

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

Between

CROSSLINK TECHNOLOGY INC.

(the “Plaintiff”)

and

DOW CHEMICAL COMPANY and DOW CHEMICAL CANADA INC.

(the “Settling Defendants”)

**CANADIAN POLYETHER POLYOLS PRODUCTS CLASS ACTION
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**CANADIAN POLYETHER POLYOL PRODUCTS CLASS ACTION
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RECITALS

A. WHEREAS the Proceedings were commenced in Ontario and Quebec, alleging that the Defendants participated in an unlawful conspiracy to fix, raise, maintain or stabilize the prices of Polyether Polyols Products in Canada and/or to allocate markets and customers for the sale of Polyether Polyols Products in Canada, contrary to Part VI of the *Competition Act* and the common law and/or civil law;

B. WHEREAS the Plaintiff executed agreements to settle the Proceedings as against the Settled Defendants, and those agreements were approved by the Ontario Court and the Quebec Court;

C. WHEREAS, pursuant to the settlements with the Settled Defendants, Class Members were provided an opportunity to opt-out of the Proceedings, and the deadline for Class Members to opt out of the Proceedings has passed, and two opt out letters were received;

D. WHEREAS the Ontario Proceeding was certified as a class proceeding under the Ontario *Class Proceedings Act, 1992* pursuant to the Order of the Ontario Court, dated March 7, 2014, which listed certain common issues for trial, and which appointed the Plaintiff as the representative plaintiff for a class defined as follows (“the Class”, each member of which is a “Class Member”):

All persons in Canada (excluding defendants and their respective parents, employees, subsidiaries, affiliates, officers and directors) who purchased Polyether Polyol Products between January 1, 1999 and December 31, 2004.

E. WHEREAS the Settling Defendants were denied leave to appeal the certification of the Ontario Proceeding;

F. WHEREAS, in light of the certification of a national class in the Ontario Proceeding, the plaintiff in the Quebec Proceeding has agreed to seek a discontinuance of the Quebec Proceeding, without costs;

G. WHEREAS the Settling Defendants do not admit, through the execution of this Settlement Agreement, any allegation of unlawful conduct alleged in the Proceedings or otherwise;

H. WHEREAS despite their belief that they are not liable in respect of the claims as alleged in the Proceedings and have good and reasonable defences in respect of the merits, the Settling Defendants are entering into this Settlement Agreement in order to achieve a final and national resolution of all claims asserted or which could have been asserted against the Settling Defendants in the Proceedings, and to avoid further expense, inconvenience, the distraction of burdensome and protracted litigation, and the risks associated with trials and appeals;

I. WHEREAS counsel for the Settling Defendants and Class Counsel have engaged in arms-length settlement discussions and negotiations, resulting in this Settlement Agreement with respect to the Proceedings;

J. WHEREAS Class Counsel, on their own behalf and on behalf of the Plaintiff and the Class, have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiff's claims, having regard to the burdens and expense in prosecuting the Ontario Proceeding, including the risks and uncertainties associated with trials and appeals, and having regard to the value of the Settlement Agreement, Class Counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiff and the Class;

K. WHEREAS the Plaintiff, Class Counsel and the Settling 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 Settling Defendants or evidence of the truth of any of the allegations against the Settling Defendants, which allegations the Settling Defendants expressly deny;

L. WHEREAS the Parties therefore wish to, and hereby do, finally resolve on a national basis, without admission of liability, the Ontario Proceeding as against the Settling Defendants;

M. WHEREAS the Settling 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 Ontario Proceeding and as is expressly provided in this Settlement Agreement with respect to the Ontario Proceeding;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Ontario Proceeding be settled and dismissed as to the Settling Defendants only, all subject to the approval of the Ontario Court, on the terms and conditions herein:

SECTION 1 - DEFINITIONS

For the purpose of this Settlement Agreement only, including the recitals hereto:

- (1) ***Administration Expenses*** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiff, Class Counsel or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of notices and the costs of claims administration, but excluding Class Counsel Fees and Class Counsel Disbursements.
- (2) ***Approval Hearing*** means the hearing to request the Ontario Court's approval of the settlement provided for in this Settlement Agreement.
- (3) ***Claims Administrator*** means the firm proposed by Class Counsel and appointed by the Ontario Court to administer the Settlement Amount in accordance with the provisions of this Settlement Agreement and the Distribution Protocol, and any employees of such firm.
- (4) ***Class Counsel*** means Siskinds LLP.
- (5) ***Class Counsel Disbursements*** include the disbursements and applicable taxes incurred by Class Counsel or counsel for the plaintiff in the Quebec Proceeding in the prosecution of the Proceedings.
- (6) ***Class Counsel Fees*** means the fees of Class Counsel and counsel for the plaintiff in the Quebec Proceeding, and any applicable taxes or charges thereon, including any amounts payable by Class Counsel, counsel for the plaintiff in the Quebec Proceeding, or the Class Members to

any other body or Person, including the Fonds d'aide aux actions collectives in Quebec, as a result of this Settlement Agreement.

(7) ***Class Period*** means January 1, 1999 to December 31, 2004.

(8) ***Counsel for the Settling Defendants*** means McCarthy Tetrault LLP.

(9) ***Defendants*** means the Settling Defendants and Settled Defendants.

(10) ***Distribution Protocol*** means the plan for distributing the Settlement Amount together with the sums paid by the Settled Defendants, and accrued interest, in whole or in part, as proposed by Class Counsel and as approved by the Ontario Court.

(11) ***Effective Date*** means the later of the dates when (i) the Final Order has been received from the Ontario Court; and (ii) a final order or judgement has been received from the Quebec Court discontinuing the Quebec Proceeding.

(12) ***Execution Date*** means the date on which the final Party executes this Settlement Agreement.

(13) ***Excluded Person*** means each Defendant, Rhodia, Rhodia Inc., and Rhodia Canada Inc., and their respective parents, employees, subsidiaries, affiliates, officers and directors, and those Persons who validly and timely opted-out of the Proceedings in accordance with the Orders of the Ontario Court, dated March 11, 2008 and July 24, 2012.

(14) ***Final Order*** means the final judgment entered by the Ontario Court approving this Settlement Agreement, either once the time to appeal such judgment has expired without any appeal being taken if an appeal lies, or, if an appeal is taken, once there has been affirmation of the approval of this Settlement Agreement upon a final disposition of all appeals.

(15) ***Notice of Hearing*** means the form or forms of notice, agreed to by the Plaintiff and the Settling Defendants, or such other form or forms of notice as may be approved by the Ontario Court, which informs the Class of: (i) the date and location of the Approval Hearing; (ii) the principal elements of the Settlement Agreement; (iii) the principal elements of the proposed Distribution Protocol; (iv) the fact that Class Counsel will seek approval for payment of the Class Counsel Fees and Class Counsel Disbursements from the Settlement Amount; and (v) the

process (including the deadline) by which Class Members may object to this Settlement Agreement, the Distribution Protocol, and/or the payments sought by Class Counsel.

(16) ***Ontario Court*** means the Ontario Superior Court of Justice.

(17) ***Ontario Proceeding*** means the action pending before the Ontario Court under the style of cause *Crosslink Technology Inc. v BASF Canada et al*, Ontario Superior Court of Justice, London (Court File No. 50305CP).

(18) ***Other Actions*** means actions or proceedings, other than the Proceedings, relating to Released Claims commenced by a Class Member either before or after the Effective Date.

(19) ***Party and Parties*** means the Plaintiff, the Class Members (where appropriate) and the Settling Defendants.

(20) ***Person*** means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, trustee, executor, beneficiary, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity and their heirs, predecessors, successors, representatives, or assignees.

(21) ***Plaintiff*** means Crosslink Technology Inc., the plaintiff in the Ontario Proceeding.

(22) ***Polyether Polyols Products*** means polyether polyols, together with polyether polyol systems, monomeric or polymeric diphenylmethane diisocyanate (“MDI”) and toluene Diisocyanate (“TDI”).

(23) ***Proceeding and Proceedings*** means the Ontario Proceeding and the Quebec Proceeding.

(24) ***Quebec Court*** means the Superior Court of Quebec.

(25) ***Quebec Proceeding*** means the action pending before the Quebec Court under the style of cause *Anne Johnson v BASF Canada et al*, Quebec Superior Court, Quebec District (Court File No. 200-06-000069-065).

