, whether pursuant to *pro rata*, proportionate fault, *pro tanto*, or another method.
- (26) *Purchase Price* means the net amount, including rebates or any other form of discounts, paid for Polyether Polyol Products purchased in Canada during the Class Period, excluding all other charges including, but not limited to, delivery or shipping charges and taxes.
- (27) *Quebec Counsel* means Siskind Desmeules s.e.n.c.r.l.
- (28) *Quebec Court* means the Superior Court of Quebec.
- (29) *Quebec Settlement Class* means all individuals resident in the province of Québec and all legal persons resident in Québec established for a private interest, partnership or association in the province of Québec which, at all times in the twelve months preceding the motion for authorization, had under its direction or control no more than 50 persons

bound to it by a contract of employment, who purchased Polyether Polyol Products during the Class Period, except Excluded Persons.

- (30) ***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, 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, suspected or unsuspected, in law, under statute or in equity, that 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 anywhere, from the beginning of time to the date hereof, in respect of the purchase, sale, pricing, discounting, marketing and/or distribution of Polyether Polyol Products in Canada, or relating to any conduct alleged (or which could have been alleged) in the Proceedings including, without limitation, any such claims which have been asserted, would have been asserted or could have been asserted, whether in Canada or elsewhere, as a result of the purchase, pricing, selling, discounting, marketing and/or distribution of Polyether Polyol Products in Canada. However, nothing herein shall be construed to release any claims arising from any alleged product defect, breach of contract, or similar claim between the Parties relating to Polyether Polyol Products.
- (31) ***Releasees*** means, jointly and severally, individually and collectively, the Settling Defendant and all of its respective present and former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, insurers, and all other persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and its respective past, present and future officers, directors, employees, agents, shareholders, attorneys, trustees, servants and representatives; and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing.
- (32) ***Releasors*** means, jointly and severally, individually and collectively, the Plaintiffs and the Settlement Class Members and their respective predecessors, successors, heirs, executors, administrators, and assigns.

- (33) *Settlement Agreement* means this agreement, including the recitals and schedules.
- (34) *Settlement Amount* means USD \$1,700,000.00.
- (35) *Settlement Class Member* means a member of either the Ontario Settlement Class or the Quebec Settlement Class who has not validly opted out of the Proceedings in accordance with orders of the Courts in the Proceedings.
- (36) *Settled Defendant* means, individually or collectively, any Defendant who has entered into a settlement agreement with the Plaintiffs relating to the allegations asserted in the Proceedings, whether or not such settlement agreement was in existence at the Execution Date of this Settlement Agreement.
- (37) *Settling Defendant* means Huntsman International LLC.
- (38) *U.S. Litigation* means the class action proceeding pending in the United States District Court for the District of Kansas, under the caption *In re Urethane Antitrust Litigation*, No. 04-MD-1616-JWL (Polyether Polyol), and including 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.

SECTION 2 - CONDITION PRECEDENT: COURT APPROVAL

This Settlement Agreement shall be deemed to be terminated and therefore null and void and of no force and effect unless the Ontario Court and the Quebec Court approve this Settlement Agreement in accordance with the terms set out herein in the Proceeding commenced in their respective jurisdiction and the orders so given become Final Orders. If this Settlement Agreement is terminated, it shall not be used as evidence or otherwise in any litigation.

SECTION 3 – SETTLEMENT APPROVAL

3.1 Best Efforts

The Parties shall use their best efforts to effectuate this Settlement and to secure the prompt, complete and final dismissal with prejudice of the Proceedings as against the Settling Defendant.

3.2 Motions for Approval

(1) As soon as practicable after the Settlement Agreement is executed, the Plaintiffs shall bring motions before the Ontario Court and the Quebec Court for orders approving the notices described in section 11, certifying or authorizing each of the Proceedings commenced in their respective jurisdictions as a class proceeding (for settlement purposes) and approving this Settlement Agreement.

(2) The Ontario order referred to in section 3.2(1) shall be in a form to be agreed upon. The Quebec order referred to in section 3.2(1) shall be agreed upon by the Parties and shall mirror the substance, and where possible, the form of the Ontario order.

3.3 Pre-Motion Confidentiality

Until the first of the motions required by section 3.2 are brought, this Settlement Agreement and all of its terms shall be kept confidential and shall not be disclosed by either the Plaintiffs or the Settling Defendant, without the prior written consent of counsel for the Settling Defendant or Class Counsel respectively, except as may be required for the purposes of financial reporting or the preparation of financial records (including tax returns and financial statements) or as otherwise required by law.

3.4 Sequence of Motions

The Plaintiff in Quebec shall not proceed with a motion to approve this Settlement Agreement in the Proceeding commenced in Quebec unless and until the Ontario Court approves this Settlement Agreement in the Proceeding commenced in Ontario. The approval motion may be filed in Quebec before the Ontario Court has approved the Settlement Agreement, but Quebec Counsel agree to seek an adjournment of any approval hearing to permit the Ontario Court to first render its decision on the motion for approval brought before it. Class Counsel and the Settling Defendant may agree to waive this provision.

SECTION 4– SETTLEMENT BENEFITS

4.1 Payment of Settlement Amount

(1) The Settling Defendant agrees to pay the Settlement Amount in accordance with this Settlement Agreement, in full satisfaction of all of the Released Claims against the Releasees.

