

SETTLEMENT AGREEMENT

THIS AGREEMENT AMONG:

MATTHEW MACKENZIE, CLIFFORD WIEBE, JOSEPH KOSTELECKY, LYLE MICHALUK, SCOTT DAWSON, DEAN JENSEN, JIM MCKEE, NEIL RICHARDSON, DAVID BELCHER, SONJA KUEHNLE, HARLEY WINGER, DOUG ROBINSON, KENNETH FAIRCLOTH, and WAZIR (MIKE) SETH

-and-

FRANZ AUER, MOHAMED RAMZY, THOMAS JAMES and MARIAN LEWIS personally and as representatives of Class Members (as defined in the Representation Order issued by the CCAA Court dated May 30, 2013 as amended *nunc pro tunc* on December 17, 2014 and on September 26, 2016) on behalf of such Class Members

-and-

GERALD KOLAR personally and as representative of all putative class members in the putative class proceedings in the U.S. District Court for the Southern District of New York (Case Nos. 13-CV-1213(DLC) and 13-cv-1412(DLC))

-and-

THE TORONTO-DOMINION BANK, as agent for itself and HSBC BANK CANADA, THE BANK OF NOVA SCOTIA, and NATIONAL BANK OF CANADA

-and-

PEYTO EXPLORATION AND DEVELOPMENT CORP.

-and-

POSEIDON CONCEPTS CORP., POSEIDON CONCEPTS LTD., POSEIDON CONCEPTS LIMITED PARTNERSHIP and POSEIDON CONCEPTS INC., by their court appointed Monitor, PRICEWATERHOUSECOOPERS INC.

Dated June 9, 2017

WHEREAS the Class, the Senior Secured Creditors and the Monitor are all stakeholders in the proceeding under *the Companies' Creditors Arrangement Act* ("CCAA") in the Alberta Court of Queen's Bench File No. 1301-04364 ("CCAA Proceeding") and have asserted various claims in respect of Poseidon;

AND WHEREAS through a court sponsored mediation process and otherwise the Settling Parties have negotiated a settlement that will resolve a number of lawsuits and claims, bring value to the estate of Poseidon, and facilitate the efficient resolution of the remaining claims of the Poseidon estate;

AND WHEREAS the Settling Defendants deny liability in respect of the claims alleged in the Class Actions, the Monitor Action and the Senior Secured Creditor Action and believe that they have good and reasonable defences to the Class Actions, the Monitor Action and the Senior Secured Creditor Action;

AND WHEREAS the Settling Defendants assert that they would vigorously defend the Class Actions, the Monitor Action and the Senior Secured Creditor Action if the Class Actions, the Monitor Action and the Senior Secured Creditor Action are pursued against them;

AND WHEREAS the Settling Defendants do not admit any of the conduct alleged in the Class Actions, the Monitor Action and the Senior Secured Creditor Action and expressly deny any and all allegations of wrongdoing;

AND WHEREAS the settlement consists of the agreement set out in this Settlement Agreement and the agreement set out in the Plan in the CCAA Proceeding, and the settlement is contingent on both the Plan of Compromise and the Settlement Agreement being approved by the Class Action Courts;

NOW THEREFORE IN THE CONSIDERATION OF THE COVENANTS AND AGREEMENTS EXCHANGED AMONG THE SETTTLING PARTIES AND THE SUM OF TEN DOLLARS (CAD\$10.00), THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, THE SETTTLING PARTIES HEREBY AGREE AS FOLLOWS:

1. Definitions and Interpretation

(a) **Definitions**

Capitalized terms used in this Settlement Agreement shall have the meaning ascribed to such terms in the Plan, unless otherwise defined in this Settlement Agreement, including the following:

"Administrator" means the third-party firm retained by the Litigation Trustee to administer the distribution of funds held by the Litigation Trust, including any proceeds of the Settlement Agreement, and any employees of such firm;

"Administration Expenses" means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable relating to approval, implementation and administration of the settlement including the costs of translating, publishing and delivering notices and the fees, disbursements and taxes paid to the Administrator, the person appointed to receive and report on objections to the settlement to the CCAA Court, and any other expenses approved by the CCAA Court which shall all be paid from the Class Settlement Funds if, and only if, Plan Implementation Date has occurred. For greater certainty, (i) Administration Expenses do not include Class Counsel Fees; and (ii)

if the Plan Implementation Date does not occur, then no fees, disbursements, expenses, costs, taxes or other amounts shall be paid from the Class Settlement Funds.

"Class Period" means November 1, 2011 through February 14, 2013;

"Escrow Account" means an interest bearing trust account with one of the Canadian Schedule 1 banks or a liquid money market account or equivalent security with a rating equivalent to, or better than, that of an interest bearing account in a Canadian Schedule 1 bank in Ontario;

"Plan" means the plan of compromise and arrangement filed by Poseidon in the CCAA Proceeding, as may be amended, modified or supplemented from time to time in accordance with the terms thereof;

"Settlement Agreement" means this Agreement; and

"Shares" means the common shares of Poseidon.

(b) **Interpretation**

This Settlement Agreement shall be interpreted applying the following rules of interpretation:

- (i) any reference in the Settlement Agreement to an order, agreement, contract, instrument, release, exhibit or other document means such order, agreement, contract, instrument, release, exhibit or other document as it may have been or may be validly amended, modified or supplemented;
- (ii) the division of the Settlement Agreement into "sections" is for convenience of reference only and it does not affect the construction or interpretation of the Settlement Agreement, nor are the descriptive headings of the "sections" intended as complete or accurate descriptions of the content thereof;
- (iii) unless the context otherwise requires, words importing the singular shall include the plural and vice versa, and words importing any gender shall include all genders;
- (iv) the words "includes" and "including" and similar terms of inclusion shall not, unless expressly modified by the words "only" or "solely", be construed as terms of limitation, but rather shall mean "includes but is not limited to" and "including but not limited to", so that references to included matters shall be regarded as illustrative without being either characterizing or exhaustive;
- (v) unless otherwise specified, all references to time herein and in any document issued pursuant hereto mean local time in Calgary, Alberta and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. (Calgary time) on such Business Day;
- (vi) unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next succeeding Business Day if the last day of the period is not a

Business Day;

- (vii) unless otherwise provided, any reference to a statute or other enactment of parliament or a legislature includes all regulations made thereunder, all amendments to or re-enactments of such statute or regulations in force from time to time, and, if applicable, any statute or regulation that supplements or supersedes such statute or regulation; and
- (viii) references to a specified "article" or "section" shall, unless something in the subject matter or context is inconsistent therewith, be construed as references to that specified article of the Plan or a section of the Settlement Agreement, whereas the terms "the Plan", "hereof", "herein", "hereto", "hereunder" and similar expressions shall be deemed to refer generally to the Settlement Agreement and not to any particular section or other portion of the Settlement Agreement and include any documents supplemental hereto.

