

**COOK IVC FILTER PRODUCTS
NATIONAL SETTLEMENT AGREEMENT**

Made as of February 27, 2024

Between

ARIE KUIPER, WENDY KOPECK, GARRY KOPECK and SACHA RIVARD

(the “**Plaintiffs**”)

- and -

**COOK (CANADA) INC., COOK INCORPORATED, and WILLIAM COOK EUROPE
APS**

(the “**Defendants**”)

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PREAMBLE & RECITALS

A. The Parties hereby enter into this Settlement Agreement to settle the class proceeding styled *Kuiper et al. v Cook (Canada) Inc. et al.*, commenced in the Ontario Superior Court of Justice under Court File No. CV-17-578210-00CP, and pursuant to the terms and conditions set forth herein, and subject to approval by the Ontario Court on a national basis;

B. WHEREAS, the Fresh as Amended Consolidated Statement of Claim amended on December 13, 2016 in the Ontario Proceeding asserted a range of claims including, *inter alia*, negligent design, development, testing, research, manufacturing, licensing, labelling, warning, marketing, distribution and sale of the Cook IVC Filter Products;

C. WHEREAS, the Plaintiffs' motion for certification of the above-referenced claims in the Ontario Proceeding was dismissed at first instance;

D. WHEREAS, the Ontario Proceeding was subsequently certified as a national class action by the Ontario Superior Court of Justice (Divisional Court) pursuant to the Certification Order issued on January 8, 2020 on the basis of a limited number of common issues related to the

adequacy of the Defendants' warnings to physicians in respect of potential injuries and complications associated with the Cook IVC Filter Products which allegations the Defendants deny;

E. WHEREAS, the Québec Proceeding is currently stayed and whereas the parties have agreed that once this Settlement Agreement is approved by the Ontario Superior Court of Justice, the Plaintiff in the Québec Proceeding will seek an order from the Québec Superior Court to recognize and enforce the Ontario order and to discontinue the Québec Proceeding;

F. WHEREAS, all other claims originally asserted by the Plaintiffs were dismissed or abandoned as there was no basis in fact for their assertion;

G. WHEREAS, the Saskatchewan Proceeding was discontinued as against Cook Group, Inc., Cook, Inc., Cook Medical, LLC, and Cook (Canada) Inc., on June 1, 2023;

H. WHEREAS, the British Columbia Proceeding was discontinued as against Cook Group, Inc., Cook, Inc., Cook Medical LLC, and William Cook Europe APS, on April 6, 2021;

I. WHEREAS, the Parties intend by this Settlement Agreement to resolve all claims for damages alleged to be due in any way related to the use of all Cook IVC Filter Products by (a) all persons resident in Canada, including their estates, who were implanted with an Cook IVC Filter Product, at any time on or before January 8, 2020, which was manufactured, marketed, and/or sold or otherwise placed into the stream of commerce in Canada by the Defendants; (b) all persons resident in Canada who by virtue of a personal relationship to one of more of such persons described in (a) have claims for common law or statutory damages; and (c) all Provincial Health Insurers' claims with respect to Class Members (as further particularized below);

J. WHEREAS, counsel to the Parties have conducted settlement negotiations in good faith and at arms-length to come to the within resolution;

K. WHEREAS, the Defendants do not admit, through the execution of this Settlement Agreement or otherwise, any liabilities, or allegations of negligent, unlawful or otherwise actionable conduct alleged in the Proceedings or otherwise, and in fact Defendants deny any such allegations;

L. WHEREAS, the Plaintiffs, Class Counsel, and the Defendants 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 the Released Parties or evidence of the truth of any of the Plaintiffs' allegations against the Released Parties, which allegations are expressly denied by the Defendants;

M. WHEREAS, the Defendants do not hereby attorn to the jurisdiction of the Ontario Court or any other court or tribunal in respect of any civil, criminal or administrative process except to the extent they have previously done so in the Proceedings and as is expressly provided in this Settlement Agreement with respect to the Proceedings;

N. WHEREAS, the Plaintiffs and Class Counsel have concluded that this Settlement Agreement provides substantial benefits to Class Members and is fair, reasonable and in the best interests of Class Members based on an analysis of the facts and applicable law, taking into account the extensive burdens and expense of litigation, including the risks and uncertainties associated with protracted trials and appeals, as well as the fair, cost-effective and assured method provided in this Settlement Agreement of resolving the claims of Class Members;

O. WHEREAS, the Defendants have similarly concluded that this Settlement Agreement is desirable in order to avoid the time, risk, uncertainty and expense of defending multiple and protracted litigation, and to resolve finally and completely the pending and potential claims of Class Members against the Defendants;

P. WHEREAS, the Parties intend by this Settlement Agreement to finally resolve, on a national basis, without admission of liability, the Proceedings and all the present and future claims of Class Members against the Defendants relating in any way to Cook IVC Filter Products;

Q. WHEREAS, the Parties shall seek an order approving the Settlement;

R. WHEREAS, the Provincial Health Insurers have confirmed that they approve, and will not object to court approval of, the settlement provided for in this Settlement Agreement, and they will accept a payment, as provided for in the Compensation Protocol, in satisfaction of all Provincial Health Insurer Rights of Recovery that they may have, whether by subrogation or by independent right of action, respecting Class Members' implantation with any Cook IVC Filter Products on or before January 8, 2020;

S. NOW THEREFORE, subject to the issuance of the Settlement Approval Order, this Settlement Agreement embodies the terms of the resolution of claims of Class Members and of the Provincial Health Insurers.

SECTION 1 - DEFINITIONS

Unless a particular section of this Settlement Agreement explicitly provides for another interpretation, the following terms, as used in this Settlement Agreement and its exhibits, shall have the meanings set forth below. Terms used in the singular shall be deemed to include the plural, and vice versa, where appropriate. Feminine pronouns and female references shall be deemed to include the masculine, and vice versa, where appropriate.