- (2) The Settling Defendant 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.
- (3) The Settling Defendant shall pay the Settlement Amount on or before the Deposit Date to Ontario Counsel for deposit into the Account.
- (4) Ontario Counsel shall maintain the Account as provided for in this Settlement Agreement and shall not pay out any of Settlement Amount, except in accordance with the provisions of this Settlement Agreement, without an order of the Courts made on notice to or on consent of the Parties.

4.2 Taxes and Interest

- (1) All interest earned on the Settlement Amount shall become and remain part of the Account.
- (2) Subject to section 4.2(3), all taxes payable on any interest which accrues on the Settlement Amount in the Account or otherwise in relation to the Settlement Amount shall be the responsibility of the Settlement Classes. Ontario Counsel shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount in the 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 Account.
- (3) The Settling Defendant shall have no responsibility to make any filings relating to the 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 Account, unless this Settlement Agreement is not approved or is terminated, in which case the interest earned on the Settlement Amount in the Account shall be returned to the Settling Defendant who, in such case, shall be responsible for the payment of all taxes on such interest.

4.3 Cooperation

- (1) Within fifteen (15) days of the Effective Date or at a time mutually agreed upon by the Parties, counsel for the Settling Defendant agrees to meet with Class Counsel to provide an

evidentiary proffer, which will include non-privileged information within its control relating to the allegations in the Proceedings.

(2) Within fifteen (15) days of the Effective Date or at a time mutually agreed upon by the Parties, the Settling Defendant agrees to produce electronic transactional data for sales by the Settling Defendant of Polyether Polyol Products in Canada during the Class Period and for the two years immediately following the Class Period. In connection with the production of such data, the Settling Defendant shall make available technical and computer personnel, on such terms as may be agreed between the parties acting reasonably, to assist Class Counsel in understanding and using such data.

(3) Within fifteen (15) days of the Effective Date or at a time mutually agreed upon by the Parties, the Settling Defendant shall identify and produce all of the Settling Defendant's relevant non-privileged Documents related to the allegations raised in the Proceedings, including but not limited to: (i) Documents relating to the allegations against the Defendants and any unnamed co-conspirators in the Proceedings; (ii) all price announcements for Polyether Polyols in North America during the Class Period; (iii) all Documents provided to any grand jury, the United States Department of Justice, the European Commission, the Competition Bureau, or any other state, federal or international governmental or administrative agency, without geographic limitation, concerning the allegations raised in the Proceedings except Documents created for or by government authorities in connection with any investigation(s) relating to Polyether Polyol Products; and (iv) to the extent not included in the above categories, any Documents provided by the Settling Defendant to the Plaintiffs or their counsel in the U.S. Litigation. The obligation to produce the above Documents shall be a continuing obligation to the extent Documents are identified following the initial productions. Nothing in this paragraph shall be construed to require the Settling Defendant to produce Documents created in cooperation with the Non-Settling Defendants in preparation for these proceedings.

(4) Within fifteen (15) days of the Effective Date or at a time mutually agreed upon by the Parties, the Settling Defendant shall produce copies of transcripts of all depositions, including all exhibits thereto, taken in the U.S. Litigation that the Settling Defendant has in its possession.

(5) The Settling Defendant agrees to produce at trial and/or discovery or through acceptable affidavits or other testimony, representatives who are qualified to establish for admission into evidence any of the Settling Defendant's Documents and/or information provided as cooperation pursuant to section 4.3 of this agreement, and agree to authenticate Documents produced by the Defendants that were created by, sent to, or received by the Settling Defendant, to the extent permitted by the rules of evidence.

(6) The Settling Defendant shall not be required to produce or provide pursuant to section 4.3 any information or Documents: (i) that it is prohibited by law from so producing or providing; (ii) that it obtained from any other party in any action or proceeding, except as required by section 4.3(4); or (iii) that are protected from disclosure by any applicable legal privilege.

(7) The Settling Defendant's obligations to cooperate shall not be affected by the release provisions of this Settlement Agreement. The Settling Defendant's obligations to cooperate shall cease as of the date that final judgment has been rendered in the Proceedings against all Defendants.

(8) Class Counsel and the Plaintiffs agree to use the confidential information provided by the Settling Defendant pursuant to this section 4.3 solely for the purpose of prosecuting the Proceedings against the Non-Settling Defendants or unnamed co-conspirators. Class Counsel and Plaintiffs agree to maintain the confidentiality of all information and materials provided by the Settling Defendant that have been designated Confidential or Highly Confidential in accordance with the terms of the Protective Order (Doc. 165) in the U.S. Litigation, the September 10, 2010 Order of the Court (Doc. 1625) in the U.S. Litigation, and any further confidentiality orders entered by the Courts in these Proceedings. Class Counsel and the Plaintiffs agree not to disclose any of the confidential information provided by the Settling Defendant pursuant to this section 4.3 to any class member who opts out of the Proceedings or any counsel for any such class member.

SECTION 5 – DISTRIBUTION OF THE SETTLEMENT AMOUNT AND ACCRUED INTEREST

5.1 Distribution Plan

The Settlement Amount shall be held by Ontario Counsel for the benefit of the Settlement Class Members. After the Effective Date, and at an appropriate time as determined by Class Counsel, the Settlement Amount shall be distributed in accordance with a plan and approved by the Courts (the “Plan of Distribution”). Class Counsel shall, by motion, on notice to the Settling Defendant, submit a notice and Plan of Distribution for approval by the Courts at the appropriate time.

