

**NATIONAL SETTLEMENT AGREEMENT**

**Made as of November 22, 2011**

**Between**

**CROSSLINK TECHNOLOGY INC. and ANNE JOHNSON**

**- and –**

**LYONDELL CHEMICAL COMPANY**

## **SETTLEMENT AGREEMENT**

This Settlement Agreement ("Settlement Agreement") is made and entered into this 22<sup>nd</sup> day of November, 2011 (the "Execution Date"), by and among Lyondell (as defined in section 1 below) and plaintiffs Crosslink Technology Inc. ("Crosslink") and Anne Johnson (the "Petitioner") (collectively the "Plaintiffs"). The Plaintiffs enter this Settlement Agreement both individually and on behalf of the Classes they seek to represent.

### **RECITALS**

WHEREAS proceedings have been commenced by the Plaintiffs in the Ontario Superior Court of Justice, Court File No. 50305CP (London) (the "Ontario Proceeding"), and the Quebec Superior Court, No. 200-06-000069-065 (the "Quebec Proceeding") (collectively the "Proceedings"), which allege that Lyondell participated in an unlawful conspiracy to raise, fix, maintain or stabilize the price of Polyether Polyols in Canada and/or to allocate volumes of sales, markets, and customers for the sale of Polyether Polyols in Canada, contrary to Part VI of the *Competition Act* and common law;

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 putative members of the Class who purchased Polyether Polyol Products between January 1, 2002 and December 31, 2003;

WHEREAS putative members of the Class shall only be eligible to opt-out of the entirety of the Proceedings if they did not purchase Polyether Polyol Products between January 1, 2002 and December 31, 2003. Putative members of the Class who purchased Polyether Polyol Products between January 1, 2002 and December 31, 2003 shall only be eligible to opt-out of the Proceedings in relation to their purchases of Polyether Polyol Products during other periods within the Class Period.

WHEREAS on January 6, 2009, Lyondell Chemical Company and certain of its affiliates in the United States (collectively, the "Reorganized Debtors" or, during the chapter 11 cases, the "Debtors") each filed voluntary petitions for relief under chapter 11 of title 11 of the United

States Code, commencing chapter 11 cases which are jointly administered under case number 09-10023<sup>1</sup> (the “Bankruptcy Cases”) in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”);

WHEREAS on June 30, 2009, Crosslink filed a proof of claim in the Bankruptcy Court, identified in the Bankruptcy Cases claims registry as proof of claim number 12253, against Lyondell Chemical Company asserting a claim for \$110,000,000, alleging as the “basis of claim”: “antitrust class action litigation on behalf of persons in Canada who purchased polyether polyol products between January 1, 1999 to December 31, 2004” (the “Proof of Claim”);

WHEREAS no proof of claim was filed in the Bankruptcy Court with respect to the Quebec Proceeding;

WHEREAS on April 23, 2010, the Bankruptcy Court entered an order [Docket No. 4418] confirming the Debtors’ plan of reorganization (the “Plan”), which became effective by its terms on April 30, 2010;

WHEREAS pursuant to Article 8 of the Plan, the Reorganized Debtors are authorized to resolve proofs of claim without further Bankruptcy Court order;

WHEREAS Lyondell has denied it engaged in an unlawful conspiracy, and maintains that the claims asserted in the Proof of Claim and in the Proceedings based on antitrust violations have no value;

WHEREAS Lyondell filed a formal objection to the Proof of Claim in the Bankruptcy Cases entitled *Reorganized Debtors’ One Hundred Sixty-First Tier I Omnibus Objection to Certain Proofs of Claim Relating to Antitrust Actions* (the “Bankruptcy Claim Objection”) [Bankruptcy Court Docket No. 6655] which remains pending in the Bankruptcy Court;

WHEREAS Crosslink and Lyondell dispute liability on and the value of the Proof of Claim, and desire to avoid the expense of litigating valuation in exchange for the consideration

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<sup>1</sup> Additional Debtors filed for chapter 11 protection on April 24, 2009, under case numbers 09-12518 and 09-12519, and on May 8, 2009, under case numbers 09-12940 through 09-12955.

stated herein;

WHEREAS through the execution of this Settlement Agreement Lyondell does not admit the claims and allegations made in the Proof of Claim or in the Proceedings;

WHEREAS the Plaintiffs, Class Counsel and Lyondell agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by or evidence against Lyondell or evidence of the truth of any of the Plaintiffs' allegations against Lyondell;

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 in the Bankruptcy Cases and in the Proceedings, the Plaintiffs and Class Counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiffs and the members of the classes they seek to represent;

WHEREAS Lyondell is entering into this Settlement Agreement in order to achieve a full and final resolution of all claims asserted or which could have been asserted against it by the Plaintiffs in the Proceedings, Proof of Claim or the Bankruptcy Cases, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation; and

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 Lyondell;

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 Proof of Claim will be disallowed in its entirety with prejudice, and the Proceedings will be settled and dismissed with prejudice as to Lyondell only, without costs as to the Plaintiffs, the classes they seek to represent, Class Counsel or Lyondell, subject to the approval of the Courts, on the following terms and conditions:

## DEFINITIONS

1. The following terms, as used in this Settlement Agreement, including the Recitals, have the following meanings:

- (a) "Class" or "Classes" means the Ontario Class and the Quebec Class collectively.
- (b) "Class Counsel" means Ontario Counsel and Quebec Counsel.
- (c) "Class Member" means a member of a Class who is not an Opt Out.
- (d) "Class Period" means (i) for the Ontario Class, from and including January 1, 1999 up to and including December 31, 2004; and (ii) for the Quebec Class, from and including January 1, 1999 up to and including December 31, 2005.
- (e) "Common Issue" means: Did Lyondell participate in a conspiracy to raise, fix, maintain or stabilize the prices of Polyether Polyols in Canada and/or to allocate volumes of sales, markets, and customers for the sale of Polyether Polyols in Canada during the Class Period?
- (f) "Courts" means the Ontario Superior Court, the Quebec Superior Court and the Bankruptcy Court.
- (g) "Defendants" means 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, and any person who is added as a defendant in the Proceedings in the future.
- (h) "Effective Date" means the date upon which the Ontario and Quebec Courts have both granted Final Orders approving this Settlement Agreement and dismissing the Proceedings and all claims therein against Lyondell with prejudice as to all Class Members.