- (a) **“British Columbia Proceeding”** means *Fraser et al v. Cook Group, Inc et al*, commenced in the Supreme Court of British Columbia under Court File No. 178129;
- (b) **“Certification Order”** means the order of the Ontario Court dated January 8, 2020 in respect of the certification of the Ontario Proceeding under the *Class Proceedings Act, 1992*;
- (c) **“Claims Administration Costs”** means all costs, other than Class Counsel Legal Fees, required to implement this Settlement Agreement, including without limitation, the costs of publishing and distributing the Hearing Notice, including the associated professional fees, French translation costs, costs incurred by the Claims Administrator, costs incurred pursuant to the Compensation Protocol (but not including payments to Class Members) and any other costs required to satisfy the notice provisions;
- (d) **“Claims Administrator”** means RicePoint Administration Inc., or such other administrator agreed to between the Parties and approved by the Ontario Court;
- (e) **“Claims-Made Settlement Amount”** means up to a maximum cap of CAD\$4,062,720.00, calculated pursuant to section 4.1 of this Settlement Agreement for payment to Qualifying Claimants, of Class Counsel Legal Fees

relating to those Qualifying Claimants, and applicable taxes required by law to be paid to any governmental authority;

(f) **“Class”** means,

- (i) All persons resident in Canada who were implanted with a Cook IVC Filter Product, at any time on or before January 8, 2020, which was manufactured, marketed, and/or sold or otherwise placed into the stream of commerce in Canada by the Defendants (**“Primary Class”**); and
- (ii) All persons resident in Canada who, by virtue of a personal relationship to one or more of such persons described in (i) above, have standing in this action pursuant to section 61(1) of the *Family Law Act*, RSO 1990, c F 3 or analogous provincial legislation (**“Family Class”**)

but, for greater certainty, does not include any Opt Out or Provincial Health Insurer;

- (g) **“Class Counsel”** means Siskinds LLP, Siskinds Desmeules Avocats, s.e.n.c.r.l., McKenzie Lake Lawyers LLP, Merchant Law Group LLP, and Koskie Minsky LLP;
- (h) **“Class Counsel Legal Fees”** means all legal fees, disbursements and applicable taxes in respect of all legal services provided by Class Counsel or any other law firm for the benefit of the Class and Provincial Health Insurers, as approved by the Ontario Court, but does not include fees for legal services for the benefit of particular Filing Claimants (which are payable by the Filing Claimant);
- (i) **“Class Members”** means members of the Class, but, for greater certainty, does not include any Opt Out or Provincial Health Insurer;
- (j) **“Compensation Protocol”** means the Ontario Court-approved plan for administering this Settlement Agreement and distributing the Settlement Amounts

to the Filing Claimants and Provincial Health Insurers, substantially in the form attached hereto as **Schedule “E”**;

- (k) **“Cook IVC Filter Product”** means the Celect Vena Cava Filter, Celect Platinum Vena Cava Filter, Günther Tulip Vena Cava Filter, accompanying instrument, materials, filter retrievers or retrieval sets, or accessory designed, manufactured, marketed, distributed, or sold by Defendants;
- (l) **“Defendants”** means Cook (Canada) Inc., Cook Incorporated, and William Cook Europe APS;
- (m) **“Effective Date”** means the date on which: (i) each Provincial Health Insurer has executed a Provincial Health Insurer Release; (ii) copies of all the Provincial Health Insurer Releases have been provided to counsel for the Defendants; and (iii) the Settlement Approval Order becomes a Final Order;
- (n) **“Filing Claimant”** means each Class Member who files a claim pursuant to the Compensation Protocol, and also includes, where context requires, a lawyer or other representative acting on behalf of a Filing Claimant;
- (o) **“Final Order”** means any order contemplated by this Settlement Agreement from which no appeal lies or in respect of which any right of appeal has expired without the initiation of proceedings in respect of that appeal, or proposed appeal, such as the delivery of a notice of appeal or application for leave to appeal;
- (p) **“Hearing Notice”** means the notice (in long, abridged and press release form) substantially in the form attached hereto as **Schedule “G”**, approved by the Ontario Court, in English and French, which advises Class Members of the hearing to approve the settlement provided for in this Settlement Agreement;
- (q) **“Hearing Notice Order”** means the order of the Ontario Court that approves the Hearing Notice and Hearing Notice Plan, in a form agreed to by the Parties;

- (r) **“Hearing Notice Plan”** means the method by which the Hearing Notice is disseminated, substantially in the form attached hereto as **Schedule “F”**, approved by the Ontario Court;
- (s) **“Implanted”, “Inserted” and “Placed”** (and derivatives thereof), as relating to the use of a Cook IVC Filter Product shall be synonymous, unless otherwise specifically stated.
- (t) **“Other Qualifying Claimant”** means Filing Claimants who are not Qualifying Death Claimants, Qualifying Fracture Claimants or Qualifying Open Surgery Claimants but who the Claims Administrator has determined should receive certain funds from the Preliminary Settlement Amount and who are finally approved pursuant to the Compensation Protocol;
- (u) **“Non-Refundable Expenses”** means the costs of French translation of the Settlement Agreement and costs of publishing and distributing the Hearing Notice, including the associated professional fees and French translation costs, any costs associated with the termination of this Settlement Agreement, including any court-ordered notice, and any other Claims Administration Costs incurred prior to any termination of this Settlement Agreement pursuant to section 5;
- (v) **“Non-Settling Defendant”** shall mean any person or entity other than Defendants or a Released Party, against whom or which a Released Claim has been or is hereafter made, asserted, or commenced in any action (irrespective of whether Defendants or another Released Party are also parties to that action), by any Class Member who has not timely and properly opted-out;
- (w) **“Ontario Court”** means the Ontario Superior Court of Justice;
- (x) **“Ontario Proceeding”** means *Kuiper et al. v Cook (Canada) Inc. et al.* commenced in the Ontario Superior Court of Justice under Court File No. CV-17-578210-00CP;
- (y) **“Opt Out”** means a person who would have been a Class Member but for their timely and valid request for exclusion pursuant to the order issued on November 3,

2020, approving the notice and opt out procedures following certification of the Ontario Proceeding as a national class action;

- (z) **“Parties”** means the Plaintiffs and the Defendants;
- (aa) **“Plaintiffs”** means Arie Kuiper, Wendy Kopeck, and Garry Kopeck, individually and collectively in their capacities both personally and as representative of the Class Members;
- (bb) **“Preliminary Settlement Amount”** means CAD\$2,708,480.00 for payment of settlement costs, including Claims Administration Costs, the Provincial Health Insurer Claims, Class Counsel Legal Fees not associated with Qualifying Claimants, Other Qualifying Claimants, and applicable taxes required by law to be paid to any governmental authority;
- (cc) **“Proceedings”** shall mean the British Columbia Proceeding, Ontario Proceeding, the Québec Proceeding and the Saskatchewan Proceeding;
- (dd) **“Provincial Health Insurers”** means all provincial and territorial Ministries of Health or equivalents, and/or provincial and territorial plans funding medical and health care services and costs throughout Canada as listed on **Schedule “B”** hereto;
- (ee) **“Provincial Health Insurer Fund”** means a total of CAD\$677,120.00 allocated from the Preliminary Settlement Amount to pay all claims of Provincial Health Insurers and approved Class Counsel Legal fees relating to the Provincial Health Insurer Claims;
- (ff) **“Provincial Health Insurer Release”** means the form of Release, attached hereto as **Schedule “C”**;
- (gg) **“Provincial Health Insurer Rights of Recovery”** means all statutory or other authority for the recovery of costs of insured health or medical services, as defined in the empowering legislation of each jurisdiction and listed on **Schedule “B”** hereto;