5.2 No Responsibility for Administration or Fees

In no event shall the Settling Defendant have any responsibility, financial obligations or liability whatsoever with respect to the investment, distribution or administration of monies in the Account including, but not limited to, in respect of Administration Expenses and Class Counsel Fees.

SECTION 6 – TERMINATION

6.1 Right of Termination

(1) If one or more of the following events occur, the Plaintiffs and the Settling Defendant shall each, in their respective sole discretion, have the option to terminate this Settlement Agreement in its entirety:

- (a) any Court declines to approve this Settlement Agreement or any material part hereof;
- (b) any Court approves this Settlement Agreement in a materially modified form; or
- (c) any order approving the Settlement Agreement is materially modified or set aside on appeal.

(2) Any order, ruling, or determination made by any Court with respect to an award of Class Counsel’s fees and disbursements from the Account 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.

(3) The Settling Defendant shall be also entitled in its sole discretion to terminate this Settlement Agreement if the total Purchase Price for Polyether Polyol Products by Persons who opt out of the Proceedings in accordance with section 11, exceeds CAN \$75,000,000.

(4) If, pursuant to section 6.1(1) or 6.1(3) above, either the Plaintiffs or Settling Defendant wish to terminate the Settlement Agreement, notice of such decision to terminate the Settlement Agreement must be provided in writing to the Plaintiffs or Settling Defendant, as applicable, within sixty (60) days of an event under section 6.1(1) having occurred.

6.2 Effect of Termination

Except as provided in section 6.4, if this Settlement Agreement is terminated, it shall have no further force and effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation and:

- (a) no motion to certify or authorize any of the Proceedings as a class action on the basis of this Settlement Agreement or to approve this Settlement Agreement shall proceed; and
- (b) any order certifying or authorizing a Proceeding as a class action on the basis of the Settlement Agreement or approving this Settlement Agreement shall be set aside and declared null and void and of no force or effect.

6.3 Allocation of Monies in the Account Following Termination

If the Settlement Agreement is terminated Ontario Counsel shall return to the Settling Defendant all monies in the Account including interest, but less the costs of notice expended in accordance with sections 11 and 13, and any monies which are reasonably withheld to pay any taxes which may become owing on interest earned, within thirty (30) business days of a Final Order not being granted by the Courts or of receiving notice of termination. The Settling

Defendant and Plaintiffs expressly reserve all of their respective rights to the extent that this Settlement Agreement is terminated.

6.4 Survival of Provisions After Termination

(1) If this Settlement Agreement is terminated for any reason, the provisions of sections 4.2, 9, 10.2, 11.2, 11.3, 12.2(5), and 13(3), and the definitions applicable thereto shall survive the termination and 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.

(2) The Settling Defendant and Plaintiffs expressly reserve all of their respective rights to the extent that this Settlement Agreement does not become effective or if this Settlement Agreement is terminated by the Settling Defendant.

SECTION 7 – RELEASES AND DISMISSALS

7.1 Release of Releasees

Upon the Effective Date, and in consideration of payment of the Settlement Amount, and for other valuable consideration set forth in the Settlement Agreement, the Releasors forever and absolutely release the Releasees from the Released Claims.

7.2 Release by Releasees

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

Notwithstanding section 7.1, 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, or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.

7.4 No Further Claims

The Releasors 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, any action, suit, cause of action, claim or demand against any Releasee or any other Person who may claim contribution or indemnity from any Releasee in respect of any Released Claim or any matter related thereto, except for the continuation of the Proceedings against the Non-Settling Defendants or unnamed co-conspirators.

7.5 Dismissal of the Proceedings

Upon the Effective Date, the Proceedings shall be dismissed with prejudice and without costs as against the Releasees.

7.6 Dismissal of Other Actions

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

(2) Upon the Effective Date, all Other Actions commenced in Ontario or Quebec by any Settlement Class Member relating to the Released Claims shall be dismissed against the Releasees, without costs and with prejudice.

SECTION 8 – BAR ORDER AND OTHER CLAIMS

8.1 Ontario

The Plaintiff in the Ontario Proceeding shall seek 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 otherwise, by any Non-Settling Defendant or any other Person or party, against a Releasee, are barred, prohibited and enjoined in accordance with the terms of this section;

- (b) if the Court ultimately determines that there is a right of contribution and indemnity between the Defendants, the Plaintiff and the Settlement Class Members shall restrict their joint and several claims against the Non-Settling Defendants such that the Plaintiff shall be entitled to claim and recover from the Non-Settling Defendants on a joint and several basis only those damages, if any, (including punitive damages) that correspond with the Proportionate Liability of the Non-Settling Defendants proven at trial or otherwise;
- (c) a Non-Settling Defendant may, upon motion on at least thirty (30) days notice to counsel for the Settling Defendant, and not to be brought unless and until the action against the Non-Settling Defendants has been certified and all appeals or times to appeal have been exhausted, seek an order from the Ontario Court for the following:
 - (A) documentary discovery and an affidavit of documents in accordance with the *Rules of Civil Procedure*, O. Reg. 194 from the Settling Defendant;
 - (B) oral discovery of a representative of the Settling Defendant, the transcript of which may be read in at trial;
 - (C) leave to serve a request to admit on the Settling Defendant in respect of factual matters; and/or
 - (D) the production of a representative of the Settling Defendant to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.