- (i) "Excluded Person" means each Defendant, the directors and officers of each Defendant, the subsidiaries or affiliates of each Defendant, the entities in which each Defendant or any of that Defendant's subsidiaries or affiliates have a controlling interest and the legal representatives, heirs, successors and assigns of each of the foregoing.
- (j) "Final Order" means a final judgment entered by a Court once: (a) the time to appeal such judgement or to seek permission to appeal such judgment has expired without any appeal being taken, if an appeal lies; or (b) there has been a final disposition of all appeals affirming the judgment in its entirety, without modification, by the court of final resort to which an appeal may be taken.
- (k) "Lyondell" means Lyondell Chemical Company, each entity owned or controlled by Lyondell Chemical Company, and each of Lyondell Chemical Company's past, present, predecessor, successor or successor in interest subsidiaries, and related, affiliated and parent entities.
- (l) "Non-Settling Defendants" means BASF Canada, BASF Corporation, BASF A.G., Dow Chemical Company, Dow Chemical Canada Inc., Huntsman International LLC., and any person who is not a Releasee and is added as a defendant in the Proceedings in the future.
- (m) "Ontario Class" means all persons in Canada who purchased Polyether Polyol Products during the Class Period except Excluded Persons and members of the Quebec Class.
- (n) "Ontario Counsel" means the law firm of Siskinds LLP.
- (o) "Ontario Court" means the Ontario Superior Court of Justice.
- (p) "Opt-Out" means a person or entity who would be a Class Member but for his, her or its timely and valid request for exclusion in accordance with the order of the Ontario Court dated March 11, 2008 or the order of the Quebec Court dated

July 2, 2009 (as appropriate), or the further orders of the Ontario and Quebec Courts provided for in this Settlement Agreement.

- (q) “Other Actions” means actions or proceedings, other than the Proceedings, relating to Released Claims commenced by a Class Member either before or after the Effective Date.
- (r) “Parties” means the Plaintiffs, Class Members and Lyondell.
- (s) “Polyether Polyols” means polyether polyols, monomeric or polymeric diphenylmethane diisocyanates, and/or toluene diisocyanates, whether sold separately or in a combined form with or without any chemicals added thereto. For greater certainty, “Polyether Polyols” shall include MDI-TDI blends and polyether polyol systems.
- (t) “Polyether Polyol Products” means Polyether Polyols and products that directly or indirectly contain or are derived from Polyether Polyols.
- (u) “Proportionate Liability” means that portion of any judgment that, had they not settled, the Ontario or Quebec Court would have apportioned to Lyondell at trial or otherwise.
- (v) “Quebec 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 between May 5, 2005 and December 31, 2005, 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.
- (w) “Quebec Counsel” means the law firm of Siskinds, Desmeules s.e.n.c.r.l.
- (x) “Quebec Court” means the Superior Court of Quebec.

- (y) "Released Claims" means those claims released pursuant to section 17 of this Settlement Agreement.
- (z) "Releasees" shall refer jointly and severally, individually and collectively, to Lyondell, each entity owned or controlled by Lyondell, and each of Lyondell's past, present, predecessor, successor or successor in interest subsidiaries, and related, affiliated and parent entities, and the past or present directors, officers, employees, insurers, attorneys, receivers, representatives and agents of each of the foregoing.
- (aa) "Releasers" shall refer jointly and severally, individually and collectively, to Plaintiffs, the Class Members, and their respective past and present parents, subsidiaries, affiliates, officers, directors, employees, agents, attorneys, servants, representatives (and the parents', subsidiaries', and affiliates' past and present officers, directors, employees, agents, attorneys, servants, and representatives), and the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing.
- (bb) "U.S. Settlement" means the settlement agreement entered into by Lyondell with the plaintiffs in the class action proceedings pending in the United States District Court for the District of Kansas under the caption *In re Urethane Antitrust Litigation*, MDL No. 1616.

## **NOTICE, CERTIFICATION FOR SETTLEMENT ONLY AND SETTLEMENT APPROVAL**

2. The Parties shall use their best efforts to effectuate this Settlement Agreement, and shall cooperate to promptly seek and obtain the Courts' approval of this Settlement Agreement and to secure the prompt, complete and final dismissal with prejudice of the Proceedings as against Lyondell.



3. 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.

4. 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 Classes.

5. The proposed Classes shall be given notice of:

- (a) the hearings at which the Ontario and Quebec Courts will be asked to certify or authorize the Proceedings as class proceedings and approve the Settlement Agreement;
- (b) the certification or authorization of the Proceedings as class proceedings and the approval of this Settlement Agreement, if granted by the Courts; and
- (c) in the event that the Settlement Agreement is terminated in accordance with section 15, notice of termination.

6. The form of the notices referred to in section 5 and the manner of their publication and distribution shall be as agreed to by the Parties and approved by the Ontario and Quebec Courts.

7. Lyondell agrees to pay administrative expenses associated with providing the notices required by section 5 not to exceed CDN\$35,000 of documented expenses. Lyondell shall not have any other financial obligations or liability whatsoever.

8. As soon as practicable after the Settlement Agreement is executed, Lyondell shall bring a motion before the Bankruptcy Court for approval of this Settlement Agreement, with each party to bear its own costs. As soon as practicable after approval is obtained from the Bankruptcy Court in accordance with this section 8 and subject to sections 10 and 11, the Plaintiffs shall bring motions before the Ontario and Quebec Courts for orders certifying the

Proceedings as class proceedings solely for purposes of the settlement, approving this Settlement Agreement, and dismissing the Proceedings as against Lyondell, with prejudice and without costs.

9. The Ontario order approving the notice of the settlement approval hearing referred to in section 5(a) shall be in the form attached hereto as Schedule A. The Quebec order shall be in the form attached hereto as Schedule B.

10. The Ontario order certifying the Ontario Proceeding as a class proceeding solely for purposes of the settlement and approving the Settlement Agreement referred to in section 8 shall be in the form attached hereto as Schedule C. The Quebec order shall be in the form attached hereto as Schedule D.

11. The Plaintiffs in Quebec shall not proceed with a motion to approve this Settlement Agreement unless and until the Ontario Court approves this Settlement Agreement. The approval motion may be filed in Quebec, but, if necessary, Quebec Counsel will seek an adjournment of their approval hearing to permit the Ontario Court to render its decision on the approval motion. Class Counsel and Lyondell may agree to waive this provision.