2. MOTIONS FOR SETTLEMENT APPROVAL

- (a) The Settling Parties shall use their best efforts to implement the Settlement Agreement and, among other things, to secure the prompt, complete and final dismissal, with prejudice and without costs, of the Class Actions as against the Settling Defendants pursuant to the Approval Orders.
- (b) The Settling Parties shall consent to all orders, including the Approval Orders, required to implement the Settlement Agreement provided that they are consistent with the terms of this Settlement Agreement.

3. PAYMENTS

(a) Payments

The Insurers, on behalf of the Released Parties, shall pay the Initial Instalment of the Poseidon Settlement Funds pursuant to the Plan, and the Initial Instalment of the Class Settlement Funds pursuant to this Settlement Agreement, by wire transfer of immediately available funds to the Monitor, in trust, within thirty (30) days after the Settlement Agreement has been signed by the last signatory thereto. The Insurers, on behalf of the Released Parties, shall pay the Final Instalment of the Poseidon Settlement Funds pursuant to the Plan (if and to the extent remaining as provided for and defined in Article 1.1 of the Plan) and the Final Instalment of the Class Settlement Funds pursuant to the Settlement Agreement (if and to the extent remaining as provided for and defined in Article 1.1 of the Plan), to the Monitor in accordance with such definition. The Settling Defendants shall have no personal liability for the payment of the Poseidon Settlement Funds and the Class Settlement Funds. Should the Settlement Agreement be terminated in accordance with its terms, such monies shall be returned, with interest accrued, if any, and without deduction or holdback, forthwith to the Insurers. Any taxes payable on any interest that accrues in relation to the Poseidon Settlement Funds and the Class Settlement Funds shall be payable by the recipient(s) of any such interest earned.

(b) Use of the Class Settlement Funds

The Class Settlement Funds shall be held in trust by the Monitor in an Escrow Account and shall be paid to the Litigation Trustee to be held in accordance with the Litigation Trust and, after the Plan Implementation Date, distributed subject to further order of the CCAA Court, having regard to, among

other things, the following priority claims:

- (i) Class Counsel Fees and reimbursement of notice expenses;
- (ii) Administration Expenses; and
- (iii) taxes required by law to be paid to any governmental authority.

(c) **Use of the Poseidon Settlement Funds**

The Poseidon Settlement Funds shall be held in trust by the Monitor and, forthwith after the Plan Implementation Date, distributed by the Monitor as follows:

- (i) first in favour of the Monitor's charges, costs and expenses; and
- (ii) second, in favour of the Priority Claims.

(d) **No Further Contributions, Liability or Exposure**

Notwithstanding any other provision of the Plan or the Settlement Agreement, and without in any way restricting, limiting or derogating from the releases provided herein and in the Plan, or in any way restricting, limiting or derogating from any other protection provided for herein and in the Plan to the Released Parties, under no circumstances shall the Released Parties be required to or be called upon to make any further financial contribution or payment in respect of any Claim including the Class Actions, Monitor Action, KPMG Claim, Underwriter Claim, or Senior Secured Creditor Action, nor shall the Released Parties have any liability whatsoever for or have any exposure whatsoever to anything directly or indirectly, related to, arising out of, based on, or connected with the Class Actions, Monitor Action, KPMG Claim, Underwriter Claim, or Senior Secured Creditor Action, over and above the payment of the Poseidon Settlement Funds and the Class Settlement Funds, which payment is solely the responsibility of the Insurers. Costs associated with any notice to Claimants required in connection with the Plan or the Settlement Agreement shall not be paid by the Released Parties. The Poseidon Settlement Funds and the Class Settlement Funds are the full monetary contribution and payment of any kind to be made by the Released Parties, which payment is solely the responsibility of the Insurers, and are inclusive of all costs, interest, legal fees, taxes (inclusive of any GST, HST, or any other taxes that may be payable in respect of the Plan or the Settlement Agreement), costs associated with any distributions, further litigation, administration or otherwise.

4. RELEASES AND INJUNCTIONS

(a) **Release**

Subject to section 4(b) of this Settlement Agreement, the Approval Orders shall provide that all Claims against the Released Parties (except those described by s. 5.1(2) and 19(2) of the CCAA) shall be fully, finally, irrevocably, absolutely, and forever compromised, remised, released, discharged, cancelled and barred as of the Effective Time on the Plan Implementation Date including the following Claims:

- (i) all Claims of the Class against the Released Parties;
- (ii) all Claims of the Senior Secured Creditors against the Released Parties;

- (iii) all Claims of KPMG against the Released Parties;
- (iv) all Claims of the Underwriters against the Released Parties;
- (v) all Claims of Poseidon against the Released Parties;
- (vi) all Claims of the Monitor against the Released Parties and the Senior Secured Creditors;
- (vii) all Claims of the Released Parties against Poseidon, the Class Representatives, the Class Members, the Senior Secured Creditors, any other Released Parties, the KPMG Releasees, and the Underwriter Releasees;
- (viii) all Claims of the Litigation Trust and/or the trustees thereof against the Released Parties; and
- (ix) all Claims of any other Person against the Released Parties.