The Settling Defendant retains all rights to oppose such motion(s) and shall not by the terms hereof be deemed to have agreed or acknowledged that any Non-Settling Defendant is entitled to any such relief.

- (d) 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 timely be provided by the Settling Defendant to the Plaintiff and Class Counsel.

- (e) a Non-Settling Defendant may effect service of the motion(s) referred to in section 8.1(c) on the Settling Defendant by service on counsel of record for the Settling Defendant in the Proceedings.

8.2 Quebec

The Plaintiff in the Quebec Proceeding shall seek an order from the Quebec Court providing for the following:

- (a) the Plaintiff in Quebec and the Quebec Settlement Class Members expressly waive and renounce the benefit of solidarity against the Non-Settling Defendants with respect to the facts and deeds of the Settling Defendant;
- (b) the Plaintiff in Quebec and the Quebec Settlement Class Members shall henceforth only be able to claim and recover damages, including punitive damages, attributable to the conduct of and/or sales by the Non-Settling Defendants;
- (c) any action in warranty or other joinder of parties to obtain any contribution or indemnity from the Settling Defendant or relating to the Released Claims shall be inadmissible and void in the context of the Quebec Proceeding; and
- (d) that any future right by the Non-Settling Defendants to examine on discovery a representative of the Settling Defendant will be determined according to the provisions of the *Code of Civil Procedure*, and the Settling Defendant shall reserve its right to oppose such an examination under the *Code of Civil Procedure*.

8.3 Claims Against Other Entities Reserved

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.

SECTION 9 – EFFECT OF SETTLEMENT

9.1 No Admission of Liability

The Parties expressly reserve all of their rights if this Settlement Agreement is terminated. Further, the Parties agree that, whether or not this Settlement Agreement is terminated, 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 Settling Defendant, or of the truth of any of the claims or allegations contained in the Proceedings or any other pleading filed by the Plaintiffs.

9.2 Agreement Not Evidence

The Parties agree that, whether or not it is terminated, 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 enforce this Settlement Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law.

9.3 No Further Litigation

(1) Except as provided in this section, no Class Counsel, nor anyone currently or hereafter employed by, associated with, 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 which relates to or arises from the Released Claims. Moreover, these Persons may not divulge to anyone 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 such information is otherwise publicly available or otherwise ordered by a court.

(2) Section 9.3(1) does not apply to the involvement of any Person in the continued prosecution of the Proceedings against any Non-Settling Defendants or unnamed co-conspirators.

SECTION 10 – CERTIFICATION OR AUTHORIZATION FOR SETTLEMENT ONLY

10.1 Settlement Class and Common Issue

(1) The Parties agree that the Proceedings shall be certified or authorized as class proceedings solely for purposes of settlement of the Proceedings and the approval of this Settlement Agreement by the Courts.

(2) The Plaintiffs agree that, in the motions for certification or authorization of the Proceedings as class proceedings 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.

10.2 Certification or Authorization Without Prejudice

In the event this Settlement Agreement is not approved or is terminated in accordance with its terms, the Parties agree that any prior certification or authorization of a Proceeding as a class proceeding, including the definition of the Settlement Class and the statement of the Common Issue, shall be without prejudice to any position that any of the Parties may later take on any issue in the Proceedings or any other litigation.

SECTION 11 – OPTING OUT AND NOTICE TO SETTLEMENT CLASSES

11.1 Opting Out Procedure

The procedure for opting out of the Proceedings, including timing and notice requirements and the information required of the Person seeking to opt-out, shall be agreed to between the parties and approved by the Courts as part of the Final Orders.

11.2 Opt-Out Deadline

Class Counsel shall, by motion, on notice to the Settling Defendant, submit a notice of settlement approval for approval by the Courts at the appropriate time. This notice shall require

that on a date, no later than forty five (45) days after the first publication of the notice of settlement approval, members of the Ontario Settlement Class and Quebec Settlement Class that are eligible to opt out and that do not want to participate in the settlement must submit a timely and valid request for exclusion from the Settlement Class (“Opt-Out Deadline”).

11.3 Opt-Out Report

Within thirty (30) days after the expiration of the Opt-Out Deadline, the Settling Defendant and Class Counsel shall be provided with a report from the claims administrator, or such other person as may be agreed between the parties, advising as to the names of any Opt-Outs, the reason for their opting out, if known, the best estimate of the total Purchase Price paid by each Opt-Out for purchases from the Settling Defendant, and a copy of all information provided by that Opt-Out in the opting out process (“Opt-Out Report”).

11.4 Notices Required

The proposed Settlement Classes shall be given notice of: (i) hearings at which the Courts will be asked to certify the Proceedings as class proceedings and approve the Settlement Agreement; and (ii) the certification or authorization of the Proceedings as class proceedings and the approval of this Settlement Agreement if granted by the Courts.

11.5 Form and Distribution of Notices

The form of the notices referred to in section 11 and the manner of their publication and distribution shall be as agreed to by the Parties and approved by the Courts.

SECTION 12 – ADMINISTRATION AND IMPLEMENTATION

12.1 Mechanics of Administration

Except to the extent provided for in this Settlement Agreement, the mechanics of the implementation and administration of this Settlement Agreement shall be determined by the Courts on motions brought by Class Counsel.