12. Until the first of the motions required by section 8 or the motion to approve the notice of settlement approval hearing referred to in section 5(a) is brought, the Parties shall keep all of the terms of the Settlement Agreement, and any information or documents related thereto, confidential and shall not disclose them without the prior written consent of counsel for Lyondell and Class Counsel, as the case may be, except as required for the purposes of financial reporting or the preparation of financial records (including tax returns and financial statements) or as otherwise required by law.

13. This Settlement Agreement shall become final only upon the Effective Date.

14. Until the Effective Date, the Bankruptcy Claim Objection will remain pending, and Lyondell reserves all rights in the Bankruptcy Cases to proceed with the Bankruptcy Claim Objection or seek other Bankruptcy Court relief with respect to the Proof of Claim, including estimation of the claim.

## **TERMINATION**

15. In the event that:

- (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 that is unacceptable to the Plaintiffs or Lyondell;
- (c) any order approving this Settlement Agreement does not become a Final Order; or
- (d) any order approving this Settlement Agreement is appealed and the Final Order is not affirmed in its entirety, without modification;

this Settlement Agreement shall be terminated and shall be null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation. Nevertheless, the Parties reserve their rights to amend this Settlement Agreement if any of the Courts fails to approve the Settlement Agreement in its entirety.

16. If this Settlement Agreement is terminated:

- (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, which has not been heard, shall proceed;
- (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, and anyone shall be estopped from asserting otherwise;
- (c) any prior certification or authorization of a Proceeding as a class proceeding, including the definitions of the Class and 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; and

- (d) any obligations pursuant to this Settlement Agreement shall cease immediately and the Settlement Agreement shall be null and void and have no further force or effect, except: (i) subject to section 7, Lyondell would still pay for already-incurred expenses related to providing notice to the Class and Lyondell would not be entitled to any refund for amounts already incurred and paid relating to notice; and (ii) sections 15, 16, 34, 43 and 44 shall survive the termination and continue in full force and effect.
- (e) within ten (10) days of such termination having occurred, Class Counsel shall return to Lyondell or destroy all documents or other materials provided by Lyondell or containing or reflecting information derived from such documents or other materials received from Lyondell and, to the extent Class Counsel has disclosed any documents or information provided by Lyondell to any other person, shall recover and return to Lyondell or destroy such documents or information. Class Counsel shall provide Lyondell with a written certification by Class Counsel of such destruction. Nothing contained in this section shall be construed to require Class Counsel to return any of their work product, which shall be destroyed.

## **RELEASE AND DISCHARGE**

17. Upon the occurrence of the Effective Date, the Releasors shall completely release, acquit, and forever discharge the Releasees from any and all claims, demands, actions, suits or causes of action of whatsoever nature, 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 (except the costs of notice set out in section 7 herein), penalties and lawyers' fees, including class counsel fees, known or unknown, suspected or unsuspected, in law, under statute or in equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, arising out of or in any way related to the factual allegations in or factual bases for the Proceedings or the Proof of Claim ("Released Claims"). Released Claims do not include any other claims relating to Polyether Polyol Products other than the specified Released Claims, and specifically do not include, by way of illustration

but not limitation, any breach of contract, warranty, product defect, or similar claims between or among Releasees and Releasors relating to Polyether Polyol Products. Released Claims also do not include any claims relating to any other materials or products other than Polyether Polyol Products. Plaintiffs expressly do not release and retain any and all claims against the Non-Settling Defendants in the Proceedings.

18. The Releasors covenant not to sue or maintain any suit against any Releasee with respect to a Released Claim.

19. Notwithstanding section 17, for any 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.

20. The Proceedings shall be dismissed with prejudice and without costs as against Lyondell.

21. Upon the Effective Date, each 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.

22. Upon the Effective Date, all Other Actions commenced in Ontario or Quebec by any Class Member shall be dismissed against the Releasees, without costs and with prejudice.

23. Upon the Effective Date, the Proof of Claim shall be automatically disallowed in its entirety, with prejudice, and expunged from the claims register in the Bankruptcy Cases without further need for any action by any party or further Bankruptcy Court approval. Should any additional instruments be necessary or desirable to memorialize or effectuate the expungement of the Proof of Claim from the claims register, such additional instruments will be promptly executed and delivered by Crosslink upon the written request of Lyondell.

## **BAR ORDER**

24. A bar order shall be granted by the Ontario and Quebec Courts 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, by any Non-Settling Defendant or any other person or party against a Releasee, or by a Releasee against any Non-Settling Defendant or any other person or party, are barred, prohibited and enjoined in accordance with the terms of this section (unless such claim is made in respect of a claim by a person who has validly opted out of the Proceedings); and
- (b) if the Courts ultimately determine that there is a right of contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise:
  - (i) the Plaintiffs and Class Members shall not be entitled to claim or recover from the Non-Settling Defendants that portion of any damages (including punitive 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 Lyondell; and
  - (ii) the Ontario and Quebec Court shall have full authority to determine the Proportionate Liability of Lyondell at the trial or other disposition of the Ontario or Quebec Proceeding, as appropriate, whether or not Lyondell appears at the trial or other disposition and the Proportionate Liability of Lyondell shall be determined as if Lyondell is a party to the Ontario or Quebec Proceeding, as appropriate, and any determination by the Ontario or Quebec Court in respect of the Proportionate Liability of Lyondell shall only apply for purposes of the bar order in the Ontario or Quebec

Proceeding, as appropriate, and shall not be binding on Lyondell in any other proceedings.

25. Notwithstanding section 24 hereof, if the Quebec Court only grants the following declaratory order in relation to the Petitioner and Class Members in the Quebec Class, rather than the bar order described in section 24, such declaratory order is not a material modification of this Settlement Agreement:

- (a) DECLARATION that, pursuant to the Settlement Agreement, the Petitioner and Class Members in the Quebec Class expressly waive and renounce the benefit of solidarity against the Non-Settling Defendants with respect to the facts, deeds or other conduct of Lyondell;
- (b) DECLARATION that the Petitioner and Class Members in the Quebec Class shall henceforth only be able to claim and recover damages, including punitive damages, interests and costs (including investigative costs claimed pursuant to s. 36 of the Competition Act) attributable to the proportionate liability of the Non-Settling Defendants, the sales by the Non-Settling Defendants, and/or other applicable measure of the proportionate liability of the Non-Settling Defendants; "proportionate liability" for the purposes of this section means that proportion of any judgment that the court attributes or apportions to the several liability of any Non-Settling Defendant whether pursuant to *pro rata*, proportionate fault, *pro tanto* or another method;
- (c) DECLARATION that any action in warranty or other joinder of parties to obtain any contribution or indemnity from Lyondell relating to the Released Claims shall be inadmissible, null and void in the context of the Quebec Proceeding.