- (hh) **“Qualifying Claimant”** means the Qualifying Death Claimants, Qualifying Fracture Claimants and the Qualifying Open Surgery Claimants who are finally approved pursuant to the Compensation Protocol as eligible to receive funds from the Claims-Made Settlement Amount;
- (ii) **“Qualifying Death Claimant”** has the meaning set out in the Compensation Protocol;
- (jj) **“Qualifying Fracture Claimant”** has the meaning set out in the Compensation Protocol;
- (kk) **“Qualifying Open Surgery Claimant”** has the meaning set out in the Compensation Protocol;
- (ll) **“Québec Parties”** mean the parties in the Québec Proceeding;
- (mm) **“Québec Proceeding”** means *Rivard c. Cook Medical Incorporated et al*, commenced in the Superior Court of Québec under Court File number 500-06-000784-161;
- (nn) **“Released Claims”** means:
 - (i) For all Releasers other than the Provincial Health Insurers, any and all legal, equitable, administrative or other claims against the Released Parties of any kind, regardless of the legal, equitable, statutory or other theory on which they are based, including all existing, future, known, and unknown claims, actions, demands, causes of action, cross-claims, counterclaims, obligations, contracts, indemnity, contribution, suits, debts, sums, accounts, controversies, rights, damages, costs, lawyers’ fees, administration costs, losses, expenses, and all liabilities whatsoever existing now or arising in the future, whether class, individual or otherwise in nature, including direct, contingent or absolute, accrued, mature, derivative, subrogated, personal, assigned, discovered, undiscovered, suspected, unsuspected, disclosed, undisclosed, asserted,

unasserted, known, unknown inchoate, or otherwise relating in any way to any conduct anywhere: 1) that arise directly or indirectly out of, relating to, or in any way connected with Cook IVC Filter Product(s); 2) that have been brought or could be brought by the Class that relate to Cook IVC Filter Product(s); and/or 3) relating to the creation, design, manufacture, testing, distribution, promotion, advertising, sale, administration, research, development, efficacy, inspection, clinical investigation, licensing, regulatory approval or authorization, packaging, labelling, use, marketing, recommendation, implantation, revision, excision, disposal, compliance with regulatory obligations or reporting requirements, warnings and post-sale warnings, packaging, instructions for use, directions for use, condition, promises, and any other matter arising out of, relating to, resulting from, or in any way connected with or related to Cook IVC Filter Product(s), including by way of example but without limitation, failure to warn, design defect, manufacturing defect, and/or labeling defect, of Cook IVC Filter Product(s); 4) relating to any alleged representations, promises, statements, warranties (express or implied) or guarantees given or made by anyone affiliated with or representing the Released Parties relating to Cook IVC Filter Product(s); and 5) relating to this Settlement Agreement relating to Cook IVC Filter Product(s), except for a claim or action to enforce its terms. Subject to the foregoing, the “Released Claims” include all claims against the Released Parties for damages or remedies of whatever kind or character, known or unknown, that are now recognized or that may be created or recognized in the future by statute, regulation, judicial decision, or in any other manner, for or in respect of, arising out of or relating to any Cook IVC Filter Product(s), including but not limited to:

- (A) Personal injury and/or bodily injury, latent injury, future injury, progression of existing injury, surgery, medical treatment, damage, disease, death, fear of death, disease or

injury, mental or physical pain or suffering, emotional or mental harm, anguish, or loss of enjoyment of life;

- (B) Compensatory damages, general damages, special damages, punitive, exemplary, and statutory damages and all other damages or penalties of any kind;
 - (C) Loss of wages, income, earnings or earning capacity;
 - (D) Medical expenses, doctor, hospital, nursing, and drug bills;
 - (E) Loss of support, services, consortium, companionship, society or affection, or damage to familial relations, by spouses, former spouses, parents, children, other relatives who by virtue of a relationship to one or more such persons in the Class have standing in this action pursuant to section 61(1) of the *Family Law Act*, RSO 1990, c. F. 3 or analogous provincial legislation or at common law;
 - (F) Consumer protection remedies of any kind, including, but not limited to, remedies under provincial consumer protection legislation or the *Competition Act*, disgorgement of profit, and other similar claims whether arising under statute, regulation, or judicial decision;
 - (G) Wrongful death and survivorship;
 - (H) Medical screening and monitoring;
 - (I) Injunctive and declaratory relief;
 - (J) Economic or business losses;
 - (K) Prejudgment or post-judgment interest; and
 - (L) Legal fees.
- (ii) For the Provincial Health Insurers, any and all manner of claims against the Released Parties which a Provincial Health Insurer ever had, now has or hereafter can, shall or may have pursuant to provincial or territorial legislation that permits the recovery of healthcare costs or medical expenses from third parties or other sources, whether known or unknown, direct or indirect, subrogated or otherwise, relating in any way to the design, manufacture, sale, distribution, labelling, use, purchase and/or implantation of Cook

IVC Filter Products in Class Members during the Class Period, including, without limitation and by way of example, all subrogated and/or direct claims in respect of Class Members that were or could have been brought for the cost of medical care and treatment provided to Class Members, as well as medical screening and monitoring, arising from the facts alleged in the Proceedings;

- (oo) **“Released Parties”** means, jointly and severally, individually and collectively, the Defendants, Cook Group, Inc., A/K/A Cook Group Incorporated, Cook, Inc., Cook Medical, LLC f/k/a Cook Medical Incorporated, Cook Medical Incorporated A/K/A Cook Medical, Inc. and any and all of their present, future and former, direct and indirect, parents, subsidiaries, divisions, affiliates, controlling persons, general or limited partners, insurers, vendors, contractors, agents and assigns, and all other Persons, partnerships or corporations with whom any of the former have been, or are now, affiliated or related, and all of their respective past, present and future officers, directors, employees, agents, shareholders, attorneys, trustees, servants and representatives, and the predecessors, successors, purchasers, heirs, executors, estate administrators, assigns and personal representatives (or equivalent thereto) of each of the foregoing; any and all suppliers of materials, components, and services used in the manufacture of any Cook IVC Filter Products, including the labelling, packaging, marketing and selling thereof, along with any and all of their present, future and former, direct and indirect, parents, subsidiaries, divisions, affiliates, controlling persons, general or limited partners, insurers, vendors, contractors and assigns, and all other Persons, partnerships or corporations with whom any of the former have been, or are now, affiliated or related, and all of their respective past, present and future officers, directors, employees, agents, shareholders, attorneys, trustees, servants and representatives, and the predecessors, successors, purchasers, heirs, executors, estate administrators, assigns and personal representatives (or equivalent thereto) of each of the foregoing; any and all distributors of Cook IVC Filter Products, including those involved in the labelling, packaging, marketing and selling of Cook IVC Filter Products, wholesale distributors, private label distributors, retail distributors,

hospitals and clinics, and all of their present, future and former, direct and indirect, parents, subsidiaries, divisions, affiliates, controlling persons, general or limited partners, insurers, vendors, contractors and assigns, and all other Persons, partnerships or corporations with whom any of the former have been, or are now, affiliated or related, and all of their respective past, present and future officers, directors, employees, agents, shareholders, attorneys, trustees, servants and representatives, and the predecessors, successors, purchasers, heirs, executors, estate administrators, assigns and personal representatives (or equivalent thereto) of each of the foregoing;