12.2 Information and Assistance

- (1) The Settling Defendant will make reasonable efforts to compile a list of the names and addresses of Persons who purchased Polyether Polyol Products in Canada from it during the Class Period.
- (2) The information required by section 12.2(1) shall be delivered to Class Counsel within ten (10) business days of the execution of this Settlement Agreement by all Parties.
- (3) Ontario Class Counsel shall use the information provided under section 12.2(2) to advise Persons who purchased Polyether Polyol Products in Canada from the Settling Defendant during the Class Period of this Settlement Agreement and the date of the approval hearings before the Courts.
- (4) The Settling Defendant will make reasonable best efforts to provide the Purchase Price paid by each of its customers in Canada during the Class Period. This information shall be provided to the administrator or, if no administrator has been appointed by the Court, to Class Counsel, within fourteen (14) days after the Effective Date and shall be used to facilitate the claims administration process eventually established in accordance with section 5 of this Settlement Agreement.
- (5) If this Settlement Agreement is terminated, all information provided by the Settling Defendant pursuant to section 12.2 shall be returned to it forthwith and no record of the information so provided shall be retained by Class Counsel in any form whatsoever.

SECTION 13 – CLASS COUNSEL FEES AND ADMINISTRATION EXPENSES

- (1) Class Counsel may seek the Courts' approval to pay Class Counsel Fees and Administration Expenses from the monies in the Account.
- (2) Subject to section 13(3), Class Counsel Fees and Administration Expenses may be paid out of the Account after the Effective Date.
- (3) Notwithstanding section 13(2), Class Counsel may pay the costs of the notices referred to in section 11 of this Settlement Agreement out of the Account, as those costs become due.

(4) The Settling Defendant shall not be liable for any fees, disbursements or taxes of any of Class Counsel's, the Plaintiffs' or Settlement Class Members', respective lawyers, experts, advisors, agents, or representatives.

SECTION 14 – MISCELLANEOUS

14.1 Motions for Directions

(1) Class Counsel or the Settling Defendant may apply to the Courts, or the Ontario Court, as applicable, for directions in respect of the implementation and administration of this Settlement Agreement.

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

14.2 Releasees Have No Liability for Administration

The Releasees have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement.

14.3 Headings, etc.

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" and similar expressions refer to this Settlement Agreement and not to any particular section or other portion of this Settlement Agreement.

14.4 Computation of Time

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, the act may be done on the next day that is not a holiday.

14.5 Ongoing Jurisdiction

(1) Each of the Courts shall retain exclusive jurisdiction over each Proceeding commenced in its jurisdiction, the Parties thereto and the Class Counsel Fees in those Proceedings.

(2) No Court shall 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 with which it shares jurisdiction over that matter.

(3) Notwithstanding the above, the Ontario Court shall exercise jurisdiction with respect to implementation, administration, and enforcement of the terms of this Settlement Agreement and the Plaintiffs, Settlement Classes and the Settling Defendant submit to the jurisdiction of the Ontario Court for purposes of implementing, administering, and enforcing the settlement provided for in this Settlement Agreement. Issues related to the administration of this 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.

14.6 Governing Law

This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario.

14.7 Entire Agreement

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.

14.8 Amendments

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 Courts with jurisdiction over the matter to which the amendment relates.

14.9 Binding Effect

This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiffs, the Settling Defendant, 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 Defendant shall be binding upon all of the Releasees.

14.10 Survival

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

14.11 Counterparts

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

14.12 Negotiated Agreement

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.

14.13 Language

The Parties acknowledge that they have required and consented that this 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, the Settling Defendant shall prepare a French translation of the Settlement Agreement at its own expense. The Parties agree that such translation is for convenience only. In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall be considered.

14.14 Transaction

The present 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.

14.15 Recitals

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

14.16 Schedule

The Schedule annexed hereto forms part of this Settlement Agreement.

14.17 Acknowledgements

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 with respect to the first Party's decision to execute this Settlement Agreement.

14.18 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, this Settlement Agreement.

14.19 Notice

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 Plaintiffs and for Class Counsel:

Charles M. Wright

**Siskinds LLP
Barristers and Solicitors
680 Waterloo Street
London, ON N6A 3V8**

Telephone: 519-660-7753

Facsimile: 519-672-6065

Email: charles.wright@siskinds.com

Simon Hébert

**Siskind Desmeules s.e.n.c.r.l.
Les promenades du Vieux-Quebec
43 rue Beadle, bureau 320
Quebec City, QC G1R 4A2**

Telephone: 418-694-2009

Facsimile: 418-694-0281

Email: simon.hebert@siskindsdesmeules.com

For Settling Defendant:

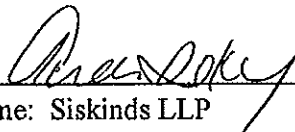
Katherine L. Kay
Stikeman Elliott LLP
5300 Commerce Court West
199 Bay Street
Toronto, Ontario M5L 1B9
Telephone: 416-869-5507
Facsimile: 416-947-0866
Email: kkay@stikeman.com

14.20 Date of Execution

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

**CROSSLINK TECHNOLOGY INC. AND
ANNE JOHNSON**

By:



Name: Siskinds LLP
Title: Ontario Counsel

By:

Name: Siskind Desmeules s.e.n.c.r.l
Title: Quebec Counsel

HUNTSMAN INTERNATIONAL LLC

By:

Name: Stikeman Elliott LLP
Title: Canadian Counsel

Katherine L. Kay

Stikeman Elliott LLP
5300 Commerce Court West
199 Bay Street
Toronto, Ontario M5L 1B9

Telephone: 416-869-5507
Facsimile: 416-947-0866
Email: kkay@stikeman.com

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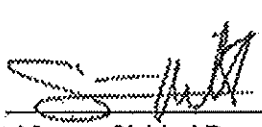
**CROSSLINK TECHNOLOGY INC. AND
ANNE JOHNSON**

By:

Name: Siskinds LLP

Title: Ontario Counsel

By:



Name: Siskind Desmeules s.e.n.c.r.l

Title: Quebec Counsel

HUNTSMAN INTERNATIONAL LLC

By:

Name: Stikeman Elliott LLP

Title: Canadian Counsel

Katherine L. Kay
Stikeman Elliott LLP
5300 Commerce Court West
199 Bay Street
Toronto, Ontario M5L 1B9
Telephone: 416-869-5507
Facsimile: 416-947-0866
Email: kkay@stikeman.com

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ANNE JOHNSON**

By:

Name: Siskinds LLP

Title: Ontario Counsel

By:

Name: Siskind Desmeules s.e.n.c.r.l

Title: Quebec Counsel

HUNTSMAN INTERNATIONAL LLC

By:

Stikeman Elliott LLP

Name: Stikeman Elliott LLP

Title: Canadian Counsel

SCHEDULE A

“Polyether Polyol Products” includes but are not limited to, polyether polyols sold under the trade names Jeffol and Rubinol, MDI sold under the trade names Rubinate, Suprasec, Mitra-Lok and Linestar, TDI sold under the trade name Rubinate, and propylene oxide-based polyether polyol systems sold under the trade names Acoustiflex, Alkapol, Rimline, Rubiflex and Rubitherm.

SCHEDULE “B”

If you purchased Polyether Polyols and/or Polyether Polyol Products in Canada, your legal rights could be affected by class action settlements.

WHAT THE CLASS ACTIONS ARE ABOUT

Class action lawsuits have been commenced in Ontario and Quebec alleging an unlawful conspiracy to fix prices for Polyether Polyols. Polyether Polyols means polyether polyols, monomeric or polymeric diphenylmethane diisocyanate (MDI), and/or toluene diisocyanate (TDI), whether sold separately or in a combined form with or without other chemicals added thereto, and polyether polyol systems. Polyether Polyol Products means Polyether Polyols and products that directly or indirectly contain or are derived from Polyether Polyols. Polyether Polyols are used in a variety of products, including furniture, bedding, seat cushions, adhesives, surface coatings, insulating materials, and packaging. Siskinds LLP (London, Ontario) and Siskinds Desmeules s.e.n.c.r.l. (Quebec City, Quebec) are class counsel in the lawsuits. If you are uncertain on whether you purchased Polyether Polyol and/or Polyether Polyol Products, please contact Class Counsel at the contact information listed below.

COURT APPROVAL OF CLASS ACTION SETTLEMENTS

Settlements have been reached in the lawsuits with Lyondell Chemical Company ("Lyondell"), BASF Canada, BASF Corporation, BASF A.G. (now BASF SE), and Huntsman International LLC ("Huntsman"). These defendants are collectively referred to as the "Settling Defendants". The settlements represent resolution of disputed claims against each of the Settling Defendants. The Settling Defendants do not admit any wrongdoing or liability. Details regarding who is affected the settlements (including the relevant purchase periods) are available online at www.classaction.ca.

Under the terms of the settlements, the Settling Defendants have agreed to pay the following for the benefit of the settlement class in exchange for the full and final release of the claims asserted in the class actions against them and their related entities, including BASF A.G.:

- Lyondell has agreed to contribute up to Cdn \$35,000 towards the costs of notice;
- BASF Canada has agreed to pay Cdn \$2,000,000;
- BASF Corporation has agreed to pay Cdn \$2,000,000; and
- Huntsman has agreed to pay US \$1,700,000.

The Settling Defendants have also agreed to provide certain cooperation to the plaintiffs as set out in the relevant settlement agreements.

On July 9, 2012, the Ontario and Quebec Courts certified/authorized the actions as class proceedings as against the settling defendants for settlement purposes only and approved the settlements as being fair, reasonable and in the best interests of settlement class members. As Lyondell was in bankruptcy proceedings in the United States at the time its settlement was entered into, the Lyondell settlement was also approved by the U.S. bankruptcy court on January 11, 2012.

DISTRIBUTION OF THE SETTLEMENT FUNDS

The BASF and Huntsman settlement funds are being held in trust by Siskinds LLP for the benefit of settlement class members. A method for distributing the settlement funds will be submitted to the courts for approval at a later time. Once the courts have approved the method for distributing the settlement funds, another notice will be provided and posted online at www.classaction.ca explaining which settlement class members are eligible for direct payment and how settlement class members can apply to receive payment.

OPTING OUT OF (OR EXCLUDING ONESELF FROM) THE CLASS ACTIONS

In the context of a prior settlement, class members with purchases between January 1, 2002 and December 31, 2003 were given the right to opt out of the class actions and were informed that no further right to opt out would be provided. Thus, class members with purchases during this period are not eligible to opt out.