26. An order relating to discovery of Lyondell Chemical Company by the Non-Settling Defendants shall be granted by the Ontario and Quebec Courts providing for the following:

- (a) if the Ontario Proceeding has been certified with respect to the Non-Settling Defendants 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 the Ontario Court determined as if Lyondell Chemical Company remained a party to the Ontario Proceeding and on at least ten (10) days notice to counsel for Lyondell Chemical Company, seek orders for the following:
  - (i) documentary discovery and an affidavit of documents in accordance with the *Rules of Civil Procedure* from Lyondell Chemical Company;
  - (ii) oral discovery of a representative of Lyondell Chemical Company, the transcript of which may be read in at trial;
  - (iii) leave to serve a request to admit on Lyondell Chemical Company in respect of factual matters; and/or
  - (iv) the production of a representative of Lyondell Chemical Company to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants;
- (b) a Non-Settling Defendant may, on motion to the Quebec Court and on notice to counsel for Lyondell, seek to examine on discovery a representative of Lyondell Chemical Company in accordance with the rules of the *Code of Civil Procedure*, and Lyondell Chemical Company shall retain and reserve all of its rights to oppose such discovery under the *Code of Civil Procedure*.

27. Lyondell retains all rights to oppose any motion brought pursuant to section 26, including any such motion brought at trial seeking an order requiring Lyondell Chemical Company to produce a representative to testify at trial. Moreover, nothing herein restricts Lyondell from seeking a protective order to maintain confidentiality and protection of proprietary and other confidential information.



28. For greater certainty, documents produced and/or information obtained from discovery in accordance with section 26, including discovery transcripts, shall not be used for any purposes other than the Ontario or Quebec Proceeding in which the evidence was obtained and, in particular, shall not be used in any form in any other jurisdiction.

29. On any motion brought pursuant to section 26, the relevant Court may make such orders as to costs and other terms as it considers appropriate.

30. To the extent that an order is granted under section 26 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 Lyondell to the Plaintiffs and Class Counsel.

31. The Ontario and Quebec Courts will retain an ongoing supervisory role over the discovery process in their respective jurisdictions and Lyondell Chemical Company will attorn to the jurisdiction of those Courts for these purposes.

32. A Non-Settling Defendant may effect service of the motion(s) referred to in section 26 on Lyondell Chemical Company by service on its counsel of record in the Proceedings.

## **LYONDELL DOCUMENTS AND WITNESSES**

33. It is understood and agreed that all documents and information provided by Lyondell to Plaintiffs and Class Counsel under this Settlement Agreement shall be used only in connection with the prosecution of the claims in the Proceedings, and shall not be used directly or indirectly for any other purpose, including, without limitation, any other litigation in any jurisdiction. Prior to the Effective Date, any documents or information provided by Lyondell, or received from Lyondell in connection with this Settlement Agreement, cannot be disclosed to any person in any manner or used, directly or indirectly, by Class Counsel or any other person in any way for any reason, without the express prior written permission of Lyondell or as required by law. After the Effective Date, any documents or information provided by Lyondell, or received from Lyondell in connection with this Settlement Agreement, can only be disclosed if the Plaintiffs and/or Class Counsel, acting reasonably, concluded that such disclosure is

reasonably necessary for the prosecution of the Proceedings as against the Non-Settling Defendants and such documents or information are not otherwise publicly available, or with the express prior written permission of Lyondell, or as required by law.

34. Class Counsel shall take appropriate steps and precautions to ensure and maintain the confidentiality of all documents and information provided by Lyondell to Plaintiffs and Class Counsel under this Settlement Agreement, and any work product of Class Counsel, and shall not use or disclose directly or indirectly any documents or information provided by Lyondell to Plaintiffs and Class Counsel under this Settlement Agreement except in accordance with the terms of this Settlement Agreement.

35. The scope of Lyondell's cooperation under this Settlement Agreement shall be limited to an alleged unlawful conspiracy to fix, raise, maintain or stabilize price, allocate markets or customers or restrict output or capacity, of Polyether Polyols sold in Canada during the Class Period. Notwithstanding anything else in this Settlement Agreement, Lyondell shall not be required as part of their cooperation under this Settlement Agreement to provide information or documents relating solely to the sale, pricing, marketing, customers, capacity or production of Polyether Polyols for sale outside Canada.

36. Upon execution of the Settlement Agreement and in exchange for the release from the Releasers as stated herein, Lyondell agrees to the following with respect to Lyondell documents and witnesses:

- (a) Lyondell will promptly after the Execution Date and no later than sixty (60) days after the Execution Date produce to the Plaintiffs documents collected by Lyondell counsel prior to the commencement of the Bankruptcy Cases. Lyondell will provide reasonable assistance to Plaintiffs in locating documents within this collection. Wherever feasible, counsel for Lyondell and Class Counsel shall agree to reasonable limitations on the document production obligations enumerated in this subsection.

- (b) Lyondell will use reasonable efforts with respect to witnesses currently or previously employed by Lyondell or Arco to have them prepare declarations and/or affidavits and/or make themselves available for interviews and/or provide testimony at examination for discovery and/or at trial. Any persons made available under this subsection shall be made available at a time and place convenient to the witnesses for interviews and/or oral discovery, and at a time scheduled by the Court for trial testimony.
- (c) Lyondell will use reasonable efforts to secure the voluntary cooperation of individuals previously employed by Lyondell or Arco, so Plaintiffs do not need to resort to formal process to secure the discovery sought.
- (d) Lyondell will comply with reasonable requests from Plaintiffs' counsel to establish for admission into evidence any documents provided to the Plaintiffs pursuant to this Settlement Agreement and any other documents that are produced in the Proceedings and were sent to or originated with Lyondell.
- (e) Lyondell will use reasonable efforts to comply with reasonable requests from Plaintiffs' counsel for assistance in the further prosecution of this litigation.

37. Lyondell makes no representation regarding the accuracy of or that they have, can or will produce a complete set of documents within any category of documents described above, and the failure to do so shall not constitute a breach or violation of Lyondell's obligations under this Settlement Agreement.