- (pp) **“Releasors”** shall mean, jointly and severally, individually and collectively, the Plaintiffs and the Class Members and all of their present, future and former representatives, predecessors, successors, heirs, executors, administrators, insurers and assigns;
- (qq) **“Saskatchewan Proceeding”** means *Bussey et al v. Cook Group, Inc et al*, commenced in the Court of King’s Bench of Saskatchewan under Court File No. QBG 2729;
- (rr) **“Settlement Agreement”** means this agreement, including the recitals, exhibits and schedules;
- (ss) **“Settlement Amount”** means the combined Preliminary Settlement Amount and Claims-Made Settlement Amount;
- (tt) **“Settlement Approval Notice”** means the notice (in long, abridged and press release form) substantially in the form attached hereto as **Schedule “H”**, approved by the Ontario Court, in English and French, which advises Class Members of the approval of the settlement provided for in this Settlement Agreement;
- (uu) **“Settlement Approval Notice Plan”** means the method by which the Settlement Approval Notice is disseminated, substantially in the form attached hereto as **Schedule “F”**, approved by the Ontario Court;

- (vv) **“Settlement Approval Order”** means the orders or judgments issued by the Ontario Court substantially in the form of **Schedule “A”** hereto; and
- (ww) **“Settlement Proceeds”** means:
- (i) the Preliminary Settlement Amount, for payment of settlement costs, including Claims Administration Costs, the Provincial Health Insurer Fund, Class Counsel Legal Fees not associated with Qualifying Claimants, Other Qualifying Claimants and notice of settlement approval, and applicable taxes required by law to be paid to any governmental authority (**“Preliminary Settlement Proceeds”**); plus
 - (ii) the Claims-Made Settlement Amount, for payment to Qualifying Claimants, including Class Counsel Legal Fees relating to those Qualifying Claims, and applicable taxes required by law to be paid to any governmental authority (**“Claims-Made Settlement Proceeds”**).
- (xx) **“Trust Account”** means a guaranteed investment vehicle, liquid money market account or equivalent security with a rating equivalent to or better than that of a Canadian Schedule I bank (a bank listed in Schedule I of the *Bank Act*, S.C. 1991, c. 46) held at a Canadian financial institution under the control of Siskinds LLP or the Claims Administrator, once appointed, for the benefit of the Filing Claimants and Provincial Health Insurers, as provided for in this Settlement Agreement and Compensation Protocol.

SECTION 2 - SETTLEMENT APPROVAL

2.1 Best Efforts

- (1) The Parties shall use their best efforts to implement this settlement and to secure the prompt, complete and final dismissal with prejudice of the Ontario Proceeding as against the Defendants. Pending approval of the Settlement Agreement, the Parties agree to hold the Ontario Proceeding and the Québec Proceeding in abeyance.

2.2 Motion Seeking Approval of Hearing Notice

- (1) The Plaintiffs shall file motions in the Ontario Court, on consent of the Defendants, as soon as practicable after this Settlement Agreement is executed, for the Hearing Notice Order.
- (2) Prior to the filing of the motion materials in connection with this section, Class Counsel will provide them to counsel for the Defendants in draft form for comment and approval.

2.3 Motion Seeking Settlement Approval Order

- (1) The Plaintiffs shall file a motion with the Ontario Court for the Settlement Approval Order as soon as practicable after:
 - (a) the Hearing Notice Order has been granted; and
 - (b) the Hearing Notice has been provided to Class Members in accordance with the Hearing Notice Order.
- (2) Prior to filing the motion materials in connection with this section, Class Counsel will provide them to counsel for the Defendant in draft form for comment and approval.
- (3) Prior to the hearing of the Settlement Approval motion, Class Counsel will provide all of the executed Provincial Health Insurer Releases to counsel for the Defendants.
- (4) This Settlement Agreement and the Provincial Health Insurer Releases shall only become final on the Effective Date.

2.4 Pre-Motion Confidentiality

- (1) Until the motion required by section 2.2 is brought, the Parties shall keep all of the terms of the Settlement Agreement confidential and shall not disclose them without the prior written consent of Counsel for the Defendants and Class Counsel, as the case may be, except as required for the purposes of financial reporting, the preparation of financial records (including tax returns and financial statements), as necessary to give effect to its terms, or as otherwise required by law. Nothing in this section shall bar counsel from communicating with clients or the Provincial Health Insurers, provided that they also shall be required to maintain confidentiality consistent with the provisions of this section.

2.5 Steps in the Québec Proceeding

- (1) As soon as practicable after this Settlement Agreement is executed, and prior to the Hearing Notice being provided to Class Members in accordance with the Hearing Notice Order, the Québec Parties shall correspond with the Superior Court of Québec to advise that a settlement was concluded between the parties and that the Québec Parties will seek a recognition and enforcement order and discontinuance of the Québec Proceeding.
- (2) The Québec Parties shall furnish the Superior Court of Québec with the Hearing Notice and the Settlement Approval Notice, in both French and English, the Hearing Notice Plan and the Settlement Approval Notice Plan. The Parties and the Québec Parties shall work cooperatively to address any comments and issues presented by the Superior Court of Québec. The Parties and the Québec Parties shall agree to any reasonable modifications to the notices as required by the Superior Court of Québec.
- (3) Following the approval of the Settlement Approval Order by the Ontario Court, the Québec Parties shall seek the recognition and enforcement of the Settlement Approval Order by the Superior Court of Québec and the discontinuance of the Québec Proceeding.

SECTION 3 - NOTICE TO THE CLASS

3.1 The Notices

- (1) The Parties have agreed to the form, contents and method of dissemination of the Hearing Notice and Hearing Notice Plan, subject to approval by the Ontario Court, which shall be sought by way of the Plaintiffs' motion.
- (2) The Settlement Approval Notice shall be disseminated in accordance with the Settlement Approval Notice Plan as soon as practicable after the Effective Date.
- (3) The costs of publishing and distributing the Hearing Notice and the Settlement Approval Notice, including the associated professional fees and French translation costs (but expressly excluding Class Counsel Legal Fees), will form part of the Claims Administration Costs to be paid out of the Preliminary Settlement Amount.

3.2 Notice of Termination

- (1) If this Settlement Agreement is terminated and the Ontario Court orders that notice be given to the Class, the Parties will cause any such notice, in a form approved by the Ontario Court, to be published and disseminated as the Ontario Court directs. The cost of such a notice is a Non-Refundable Expense.
- (2) If this Settlement Agreement is terminated, the Defendants shall be solely liable for the Non-Refundable Expenses and any costs which may arise as described in section 3.2(1).