(b) **Claims Not Released**

Nothing in section 4(a) of this Settlement Agreement shall waive, compromise, release, discharge, cancel, bar or otherwise affect any of the following:

- (i) the obligations of any Person in respect of the Plan, the Approval Orders, and the Settlement Agreement, including the obligations of the Insurers to pay the Class Settlement Funds and the Poseidon Settlement Funds;
- (ii) Unaffected Claims;
- (iii) Claims asserted in the Monitor Action as against KPMG (all Claims in the Monitor Action against the Released Parties are released);
- (iv) Claims asserted in the Class Actions by the Class as against Poseidon, KPMG and the Underwriters (provided, for greater certainty, that all Claims in the Class Actions against the Released Parties are released);
- (v) Claims asserted in the Class Actions by Poseidon against KPMG (provided, for greater certainty, that all Claims in the Class Actions against the Released Parties are released);
- (vi) any Party's obligations under the Cooperation Agreement;
- (vii) any and all Claims described in section 4(b)(i)-(vi), above, that are or come to be transferred to the Litigation Trust or otherwise in the possession of the Litigation Trustee (for greater certainty, all Claims transferred to the Litigation Trust or otherwise in the possession of the Litigation Trustee against the Released Parties are released);
- (viii) the rights of the Insureds (excluding Poseidon, whose rights against the Insurers are fully released under s. 4(a) above) against the Insurers under the Insurance Policies except as affected by the declarations set out in section 4(h) below; and

- (ix) the rights of any Person, including the Senior Secured Creditors, in respect of matters completely unrelated to the Claims, including any rights against the Released Parties that are in respect of matters completely unrelated to the Claims.

(c) **No Further Claims**

Subject to sections 4(d) and 4(g) of this Settlement Agreement, the Approval Orders shall provide that all Persons (regardless of whether or not such Persons are creditors or Claimants), including the Settling Defendants, Poseidon, the Released Parties, KPMG and the Underwriters, shall be permanently and forever barred, estopped, stayed and enjoined, as of the Effective Time on the Plan Implementation Date, from:

- (i) commencing, conducting, pursuing, instituting, intervening in, asserting, advancing, or continuing in any manner, directly or indirectly, any Claim or other related proceedings of any nature or kind whatsoever (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against the Released Parties;
- (ii) enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, decree, Damages, or order against the Released Parties or their property;
- (iii) making, asserting, pursuing, instituting, intervening in, advancing, commencing, conducting or continuing in any manner, directly or indirectly, any Claim, including for contribution or indemnity or other relief, or other proceedings of any nature or kind whatsoever (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against any Person who makes or asserts, or might reasonably be expected to make or assert, such a Claim, in any manner or forum, against one or more of the Released Parties;
- (iv) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any lien or encumbrance of any kind against the Released Parties or their property; or
- (v) taking any actions to interfere with the implementation or consummation of the Settlement Agreement;

The foregoing shall not apply to the enforcement of any obligations under the Settlement Agreement.

(d) **Saving Provision re section 4(c)**

Subject only to section 4(g), the Approval Orders shall not bar, estop, stay and enjoin or otherwise affect any of the following:

- (i) the obligations of any Person in respect of the Plan, the Approval Orders, and the Settlement Agreement;
- (ii) Unaffected Claims;
- (iii) claims asserted in the Monitor Action as against KPMG (all Claims in the Monitor Action against the Released Parties are barred, estopped, stayed and enjoined);

- (iv) claims asserted in the Class Actions by the Class as against Poseidon, KPMG and the Underwriters (all Claims in the Class Actions against the Released Parties are barred, estopped, stayed and enjoined);
- (v) claims asserted in the Class Actions by Poseidon as against KPMG (all Claims in the Class Actions against the Released Parties are barred, estopped, stayed and enjoined);
- (vi) the rights of the Insureds (excluding Poseidon, whose rights against the Insurers are fully barred, estopped, stayed and enjoined under section 3(c) above) against the Insurers under the Insurance Policies except as affected by the declarations set out in section 4(h) below; and
- (vii) the rights of any Person, including the Senior Secured Creditors, in respect of matters completely unrelated to the Claims, including any rights against the Released Parties that are in respect of matters completely unrelated to the Claims.

(e) **Claims against KPMG and the Underwriters**

The Approval Orders shall provide that all Persons are enjoined from recovering, in total, in respect of the Claims made in the Class Actions and the Monitor Action, more than: (i) \$250,000,000.00 plus costs and pre-filing and post-filing interest from KPMG; and, (ii) \$16,000,000.00 plus costs and pre-filing and post-filing interest from the Underwriters.

(f) **Acknowledgement that Knowledge not Complete**

For greater certainty, the Settling Parties acknowledge that they may subsequently discover facts adding to those they now know, but nonetheless agree that on the Effective Date, all of the protections provided for herein (including the protections in section 4 of this Settlement Agreement) for the Released Parties shall be definitive and permanent irrespective of whether any subsequently discovered facts were unknown, unsuspected, or not disclosed.

By means of the Settlement, the Settling Parties waive any right they might have under the law, common law, civil law, in equity or otherwise, to disregard or avoid the protections provided for herein (including the protections in section 4 of this Settlement Agreement) and expressly relinquish any such right and each Class Member shall be deemed to have waived and relinquished such right. Furthermore, the Settling Parties agree to this waiver of their own volition, with full knowledge of its consequences and that this waiver was negotiated and constitutes a key element of the Settlement.

(g) **Senior Secured Creditor Action**

The Senior Secured Creditors Action shall be dismissed.

(h) **Declarations Regarding Insurance**

The Approval Orders shall declare that:

A. the Contribution:

- I. does not violate the rights, in respect of the Insurance Policies, of the Class

Representatives, the Class, the Monitor, the Senior Secured Creditors, KPMG, the Underwriters, or any other Person who might have a claim against any person or entity potentially covered under the Insurance Policies;

- II. constitutes covered Loss (as defined in the Insurance Policies);
 - III. reduces the Limits of Liability (as defined in the Insurance Policies) under the Insurance Policies for all purposes, regardless of any subsequent finding by any court, tribunal, administrative body or arbitrator, in any proceeding or action, that the Settling Defendants, or any of them, engaged in conduct that triggered or may have triggered any exclusion, term or condition of the Insurance Policies, or any of them, so as to disentitle them to coverage under the Insurance Policies, or any of them;
 - IV. is without prejudice to any coverage positions or reservations of rights taken by the Insurers in relation to any other matter advised to the Insurers or any other Claim (as defined in the Insurance Policies) made or yet to be made against the Insureds (as defined in the Insurance Policies), provided that neither coverage nor payment in respect of the settlement of the Class Actions, the Monitor Action or the Senior Secured Creditor Action, nor the settlement of the Class Actions, the Monitor Action or the Senior Secured Creditor Action, will be voided or impacted by any such coverage position or reservation of rights; and
 - V. fully and finally releases the Insurers from any further obligation, and from any and all claims against them under or in relation to the Insurance Policies, in respect of the portion of the Limits of Liability that were expended to fund the Contribution;
- B. once the Contribution has been funded, there is no further coverage under the Insurance Policies for Poseidon. For clarity, this declaration is not intended to, and does not, extinguish any remaining coverage under the Insurance Policies for the individual Insureds.
- C. The determination of what constitutes reasonable Defence Costs paid or payable by any of the Insurers for Criminal/Regulatory Defence Costs and which reduce the amount of the Final Instalment of the Class Settlement Funds and the Final Instalment of the Poseidon Settlement Funds, all such terms as defined in Article 1.1 of the Plan, shall be within the sole purview and discretion of the Insurer paying them in accordance with the applicable litigation guidelines and, except for the individual Insured on whose behalf they are being paid, shall not be subject to review or challenge by any other Person, including but not limited to the Monitor, the Senior Secured Creditors, Class Members or the Class Representatives.
- D. in addition to the reduction of the Limits of Liability under the Policies pursuant to section 4(h)(i)(c), the Limits of Liability under the following Policies will be deemed to have been further reduced by the following amounts pursuant to an agreement between the Insurers and the Insureds under the Policies:

Policy Issued by:	Policy	Limits of Liability to be Reduced by:
Encon Group Inc.	DO-409880	\$250,000
Chubb Insurance Company of Canada	8224-5964	\$250,000
Travelers Insurance Company of Canada	75237516	\$250,000
Royal & Sun Alliance Insurance Company of Canada	9500854	\$250,000
Chartis Insurance Company of Canada, now known as AIG Insurance Company of Canada	01-340-62-02	\$2,500,000
Lloyd's Underwriters	ODLA052012-10150	\$0

5. CONDITIONS PRECEDENT

The terms of this Settlement Agreement are conditional upon the fulfillment of the following conditions on or before the Plan Implementation Date:

- (a) **Approval of the Plan**
The Plan in its entirety shall have been approved by the required majority of Affected Creditors.
- (b) **Granting of the Approval and Settlement Order**
The Approval and Settlement Order shall have been granted by the CCAA Court, including the granting by the CCAA Court of its approval of all of the compromises, releases and injunctions contained in and effected by the Plan.
- (c) **Granting of the U.S. Approval Order**
The U.S. Approval Order shall have been granted by the Bankruptcy Court, including the granting by the Bankruptcy Court of its approval of all of the compromises, releases and injunctions contained in and effected by the Plan.
- (d) **Granting of the Settlement Recognition Orders**
The Settlement Recognition Orders shall have been granted by the Class Action Courts in Ontario, Quebec, and in the United States.
- (e) **Expiry of Appeal Periods**
The Approval Orders shall have become Final Orders.
- (f) **Insurer Release**
The Monitor receiving court approval to execute a release in favour of the insurers, in the form attached to the Plan as Schedule "E".

6. EFFECT OF SETTLEMENT

(a) No Admission of Liability

Neither this Settlement Agreement, nor anything contained herein, shall be interpreted as a concession or admission of wrongdoing or liability by the Released Parties, or as a concession or admission by the Released Parties of the truthfulness or merit of any claim or allegation asserted in the Class Actions, the Monitor Action, the KPMG Claim, the Underwriters Claim, or the Senior Secured Creditor Action. Neither this Settlement Agreement, nor anything contained herein, shall be used or construed as an admission by the Released Parties of any fault, omission, liability or wrongdoing whatsoever. Any and all liability or wrongdoing is expressly denied.

(b) Agreement Not Evidence

Except as required to defend against the assertion of Released Claims and to enforce the terms of this Settlement Agreement, neither this Settlement Agreement, nor anything contained herein, nor any of the negotiations or proceedings connected with it, nor any related document, nor any other action taken to carry out the Settlement Agreement shall be referred to, offered as evidence or received in evidence in any pending or future civil, criminal, quasi-criminal, regulatory or administrative action or proceeding.

7. DISMISSAL OF CERTAIN CLASS ACTIONS AND RELATED PROCEEDINGS

Except as otherwise provided in this Settlement Agreement, upon the Plan Implementation Date or as soon as reasonably practicable thereafter:

- (a) the Class Actions in Quebec shall be dismissed against all of the Released Parties, without costs and with prejudice;
- (b) the Class Actions in Ontario shall be dismissed against all of the Released Parties, without costs and with prejudice;
- (c) the Class Actions in Alberta shall be dismissed against all of the Released Parties, without costs and with prejudice;
- (d) the Class Actions in the United States District Court for the Southern District of New York shall be dismissed against all of the Released Parties without costs and with prejudice;
- (e) all crossclaims, counterclaims, and third (or subsequent) party claims by the Released Parties against KPMG and/or the Underwriters in, in connection with, or related to, the Class Actions shall be dismissed, without costs and with prejudice;
- (f) all crossclaims, counterclaims, and third (or subsequent) party claims by KPMG and the Underwriters against the Released Parties in, in connection with, or related to, the Class Actions shall be dismissed;
- (g) the Senior Secured Creditor Action shall be dismissed without costs and with prejudice; and
- (h) the Monitor Action shall be dismissed against the Released Parties, without costs and with prejudice;

such that only the following Claims and proceedings will remain, all of which will be transferred to the Litigation Trust as contemplated by the Plan, the Approval and Settlement Order, and the Litigation Trust:

- (a) Class v. Underwriters - Ontario - court file no. CV-13-474553 00CP;
 - (i) Underwriters v. Poseidon and KPMG LLP - Ontario - court file no. CV-13-474553 CPA1 (Third Party Claim, but only as against Poseidon and KPMG LLP;
- (b) Class v. KPMG - Alberta - court file no. 1401-07353;
 - (i) KPMG v. Poseidon - Alberta - court file no. 1401 07353 (Third Party Claim, but only as against Poseidon);
- (c) Class v. KPMG - Ontario - court file no. CV-14-507785-00CP;
- (d) Class v. KPMG – Quebec – court file no. 500-06-000699-146;
- (e) Class v. Poseidon - Alberta - court file no. 1301-00935 (but only as against Poseidon);
 - (i) Poseidon v. KPMG – Alberta – court file no. 1301-00935 (Third Party Claim, but only on behalf of Poseidon);
- (f) Class v. Poseidon – Ontario – court file no. CV-12-468736-00CP (but only as against Poseidon);
 - (i) Poseidon v KPMG – Ontario – court file no. CV-12-468736-00CP-A1 (Third Party Claim, but only on behalf of Poseidon)
- (g) Class v Poseidon – Quebec – court file no. 500-06-000633-129 (but only as against Poseidon); and
- (h) Poseidon v. KPMG – Alberta – court file no. 1301-12927 (but only as against KPMG).