38. Notwithstanding section 36, Lyondell may elect to conduct any witness interviews or where practical other cooperation concurrently with (i.e. at the same time as and at the same place as) any witness interviews or other cooperation contemplated by the U.S. Settlement.

39. Nothing in this Settlement Agreement shall preclude the Plaintiffs from exercising any rights they may have apart from this Settlement Agreement to seek to obtain discovery of any current or former officer, director or employee of Lyondell who is put forward by Lyondell

under section 36 but who refuses to make him/herself available or otherwise cooperate with the Plaintiffs.

40. Nothing in this Settlement Agreement shall require, or shall be construed to require, Lyondell or any representative of Lyondell to disclose or produce any documents or information prepared by or for counsel for Lyondell, or to perform any act or disclose or produce any documents or information in breach of any order, regulatory directive, rule or law of this or any jurisdiction, or subject to solicitor-client privilege, litigation privilege, or any other privilege, or to disclose or produce any information or documents they obtained on a privileged or co-operative basis from any party to any action or proceeding other than Lyondell.

41. If any documents protected by any privilege, and/or any privacy law or other rule or law of this or any applicable jurisdiction are accidentally or inadvertently produced, such documents shall be promptly returned to Lyondell and the documents and the information contained therein shall not be disclosed or used directly or indirectly, except with the express written permission of Lyondell, and the production of such documents shall in no way be construed to have waived in any manner any privilege or protection attached to such documents.

42. Lyondell's obligations with respect to documents and witnesses shall not be affected by the Release set forth in section 17 of this Settlement Agreement. Lyondell's obligations shall cease as of the date that a final judgment has been rendered or final settlement reached in the Proceedings against all Defendants.

## **EFFECT OF SETTLEMENT**

43. 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 Lyondell, or of the truth of any of the claims or allegations contained in the Proceedings or any other pleading filed by the Plaintiffs.

44. 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 referred to, offered as evidence or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to approve and/or enforce this Settlement Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law.

45. 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, except in relation to the continued prosecution of the Proceedings against any Non-Settling Defendants, or in the event that a future contested certification hearing in the Proceedings is not resolved in favour of the Plaintiffs, continuation of the claims as alleged in the Proceedings against the Non-Settling Defendants in the form of individual claims, group proceedings or test cases. Moreover, no Class Counsel, nor anyone currently or hereafter employed by, associated with, or a partner with Class Counsel, may 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 unless ordered to do so by a court.

## **MISCELLANEOUS**

46. This Settlement Agreement constitutes the entire agreement among Plaintiffs and Lyondell pertaining to the settlement of the Proceedings and Proof of Claim against Lyondell only and supersedes any and all prior and contemporaneous undertakings of Plaintiffs and Lyondell in connection therewith. This Settlement Agreement may be modified or amended only by a writing executed by Class Counsel and Lyondell and approved by the Courts.

47. Class Counsel or Lyondell may apply to the Courts for directions in respect of the interpretation, implementation and administration of this Settlement Agreement. All motions contemplated by this Settlement Agreement shall be on notice to the Plaintiffs or Lyondell, as

appropriate. Unless the Courts order otherwise, motions for directions that do not relate specifically to the Bankruptcy Cases, the Quebec Proceeding and/or Class Members of the Quebec Class shall be determined by the Ontario Court.

48. In this Settlement Agreement:

- (a) the division of the Settlement Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement; and
- (b) the terms “this Settlement Agreement”, “hereof”, “hereunder”, “herein”, and similar expressions refer to this Settlement Agreement and not to any particular section or other portion of this Settlement Agreement.

49. 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.

50. Each of the Courts shall retain exclusive jurisdiction over each Proceeding or Bankruptcy Case commenced in its jurisdiction.

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

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

53. All of the Plaintiffs and Class Members in the Ontario Class, regardless of their province of residence or where the relevant purchase occurred, shall attorn to the jurisdiction of the Ontario Court for the purposes of the implementation and enforcement of this Settlement Agreement.

54. All of the Plaintiffs and Class Members in the Quebec Class, regardless of where the relevant purchase occurred, shall attorn to the jurisdiction of the Quebec Court for the purposes of the implementation and enforcement of this Settlement Agreement.

55. All of the Plaintiffs and Class Members attorn to the jurisdiction of the Bankruptcy Court in relation to the Bankruptcy Cases and consent to recognition and enforcement in Canada of any orders made by the Bankruptcy Court in the Bankruptcy Cases, including without limitation any orders relating to the expungement of the Proof of Claim.

56. For greater certainty, nothing in this Settlement Agreement shall limit Lyondell's ability to seek recognition and enforcement in Canada of any order of the Bankruptcy Court, including orders enjoining or releasing Lyondell from litigation.

57. This Settlement Agreement may be executed in counterparts by Plaintiffs and Lyondell, and a facsimile signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

58. 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.

59. 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. If required by any of the Courts, Lyondell shall prepare a French translation of the Settlement Agreement excluding Schedule B at its own expense. The Parties agree that any 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.

60. The present Settlement Agreement constitutes a transaction in accordance with Articles 2631 and following of the Civil Code of Quebec, and the Parties are hereby renouncing to any errors of fact, of law and/or of calculation.

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

62. The Schedules annexed hereto form part of this Settlement Agreement.

63. 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.



64. 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.

65. 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**  
**680 Waterloo Street**  
**London, ON N6A 3V8**

Telephone: 519-672-2121  
Facsimile: 519-672-6065  
Email: [charles.wright@siskinds.com](mailto:charles.wright@siskinds.com)

**Simon Hébert**  
**Siskinds Desmeules s.e.n.c.r.l.**  
**43 rue Buade, bureau 320**  
**Quebec City, QC G1R 4A2**

Telephone: 418-694-2009  
Facsimile: 418-694-0281  
Email: [simon.hebert@siskindsdesmeules.com](mailto:simon.hebert@siskindsdesmeules.com)

For Lyondell:

**Rob Kwinter**  
**Catherine Beagan Flood**  
**Blake, Cassels & Graydon LLP**  
**199 Bay Street, Suite 2800**  
**Commerce Court West**  
**Toronto, Ontario M5L 1A9**

Tel: 416-863-2400  
Fax: 416-863-2653  
Email: [rob.kwinter@blakes.com](mailto:rob.kwinter@blakes.com)  
[cathy.beaganflood@blakes.com](mailto:cathy.beaganflood@blakes.com)

IN WITNESS WHEREOF, the Parties hereto, through their fully authorized representatives, have agreed to this Settlement Agreement as of the date first herein written above.