(26) ***Released Claims*** means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated,

including any claims for consequential, subsequent or follow-on harm that arises after the Class Period, damages of any kind (including compensatory, punitive or other damages) whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses (including Administration Expenses), penalties, and lawyers' fees (including Class Counsel Fees and Class Counsel Disbursements), known or unknown, suspected or unsuspected, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity, that any of the Releasers ever had, now have or hereafter can, shall or may have arising from or relating in any way to an alleged unlawful conspiracy to fix, raise, maintain, and/or stabilize the price of Polyether Polyol Products in Canada during the Class Period, or relating to any conduct alleged in the Proceedings. However, nothing herein shall be construed to release: (a) any claims involving any negligence, personal injury, breach of contract, bailment, failure to deliver lost goods, damaged or delayed goods, product defect, securities, or other similar claim relating to Polyether Polyol Products; and (b) claims brought (whether before or after the Effective Date) relating to purchases of Polyether Polyol Products outside of Canada.

(27) **Releasees** means, jointly and severally, individually and collectively, the Settling Defendants, and all of their respective present and former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, insurers, and all other Persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and 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, administrators and assigns of each of the foregoing.

(28) **Releasers** means, jointly and severally, individually and collectively, the Plaintiff, Anne Johnson, and the Class Members, on behalf of themselves and any Person or entity claiming by or through them as a parent, subsidiary, affiliate, predecessor, successor, shareholder, partner, director, owner of any kind, agent, principal, employee, contractor, attorney, heir, executor, administrator, insurer, devisee, assignee, or representative of any kind.

(29) **Settled Defendants** means:

- (a) Bayer Inc, Bayer AG, Bayer MaterialScience LLC (formerly known as Bayer Polymers LLC) and Bayer Corporation;

- (b) Lyondell Chemical Company;
 - (c) Huntsman International LLC; and
 - (d) BASF Corporation and BASF Canada Inc.
- (30) **Settlement Agreement** means this agreement, including the recitals.
- (31) **Settlement Amount** means the sum of five million, eighty thousand Canadian dollars (CDN \$5,080,000).
- (32) **Settling Defendants** means Dow Chemical Company and Dow Chemical Canada Inc.
- (33) **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, SC 1991, c 46) held at a Canadian financial institution under the control of Class Counsel or the Claims Administrator, once appointed, for the benefit of the Class Members or the Settling Defendants, as provided for in this Settlement Agreement.

SECTION 2 - SETTLEMENT APPROVAL

2.1 Best Efforts

- (1) The Parties shall use their best efforts to implement this settlement and to secure the dismissal with prejudice of the Ontario Proceeding as against the Settling Defendants, and a discontinuance of the Quebec Proceeding as against the Settling Defendants, without costs.

2.2 Motion for Notice Approval

- (1) The Plaintiff shall bring a motion before the Ontario Court, as soon as practicable after the Execution Date, for an order approving the Notice of Hearing.
- (2) The form of order referred to in section 2.2(1) shall be as agreed to by the Plaintiff and Settling Defendants or be in such form or manner as approved by the Ontario Court.

2.3 Motion for Settlement Approval

(1) The Plaintiff shall bring a second motion before the Ontario Court for an order approving the Settlement Agreement as soon as practicable after:

- (a) the order referred to in Section 2.2(1) has been granted;
- (b) the Notice of Hearing has been published; and
- (c) the deadline for objecting to the Settlement Agreement has expired.

(2) The form of order referred to in section 2.3(1) shall be as agreed to by the Plaintiff and Settling Defendants or be in such form or manner as approved by the Ontario Court, subject to section 4.1(1).

2.4 Effective Date

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

2.5 Pre-Motion Confidentiality

(1) Until the Motion Record for the motion required by section 2.2(1) is filed, the Parties shall keep all of the terms of the Settlement Agreement confidential and shall not disclose them without the prior consent of counsel for the opposing Party, except as required for the purposes of financial reporting or the preparation of financial records (including tax returns and financial statements), as otherwise required by law, or as otherwise required to give effect to the terms of this Settlement Agreement.

SECTION 3 - SETTLEMENT BENEFITS

3.1 Payment of Settlement Amount

(1) Within thirty (30) days of the Execution Date and no later than December 15, 2017, the Settling Defendants shall pay the Settlement Amount to Class Counsel to be held in escrow, by deposit into the Trust Account, pending the Effective Date.