8. COOPERATION

The D&Os shall be required to provide cooperation only as set out in the Cooperation Agreement. No further cooperation will be required of the Settling Defendants or applied for against the Settling Defendants or the Released Parties by the Settling Parties.

9. ADMINISTRATION

- (a) **Appointment of the Administrator**
 - (i) The Litigation Trustee will, subject to the approval of the CCAA Court, appoint the Administrator to serve until further order of the CCAA Court, to implement the distribution of funds held by the Litigation Trust, including any proceeds of the Settlement Agreement as directed by the CCAA Court.
 - (ii) If the Settlement becomes final, one or more of the Class Action Courts will fix the Administrator's compensation and payment schedule.

(b) **Information and Assistance from the Monitor**

Subject to the Plan Implementation Date having occurred:

- (i) Upon request, the Monitor, Poseidon and/or any successor to Poseidon will authorize and direct TMX Equity Transfer Services or similar provider to deliver a computerized list of the names and addresses of persons who purchased Shares during the Class Period or similar available information in its possession to the Litigation Trustee, Class Counsel and the Administrator, as applicable. Upon request, the Monitor will also authorize Broadridge Financial Solutions Inc. to obtain information about Class Members who hold or held beneficial interests in the Shares during the Class Period.
- (ii) The Monitor will identify a person to whom the Litigation Trustee, Class Counsel and the Administrator may address any requests for information in respect of s. 10(b)(i) of this Settlement Agreement. The Monitor agrees to make reasonable efforts to answer any reasonable inquiry from the Administrator in order to facilitate the administration and implementation of the Settlement Agreement.
- (iii) The Litigation Trustee, Class Counsel and/or the Administrator may use the information obtained pursuant to sections 10(b)(i) and (ii) only for the purposes of delivering the notices and administering and implementing the distribution of Class Settlement Funds and other proceeds of litigation, consequent to this Settlement Agreement or as otherwise ordered by the Court.
- (iv) Any information obtained or created in the administration of this Settlement Agreement is confidential and, except as required by law, shall be used and disclosed only for the purpose of the administration of the Litigation Trust and this Settlement Agreement or as otherwise ordered by the Court.
- (v) If, and only if, the Plan Implementation Date has occurred, any professional fees or other costs associated with this paragraph shall be paid out of the Class Settlement Funds.

(c) **Use of Class Settlement Funds**

Subject to section 3 hereof, the Litigation Trustee will determine the use of the Class Settlement Funds in accordance with the Litigation Trust and any order of the CCAA Court.

10. CLASS COUNSEL FEES

- (a) Class Counsel shall seek the CCAA Court's approval of Class Counsel Fees to be paid as a first charge on the Class Settlement Funds. Class Counsel are not precluded from making additional applications to the CCAA Court for expenses incurred as a result of implementing the terms of the Settlement Agreement.
- (b) The Settling Defendants acknowledge that they are not parties to the motion concerning the approval of Class Counsel Fees, they will have no involvement in the approval process to determine the amount of Class Counsel Fees and they will not make any submissions to the CCAA Court concerning Class Counsel Fees.

- (c) Any order or proceeding relating to Class Counsel Fees, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel the Settlement Agreement or affect or delay the finality of the settlement provided herein.

11. MISCELLANEOUS

(a) Entire Agreement

This Settlement Agreement, the Plan and the Litigation Trust together constitute the entire agreement between the Settling Parties with respect to the matter herein. The execution of this Settlement Agreement has not been induced by, nor do any of the Settling Parties rely upon or regard as material, any representations, promises, agreements or statements whatsoever not incorporated herein and made a part hereof.

(b) Governing Law

This Settlement Agreement shall be governed by, and will be construed and interpreted in accordance with, the laws of the Province of Alberta and the laws of Canada applicable in the Province of Alberta. The Settling Parties hereby attorn to the jurisdiction of the Court of Queen's Bench in the Province of Alberta, in the CCAA Proceeding, in respect of any dispute arising from this Settlement Agreement except with respect to disputes concerning solely the U.S. Class Members, in which case the Settling Parties hereby attorn to the jurisdiction of the United States District Court for the Southern District of New York.

(c) Amendment

No amendment, supplement, modification or waiver or termination of this Settlement Agreement and, unless otherwise specified, no consent or approval by any Party, is binding unless executed in writing by the party to be bound thereby.

(d) Expenses

Each of the Settling Parties shall pay their respective legal, accounting, and other professional advisory fees, costs and expenses incurred in connection with this Settlement Agreement and its implementation.

(e) Monitor's Capacity

The Settling Parties acknowledge and agree that the Monitor, acting in its capacity as the Monitor of Poseidon in the CCAA Proceeding, will have no liability in connection with this Settlement Agreement (including in relation to any information or data provided by the Monitor in connection with this Settlement Agreement) whatsoever in its capacity as Monitor, in its personal capacity or otherwise; provided however that the Monitor shall exercise the powers granted to the Monitor under any order of the CCAA Court to perform the Monitor's obligations in respect of this Settlement Agreement and the Monitor shall be bound by the releases provided for in this Agreement and in the Plan at the Effective Time on the Plan Implementation Date.

(f) Counterparts

This Settlement Agreement may be executed in counterparts, each of which shall be deemed to be an original and which together shall constitute one and the same agreement. Delivery of an executed original

counterpart of a signature page of this Settlement Agreement by facsimile or electronic transmission shall be as effective as delivery of a manually executed original counterpart of this Settlement Agreement.

(g) **Motions for Directions**

Any one or more of the Settling Parties, Class Counsel or the Administrator may apply to the CCAA Court for directions in respect of any matter in relation to this Settlement Agreement. All motions contemplated by the Settlement Agreement shall be on notice to the Settling Parties.

(h) **Released Parties Have No Responsibility or Liability for Administration**

The Released Parties shall not have any responsibility for, or any liability whatsoever with respect to, the administration or implementation of this Settlement Agreement, including, without limitation, the allocation, processing and payment of claims by the Administrator.