3.3 Cooperation

- (1) The Parties shall cooperate, assist one another and the Claims Administrator and undertake all reasonable actions in order to ensure that the Hearing Notice and Settlement Approval Notice are disseminated in a timely manner by the Claims Administrator.

3.4 Notice to Provincial Health Insurers

- (1) Within ten (10) days of execution of this Settlement Agreement, Class Counsel will complete, and the Defendants shall execute and submit, a Notice of Proposed Terms of Settlement, in the form attached hereto as **Schedule “D”**, to the British Columbia Ministry of Health, pursuant to section 13 of the *Health Care Costs Recovery Act*, SBC 2008, c. 27.

SECTION 4 - SETTLEMENT BENEFITS

4.1 Quantum of Claims-Made Settlement Amount

- (1) Pursuant to the Compensation Protocol, the Administrator shall adjudicate the claims made by Filing Claimants. Following the final determination by the Administrator, and any appeals provided for in the Compensation Protocol, the Administrator shall report the number of Qualifying Death Claimants, Qualifying Fracture Claimants and Qualifying Open Surgery Claimants to the Parties.
- (2) The Claims-Made Settlement Amount shall be calculated as the sum of the following, up to its maximum defined limit:
 - (a) CAD\$81,000 for each Qualifying Death Claimant;
 - (b) CAD\$54,000 for each Qualifying Fracture Claimant; and

(c) CAD\$169,500 for each Qualifying Open Surgery Claimant.

(3) Other than the Preliminary Settlement Amount, the Defendants shall only be required to pay up to the Claims-Made Settlement Amount. If the total calculated in section 4.1(2) exceeds the Claims-Made Settlement Amount, payments to Qualifying Claimants shall be reduced on a *pro rata* basis, as set out in the Compensation Protocol.

4.2 Payment of Settlement Amount by Defendants

(1) The Defendants shall pay the Preliminary Settlement Amount by depositing into the Trust Account:

(a) CAD\$300,000, within thirty (30) days of execution of this Settlement Agreement and the execution by each Provincial Health Insurer of the Provincial Health Insurer Release; and

(b) the remaining balance of the Preliminary Settlement Amount, within thirty (30) days of the Effective Date.

(2) The Defendants shall deposit the Claims-Made Settlement Amount into the Trust Account within thirty (30) days of receipt of the report described in paragraph 4.1(1).

(3) Payments of the Settlement Amount shall be made by wire transfer. At least fifteen (15) business days prior to any payment of the Settlement Amount becoming due, Class Counsel will provide, in writing, the following information necessary to complete the wire transfers: name of bank, address of bank, ABA number, SWIFT number, name of beneficiary, beneficiary's bank account number, beneficiary's address and bank contact details.

(4) The Settlement Amount to be provided in accordance with the terms of this Settlement Agreement shall be provided in full satisfaction of the Released Claims against the Released Parties.

(5) The Settlement Amount shall be inclusive of all amounts, including, without limitation, interest, costs, Class Counsel Legal Fees and Claims Administration Costs and, if any, amounts payable to the Fonds d'aide aux actions collectives.

(6) The Defendants shall have no obligation to pay any amount in addition to the Settlement Amount, for any reason, pursuant to or in furtherance of this Settlement Agreement.

(7) Once the appointment of the Claims Administrator has been approved by the Ontario Court, Class Counsel shall transfer control of the Trust Account to the Claims Administrator or shall transfer the funds in the Trust Account to a new Trust Account under the control of the Claims Administrator that shall, from that point on, be the Trust Account.

(8) Class Counsel and the Claims Administrator, as the case may be, shall maintain the Trust Account as provided for in this Settlement Agreement and shall not pay out all or any part of the money in the Trust Account, except in accordance with this Settlement Agreement, or in accordance with an order of the Ontario Court obtained after notice to the Parties.

4.3 Taxes and Interest

(1) Except as hereinafter provided, all interest earned on the Settlement Amount in the Trust Account shall accrue to the benefit of the Filing Claimants and the Provincial Health Insurers, and shall become and remain part of the Trust Account and the Settlement Proceeds.

(2) All taxes payable on any interest which accrues on the Settlement Amount in the Trust Account or otherwise in relation to the Settlement Amount shall be paid from the Trust Account. Siskinds LLP or the Claims Administrator, as appropriate, shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount in the Trust Account, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned by the Settlement Amount shall be paid from the Trust Account.

(3) The Defendants shall have no responsibility to make any filings relating to the Trust Account and will have no responsibility to pay tax on any income earned on the Settlement Amount or pay any taxes on the money in the Trust Account, unless this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason, in which case the interest earned on the Settlement Amount in the Trust Account or otherwise shall be paid to the Defendants who, in such case, shall be responsible for the payment of all taxes on such interest not previously paid by Siskinds LLP or the Claims Administrator.

4.4 Compensation Protocol

- (1) The Plaintiffs shall file motions in the Ontario Court, on consent of the Defendants, as soon as possible, to approve the Compensation Protocol, to be heard at the same time the Ontario Court considers the Settlement Approval Order.
- (2) Upon approval by the Ontario Court, the Claims Administrator shall implement the Compensation Protocol.
- (3) Claims shall be submitted by Class Members in the manner contemplated by the Compensation Protocol.
- (4) Should circumstances require, the Claims Administrator may seek an amendment of the Compensation Protocol. Any such motion shall be to the Ontario Court, on notice to the Parties, who may oppose such amendment. If either party opposes the amendment, the Settlement Agreement governs. In no circumstance may the Claims Administrator seek an amendment of the Compensation Protocol that has the effect of altering any payment obligation of a Defendant. Notwithstanding the forgoing, the Claims Administrator may make *de minimis* modifications to the Compensation Protocol to permit its orderly and reasonable implementation.

4.5 Distribution of Settlement Proceeds

- (1) On or after the Effective Date, the Claims Administrator shall pay the following from the Preliminary Settlement Amount:
 - (a) Class Counsel Legal Fees not associated with Qualifying Claimants, as approved by the Ontario Court;
 - (b) All of the costs and expenses reasonably and actually incurred in connection with the provision of Settlement Approval Notice in accordance with the Notice Plan;
 - (c) Any remaining Claims Administration Costs, including the professional fees of the Claims Administrator; and
 - (d) Any taxes required by law to be paid to any governmental authority.

(2) Within ten (10) days of the receipt of the entire Preliminary Settlement Amount pursuant to section 4.2(1)(b), the Claims Administrator shall distribute funds to the Provincial Health Insurers Fund, in the amounts set out at Exhibit A to the Compensation Protocol (along with the attendant Class Counsel Legal Fees, the “**PHI Payments**”) provided section 4.5(3) is complied with for all Provincial Health Insurers.

(3) In order to receive a PHI Payment, all Provincial Health Insurers must execute the Provincial Health Insurer Release.