As the proposed settlements contemplate a longer purchase period (January 1, 1999 to December 31, 2004 (and for Lyondell in Quebec, to December 31, 2005)), you can opt out if you only made purchases during the earlier part of the class period (January 1, 1999 to December 31, 2001) or during the later part of the class period (January 1, 2004 to December 31, 2004 (and for Lyondell in Quebec, December 31, 2005)), but did not make any purchases during the January 1, 2002 to December 31, 2003 period. Information regarding how to opt out and the implications of opting out (or not opting out) are available online at www.classaction.ca. The deadline for opting out is [date].

This notice has been approved by the Ontario and Quebec courts. This notice contains a summary of some of the terms of the settlements. If there is a conflict between the provisions of this notice and the settlement agreements, the terms of the settlement agreements shall prevail.

QUESTIONS? VISIT www.classaction.ca, email charles.wright@siskinds.com or call toll-free 1-800-461-6166 ext. 2455.

SCHEDULE “C”

If you purchased Polyether Polyols and/or Polyether Polyol Products in Canada, your legal rights could be affected by class action settlements.

WHO THIS NOTICE IS FOR

All persons in Canada who purchased Polyether Polyols Products during the class periods outlined below (the "settlement class"). Polyether Polyols means polyether polyols, monomeric or polymeric diphenylmethane diisocyanate (MDI), and/or toluene diisocyanate (TDI), whether sold separately or in a combined form with or without other chemicals added thereto, and polyether polyol systems. Polyether Polyol Products means Polyether Polyols and products that directly or indirectly contain or are derived from Polyether Polyols. Polyether Polyols are used in a variety of products, including furniture, bedding, seat cushions, adhesives, surface coatings, insulating materials, and packaging. If you are uncertain on whether you purchased Polyether Polyol and/or Polyether Polyol Products, please contact Class Counsel at the addresses listed below.

COURT APPROVAL OF CLASS ACTION SETTLEMENTS

Class action lawsuits have been commenced in Ontario and Quebec alleging an unlawful conspiracy to fix prices for Polyether Polyols. Settlements have been reached in the lawsuits with Lyondell Chemical Company ("Lyondell"), Huntsman International LLC ("Huntsman"), BASF Canada Inc. ("BASF Canada"), BASF Corporation, and BASF A.G. (now BASF SE). These defendants are collectively referred to as the "Settling Defendants". The settlements represent resolution of disputed claims against each of the Settling Defendants. The Settling Defendants do not admit any wrongdoing or liability. The litigation is continuing against the remaining two Defendants: Dow Chemical Company and Dow Chemical Canada Inc.

For persons resident in Canada (excluding Quebec Class Members, as defined in the below paragraph), your rights may be impacted by the settlements if you purchased Polyether Polyols Products during the period of January 1, 1999 to December 31, 2004, and you have not previously opted out as described below.

For individuals resident in the province of Québec and all legal persons established in Québec for a private interest, partnership or association which at all times between May 1, 2005 and December 31, 2005 had no more than 50 persons bound to it by a contract of employment ("Quebec Class Members"):

- The BASF and Huntsman settlements provide for a class period of January 1, 1999 to December 31, 2004. If you purchased Polyether Polyol Products during this period and did not previously opt out as described below, your rights may be impacted by the BASF and Huntsman settlements.
- The Lyondell settlement provides for a class period of January 1, 1999 to December 31, 2005. If you purchased Polyether Polyol Products during this period and did not previously opt out as described below, your rights may be impacted by the Lyondell settlement. As the Lyondell settlement only provides for a contribution to notice costs, no compensation will be paid with respect to Polyether Polyol Product purchases between January 1, 2005 and December 31, 2005.

Under the terms of the settlements, the Settling Defendants have agreed to pay the following for the benefit of the settlement class in exchange for the full and final release of the claims asserted in the class actions against them and their related entities, including BASF A.G.:

- Lyondell has agreed to contribute up to Cdn \$35,000 towards the costs of notice;
- BASF Canada has agreed to pay Cdn \$2,000,000;
- BASF Corporation has agreed to pay Cdn \$2,000,000; and
- Huntsman has agreed to pay US \$1,700,000.

The Settling Defendants have also agreed to provide certain cooperation to the plaintiffs as set out in the relevant settlement agreements.

On July 9, 2012, the Ontario and Quebec Courts certified/authorized the actions as class proceedings as against the Settling Defendants for settlement purposes only and approved the settlements as being fair, reasonable and in the best interests of settlement class members. As Lyondell was in bankruptcy proceedings

in the United States at the time its settlement was entered into, the Lyondell settlement is also subject to the approval of the U.S. bankruptcy court. The U.S. bankruptcy court approved the Lyondell settlement on January 11, 2012.

A prior settlement for was entered into with Bayer Inc., Bayer AG, Bayer MaterialScience LLC (formerly known as Bayer Polymers LLC) and Bayer Corporation (collectively "Bayer"). Details about that settlement are available online at www.classaction.ca.