(2) The Settling Defendants shall deposit the Settlement Amount into the Trust Account by wire transfer. Class Counsel shall provide the necessary wire transfer information to Counsel for

the Settling Defendants with reasonable advance notice so that the Settling Defendants have a reasonable period of time to comply with section 3.1(1) of this Settlement Agreement.

(3) The Settlement Amount and other consideration to be provided in accordance with the terms of this Settlement Agreement shall be provided in full satisfaction of the Released Claims against the Releasees.

(4) The Settling 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.

(5) Once a Claims Administrator has been appointed, Class Counsel may transfer all funds in the Trust Account to the Claims Administrator.

(6) Class Counsel and the Claims Administrator shall maintain the Trust Account as provided for in this Settlement Agreement. While in control of the Trust Account, Class Counsel and the Claims Administrator shall not pay out all or part of the monies 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.

3.2 Taxes and Interest

(1) Except as hereinafter provided, all interest earned on the Settlement Amount shall accrue to the benefit of the Class and shall become and remain part of the Trust Account.

(2) Subject to section 3.2(3), all Canadian 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. Class Counsel or the Claims Administrator 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 Settling 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 by the Settlement Amount or pay any taxes on the monies in the Trust Account, unless this Settlement Agreement terminated, in which case the interest earned on the Settlement Amount in the Trust Account

shall be paid to the Settling Defendants who, in such case, shall be responsible for the payment of all taxes on such interest not previously paid.

SECTION 4 - TERMINATION OF SETTLEMENT AGREEMENT

4.1 Right of Termination

(1) In the event that:

- (a) the Ontario Court declines to dismiss the Ontario Proceeding against the Settling Defendants;
- (b) the Ontario Court declines to approve this Settlement Agreement or any material part hereof;
- (c) the Ontario Court approves this Settlement Agreement in a materially modified form;
- (d) any order approving this Settlement Agreement made by the Ontario Court does not become a Final Order;
- (e) the Quebec Court declines to discontinue the Quebec Proceeding; or
- (f) the Settlement Amount is not paid in accordance with section 3.1(1),

the Plaintiff and the Settling Defendants shall have the right to terminate this Settlement Agreement (except that only the Settling Defendants shall have the right to terminate under subsection (a) and (e) above and only the Plaintiff shall have the right to terminate under subsection (f) above) by delivering a written notice pursuant to section 10.16, within thirty (30) days following an event described above.

(2) Except as provided for in section 4.3, if the Settling Defendants or the Plaintiff exercise their right to terminate, the Settlement Agreement 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.

(3) Any order, ruling or determination made (or rejected) by the Ontario Court with respect to Class Counsel Fees or Class Counsel Disbursements, 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.

4.2 If Settlement Agreement is Terminated

(1) If this Settlement Agreement is not approved, is terminated in accordance with its terms, or otherwise fails to take effect for any reason:

- (a) no motion to approve this Settlement Agreement, which has not been decided, shall proceed;
- (b) the Parties will cooperate in seeking to have any issued order approving this Settlement Agreement set aside and declared null and void and of no force or effect, and any Party shall be estopped from asserting otherwise; and
- (c) within ten (10) days of such termination having occurred, Class Counsel shall destroy all documents or other materials provided by the Settling Defendants pursuant to this Settlement Agreement or containing or reflecting information derived from such documents or other materials received from the Settling Defendants and, to the extent Class Counsel has disclosed any documents or information provided by the Settling Defendants to any other Person, shall endeavor to recover and destroy such documents or information. Class Counsel shall provide Counsel for the Settling Defendants with a written certification by Class Counsel of such recovery efforts and destruction. Nothing contained in this section 4.2 shall be construed to require Class Counsel to destroy any of their work product. However, any documents or information provided by the Settling Defendants, or received from the Settling Defendants in connection with this Settlement Agreement, may not be disclosed to any Person in any manner or used, directly or indirectly, by Class Counsel or any other Person in any way for any reason, without the express prior written permission of the Settling Defendants. Class Counsel shall take appropriate steps and precautions to ensure and maintain the confidentiality of such documents, information and any work product of Class Counsel derived from such documents or information.

(2) If the Settlement Agreement is terminated, Class Counsel shall, within thirty (30) business days of the written notice advising that the Settlement Agreement has been terminated in accordance with its terms, return to the Settling Defendants the Settlement Amount, plus all accrued interest thereon and less taxes paid on interest, any costs actually incurred or payable with respect to the notices required by section 7.1, and any costs of translation required by section 10.11 that have actually been incurred or are payable.