(4) Distributions made to the Provincial Health Insurers shall be in full and final satisfaction of all Provincial Health Insurer Rights of Recovery they may have in relation to all Cook IVC Filter Products implemented on or before January 8, 2020, for the costs of services, pursuant to the legislation of each jurisdiction, whether already provided or to be provided to Class Members.

(5) Within thirty (30) days of receipt of the report described in paragraph 4.1(1), the Claims Administrator shall distribute the Preliminary Settlement Proceeds, less the amounts paid pursuant to sections 4.5(1) and (2), to the Other Qualifying Claimants and in accordance with the Compensation Protocol.

(6) On or after the Claims-Made Settlement Amount is deposited into the Trust Account, the Claims Administrator shall distribute the Claims-Made Settlement Proceeds to the Qualifying Claimants in accordance with the Compensation Protocol, after payment of the following from the Claims-Made Settlement Amount:

- (a) Class Counsel Legal Fees relating to the Qualifying Claimants, as approved by the Ontario Court; and
- (b) Any taxes required by law to be paid to any governmental authority.

4.6 *Cy Près* Distribution

(1) If six months after final distribution of all Settlement Proceeds, there are remaining excess funds, whether as a result of failure of Class Members to make proper claims or as a result of cheques having become stale dated and/or such other forms of payment as may be made to Filing Claimants and which may otherwise expire without having been claimed, such excess funds shall be distributed to the Heart and Stroke Foundation of Canada to be used for research purposes.

(2) The Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives, CQLR c F-3.2.0.1.1. r.2 will apply to the portion of any remaining balance, if any, attributable to Class Members resident in Québec.

SECTION 5 - TERMINATION

5.1 General

(1) Termination rights are as follows:

(a) The Defendants shall have the right to terminate this Settlement Agreement in the event that:

- (i) any of the Provincial Health Insurers (a) do not confirm their approval of this Settlement Agreement or (b) object to court approval of the settlement provided for in this Settlement Agreement; or
- (ii) The Ontario Court refuses to approve this Settlement Agreement; or,
- (iii) The Quebec Court refuses to grant the recognition and enforcement order and to discontinue of the Québec Proceeding.

(b) Each of the Parties shall have the right to terminate this Settlement Agreement in the event that:

- (i) a Settlement Approval Order is denied and, following appeal, the denial of the Settlement Approval Order becomes a Final Order;
- (ii) a Settlement Approval Order is entered but reversed on appeal and the reversal becomes a Final Order; or
- (iii) The Ontario Court issues an order approving the Settlement Agreement in a materially modified form that is not agreed to by both the Plaintiffs and the Defendants.

(2) Any order, ruling or determination made (or rejected) by the Ontario Court with respect to Class Counsel Legal Fees or the Compensation Protocol shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not provide any basis for the termination of this Settlement Agreement.

(3) In all cases, failure of the Defendant to pay the Settlement Amount in accordance with this Settlement Agreement shall be grounds for the Plaintiffs, in their sole discretion, to terminate the Settlement Agreement.

(4) To exercise a right of termination, the terminating party shall deliver a written notice of termination to counsel for the other party within 30 days of the event giving rise to the right to terminate. Upon delivery of such a written notice, this Settlement Agreement shall be terminated and, except as provided for in sections 5.2 and 5.3, it 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.

5.2 Effect of Termination

(1) In the event this Settlement Agreement is terminated in accordance with its terms:

- (a) it shall be null and void and shall have no force or effect, and the Parties shall not be bound by its terms, except as specifically provided in this Settlement Agreement;
- (b) all negotiations, statements and proceedings relating to this Settlement Agreement shall be deemed to be without prejudice to the rights of the Parties, and the Parties shall be deemed to be restored to their respective positions existing immediately before this Settlement Agreement was executed;
- (c) all funds paid pursuant to this Settlement Agreement shall be returned to the Defendants, except the Non-Refundable Expenses; and
- (d) the Parties shall be returned to the status quo position they were in immediately before the Settlement Agreement was executed in respect of all Proceedings.

5.3 Survival

(1) Notwithstanding section 5.2(1) of this Settlement Agreement, if this Settlement Agreement is terminated, the provisions of this section, and sections 2.4, 3.2, 4.3(3), 5.4, 5.5, 7.1, 7.2 and 13.7, and the definitions applicable thereto of this Settlement Agreement, shall survive termination and shall continue in full force and effect. The definitions and Schedules shall survive only for the limited purpose of interpreting these sections of this Settlement Agreement, but for no other purposes.

5.4 Accounting

(1) If this Settlement Agreement is terminated after the Settlement Amount, or any of it, has been paid pursuant to section 4.2, Class Counsel or the Administrator, as the case may be, shall account to the Ontario Court and the Parties for all payments made from the Trust Account by no later than fifteen (15) days after such termination.

5.5 Termination Orders

(1) If this Settlement Agreement is terminated, Class Counsel shall, within thirty (30) days after termination, apply to the Ontario Court, on notice to the Claims Administrator, for an order:

- (a) declaring this Settlement Agreement null and void and of no force or effect except for the provisions of those sections listed in section 5.3(1) of this Settlement Agreement;
- (b) providing that any funds paid by the Defendants under the terms of this Agreement, other than those related to the Non-Refundable Expenses, shall be returned to Defendants by wire transfer within fifteen (15) days; and
- (c) setting aside the Settlement Approval Order in accordance with the terms of this Settlement Agreement.

(2) Subject to section 5.5(3) of this Settlement Agreement, the Parties shall consent to the orders sought in any motion made pursuant to section 5.5(1) of this Settlement Agreement.

(3) If there is any dispute about the termination of this Settlement Agreement, the Ontario Court shall determine any dispute by motion on notice to the Parties.

SECTION 6 - OPT OUT PROVISIONS

- (1) In the event that an Opt Out seeks to retain Class Counsel for any purpose related to the Proceeding, Class Counsel hereby agree to refuse to represent the Opt Out.
- (2) The Defendants reserve all of their legal rights and defences with respect to any Opt Outs.

SECTION 7- EFFECT OF SETTLEMENT

7.1 No Admission of Liability

- (1) The Plaintiffs and the Released Parties expressly reserve all of their rights if the Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason. Further, whether or not the Settlement Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, shall not be deemed, construed or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by the Released Parties, or of the truth of any of the claims or allegations contained in the Proceedings or any other pleading filed by the Plaintiffs.

7.2 Agreement Not Evidence

- (1) The Parties agree that, whether or not it is terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a pending or future proceeding to approve and/or enforce this Settlement Agreement, to defend against the assertion of Released Claims, or as otherwise required by law.

7.3 No Further Litigation

- (1) Except with respect to the enforcement or administration of this Settlement Agreement, neither the Plaintiffs nor Class Counsel (whether directly or via local counsel in any Canadian Province or Territory) may directly or indirectly participate or be involved in or in any way assist with respect to any claim made or action commenced by any Person which relates to or arises from

the Released Claims. Moreover, subject to the other terms of this Settlement Agreement, the Plaintiffs and Class Counsel (whether directly or via local counsel in any Canadian Province or Territory) may not divulge to anyone for any purpose any information obtained in the course of the Proceeding or the negotiation and preparation of this Settlement Agreement, except to the extent such information is otherwise publicly available (so long as the information does not become publicly available through a breach of this section) or unless ordered to do so by a court of competent jurisdiction.