DISTRIBUTION OF THE SETTLEMENT FUNDS

The BASF, Huntsman and Bayer settlement funds are being held in trust by Siskinds LLP for the benefit of settlement class members. A method for distributing the settlement funds will be submitted to the courts for approval at a later time. Once the court has approved the method for distributing the settlement funds, another notice will be provided and posted online at www.classaction.ca explaining which settlement class members are eligible for direct payment and how settlement class members can apply to receive payment. In Class Counsel's experience with actions similar to this, the majority of the monies are typically put in a fund used to provide direct compensation to class members who made purchases directly from the defendants or a distributor. In recognition of the difficulties involved in directly compensating downstream purchasers, compensation for these types of class members are typically paid out through a distribution to organizations which operate for the general benefit of downstream purchasers.

OPTING OUT OF (OR EXCLUDING ONESELF FROM) THE CLASS ACTIONS

In the context of a prior settlement, class members with purchases between January 1, 2002 and December 31, 2003 were given the right to opt out of the class actions and were informed that no further right to opt out would be provided. Thus, class members with purchases during the January 1, 2002 and December 31, 2003 period are not eligible to opt out.

As the proposed settlements contemplate a longer purchase period (January 1, 1999 to December 31, 2004 (and for Lyondell in Quebec, to December 31, 2005)), you can opt out if you only made purchases during the earlier part of the class period (January 1, 1999 to December 31, 2001) or during the later part of the class period (January 1, 2004 to December 31, 2004 (and for Lyondell in Quebec, December 31, 2005)), but did not make any purchases during the January 1, 2002 to December 31, 2003 period.

You will be bound by the terms of the settlement unless you "opt out" of the Proceedings. If you do not opt out, you will not be able to bring or maintain any other claim or legal proceeding alleging acts in violation of the *Competition Act*, such as price-fixing, or other claims relating to the alleged conduct in the market for Polyether Polyols. No further right to opt out of the Proceedings will be provided. If you opt out, you will not be able to participate in the settlement, and you will not be able to participate in any further settlements with, or judgments against, other defendants in the Proceedings.

If you would like to opt out, you must submit a written request to opt out containing the following information:

- your full name, current address, and telephone number;
- a statement that you wish to opt out of the Proceedings;
- your reasons for opting out;
- a statement that the class member did not purchase Polyether Polyols and/or Polyether Polyol Products during the January 1, 2002 to December 31, 2003 period;
- the name(s) of each entity from whom you purchased Polyether Polyols and/or Polyether Polyol Products during the Class Period; and
- for each such entity, the information in your possession concerning the dollar value of your Polyether Polyols and/or Polyether Polyol Products purchases during the Class Period.

The request to opt out must be emailed, faxed or postmarked on or before [date] to the appropriate class counsel at the addresses listed below. Quebec Class Members must also mail the request to opt out postmarked on or before [date] to: Clerk of the Superior Court of Québec, 300, Boulevard Jean Lesage, Room 1.24, Québec, QC G1K 8K6, Court File No: 200-06-000069-065.

CLASS COUNSEL

The law firm of Siskinds LLP represents settlement class members in Canada, other Quebec Class Members. Siskinds LLP can be reached toll free at 1-800-461-6166 ext. 2455, by email at charles.wright@siskinds.com or by mail at 680 Waterloo Street, London, Ontario N6A 3V8 Attention: Charles Wright.

The law firm of Siskinds Desmeules s.e.n.c.r.l. represents Quebec Class Members. Siskinds Desmeules s.e.n.c.r.l. can be reached at 418-694-2009, by email at simon.hebert@siskindsdesmeules.com or by mail at Les promenades du Vieux-Québec, 43 rue De Buade, bureau 320, Québec City, QC G1R 4A2, Attention: Simon Hébert.

This notice has been approved by the Ontario and Quebec courts. This notice contains a summary of some of the terms of the settlements. If there is a conflict between the provisions of this notice and the settlement agreements, the terms of the settlement agreements shall prevail.

QUESTIONS? VISIT www.classaction.ca, email charles.wright@siskinds.com or call toll-free 1-800-461-6166 ext. 2455.

SCHEDULE "D"

PLAN OF DISSEMINATION

NOTICE OF CERTIFICATION AND SETTLEMENT APPROVAL IN THE MATTER OF POLYETHER POLYOLS CLASS ACTION LITIGATION

The summary Notice of Certification and Settlement Approval shall be distributed in the following manner:

1. published once in the following newspapers:
 - (a) Globe and Mail (National Edition);
 - (b) Le Journal de Montréal;
 - (c) Le Journal de Québec.
2. sent to the following industry associations requesting voluntary distribution to their membership:
 - (a) Canadian Urethane Manufacturers' Association;
 - (b) Canadian Flexible Foam Manufacturers Association;
 - (c) Canadian Home Furnishing Alliance;
 - (d) Quebec Furniture Manufacturers Association;
 - (e) Furniture West Inc.;
 - (f) Automotive Parts Manufacturers Association;
 - (g) Canadian Appliance Manufacturers Association;
 - (h) Canadian Construction Association;
 - (i) The Packaging Association; and
 - (j) Canadian Textile Industry Association

The long-form Notice of Certification and Settlement Approval shall be distributed in the following manner:

1. posted on Class Counsel's website at www.classaction.ca; and
2. sent by direct mail to persons in Canada who purchased Polyether Polyols in Canada during the relevant period, based on the available customer information provided by Bayer, Lyondell, BASF and Huntsman pursuant to the terms of their settlement agreements. The direct mailing shall occur within 7 days of the first publication of the Notice.

Where appropriate, the Notice of Certification and Settlement Approval will be published in the French language.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at London

**ORDER
Huntsman Settlement Approval**

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