(i) **Negotiated Agreement**

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

(j) **Acknowledgements**

Each of the Settling Parties hereby represents and warrants that:

- (i) he/she has all requisite corporate power and authority to execute, deliver and perform the Settlement Agreement and has been duly authorized to do so;
- (ii) the Settlement Agreement has been duly and validly executed and delivered by him/her and constitutes legal, valid, and binding obligations;
- (iii) the terms of the Settlement Agreement and the effects thereof have been fully explained to him, her or its representative by his, her or its counsel;
- (iv) he, she or its representative fully understands each term of the Settlement Agreement and its effect;
- (v) he, she or its representative have required and consented that this Settlement Agreement and all related documents be prepared only in English; les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés seulement en anglais.

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

(k) **Notices**

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

A. If to Poseidon:

Bennett Jones LLP
4500, 855 – 2nd Street S.W.
Calgary, Alberta T2P 4K7

Attention: Mr. Ken Lenz, Q.C.
Fax: 403-265-7219
Email: lenzk@bennettjones.com

with a copy by email to:

Gowling WLG (Canada) LLP
1600, 421 7th Avenue SW
Calgary, Alberta T2P 4K9

Attention: Mr. David Bishop and Mr. Scott Kugler
Email: david.bishop@gowlingwlg.com and scott.kugler@gowlingwlg.com

B. If to the Monitor:

PricewaterhouseCoopers Inc.
Suite 3100, 111 – 5th Avenue S.W.
Calgary, Alberta T2P 5L3

Attention: Mr. Clinton Roberts
Fax: 403-781-1825
Email: clinton.l.roberts@ca.pwc.com

with a copy by email or fax (which shall not be deemed notice) to:

Attention: Mr. Ken Lenz, Q.C.
Fax: 403-265-7219
Email: lenzk@bennettjones.com

C. If to the Class Representatives:

Paliare Roland Rosenberg Rothstein LLP
35th Floor, 155 Wellington Street W.
Toronto, Ontario M5V 3H1

Attention: Mr. Max Starnino
Fax: 416-646-4301
Email: max.starnino@paliarerland.com

D. If to the Senior Secured Creditors:

Dentons Canada LLP
15th Floor, 850 2nd St SW
Calgary AB T2P 0R8

Attention: Mr. David Mann
Fax: 403-268-3100
Email: david.mann@dentons.com

and

Rose LLP
810-333 5 Avenue SW
Calgary AB T2P 3B6

Attention: Mr. Matthew Lindsay
Fax: 403-776-0601
Email: matt.lindsay@rosellp.com

E. If to the Class Members in the U.S. Action:

The Rosen Law Firm
275 Madison Avenue, 34th Floor
New York, NY 10016

Attention: Mr. Jonathan Horne
Fax: 212-202-3827
Email: jhorne@rosenlegal.com

F. If to Matthew MacKenzie:

Burnet, Duckworth & Palmer LLP
525 – 8TH Avenue S.W., Suite 2400
Calgary, AB T2P 1G1

Attention: Mr. Daniel J. McDonald, Q.C.
Fax: 403-260-0332
Email: djm@bdplaw.com

with a copy by email to:

Gowling WLG (Canada) LLP
1600, 421 7th Avenue SW
Calgary, Alberta T2P 4K9

Attention: Mr. David Bishop and Mr. Scott Kugler
Email: david.bishop@gowlingwlg.com and scott.kugler@gowlingwlg.com

G. If to Lyle Michaluk:

Peacock Linder Halt & Mack LLP
400 3rd Avenue S.W., Suite 4050
Calgary, AB T2P 4H2

Attention: Mr. J. Patrick Peacock, Q.C.
Fax: 403-296-2299
Email: jppeacock@plhlaw.ca

with a copy by email to:

Gowling WLG (Canada) LLP
1600, 421 7th Avenue SW
Calgary, Alberta T2P 4K9

Attention: Mr. David Bishop and Mr. Scott Kugler
Email: david.bishop@gowlingwlg.com and scott.kugler@gowlingwlg.com

H. If to Harley Winger:

Peacock Linder Halt & Mack LLP
400 3rd Avenue S.W., Suite 4050
Calgary, AB T2P 4H2

Attention: Mr. Perry R. Mack, Q.C.
Fax: 403-296-2299
Email: pmack@plhlaw.ca

with a copy by email to:

Gowling WLG (Canada) LLP
1600, 421 7th Avenue SW
Calgary, Alberta T2P 4K9

Attention: Mr. David Bishop and Mr. Scott Kugler
Email: david.bishop@gowlingwlg.com and scott.kugler@gowlingwlg.com

I. If to Scott Dawson:

Parlee McLaws LLP
3300 TD Canada Trust Tower
421-7 Avenue S.W.
Calgary, AB T2P 4K9

Attention: Mr. Gregory D.M. Stirling, Q.C.
Fax: 403-767-8874
Email: gstirling@parlee.com

with a copy by email to:

Gowling WLG (Canada) LLP
1600, 421 7th Avenue SW
Calgary, Alberta T2P 4K9

Attention: Mr. David Bishop and Mr. Scott Kugler
Email: david.bishop@gowlingwlg.com and scott.kugler@gowlingwlg.com

J. If to Clifford Wiebe:

Scott Venturo LLP
200 Barclay Parade S.W.
Calgary, AB T2P 4R5

Attention: Mr. Domenic Venturo
Fax: 403-265-4632
Email: d.venturo@scottventuro.com

K. If to Joseph Kostelecky:

Code Hunter LLP
440 2nd Avenue S.W., Suite 850
Calgary, AB T2P 5E9

Attention: Messrs. Eric Groody and Robert Moyse
Fax: 403-261-2054
Email: eric.groody@codehunterllp.com and robert.moyse@codehunterllp.com

L. If to David Belcher:

Brownlee LLP
2200 Commerce Place
10155 – 102 Street
Edmonton, AB T5J 4G8

Attention: Mr. Havelock B. Madill, Q.C.
Fax: 780-424-3254
Email: hmadill@brownleelaw.com

M. If to Lyle D. Michaluk, Matt C. MacKenzie, A. Scott Dawson, Clifford L. Wiebe, Harley L. Winger, Dean Jensen, James McKee and Neil Richardson in their capacity as Defendants in the U.S. Action:

Kaufman Borgeest & Ryan LLP
200 Summit Lake Drive
Valhalla, New York 10595

Attention: Mr. Paul T. Curley
Fax: 914-449-1100
Email: pcurley@kbrlaw.com

N. If to Sonja Kuehnle and Doug Robinson:

Fasken Martineau DuMoulin LLP
350 7th Avenue S.W., Suite 3400
Calgary, AB T2P 3N9

Attention: Mr. Robert D. Maxwell
Fax: 403-261-5351
Email: rmaxwell@fasken.com

O. If to Peyto Exploration and Development Corp.

Goodmans LLP
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Attention: Mr. David Conklin
Fax: 416-979-1234
Email: dconklin@goodmans.ca

P. If to Kenneth Faircloth and Wazir (Mike) Seth:

Ormston List Frawley LLP
6 Adelaide Street East, Suite 500
Toronto, ON M5C 1H6

Attention: John P. Ormston
Fax: 416-594-9690
Email: jormston@olflaw.com

or to such other address as any party may from time to time notify the others in accordance with this section. Any such communication so given or made shall be deemed to have been given or made and to have been received on the day of delivery if delivered, or on the day of faxing or emailing, provided that such day in either event is a Business Day and the communication is so delivered, faxed or emailed before 5:00 p.m. (Calgary time) on such day. Otherwise, such communication shall be deemed to have been given and made and to have been received on the next following Business Day.

(I) **Further Assurances**

The Settling Parties all covenant and agree to:

- (i) pursue as promptly as practicable and in coordination with the Plan, Court approval of the Settlement Agreement and the granting of the Class Action Settlement Orders in an expedited and commercially reasonable fashion; and

- (ii) execute any and all documents and perform any and all acts required by the Plan and the Settlement Agreement, including any consent, approval or waiver requested by the Settling Parties, acting reasonably.

(m) **Successors and Assigns**

This Settlement Agreement shall be binding upon and shall ensure to the benefit of the heirs, administrators, executors, legal personal representatives, successors and assigns of any Person named or referred to in this Settlement Agreement.

(n) **Fonds d'aide aux actions collectives Levy**

The Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives will apply to the portion of any remaining balance (or "reliquat") attributable to Quebec residents who are Class Members after all the Class Actions have been resolved.

12. TERMINATION

(a) **Rights of Termination**

This Settlement Agreement shall terminate if:

- (i) the Approval and Settlement Order or the U.S. Approval Order are not granted and no further rights of appeal exist;
- (ii) the Approval and Settlement Order and the U.S. Approval Order are granted, overturned on appeal, and no further rights of appeal exist;
- (iii) any of the Settlement Recognition Orders are not granted and no further rights of appeal exist;
- (iv) any of the Settlement Recognition Orders are granted, overturned on appeal, and no further rights of appeal exist; or
- (v) the Plan is terminated for any reason by Final Order of the CCAA Court.

If there are any disputes about the termination of the Settlement Agreement, the dispute shall be determined by the CCAA Court on notice to the Settling Parties.

(b) **No Termination Rights Regarding Class Counsel Fees**

The refusal of the Class Action Courts to approve, or uphold in the case of an appeal, any request by Class counsel for fees shall not be grounds to terminate this Settlement Agreement.

(c) **Impact of Non-Approval and/or Termination**

If the conditions precedent set out in section 5 of this Settlement Agreement are not met, or if the Settlement Agreement or the Plan terminates or is terminated in accordance with its terms, then:

- (i) the Plan and the Settlement Agreement shall be null and void in all respects

(subject to any survival provisions);

- (ii) any settlement or compromise embodied in the Plan, or the Settlement Agreement, and any document or agreement executed pursuant to the Plan or Settlement Agreement shall be deemed null and void;
- (iii) nothing contained in the Plan or the Settlement Agreement, and no act taken in preparation of the consummation of the Plan or the Settlement Agreement, shall:
 - A. constitute or be deemed to constitute a waiver or release of any Claims or any defences thereto, by or against any of the Released Parties or any other Person;
 - B. prejudice in any manner the rights of any of the creditors, the Released Parties or any other Person; or
 - C. constitute an admission of any sort by any of the creditors, the Released Parties or any other Person; and
- (iv) the Settling Parties and any other Person affected by the Plan or the Settlement Agreement will be restored to their respective positions prior to the execution of the Settlement Agreement;
- (v) the Settling Parties will consent to orders setting aside, on a without prejudice basis, any order granting leave as against a Settling Party to commence a claim under s. 138.3 of the *Securities Act* (Ontario) and equivalent provisions of *Securities Acts* of other Provinces for the purposes of implementing this Settlement Agreement;
- (vi) the Settling Parties will consent to orders setting aside, on a without prejudice basis, any orders certifying (in Ontario and Alberta) or judgments authorizing (in Quebec) the Class Actions as class proceedings, as against a Settling Party, for the purposes of implementing this Settlement Agreement;
- (vii) subject to any survival provisions herein, the Settlement Agreement will have no further force and effect and no effect on the rights of the Settling Parties and any other Person affected by the Plan or the Settlement Agreement;
- (viii) the certification and authorization of the Class Actions will be deemed to have been without prejudice to any position that any of the Settling Parties may later take on any issue in the Class Actions, the KPMG Claim, the Underwriter Claim and the Monitor Action;
- (ix) the Class Settlement Funds will be returned to the payor(s) of such funds, with interest and without deduction or holdback, within 30 days after the date upon which the triggering event for repayment occurs. Any taxes payable on any interest that accrues in relation to the Class Settlement Funds shall be payable by the recipient(s) of any such interest earned;
- (x) neither the Settlement Agreement nor the Plan will be introduced into evidence or otherwise referred to in any litigation or proceeding against the Released Parties;
- (xi) the provisions of this section, and sections 1(a), 1(b), 6(a), 6(b), 11(a)-(k), 11(l)(ii) and the recitals and schedules applicable thereto shall survive termination and shall continue in full force and effect;

- (xii) Poseidon and/or the Monitor, or Class Counsel, as applicable, shall, within 30 days after the date upon which the triggering event for repayment occurs, apply to the CCAA Court and the Class Action Courts, as necessary, for orders:
- A. declaring the Plan and the Settlement Agreement null and void and of no force or effect except for the provisions of those Articles and sections that are expressly specified as continuing in force; and
 - B. setting aside, *nunc pro tunc*, all prior orders or judgments entered in accordance with the terms of the Plan and/or the Settlement Agreement.

IN WITNESS OF WHICH the Settling Parties have executed this Settlement Agreement.