**CROSSLINK TECHNOLOGY INC. and ANNE JOHNSON**

By: 

*per* Name: Siskinds LLP  
Title: Ontario Counsel

By: 

*for* Name: Siskinds Desmeules s.e.n.c.r.l.  
Title: Quebec Counsel

**LYONDELL CHEMICAL COMPANY**

By: \_\_\_\_\_

Name: Blake, Cassels & Graydon LLP  
Title: Canadian Counsel

**CROSSLINK TECHNOLOGY INC. and ANNE JOHNSON**

By: \_\_\_\_\_  
Name: Siskinds LLP  
Title: Ontario Counsel

By: \_\_\_\_\_  
Name: Siskinds Desmeules s.e.n.c.r.l.  
Title: Quebec Counsel

**LYONDELL CHEMICAL COMPANY**

By:  \_\_\_\_\_  
Name: Blake, Cassels & Graydon LLP  
Title: Canadian Counsel

## SCHEDULE A

Court File No. 50305CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

The Honourable ) , the day  
)  
) of , 2011

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, AND LYONDELL CHEMICAL COMPANY

## Defendants

Proceeding under the *Class Proceedings Act*, 1992

## ORDER

**THIS MOTION** made by the plaintiff for an Order approving the notice to putative class members of the settlement approval hearing relating to the defendant Lyondell Chemical Company 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 putative members of the proposed class 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 Lyondell Chemical Company:

1. **THIS COURT ORDERS** that the notice of hearing is hereby approved substantially in the form attached hereto as Schedule "B".
2. **THIS COURT ORDERS** that the plan of dissemination of the notice of hearing is hereby approved substantially in the form attached hereto as Schedule "C" and that the notice of hearing shall be distributed in accordance with the method of dissemination.

Date:

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**SCHEDULE B**  
**SUPERIOR COURT**

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF QUÉBEC

N° : 200-06-000069-065

DATE :

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**PRESIDING: THE HONOURABLE DOMINIQUE BÉLANGER, J.S.C.**

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**ANNE JOHNSON**  
*Petitioner*

v.

**LYONDELL CHEMICAL COMPANY ET AL.**  
*Respondents*

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**ORDER**

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- [1] **WHEREAS** the parties are involved in class action proceedings both in Ontario and in Québec (the “**Proceedings**”);
- [2] **CONSIDERING** the present Motion for approval of the notice of settlement approval hearing (the “**Motion**”);
- [3] **CONSIDERING** similar proceedings brought by Crosslink Technology Inc. before the Ontario Superior Court of Justice (the “**Ontario Court**”) in Court File No. 50305CP;
- [4] **CONSIDERING** 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 Superior 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 proposed class who purchased Polyether Polyol Products between January 1, 2002 and December 31, 2003;
- [5] **CONSIDERING** the exhibits filed in the record, including the National Settlement Agreement made as of <\*>, (hereinafter the “**Lyondell Settlement**”, exhibit P-<\*>),

between Crosslink Technology Inc. and the Petitioner Anne Johnson and Lyondell Chemical Company;

- [6] **CONSIDERING** that the notice to the Class Members provided as Appendix “B” to this Order (the “**Notice**”) and the method of dissemination of same described at Appendix “C” to this Order are sufficient;
- [7] **CONSIDERING** that the present Motion is not contested by the Respondents;
- [8] **CONSIDERING** the representations made by the parties’ attorneys;
- FOR THESE REASONS, THE COURT:**
- [9] **GRANTS** the present Motion;
- [10] **APPROVES** the Notice and the method of dissemination of the Notice attached to this Order as Appendices “B” and “C”;
- [11] **ORDERS** that a Notice in the form of the model attached to this Order as Appendix “B” be published pursuant to the method of dissemination provided for at Appendix “C” to this Order;
- [12] **THE WHOLE**, without costs.

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**DOMINIQUE BÉLANGER, J.S.C.**

Mtre Simon Hébert  
Siskinds Desmeules, s.e.n.c.r.l.  
Attorneys for Petitioner  
Mtre Robert J. Torralbo  
Blake, Cassels & Graydon LLP  
Attorneys for the Respondent Lyondell Chemical Company





**WHEREAS**, on January 6, 2009, Lyondell and certain of its affiliates in the United States each filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, commencing chapter 11 cases which are jointly administered under case number 09-10023 in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") and, on ● the Bankruptcy Court issued an order approving the Settlement Agreement;

**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 Lyondell:

3. **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.

4. **THIS COURT ORDERS** that this action be certified as a class proceeding as against Lyondell for settlement purposes only.

5. **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 Class.

6. **THIS COURT ORDERS** that Crosslink Technology Inc. be appointed as the representative plaintiff for the Settlement Class.

7. **THIS COURT ORDERS** that the following issue is common to the Settlement Class:

Did Lyondell participate in a conspiracy to raise, fix, maintain or stabilize the prices of Polyether Polyols in Canada and/or to allocate volumes of sales, markets, and customers for the sale of Polyether Polyols in Canada during the Class Period?

8. **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.

9. **THIS COURT ORDERS** that the Settlement Agreement is approved pursuant to s. 29 of the *Class Proceedings Act, 1992*.
10. **THIS COURT ORDERS** that the Settlement Agreement, in its entirety, forms part of this Order, shall be implemented in accordance with its terms and, subject to paragraph 13 below, is binding upon the Plaintiffs, the Class Members (including those persons who are minors or mentally incapable), and Lyondell, 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 only be eligible to opt-out of this action in its entirety if they did not purchase Polyether Polyol Products between January 1, 2002 and December 31, 2003. Members of the Settlement Class who purchased Polyether Polyol Products between January 1, 2002 and December 31, 2003 shall only be eligible to opt-out of this action in relation to their purchases of Polyether Polyol Products between January 1, 1999 to December 31, 2001 and/or January 1, 2004 to December 31, 2004. 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 all or part 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 notice attached hereto as Schedule "B". The written election to opt-out shall include the person's name, address, a request to be excluded from the action, and a statement as to whether the person purchased Polyether Polyol Products between January 1, 2002 and December 31, 2003.
13. **THIS COURT ORDERS** that any member of the Settlement Class who has validly opted-out of all or part 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, except members of the Settlement Class who purchased Polyether Polyol Products between January 1, 2002 and December 31, 2003, but did not opt-out in accordance with the order of this court dated March 11, 2008, shall be bound by the Settlement Agreement and any

subsequent settlements and/or court orders issued in this action with respect to their purchase of Polyether Polyol Products between January 1, 2002 and December 31, 2003.