(2) Section 7.3(1) shall be inoperative to the extent that it is inconsistent with Class Counsel's obligations under Rule 3.2-10 of the Code of Professional Conduct for British Columbia.

SECTION 8 - RELEASES AND DISMISSALS

8.1 Exclusive Remedy

(1) This Settlement Agreement shall be the exclusive remedy for all claims against the Defendants by or through Class Members respecting Cook IVC Filter Product(s) implanted on or before January 8, 2020.

(2) On the Effective Date, each Class Member, whether or not he or she submits a claim or otherwise receives compensation, shall be deemed by this Settlement Agreement to have completely and unconditionally released, forever discharged, and acquitted the Released Parties from the Released Claims.

(3) On the Effective Date, each Provincial Health Insurer shall be deemed by this Settlement Agreement to have completely and unconditionally released, forever discharged, and acquitted the Released Parties from the Released Claims.

(4) In consideration for the Settlement Amount, Class Counsel agrees, on behalf of the Class Members, that any prosecution of a settled claim in breach of section 8.1(2) shall cause irreparable harm to the Released Parties, in respect of which a stay or injunction is an appropriate remedy. For the same consideration, Class Counsel agree on behalf of Class Members to cooperate with the Released Parties in seeking such a stay or injunction.

8.2 Third-Party Contribution or Indemnity Claims

- (1) Class Members who commence or continue litigation against any person or entity who may make a claim for contribution and/or indemnity against any Released Party, shall limit the value and right of recovery of such claim against such person or entity to the quantum of damages, interest, costs and all losses and other compensation proven and apportioned against such person or entity, severally and not jointly with any Released Party.
- (2) In the event that litigation commenced or continued by a Class Member who has not opted-out of the Ontario Proceeding results in a claim over or judgment against any or all of the Defendants and/or any other Released Party to pay any amount to any party, such Class Member shall then fully hold harmless, reimburse and indemnify the Defendants and/or other Released Parties for the full amount of such claim over or judgment, together with any interest, counsel fees and disbursements incurred by Defendants and/or Released Parties in defence of such claims.
- (3) Class Counsel on behalf of Class Members agrees that the lack of a judicial determination that Defendants or other Released Parties are joint tortfeasors does not preclude Non-Settling Defendants from obtaining the right to limit any judgment against them to the quantum of damages, interest, costs and all losses and other compensation proven and apportioned against such Non-Settling Defendant pursuant to section 8.1(1) herein.
- (4) The provisions in sections 8.2(1)-(3) are intended to obviate the necessity and expense of having Defendants and the Released Parties added or remain as parties on the record and obliged to participate in a trial merely for the purpose of determining if in fact they were tortfeasors so as to entitle Non-Settling Defendants to limit any recovery against such Non-Settling Defendants to the quantum of damages, interest, costs and all losses and other compensation proven and apportioned against them as provided in section 8.2(1) herein.
- (5) To the extent that the provision of benefits to any Filing Claimant under this Settlement Agreement may give rise to a claim or potential claim for subrogation or reimbursement against Defendants and/or Released Parties by any person or entity other than a Provincial Health Insurer, the Filing Claimant with respect to whom such claim or potential claim relates shall be responsible for resolving such claim or potential claim prior to receiving any benefits under this Settlement Agreement.

(6) To the extent that any such claim for subrogation or reimbursement is asserted against Defendants and/or Released Parties by any person or entity other than a Provincial Health Insurer notwithstanding this provision, such Claimant shall then fully hold harmless, reimburse and indemnify the Defendants or Released Parties for the full amount of such claims, together with any interest.

8.3 Other Litigation

(1) The Released Claims do not include any claims for damages or remedies of whatever kind or character, known or unknown, that are now recognized or that may be created or recognized in the future by statute, regulation, judicial decision, or in any other manner, for or in respect of, arising out of or relating to devices other than the Cook IVC Filter Products.

SECTION 9 - LIMITATION DEFENCE

(1) Except as provided herein, no Class Member who satisfies the criteria for payment pursuant to the Compensation Protocol shall be considered ineligible to receive a payment pursuant to this Settlement Agreement on the basis of any statute of limitation or repose, prescription period, or any other limitation or prescription defence.

(2) Nothing in this Settlement Agreement shall constitute or be deemed to constitute a waiver by the Defendants or Released Parties of defences based on statutes of limitation or repose, prescription periods or any other limitation or prescription defence with respect to any Opt Out.

SECTION 10 - AMENDMENTS TO THE SETTLEMENT AGREEMENT

(1) The Parties may amend this Settlement Agreement in writing, by consent and upon approval of the Ontario Court.

SECTION 11 - LEGAL FEES AND DISBURSEMENTS

11.1 Fee Approval

(1) Class Counsel shall bring a motion to the Ontario Court for the determination of Class Counsel Legal Fees to be paid from the Settlement Amount.

(2) The approval of the Settlement Agreement is not contingent on the outcome of any motion regarding Class Counsel Legal Fees.

(3) Class Counsel shall not be precluded from making additional motions to the Ontario Court for expenses incurred as a result of implementing the terms of this Settlement Agreement. All amounts awarded on account of Class Counsel Legal Fees shall be paid from the Settlement Amount.

(4) The Released Parties hereby acknowledge and agree that they are not parties to the motions concerning the approval of Class Counsel Legal Fees, they will have no involvement in the approval process to determine the amount of Class Counsel Legal Fees and they will not take any position or make any submissions concerning Class Counsel Legal Fees.

11.2 Individual Claims

(1) Class Members who retain lawyers to assist them in making their individual claims for compensation pursuant to this Settlement Agreement or to appeal the classification or rejection of their claim for compensation, shall be responsible for the legal fees and expenses of such lawyers.

SECTION 12 - CLAIMS ADMINISTRATOR

12.1 Appointment of Claims Administrator

(1) The Parties will jointly propose that the Claims Administrator be appointed by the Ontario Court for the purpose of processing and classifying claims and paying claims as provided in this Settlement Agreement and under the authority of the Ontario Court. The Claims Administrator shall follow the Compensation Protocol.

(2) The Claims Administrator shall be bilingual (French/English).

(3) All fees and costs of or related to the Claims Administrator shall be paid out of the Preliminary Settlement Amount.

12.2 Investment Guidelines

(1) The Claims Administrator shall invest all funds in its possession under this Settlement Agreement in the classes of securities provided in section 26 of the *Trustee Act*, RSO 1990, c. T 23.

(2) All fees and costs of any custodian holding and/or investing such funds shall be paid out of the income of such funds and shall not be the responsibility of Defendants.