4.3 Survival of Provisions After Non-Approval of Settlement Agreement

(1) If this Settlement Agreement is terminated or otherwise fails to take effect for any reason, the provisions of sections 3.2(3), 4.1(2), 4.2, 6.1, 6.2, 7.1, 8.3(3)(a), and 8.3(4), and the definitions applicable thereto shall survive the termination and continue in full force and effect. The definitions shall survive only for the limited purpose of the interpretation of sections 3.2(3), 4.1(2), 4.2, 6.1, 6.2, 7.1, 8.3(3)(a), and 8.3(4) within the meaning of this Settlement Agreement, but for no other purposes. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

SECTION 5 - RELEASES AND DISMISSALS

5.1 Release of Releasees

(1) Upon the Effective Date, subject to section **Error! Reference source not found.**, and in consideration of payment of the Settlement Amount and other consideration set forth in the Settlement Agreement, the Releasors forever and absolutely release the Releasees from the Released Claims that any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have.

5.2 No Further Claims

(1) Upon the Effective Date, the Releasors shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any action, suit, cause of action, claim or demand against the Settling Defendants or any other Person who may claim contribution or indemnity or other claims over relief from the Settling Defendants, in respect of any Released Claim.

5.3 Dismissal of the Ontario Proceeding

(1) Upon the Effective Date, the Ontario Proceeding shall be dismissed, with prejudice and without costs, as against the Settling Defendants.

5.4 Dismissal of Other Actions

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

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

5.5 Claims Against Other Entities Reserved

(1) Except as provided herein, this Settlement Agreement does not settle, compromise, release or limit in any way whatsoever any claim by Class Members against any Person other than the Releasees.

5.6 Material Term

(1) For the avoidance of doubt and without in any way limiting the ability of the Parties to assert that other terms in this Settlement Agreement are material terms (subject to section 4.1(3)), the releases and reservation of rights contemplated in this section 5 shall be considered a material term of the Settlement Agreement and the failure of the Ontario Court to approve the releases and/or and reservation of rights contemplated herein shall give rise to a right of termination pursuant to section 4.1 of the Settlement Agreement.

SECTION 6 - EFFECT OF SETTLEMENT

6.1 No Admission of Liability

(1) The Parties expressly reserve all of their rights if this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason. Further, whether or not this 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, and any action taken to carry out this Settlement Agreement, shall not be deemed,

construed or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by the Settling Defendants, or of the truth of any of the claims or allegations contained in the Proceedings, or any other pleading filed by the Plaintiff.

6.2 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 proceeding to approve and/or enforce this Settlement Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law or as provided in this Settlement Agreement.

6.3 No Further Litigation

(1) No Class Counsel, nor anyone currently or hereafter employed by, or a partner with Class Counsel, may directly or indirectly participate or be involved in or in any way assist with respect to any claim made or action commenced by any Person against the Settling Defendants that relates to or arises from the Released Claims. Moreover, neither Class Counsel, nor anyone currently or hereafter employed by, or a partner with Class Counsel, may divulge to anyone for any purpose, or use for any purpose, any information obtained in the course of the Ontario Proceeding or the negotiation and preparation of this Settlement Agreement, except to the extent that such information is or becomes otherwise publicly available or unless ordered to do so by a court in Canada.

SECTION 7- NOTICE TO CLASS

7.1 Notices Required

(1) The Class shall be given the following notices: (i) the Notice of Hearing; (ii) notice if this Settlement Agreement is approved, as to the details of the Distribution Protocol; (iii) notice if this Settlement Agreement is not approved, or is terminated, or otherwise fails to take effect; and (iv) such further notice as may be directed by the Ontario Court.

7.2 Form and Distribution of Notices

(1) The form of notices referred to in section 7.1(i), (iii) and (iv) and the manner and extent of publication and distribution shall be as agreed to by the Plaintiff and Settling Defendants or in such form or manner as approved by the Ontario Court.

SECTION 8 – ADMINISTRATION AND IMPLEMENTATION

8.1 Mechanics of Administration

(1) Except to the extent provided for in this Settlement Agreement, the mechanics of the implementation and administration of this Settlement Agreement and the Distribution Protocol shall be determined by the Ontario Court on motions brought by Class Counsel.