14. **THIS COURT ORDERS** that nothing in this Order precludes Lyondell from seeking recognition and enforcement of orders of the Bankruptcy Court, including enforcing orders of the Bankruptcy Court that enjoin or release litigation against Lyondell against any Opt-Out, Class Member or other person or entity;
15. **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.
16. **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.
17. **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.
18. **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 against the Non-Settling Defendants.

19. **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.
20. **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.
21. **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.
22. **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).
23. **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 punitive

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 Lyondell proven at trial or otherwise; and

- (b) this Court shall have full authority to determine the Proportionate Liability of Lyondell at the trial or other disposition of this action, whether or not Lyondell appears at the trial or other disposition and the Proportionate Liability of Lyondell shall be determined as if Lyondell is a party to this action and any determination by this Court in respect of the Proportionate Liability of Lyondell shall only apply for purposes of this bar order in this action, and shall not be binding on Lyondell in any other proceedings.

24. **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.

25. **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 Lyondell Chemical Company remained party to this action and on at least ten (10) days notice to counsel for Lyondell Chemical Company, seek orders for the following:

- (a) documentary discovery and an affidavit of documents in accordance with the *Rules of Civil Procedure* from Lyondell Chemical Company;
- (b) oral discovery of a representative of Lyondell Chemical Company, the transcript of which may be read in at trial;
- (c) leave to serve a request to admit on Lyondell Chemical Company in respect of factual matters; and/or
- (d) the production of a representative of Lyondell Chemical Company to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.

Lyondell retains all rights to oppose such motion(s). Further, nothing herein restricts Lyondell from seeking a protective order to maintain confidentiality and protection of proprietary and other confidential information. Documents to be produced and/or

information obtained from discovery in accordance with this paragraph shall not be used for any purposes other than this Proceeding and in particular may not be used in any form in any other jurisdiction. Notwithstanding any provision in this Order, or any motion brought pursuant to this paragraph 25, the Court may make such orders as to costs and other terms as it consider appropriate.

26. **THIS COURT ORDERS** that a Non-Settling Defendant may effect service of the motion(s) referred to in paragraph 25 above on Lyondell Chemical Company 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 Lyondell will attorn to the jurisdiction of this Court for these purposes.
28. **THIS COURT ORDERS** that Lyondell has no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement.
29. **THIS COURT ORDERS** that the notice of settlement approval is hereby approved substantially in the form attached hereto as Schedule "B".
30. **THIS COURT ORDERS** that the method of dissemination of the notice of settlement approval is hereby approved substantially in the form attached hereto as Schedule "C" and that the notice of settlement approval shall be distributed in accordance with the method of dissemination.
31. **THIS COURT ORDERS** that this action be and is hereby dismissed as against Lyondell without costs and with prejudice.
32. **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:

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**SCHEDULE D**  
**SUPERIOR COURT**

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF QUÉBEC

N° : 200-06-000069-065

DATE :

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**PRESIDING: THE HONOURABLE DOMINIQUE BÉLANGER, J.S.C.**

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**ANNE JOHNSON**

*Petitioner*

v.

**LYONDELL CHEMICAL COMPANY ET AL.**

*Respondents*

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**ORDER**

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- [13] **WHEREAS** the parties are involved in class action proceedings;
- [14] **WHEREAS** the Petitioner seeks an order of this Court authorizing the institution of class proceedings for the purposes of settlement and approving the Settlement Agreement entered into with Lyondell Chemical Company (the “**Motion**”);
- [15] **WHEREAS** this Court issued an order on ● providing for the dissemination of notices to the putative class members and the Petitioner fully complied with the said order;



- [16] **CONSIDERING** similar proceedings brought by Crosslink Technology Inc. (hereinafter “**Crosslink**”) before the Ontario Superior Court of Justice (the “**Ontario Court**”) in Court File No. 50305CP;
- [17] **CONSIDERING** 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 Superior 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 proposed class who purchased Polyether Polyol Products between January 1, 2002 and December 31, 2003;
- [18] **CONSIDERING**, on January 6, 2009, Lyondell and certain of its affiliates in the United States each filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, commencing chapter 11 cases which are jointly administered under case number 09-10023 in the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”) and, on ● the Bankruptcy Court issued an order approving the Settlement Agreement;
- [19] **CONSIDERING** the exhibits filed in the record, including the National Settlement Agreement made as of <\*>, (hereinafter the “**Lyondell Settlement**”, exhibit P-<\*>), between Crosslink and the Petitioner Anne Johnson and Lyondell Chemical Company (hereinafter “**Lyondell**”);
- [20] **CONSIDERING** that the present **Motion** is not contested by the Respondents;
- [21] **CONSIDERING** the representations made by the parties’ attorneys;
- [22] **CONSIDERING** articles 1025, 1045 and 1046 of the Code of Civil Procedure;
- FOR THESE REASONS, THE COURT:**
- [23] **GRANTS** the Petitioner’s Motion;
- [24] **DECLARES** that the definitions found in the Lyondell Settlement are incorporated into this Order and form an integral part hereof;
- [25] **AUTHORIZES** a class action against Lyondell solely for the purposes of settlement of the Proceedings;
- [26] **ASCRIBES** the status of representative to the Petitioner Anne Johnson in respect of the persons comprising the following class (hereinafter the “**Settlement Class**”):

“Tous les résidents du Québec qui ont acheté au Québec des produits contenant des polyols de polyéther au cours de la Période Visée par le recours ayant traits aux Polyols de Polyether, a l’exception des Personnes Exclues.”

[27] **IDENTIFIES** the following principal issue to be addressed collectively:

Did Lyondell participate in a conspiracy to raise, fix, maintain or stabilize the prices of Polyether Polyol Products in Canada and/or to allocate volumes of sales, markets and customers for the sale of Polyether Polyol Products in Canada during the Class Period?