(3) All taxes due and owing on investment proceeds shall be paid by the Claims Administrator from the Settlement Amount.

12.3 Confidentiality Obligations

(1) The Claims Administrator and any person appointed by the Claims Administrator to assist in the processing of claims must sign and adhere to a confidentiality statement by which they agree to keep confidential any information concerning Class Members, and the Claims Administrator shall institute procedures to ensure that the identity of all Class Members, and all information regarding their claims and submissions, will be kept confidential and not be provided to persons except as may otherwise be provided in this Settlement Agreement or as may be required by law.

(2) The Claims Administrator shall be subject to removal by the Ontario Court for cause. In the event of such removal, any successor Claims Administrator shall be identified and appointed as set forth in section 13.1(1).

SECTION 13 - MISCELLANEOUS PROVISIONS

13.1 Ongoing Authority

(1) The Ontario Court shall retain exclusive and continuing jurisdiction over the approval, implementation and administration, interpretation and enforcement of this Settlement Agreement and the Plaintiffs, Class Members and Defendants attorn to the jurisdiction of the Ontario Court for such purposes.

13.2 Recitals

(1) The Parties represent and warrant that the recitals referred to in section 1 are accurate and agree that they form part of this Settlement Agreement.

13.3 Negotiated Agreement

(1) This Settlement Agreement is the product of arm's length negotiations between Class Counsel, counsel for the Defendants, and/or parties represented by counsel. No Party shall be deemed to be the drafter of this Settlement Agreement or any provisions hereof. No presumption shall be deemed to exist in favour of or against any Party as a result of the preparation or negotiation of this Settlement Agreement.

(2) This Settlement Agreement shall be binding on the Parties regardless of any change in the law that might occur after the date each Party signed this Settlement Agreement.

13.4 Entire Agreement

(1) This Settlement Agreement, including its recitals, schedules and exhibits, as well as other documents expressly referred to and defined herein (*e.g.* the Compensation Protocol, Certification Amendment Order, Hearing Notice, Hearing Notice Plan, Hearing Notice Order, Settlement Approval Notice, Settlement Approval Notice Plan, Settlement Approval Order, Notice of Proposed Terms of Settlement and Provincial Health Insurer Release) constitutes the entire agreement by and among the Parties with regard to the subject matter of this Settlement Agreement and, on the Effective Date, shall supersede any previous agreements and understandings between the Parties with respect to the subject matter of this Settlement Agreement.

13.5 Counterparts

(1) This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

(2) Each of the signatories hereto warrant and represent that they are authorized to enter into this Settlement Agreement on behalf of the Parties on whose behalf this Settlement Agreement has been executed.

13.6 Class Member Notification

(1) All communications from the Claims Administrator to Class Members may be made by regular mail and/or email to such person's last mailing address and/or email address provided by such person to the Claims Administrator.

13.7 Governing Law

(1) This Settlement Agreement shall be governed by and interpreted pursuant to the laws of Ontario.

13.8 Severability

(1) If any provision of this Settlement Agreement is held to be void or invalid, the same shall not affect any other provision and the remainder shall be effective as though such provision had not been contained herein.

13.9 Dates

(1) Dates referred to in this Settlement Agreement may be altered with the written consent of the Parties and, as necessary, with the approval of the Ontario Court.

13.10 No Defendants in the Proceedings That Are Not Released Parties

(1) The Defendants represent and warrant that there are no defendants in the Proceedings that are not Released Parties such that the principle in *Tallman Truck Centre Limited v. K.S.P. Holdings Inc.*, 2022 ONCA 66, is engaged. Notwithstanding the forgoing, nothing in this Settlement Agreement requires any Party to take any step in the litigation prior to the execution of the Settlement Agreement and, without limiting the generality of the forgoing, nothing in the negotiation of this Settlement Agreement in any way changes the adversarial position of the Parties, which position shall not change until the Settlement Agreement is executed and then only to the extent of its terms. The Parties further agree that immediately upon the execution of the Settlement Agreement either Party may disclose the fact of the Settlement Agreement, any terms of the Settlement Agreement and/or a copy of the Settlement Agreement to any defendant in any Proceeding that is not a Party.

13.11 Party Notification

(1) Any notification, request, instruction or other document to be given by any Party to any other Party to this Settlement Agreement (other than class notification) shall be in writing and shall be addressed as follows:

(a) If to: THE PLAINTIFFS and/or CLASS COUNSEL,

Daniel E. H. Bach
Siskinds LLP
275 Dundas St, Unit 1
London, ON N6B 3L1
Tel.: (416) 594-4376
Fax: (416) 594-4377

Email: daniel.bach@siskinds.com

(b) If to: Cook (Canada) Inc., Cook Incorporated, and William Cook Europe APS

Sarah J. Armstrong

Fasken LLP
333 Bay Street, Suite 2400
Toronto, ON M5H 2T6
Tel: (416)868-3452
Fax: (416) 364-7813
Email: sarmstrong@fasken.com

13.12 French Translation

(1) Class Counsel shall prepare a French translation of this Settlement Agreement and the Compensation Protocol. The text of the translations shall be subject to approval by the Defendants.

(2) In case of any ambiguity or dispute about interpretations, the English version is official and shall prevail.

(3) The costs of preparing a French translation of this Settlement Agreement and the Compensation Protocol will form part of the Non-Refundable Expenses.

(4) The translations of this Settlement Agreement and the Compensation Protocol shall be provided to the Class Members.

13.13 English Language Clause

(1) The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English; les parties reconnaissent avoir exigé et consenti à ce que la présente entente de règlement et tous les documents connexes soient rédigés en anglais..

13.14 Motions for Directions

(1) Class Counsel or the Defendants may apply to the Ontario Court for directions in respect of the interpretation, implementation and administration of this Settlement Agreement.

(2) All motions contemplated by this Settlement Agreement shall be on notice to the Plaintiffs and Defendants, as applicable.

13.15 Acknowledgements

(1) Each of the Parties herby affirms and acknowledges that:

- (a) He, she, they 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, them or the Party's representative by his, her or its counsel;
- (c) He, she, they or the Party's representative fully understands each term of the Settlement Agreement and its effect; and
- (d) No Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party, beyond the terms of the Settlement Agreement, with respect to the first Party's decision to execute the Settlement Agreement.

13.16 Authorized Signatures

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

13.17 Date of Execution

(1) The Parties have executed the Settlement Agreement as of the date on the cover page and may be signed in counterparts.

CLASS COUNSEL

Dated: _____, 2024

--DRAFT--

Name:
SISKINDS LLP
Class Counsel

CLASS COUNSEL

Dated: _____, 2024

--DRAFT--

Name:

SISKINDS DESMEULES AVOCATS, S.E.N.C.R.L.

Class Counsel

Cook (Canada) Inc., Cook Incorporated, and William
Cook Europe APS

Dated: _____, 2024

[NAME]

[ROLE]

I have authority to bind the corporations