JENSEN SHAWA SOLOMON DUGUID HAWKES LLP , as Legal Counsel for and on behalf of FRANZ AUER and MOHAMED RAMZY Per: _____	SISKINDS LLP , as Legal Counsel for and on behalf of THOMAS JAMES and MARIAN LEWIS Per: _____
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THE TORONTO-DOMINION BANK , as Agent for itself and HSBC BANK CANADA, THE BANK OF NOVA SCOTIA and NATIONAL BANK OF CANADA Per: _____ Title: _____	POSEIDON CONCEPTS CORP., POSEIDON CONCEPTS LTD., POSEIDON CONCEPTS LIMITED PARTNERSHIP and POSEIDON CONCEPTS INC. by its Court Appointed Monitor, PRICEWATERHOUSECOOPERS INC. Per: _____ Title: _____
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	GOODMANS LLP , as Legal Counsel for Peyto Exploration and Development Corp. Per: _____ David Conklin
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BURNET, DUCKWORTH & PALMER LLP , as Legal Counsel for Matthew MacKenzie Per: _____ Daniel J. McDonald, Q.C.	PEACOCK LINDER HALT & MACK LLP , as Legal Counsel for Harley Winger Per: _____ Perry R. Mack, Q.C.
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PEACOCK LINDER HALT & MACK LLP , as Legal Counsel for Lyle Michaluk Per: _____ J. Patrick Peacock, Q.C.	PARLEE McLAWS LLP , as Legal Counsel for Scott Dawson Per: _____ Gregory D.M. Stirling, Q.C.
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SCOTT VENTURO LLP , as Legal Counsel for Clifford Wiebe Per: _____ Domenic Venturo, Q.C.	CODE HUNTER LLP , as Legal Counsel for Joseph Kostecky Per: _____ Robert Moyse
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BROWNLEE LLP, as Legal Counsel for David Belcher

Per: _____
Havelock B. Madill Q.C.

KAUFMAN BORGEEST & RYAN LLP, as Legal Counsel for Lyle D. Michaluk, Matt C. MacKenzie, A. Scott Dawson, Clifford L. Wiebe, Harley L. Winger, Dean Jensen, James McKee and Neil Richardson in their capacity as Defendants in the U.S. Action

Per: _____
Paul T. Curley

FASKEN MARTINEAU DuMOULIN LLP, as Legal Counsel for Sonja Kuehnle and Doug Robinson

Per: _____
Robert D. Maxwell

ORMSTON LIST FRAWLEY LLP, as Legal Counsel for Kenneth Faircloth and Wazir (Mike) Seth

Per: _____
John P. Ormston

THE ROSEN LAW FIRM, as counsel for Gerald Kolar personally and as representative of all putative class members in the U.S. Action

Per: _____
Jonathan Horne

SCHEDULE "A"
COOPERATION AGREEMENT

1. The D&Os will confirm that, to the best of their knowledge, documents related to Poseidon in their power, possession and control have been preserved in response to a document preservation memorandum dated December 17, 2012 and will continue to be preserved until the Class Actions and any and all actions by the Litigation Trustee including, without limitation, the Monitor Action as against KPMG (collectively, the "**Cooperation Actions**" each a "**Cooperation Action**") have been finally resolved.
2. The D&Os shall be consulted about the proposed schedule for production before the finalization of a Discovery Plan pursuant to Rules 29.1.03(1) of the Ontario *Rules of Civil Procedure* (or its equivalent in the jurisdictions in which any of the Cooperation Actions are pending).
3. Upon reasonable request by the Litigation Trustee and/or Class Counsel, the D&Os will identify the non-privileged documents in their possession that are relevant to the Cooperation Actions, as determined by reference to the pleadings therein, such relevance to be determined as if the D&Os were parties to those Cooperation Actions, subject to the principles of proportionality and reasonableness and other lawful confidentiality claims (the "Documents").
4. The D&Os shall make the Documents available for inspection in accordance with the established schedule and, if requested, copies shall be produced to the parties to the Cooperation Actions at the cost of the requesting party(ies). In the case of documents that are now in electronic form, production of such documents will be by electronic copies at

the cost of the requesting party(ies). Any dispute with respect to the schedule as it affects the D&Os may be referred to the Court pursuant to paragraph 12 hereof.

5. Any party to any of the Cooperation Actions that requests copies of documents pursuant to paragraphs 3 to 6 hereof agrees to pay all reasonable expenses relating to the copying or scanning of the requested documents incurred by the D&Os for both the party requesting the documents and all other parties to such Cooperation Action who are entitled to receive a duplicate copy, subject to the rights of the parties to such Cooperation Action to recover the same from the other parties to such Cooperation Action as costs therein. Nothing in this paragraph is intended to prevent the parties to the such Cooperation Action from allocating the costs referred to among themselves in any way they agree is appropriate.
6. All other costs of the D&Os relating to the preparation for inspection and the production of documents shall be in the discretion of the Court pursuant to rule 5.13 of the *Alberta Rules of Court* and s. 21 of the *Court of Queen's Bench Act* (or their equivalent in the jurisdiction in which any Cooperation Action is pending) and the D&Os or any party to such Cooperation Action may refer the issue of the responsibility for payment of such costs to the Court pursuant to paragraph 12 hereof.
7. Promptly after the completion of documentary discovery as provided for herein, the D&Os shall furnish to the parties in such Cooperation Action affidavits of records, in accordance with the *Alberta Rules of Court* (or its equivalent in the jurisdiction in which the Cooperation Action is pending).

8. Following service of their affidavits of records, the D&Os shall make themselves available for oral discovery in the Cooperation Action, the transcripts of which may be read in at trial.
9. If called upon by a party to the Cooperation Actions, the D&Os shall testify at trial and shall be subject to cross-examination by counsel for any other party to the Cooperation Action in which the D&Os are called to testify.
10. The parties to the Cooperation Actions and the D&Os may seek the assistance of the Court in case managing or resolving any issues that may arise during implementation of the these provisions, including the application and/or waiver of privilege, privilege generally, claims of confidentiality claims, the determination of relevance and the responsibility for costs incurred by the D&Os.
11. The D&Os shall be provided notice of all motions in the Cooperation Actions affecting them, with service effective upon Gowling WLG in accordance with the notice requirements set out in s. 11(k) of the Settlement Agreement.