[28] **DECLARES** that Lyondell Settlement agreed to between Crosslink Technology Inc., the Petitioner Anne Johnson and the Respondent Lyondell, including all schedules thereto is valid, equitable, reasonable, in the best interest of the members of the Settlement Class and constitutes a transaction pursuant to article 2631 of the *Civil Code of Québec*, binding all parties and Class Members described therein;

[29] **APPROVES** the Lyondell Settlement;

[30] **DECLARES** that the Lyondell Settlement, in its entirety (including the preamble, the definitions therein, and the schedules thereto), attached to this Order as Appendix "A", forms an integral part of this Order and is binding on all of the parties and on all of the Class Members described therein;

[31] **ORDERS AND DECLARES** that members of the Settlement Class shall only be eligible to opt-out of this action in its entirety if they did not purchase Polyether Polyol Products between January 1, 2002 and December 31, 2003. Members of the Settlement Class who purchased Polyether Polyol Products between January 1, 2002 and December 31, 2003 shall only be eligible to opt-out of this action in relation to their purchases of Polyether Polyol Products between January 1, 1999 to December 31, 2001 and/or January 1, 2004 to December 31, 2005. No future right to opt out will be provided.

[32] **ORDERS AND DECLARES** that members of the Settlement Class who are eligible to opt-out of all or part of this action can do so on or before the date which is forty-five (45) days from the date of the first publication of the notice attached as Appendix "B" by filing a written election to opt-out with the clerk of this Court pursuant to Article 1007 C.C.P. as well as sending a copy to the law firm Siskinds Desmeules s.e.n.c.r.l. The written election to opt-out shall include the person's name, address, a request to be excluded from the actions, and a statement as to whether the person purchased Polyether Polyol Products between January 1, 2002 and December 31, 2003.

[33] **ORDERS AND DECLARES** that any member of the Settlement Class who validly and timely opted-out will not be bound by the Settlement Agreement and shall no longer participate or have the opportunity in the future to participate in this action, except that members of the Settlement Class who purchased Polyether Polyol Products between January 1, 2002 and December 31, 2003, but did not opt-out in accordance with the order of this court dated July 2, 2009, shall be bound by the Settlement Agreement and any subsequent settlements and/or court orders issued in this action with respect to their purchases of Polyether Polyol Products between January 1, 2002 and December 31, 2003.

- [34] **ORDERS AND DECLARES** that nothing in this Order precludes Lyondell from seeking recognition and enforcement of orders of the Bankruptcy Court in Quebec, including enforcing orders of the Bankruptcy Court that enjoin or release litigation against Lyondell against any Opt-Out, Class Member or other person or entity;
- [35] **ORDERS AND DECLARES** that upon the Effective Date each Releasor has released and is deemed to have forever provided a complete and final release to the Releasees with respect to the Released Claims;
- [36] **DECLARES** that upon the Effective Date each Releasor will be deemed to have irrevocably consented to the final and definitive dismissal of all Other Actions (s)he has brought against the Releasees without costs and with prejudice;
- [37] **ORDERS** that upon the Effective Date each Releasor renounces his or her right to file, commence, prosecute, intervene or continue any proceeding, claim, action, cause of action or demand, directly or indirectly, whether in Canada or elsewhere, on his or her own behalf or on behalf of any class or any other person, against any Releasee in connection with the Released Claims or against any other person, partnership, corporation or other entity that claims or institutes or that may claim or institute, in connection with any such action or procedure, any claim, additional claim, counterclaim, claim for a contribution, damages or indemnity or any other relief against the Releasees, it being understood that nothing in the present Order affects the right of Class Members to formulate a claim or to pursue a claim already formulated against any Non-Settling Defendant;
- [38] **DECLARES** that, pursuant to the Lyondell Settlement, the Petitioner and Class Members expressly waive and renounce the benefit of solidarity against the Non-Settling Defendants with respect to the facts, deeds or other conduct of Lyondell;
- [39] **DECLARES** that any action in warranty or any other claim or joinder of parties to obtain any contribution or indemnity from Lyondell relating to the Released Claims shall be inadmissible, null and void in the context of this action;
- [40] **DECLARES** that the Petitioner and the Class Members shall henceforth only be able to claim and recover damages, including punitive damages, interests and costs (including investigative costs claimed pursuant to s. 36 of the *Competition Act*) attributable to the proportionate liability of the Non-Settling Defendants, the sales by the Non-Settling Defendants, and/or other applicable measure of the proportionate liability of the Non-Settling Defendants; "proportionate liability" means that proportion of any judgment that the court attributes or apportions to the several liability of any Non-Settling Defendant whether pursuant to *pro rata*, proportionate fault, *pro tanto* or another method;
- [41] **DECLARES** that any action in warranty or other forced intervention for the purposes of seeking a contribution or indemnity from Lyondell or relating to the Released Claims is inadmissible and barred in the context of the present class action proceedings;

- [42] **DECLARES** that the right of the Non-Settling Defendants to examine on discovery a representative of Lyondell shall be governed by the rules of the *Code of Civil Procedure*, and Lyondell shall retain and reserve all of their rights to oppose such discovery under the *Code of Civil Procedure*;
- [43] **DECLARES** that Lyondell may, upon notice to the Petitioner and to the Non-Settling Defendants, present a motion for the issuance of an order to declare that any documents produced and/or information provided by Lyondell to the Non-Settling Defendants are confidential and proprietary;
- [44] **ORDERS** that any documents produced and/or information provided by Lyondell to the Non-Settling Defendants may not be used other than for the purposes of this Proceeding;
- [45] **DECLARES** that a Non-Settling Defendant may effect service of the motion(s) referred to in the foregoing paragraphs on Lyondell by service on counsel of record for Lyondell as specified in the Order;
- [46] **DECLARES** that for the purposes of the enforcement of this Order, this Court will retain an ongoing supervisory role and Lyondell will attorn to the jurisdiction of this Court for these purposes;
- [47] **DECLARES** that Lyondell has no responsibility for and no liability whatsoever with respect to the administration of the Lyondell Settlement;
- [48] **APPROVES** the notice and the method of dissemination of the notice attached to this Order as Appendices "B" and "C";
- [49] **ORDERS** that a notice of authorization to institute a class action and of settlement approval in this matter, in the form of the model attached to this Order as Appendix "B" be published pursuant to the method of dissemination provided for at Appendix "C" to this Order;
- [50] **THE WHOLE**, without costs.

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**DOMINIQUE BÉLANGER, J.S.C.**

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