(2) Subject to section 4.2(2), the Settling Defendants shall not have any responsibility, financial obligations or liability whatsoever with respect to the investment, distribution or administration of monies in the Trust Account including, but not limited to, Administration Expenses, Class Counsel Fees and Class Counsel Disbursements.

8.2 Distribution Protocol

(1) As part of the motion seeking approval of this Settlement Agreement, and on notice to the Settling Defendants, Class Counsel will seek an order from the Ontario Court approving the Distribution Protocol.

(2) The Distribution Protocol shall require Class Members seeking compensation to give credit for any compensation received through other proceedings or in private out-of-class settlements, unless by such proceedings or private out-of-class settlements the Class Member's claim was released in its entirety, in which case that Class Member shall be deemed ineligible for any further compensation.

8.3 Information and Assistance

(1) The Settling Defendants will make reasonable best efforts to compile a list of the names and addresses (including any relevant email addresses) of those Persons in Canada who purchased Polyether Polyols Products from them during the Class Period. The information shall be delivered in Microsoft Excel or such other format as may be agreed upon by Counsel for the Settling Defendants and Class Counsel.

(2) The information required by section 8.3(1) shall be delivered to Class Counsel within fifteen (15) days of the Execution Date.

(3) Class Counsel may use the information provided under section 8.3(1) to facilitate:

(a) the dissemination of the notices required in section 7.1; and

(b) the implementation and administration of the Distribution Protocol with respect to this Settlement Agreement and the other settlement agreements achieved in the Proceedings.

(4) It is understood and agreed that the information provided in accordance with section 8.3(1) shall only be used or disclosed for the purposes set out in section 8.3(3) and shall not be used directly or indirectly for any other purpose, except to the extent that the information is or becomes publicly available. Class Counsel may disclose all information provided by the Settling Defendants pursuant to section 8.3(1) to any Court-appointed notice provider and/or the Claims Administrator, to the extent reasonably necessary for the purposes enumerated in section 8.3(3). Any Court-appointed notice provider and/or any the Claims Administrator shall be bound by the same confidentiality obligations set out herein. If this Settlement Agreement is terminated, all information provided by the Settling Defendants pursuant to section 8.3(1) shall be dealt with in accordance with section 4.2(1)(c) and no record of the information so provided shall be retained by Class Counsel in any form whatsoever.

(5) The Settling Defendants will make themselves reasonably available to respond to questions respecting the address information provided pursuant to section 8.3(1) from Class Counsel or any Court-appointed notice provider and/or the Claims Administrator. The Settling Defendants' obligations to make themselves reasonably available to respond to questions as particularized in this Section shall not be affected by the release provisions contained in section 5 of this Settlement Agreement. Unless this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, the Settling Defendants' obligations to cooperate pursuant to this section 8.3 shall cease when all settlement funds have been distributed.

SECTION 9 - CLASS COUNSEL FEES, DISBURSEMENTS AND ADMINISTRATION EXPENSES

9.1 Court Approval for Class Counsel Fees and Disbursements

(1) Class Counsel shall seek the Ontario Court's approval to pay Class Counsel Disbursements and Class Counsel Fees contemporaneous with seeking approval of this Settlement Agreement. Class Counsel Disbursements and Class Counsel Fees shall be reimbursed and paid solely out of the Trust Account after the Effective Date.

9.2 Responsibility for Fees, Disbursements and Taxes

(1) The Settling Defendants shall not be liable for any Class Counsel Fees, Class Counsel Disbursements or taxes of any of the lawyers, experts, advisors, agents, or representatives retained by Class Counsel, the Plaintiff or the Class Members, any amounts to which the Fonds d'aide aux actions collectives in Quebec may be entitled, or any lien of any Person on any payment to any Class Member from the Settlement Amount.

9.3 Administration Expenses

(1) Except as provided herein, Administration Expenses may only be paid out of the Trust Account after the Effective Date.

(2) Notwithstanding section 9.3(1), Class Counsel shall pay the costs of the notices required by section 7.1 and any costs of translation required by section 10.11 from the Trust Account, as they become due and such payments may be made before the Effective Date. Subject to section 4.2(2), the Settling Defendants shall not have any responsibility for the costs of the notices or translation.

9.4 Remaining Settlement Funds

(1) In the event that some of the settlement funds remain after payment of Class Counsel Disbursements, Class Counsel Fees, Administration Expenses, and implementation of the Distribution Protocol, Class Counsel shall seek bring a motion, on notice to the Settling Defendants, to seek direction from the Ontario Court regarding the distribution of the remaining funds.

SECTION 10 - MISCELLANEOUS

10.1 Motions for Directions

- (1) Class Counsel or the Settling Defendants may apply to the Ontario Court as may be required for directions in respect of the interpretation, implementation and administration of this Settlement Agreement.
- (2) All motions contemplated by this Settlement Agreement shall be on notice to the Parties, except for those motions concerned solely with the implementation and administration of the Distribution Protocol.

10.2 Headings, etc.

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

10.3 Computation of Time

- (1) In the computation of time in this Settlement Agreement, except where a contrary intention appears,
 - (a) where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
 - (b) only in the case where the time for doing an act expires on a day defined as a “holiday” in the *Rules of Civil Procedure*, RRO 1990, Reg 194, the act may be done on the next day that is not a holiday.

10.4 Ongoing Jurisdiction

(1) The Ontario Court shall retain exclusive jurisdiction over the Ontario Proceeding, the Parties, and the implementation, administration, interpretation and enforcement of the terms of this Settlement Agreement, and the Parties attorn to the jurisdiction of the Ontario Court for such purposes.

10.5 Governing Law

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

10.6 Entire Agreement

(1) This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

10.7 Amendments

(1) This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto, and any such modification or amendment must be approved by the Ontario Court.

10.8 Binding Effect

(1) This Settlement Agreement shall be binding upon, and enure to the benefit of, the Parties, the Releasors, the Releasees and all of their successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiff shall be binding upon all Releasors and each and every covenant and agreement made herein by the Settling Defendants shall be binding upon all of the Releasees.

10.9 Counterparts

(1) This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile or electronic signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

10.10 Negotiated Agreement

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

10.11 Language

(1) The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English; les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en anglais. Nevertheless, if required by a Court, Class Counsel and/or a translation firm selected by Class Counsel shall prepare a French translation of the Settlement Agreement, the cost of which shall be paid from the Settlement Amount. In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall govern.

10.12 Transaction

(1) This Settlement Agreement constitutes a transaction in accordance with Articles 2631 and following of the *Civil Code of Quebec*, and the Parties are hereby renouncing to any errors of fact, of law and/or of calculation.

10.13 Recitals

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

10.14 Acknowledgements

- (1) Each of the Parties hereby affirms and acknowledges that:
 - (a) he, she or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;
 - (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel;
 - (c) he, she or the Party's representative fully understands each term of the Settlement Agreement and its effect; and
 - (d) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party, beyond the terms of this Settlement Agreement, with respect to the first Party's decision to execute this Settlement Agreement.

10.15 Authorized Signatures

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

10.16 Notice

(1) Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another Party, such notice, communication or document shall be provided by email, facsimile or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

For Class Counsel:

Charles M. Wright and Linda Visser
Siskinds LLP
Barristers and Solicitors
680 Waterloo Street
London, ON N6A 3V8

Telephone: 519-672-2121
Facsimile: 519-672-6065
Email: charles.wright@siskinds.com
linda.visser@siskinds.com

For Settling Defendants:

Dana Peebles
McCarthy Tétrault LLP
Suite 5300, TD Bank Tower
Box 48, 66 Wellington Street West
Toronto ON M5K 1E6

Telephone: 416-362-1812
Facsimile: 416-868-0673
Email: dpeebles@mccarthy.ca

10.17 Execution

(1) The Parties hereby execute this Settlement Agreement on the dates indicated:

CROSSLINK TECHNOLOGY INC., on its own behalf and on behalf of the Class, by its counsel

Name of Authorized Signatory:

Linda Vese

Signature of Authorized Signatory:

[Signature]

Siskinds LLP
Class Counsel

Date: Nov 17, 2017

DOW CHEMICAL COMPANY AND DOW CHEMICAL CANADA INC., by their counsel

Name of Authorized Signatory:

Dana Poble, Partner.

Signature of Authorized Signatory:

[Signature]

McCarthy Tétrault LLP

Date: November 16, 2017.